

Tour Operator Licence Fees Regulations 2011

Regulatory Impact Statement March 2011



Tour Operator Licence Fees Regulations 2011

This Regulatory Impact Statement has been prepared in accordance with the requirements of the Subordinate Legislation Act 1994 and the Victorian Guide to Regulation incorporating the Victorian Regulatory Change Measurement Manual.

March 2011

Tour operator licence fees regulations 2011 Regulatory impact statement

This Regulatory Impact Statement (RIS) has been prepared to fulfil the requirements of the *Subordinate Legislation Act 1994* and to facilitate public consultation on the proposed Tour Operator Licence Fees Regulations 2011.

In accordance with the *Victorian Guide to Regulation*, the Victorian Government seeks to ensure that proposed regulations are well-targeted, effective and appropriate, and impose the lowest possible burden on Victorian business and the community.

A prime function of the RIS process is to help members of the public comment on proposed statutory rules (regulations) before they have been finalised. Such public input can provide valuable information and perspectives, and thus improve the overall quality of the regulations. The proposed Regulations are being circulated to key stakeholders and any other interested parties, and feedback is sought. A copy of the proposed Regulations is provided as an attachment to this RIS.

Public comments and submissions are now invited on the proposed Tour Operator Licence Fees Regulations 2011. Unless otherwise indicated, 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, Friday 29 April 2011** to the:

Public Land Tour Operator Licence Reform Project
Department of Sustainability and Environment
PO Box 500
East Melbourne VIC 3002

or email:

licence.reforms@dse.vic.gov.au

This Regulatory Impact Statement was prepared for the Department of Sustainability and Environment by Regulatory Impact Solutions Pty Ltd.

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Abbreviations

AAS – Adventure Activity Standards

ABC – Activity-based Costing

DSE – Department of Sustainability and Environment

EOI – Expression of Interest

LTO – Licensed Tour Operator. This includes licensed tour operator and commercial activity providers that operate on public land in Victoria.

MO – Ministerial Order

MCA – Multi-criteria Analysis

NCC – National Competition Council

Policy Statement – *Policy Statement: Licensing System for Tour Operators and Activity Providers on Public Land in Victoria*, Melbourne, May 2008

Premier’s Guidelines – Subordinate Legislation Act 1994 Guidelines

PV – present value. Present value ‘discounts’ the value of money in future years to allow it to be valued in today’s terms.

RRB – Reducing the Regulatory Burden initiative

r. – regulation

the amending Act – *Crown Land Acts Amendment (Lease and Licence Terms) Act 2009*

the proposed Regulations – Tour Operator Licence Fees Regulations 2011. This refers to the five separate but identical statutory rules, namely the Crown Land (Reserves) (Fees) Regulations 2011, Forest (Fees) Regulations 2011, Land (Fees) Regulations 2011, National Parks (Fees) Regulation 2011, and Wildlife (Fees) Regulations 2011

tour operators – means commercial tour operators and outdoor activity providers.

TOMS – Tour Operator Management System

VCEC – Victorian Competition and Efficiency Commission

VPS – Victorian Public Service

VGR – Victorian Guide to Regulation

Summary

Native Grassland near Wickliffe, west of Ballarat. Photo: Stephen Platt

Purpose of a Regulatory Impact Statement

While a Regulatory Impact Statement (RIS) formally assesses regulatory proposals against the requirements in the *Subordinate Legislation Act 1994* and the *Victorian Guide to Regulation*, its prime function is to help members of the public comment on new regulations before they have been finalised. Such public input can provide valuable information and perspectives, and thus improve the overall quality of the regulations.

The Department of Sustainability and Environment (DSE) welcomes and values comments from businesses and members of the community. While in no way limiting comments, this RIS asks a number of questions concerning how the fees should be designed and applied. It is important that the fees operate efficiently, but also are fair and take practical considerations into account.

Context

This RIS provides an assessment of the proposed Tour Operator Licence Fees Regulations 2011 (the proposed Regulations). The proposed Regulations provide a fee schedule for tour operators and activity providers conducting commercial operations on public land.

The proposed changes in this RIS arise from reviews and consultation with stakeholders commencing in 2003, which culminated in the release of the *Policy Statement: Licensing System for Tour Operators and Activity Providers on Public Land in Victoria* in May 2008.¹ A number of key reform proposals emerged from the Policy Statement, including lengthening the duration of licence terms, attaining consistency of the licensing system across public land categories, and simplifying the complicated nature of the licence fees.

In August 2009 the *Crown Land Acts Amendment (Lease and Licence Terms) Act 2009* (the amending Act) was passed by parliament, having received support from both the then government and opposition. The Act provides the legislative authority for the reforms to the tour operator licensing system. Specifically, the Act allows for amendments to the:

- *Crown Land (Reserves) Act 1978*
- *Forest Act 1958*
- *Land Act 1958*
- *National Parks Act 1975*, and
- *Wildlife Act 1975*.

¹ State of Victoria, Department of Sustainability and Environment (2008), *Policy Statement: Licensing System for Tour Operators and Activity Providers on Public Land in Victoria*, Melbourne, May 2008

The Act allows for the introduction of identical provisions into each of these five pieces of legislation to provide an authority to charge tour operator and activity provider licence fees.² These provisions have not yet been proclaimed. It is intended that these provisions will come into operation on the forced commencement date of 1 July 2011 to coincide with the operation of the regulations. This RIS will therefore cover five separate but identical regulations authorised and is referred to as the proposed Tour Operator Licence Fees Regulations 2011.

The fees for the majority of tour operator licences that occur on National and State parks and state forests are currently set by a Ministerial Order. The proposed Regulations are therefore new regulations rather than remade statutory rules. Committees of Management and Alpine Resort Management Boards currently issue licences to tour operators and activity providers and set licence fees under their statutory powers.

The amending Act introduces a uniform licensing regime which will apply to all public land managers. This means all public land managers will be required to charge consistent State-wide fees, rather than the different fees that may be charged at present.

The majority of tour operator licences are managed by Parks Victoria through the Tour Operator Management System (TOMS). While data has been gathered from other public land managers, the TOMS system provides the most detailed information for analysis of commercial tour operations and recreational activities on public lands, and has therefore been used as the basis to calculate proposed Regulations.

² This authority will be included as s. 31 in the *Crown Land (Reserves) Act 1978*, s. 100A in the *Forest Act 1958*, s. 413A in the *Land Act 1958*, s. 48AA in the *National Parks Act 1975*, and s. 87A in the *Wildlife Act 1975*.



Mt Hotham, Victoria's north east. Photo: Peter Dunphy

Licensed Tour Operators

Tour operators play a key role in unlocking Victoria's public land experience for many consumers of outdoor activities.³ Activities such as guided walking tours, rock climbing and canoeing on public land and waters provide enjoyment for many Victorians, as well as interstate and overseas visitors. Tour operators also play an important role in helping people access, enjoy and learn about the amenity provided by public land. Indirect benefits provided by tour operators may include providing a platform to learn about ecosystems, biodiversity, flora, fauna, and cultural and historic heritage.

There are about 450 licensed tour operators in Victoria. The majority of tours/activities occur in national and state parks and state forests and are licensed by Parks Victoria under TOMS. Committees of Management and Alpine Resort Management Boards have their own systems in place to administer tour operator licences on the various types of reserves that they manage.

A key change contained in the proposed Regulations is to establish a consistent fee structure across all public lands. The proposed fees will apply to licensed tour operators and activity providers that operate on land managed by Committees of Management (at least 150 operators), Alpine Resort Management Boards (approximately 10 operators), DSE and Parks Victoria (approximately 300 operators).

Problem to be addressed

The problem to be addressed centres on achieving an appropriate level of cost-recovery with respect to the tour operator licensing system. The adoption of cost-recovery principles has the potential to satisfy efficiency and equity objectives. Achieving these objectives is important not only from a government perspective, but also because of the benefits provided to businesses and the community as a whole. Fees currently recover only about 32 per cent of the operating costs of TOMS, and have not been reviewed since their introduction in 1996.

In addition, the current arrangements do not treat tour operators who operate on public land in Victoria in a consistent manner. Specifically, Committees of Management, Alpine Resort Management Boards and some local governments currently have their own arrangements for charging fees. This means that an operator undertaking activities on public land can be charged different fees and have different requirements imposed upon them simply because the activity is administered by a different management body. To improve consistency, transparency and administrative efficiency, tour operators should face the same fees system across Victoria when they operate on public land.

³ In this document reference to 'tour operators' includes tourism businesses and outdoor activity providers conducting commercial operations on public land.

Objectives of government intervention

The objective of the proposed Regulations is to recover government costs in an efficient, equitable and effective manner with respect to tour operators on public land in Victoria. This objective has regard to the following considerations:

- Efficiency – fees should be set to enhance allocative efficiency and to minimise distortions and calls on general revenue.
- Equity – fees should not create a barrier for smaller businesses to enter the market and should not deter people from 'consuming' tour/activities services.
- Effectiveness – fees need to be easy to understand and set in a way to encourage compliance.

A secondary objective of the proposed Regulations is to treat tour operators who operate on public land in Victoria in a consistent manner.

Fee options considered

There are limited options when considering a RIS dealing with fees. Clause 2.04 of the Subordinate Legislation Act 1994 Guidelines (the Premier's Guidelines) states that "where the authorising legislation provides for fees to be prescribed by statutory rule, there is no discretion to set those fees by another method".⁴

Given this limited discretion, options in this RIS focused on fee design elements contained in a statutory rule, rather than considering alternative funding options. The fee design options considered in this RIS are:

- scope of the fees – the scope of the fees considered the coverage of businesses. While this is largely governed by the Act, the RIS concluded that a broad coverage of businesses delivers the most benefits because it reduces inconsistencies and raises more fee revenue at a lower rate.
- cost-recovery options – considers the most appropriate level of cost-recovery, that is, full or partial recovery. While full cost recovery delivers the most benefits on economic efficiency grounds, this RIS considers that there is sufficient justification for recovering a proportion of the total costs. These arguments include the health, cultural and educational benefits of encouraging Victorians and other visitors to enjoy the activities afforded by public land.
- fee structure – this option examines variations of fixed versus variable fee rates (i.e. what proportion should be fixed and what proportion should be raised by the use fees), whether student discounts should be retained, at what level should fee caps be set or should they be abolished, and whether there should be discounts for multi-year licences to take into account the 'time value of money'.
- competitive allocation of licences – in some cases activities need to be restricted to manage health and safety and environmental risks. The proposal examines options to manage these risks through competitively allocated licences. A model of an annual fee and fee determined in the Expression of Interest (EOI) is assessed as the preferred model.

These options are not mutually exclusive and there are potentially numerous combinations between them.

⁴ Subordinate Legislation Act 1994 Guidelines, Revised 2007, Section 2.04.

Costs and benefits of the options – Multi-criteria Analysis

Given the difficulty in measuring the costs and benefits of the options in monetary terms, this RIS uses the Multi-criteria Analysis (MCA) assessment tool to inform its decision of the preferred fee design options (section 4.2.3 of the RIS describes the Multi-criteria Analysis assessment methodology). Reflecting good design principles of fees and the objectives of the proposed Regulations, three criteria – efficiency, equity, effectiveness – were chosen and weightings selected.

Assessment of the fee design options using the MCA framework suggests that the proposed Regulations are superior to regulations with different design features, as shown in Table 1 below.

Specifically, partial cost recovery is assessed as superior to full cost recovery, and a broader coverage of the fee base is preferred to a narrower base.

A fixed fee only (i.e., removing the 'use' fee component) was considered inferior to the proposed arrangements of a fixed fee and use component; however, a fixed fee alone would lower administrative costs and result in slightly lower fees overall. This would result in a flat annual fee of around \$920 per annum. This option scores slightly higher than the current arrangements; however, the scoring suggests that this option has some merit. For this to be a superior option to the proposal, the efficiency benefits would clearly need to outweigh the financial hardship that such an approach would cause smaller businesses. DSE would like to hear from businesses on the merits of this approach.

Table 1: Summary of Multi-criteria Analysis comparing fee design options

Criteria	Weight	Full cost recovery	Partial cost recovery	Broad coverage	Narrow coverage	Fixed fee
Efficiency	35	100	75	75	25	25
Equity	35	-50	-25	75	50	-65
Effectiveness	30	-25	-15	50	50	50
Weighted score		+10.00	+13.00	+67.50	+41.25	+1.00

Another option examined was removing the current student discount attached to the use fee. The current rate implies a discount of approximately 32 per cent for students/children. An MCA assessment was also undertaken concerning removing student discounts. This assessment resulted in a score of +5.25, which on the face of it suggests that it might have some merit. While removing the student use fee concession would improve efficiency at the margin, given that the current arrangements have been in place for 14 years and stakeholders are familiar with them, any changes would incur transitional costs. DSE believes that the implementation costs of removing the student discount would outweigh any margin increase in the benefit of streamlining the use fees. Therefore the current arrangements are presented in this RIS as the preferred option. That said, the likely efficiencies associated with this option provide a case to consider removing the current differential. DSE seeks input through this RIS process on the merits of standardising the fees.

The proposed fee regulations

All business entities undertaking tours or activities associated with outdoor or nature-based recreation for profit on Victorian public land are required to hold a tour operator and activity provider licence. To administer the licensing system efficiently, operators incur licence fees. The current licence fees have been reviewed as part of the RIS process. Following comments received arising from this RIS, the licence fees will be set (see Table 2 overleaf).

The proposed fees contain a number of key differences compared to the current arrangements. These are:

- fees will be set to recover a higher proportion of the costs associated with administering the licensing system.
- licence fees will be indexed annually.
- the licensing regime will apply to all public land managed by DSE, Parks Victoria, Committees of Management, Alpine Resort Management Boards and some local governments (where they manage Crown land as the Committee of Management).
- **as a result of changes contained in the amending Act** a new maximum licence term will be set, increasing it from the current three year duration to a maximum of 10 years.
 - The process for applying for a multi-year licence (licences may be issued from between 1 and 10 years) will be similar as for an annual licence. In order to be considered for a licence with a term of 3 years and above applicants are required to show evidence of accepted accreditation.
 - It will be at the discretion of the land manager to determine if a 10-year licence will be granted and will depend on the management objectives for the site and associated natural resources.
- allowing the use fee component to be paid annually (as well as the current quarterly requirement).
- minimum fees will be set for the limited circumstances in which licences may be competitively allocated.

An activity-based costing exercise was undertaken to assess the administrative costs associated with managing the licensing system. This exercise was undertaken against the fee design principles in the *Cost Recovery Guidelines*.⁵ Given that licensees are familiar with the current arrangements a practical approach that builds on the current arrangements in relation to the fee structures was generally adopted. The fee structure is also similar to that applied interstate. Many tour operators have multi-jurisdictional businesses, and a degree of national consistency will be a further benefit to industry. The proposed fees are shown in Table 2 below.

Table 2: Proposed Tour Operator Licence Fees

Category	Current Fee (TOMS) (\$)	Proposed Fee (\$)	% increase
Initial application fee	165.00	abolished	n.a
One year licence	55.00	255.00	364%
Licence greater than one year (per year)*	n.a	200.00	n.a
Premium 10 year licence	n.a	2,000.00	n.a
Use fee** – general visitor	1.10	2.40	118%
Use for – school student and child	0.75	1.60	113%
Use fee cap	5,500.00	12,500.00	127%
Competitively allocated licence minimum annual fee	n.a	255.00	n.a
Competitively Allocated licence use fee general visitor	n.a	2.40	n.a
Competitively Allocated licence use fee school student and child	n.a	1.60	n.a

* Three year licences currently cost \$165 under TOMS. ** Use fees for competitively allocated licences will be at a minimum the same as use fees under standard licences.

The proposed fees will raise an additional \$1,000 or so per 'average' licence. Given that inflation has increased by around 43.7 per cent since 1996, this represents a real increase of about \$700. This increase is the result of increasing the level of cost-recovery from around 32 per cent to 75 per cent of the costs of administering the licensing regime. This rate of cost recovery is also consistent with that contained in the Wildlife (Marine Mammals) Regulations 2009, which also deals with tour operators.

Fees set at the proposed rates in Table 2 will:

- raise approximately \$305,000 per annum from the 300 licensed operators under the TOMS, which is an additional \$175,000 compared to the fee revenue actually collected under the current rates of around \$130,000
- raise approximately \$165,000 per annum from Committees of Management, Alpine Resort Management Boards and through competitively allocated licences, which represents an additional \$55,000 compared to the current arrangements. It is important to note that committees and boards will retain this fee revenue.

⁵ Department of Treasury and Finance (2010(a)), *Cost Recovery Guideline*, Melbourne

- raise \$3.9 million (PV⁶) over a 10-year period
- cost approximately \$5.2 million (PV) to administer over a 10-year period (TOMS and committee and boards costs)
- result in a net cost to tax and rate payers of around \$1.3 million (PV) over a 10-year period.

The proposed fees were set in a manner which sought to improve and simplify the current arrangements while maintaining features familiar to users. These design features have been incorporated into the fees contained in the draft Regulations.

Consultation undertaken to develop the regulations

In 2006, a Directions Paper, *Public Land Tour Operator and Activity Provider Licence Reform Project* was presented for public comment and over 80 submissions were received. Overall there was broad support for the intent of the Directions Paper. The majority of the submissions indicated support and understanding of the need to move towards 75 per cent cost recovery.

Groups affected

Groups who will be affected by the new fee structure include Licensed Tour Operators, i.e. businesses running guided tours or outdoor recreational activities for profit on public land. The majority of tour operators are small or very small businesses. For the majority of tour operators fees will be increased. There may be a small number of groups who now require a licence to conduct activities despite previously considering themselves 'non profit' or 'charitable' in nature. This will only occur where there is evidence the group is primarily a business entity e.g. a guide or leader who is paid or compensated. Bus companies that access public land to deliver an organised commercial tour, as with other commercial tours/activity providers, fall within the definition of a tour operator under the Act and therefore require a licence. Several tour bus companies are already licensed tour operators on public lands.

All Committees of Management and Alpine Resort Management Boards will be required to charge the new regulated tour operator licence fees. Committees of Management that are currently charging fees for tour operator licences which are likely to be in excess of the fees set through the RIS process may see a change in the revenue generated from licensing. Information collected from surveys completed by a representative sample of Committees of Management indicates that most Committees will have improved revenue and that they are generally supportive of the proposal.

Those indirectly affected by the proposed fees include consumers undertaking activities in the following areas: bushwalking, coach/bus tours, bird watching, canoeing/kayaking, four - wheel drive tours, mountain biking, coastal walking, abseiling, rock climbing, horse trail riding and surfing or fitness instruction.

⁶ Present Value (PV) adjusts (discounts) the value of money in future years to express in terms of today's value of money. The discount rate of 3.5 per cent was used in these calculations (see *Victorian Guide to Regulation*, section C.3, p. C-9).

Small business impacts

Tour operators are typically represented by small (up to 20 staff) or very small (less than 5 staff) businesses. About 80 per cent of full-time tour operators employ less than 5 staff. While the impact of the proposed Regulations can arguably be seen to fall disproportionately on small business, the impact within the small business segment as a whole will be relatively equal. In terms of the proposed Regulations having a material impact on small business, given the relatively low level of the fees, it is considered unlikely that the proposal will deter small businesses from entering the industry.

Competition assessment

The *Victorian Guide to Regulation* sets out the ‘competition test’ criteria used to assess whether the proposed Regulations restrict competition. Given the relatively low level of the fees, it is assessed the proposed Regulations do not impose such barriers or impose a cost burden on business so as to affect their competitive position in the broader market.

Conclusion

This Regulatory Impact Statement concludes that:

- the proposed fees are set in accordance with the cost-recovery principles contained in the *Victorian Guide to Regulation*
- the proposed Regulations do not impose restrictions on competition, and
- the fee levels are unlikely to impose barriers of entry to small business.

Public consultation

The prime objective of the RIS process is to inform members of the public and seek comment on proposed Regulations before they are finalised. Preliminary inquiries suggest that there may be around 150 licences issued by Committees of Management, Alpine Resort Management Boards and local government who will become subject to the fees contained in the RIS (in most cases replacing existing fees), in addition to the some 300 licensees already managed under the Parks Victoria TOMS system. DSE would particularly like to hear from these land managers, along with businesses who are licensed by them, to ensure that the costs and processes are adequately understood before finalising these fees.

While comments on any aspect of the proposed Regulations are welcome, stakeholders may wish to comment on the following consultation points.

Consultation Points

Consultation point 1

- 1.1 Is the proposed coverage of the fee base appropriate?
- 1.2 Should certain commercial tourism or outdoor activities be exempt or pay different fees from the fee base?

Consultation point 2:

- 2.1 Is partial cost-recovery of 75 per cent appropriate?
- 2.2 Does this level represent a reasonable estimate of the ‘public good’ benefit provided by licensees?

Consultation point 3:

- 3.1 Is the proposed fee structure of approximately 25 per cent fixed and 75 per cent variable appropriate? If not, what proportion would be most appropriate?
- 3.2 Should the ‘use’ component be retained?

Consultation point 4:

- 4.1 What are the advantages of the current discount for students/children under 16 years of age?
- 4.2 Should the current concession of approximately 32 per cent be retained?
- 4.3 Is there any evidence that this concession is being passed on?

Consultation point 5:

- 5.1 What, if any, is a reasonable discount for multi-year licences?

Consultation point 6:

- 6.1 Is the suggested rationale for the use fee cap (i.e. those who have high visitor numbers may also have low impact on public land) appropriate?
- 6.2 Is a use fee cap of \$12,500 reasonable? If not, at what level should the cap be set?
- 6.3 Should a use fee cap be retained?
- 6.4 What alternatives or arrangements can be made to enable pro-rata payment of use fees?

Consultation point 7:

- 7.1 What are the advantages and disadvantages of the competitively allocated licence fees?
- 7.2 How should a competitively allocated fee be designed?

Consultation point 8:

- 8.1 Are there any unintended consequences associated with the preferred option?
- 8.2 Is it reasonable to use the TOMS costing base as an approximation for fees set by Committees of Management?

Consultation point 9:

- 9.1 Are there any practical difficulties, transitional or implementation issues associated with the preferred option? For example, would there be advantages or disadvantages in phasing in the proposed fees?
- 9.2 Are there any measures that would improve compliance?



1 What is the issue to be addressed?

1.1 Background

1.1.1 Victorian public land and tourism industry

Tourism represents a significant sector of the Victorian economy. Its annual contribution to the State's economy is in the vicinity of \$15.8 billion (or 5.9 per cent of Gross State Product), of which a significant proportion is injected into regional Victoria. The tourism industry in Victoria is estimated to account for almost 184,000 jobs.⁷

Victoria's public land estate, which accounts for around one-third of the State's land mass, contains some of the State's most significant natural environments and is an important tourism asset for Victoria and its visitors. Tourism and recreational use of forests and Crown land (which combined account for almost 50 per cent of the public land estate) contributes up to \$73 million per annum.⁸ It is estimated that over the past 3 years over 400,000 visitors to national parks and state forests used private tour operators to undertake their activities. The total number of visitors to the parks estate in 2008/09 was estimated to be around 49 million⁹.

Nature-based tourism is an important contributor to the Victorian economy and is a major motivator for international visitors. Activities such as guided walking tours, canoeing and rock climbing on public land are experienced by many Victorians as well as interstate and overseas visitors. Many commercial outdoor recreation activities and instruction such as surfing, kite-surfing and personal fitness activities also occur on public land. In Victoria, demand for nature-based tourism is forecast to experience strong growth, with visitation estimated to reach 1.61 million visitors by 2016, up from 1.11 million in 2006. Growth will be derived largely from the international market.¹⁰ Tour operators play an important role in helping people access, enjoy and learn about amenity provided by public land.¹¹

1.1.2 Land Tour Operator Reform Project

In 2003 the then Minister for Environment established a review of the tour operator licensing system in Victoria to determine whether or not any changes were required to support a viable nature-based tourism industry on public land. A number of key issues emerged from that review including the overly complicated nature of the existing licence fee and licensing arrangements generally.

⁷ Tourism Victoria, *Victoria Market Profile: Year ending December 2008*: www.tourism.vic.gov.au/facts-and-figures/

⁸ Marsden Jacob Associates for DSE, *Economic Analysis of the Value of Public Land in Victoria, 2004* – visitor and recreation values (consumer surplus) in 2003 dollars; to the Victorian economy per annum.

⁹ Parks Victoria Annual Report 2009/10

¹⁰ State of Victoria, Tourism Victoria (2008), *Victoria's Nature-Based Tourism Strategy 2008-2012*, Melbourne, p. 17

¹¹ *ibid.* p. 4

In January 2004 the Minister endorsed a high level strategic directions paper known as the *Nine Point Plan*. The levels of licence fees, duration of licence terms and licensing arrangements and procedures were key points of this plan. To analyse and elaborate on these issues, an Issues Paper, *Reforms to Public Land Tour Operators Licensing – Current Situation, Issues and Policy Proposals*, was released in 2005 and targeted stakeholder engagement undertaken.¹² In 2006, a Discussion Paper, *Public Land Tour Operator and Activity Provider Licence Reform Project* was released for public comment and over 80 submissions were received.¹³

These processes culminated in the release of the *Policy Statement: Licensing System for Tour Operators and Activity Providers on Public Land in Victoria* in May 2008. The Policy Statement announced intended changes to the licensing system, including providing licence terms of up to 10 years and changes to the fee arrangements.

In September 2008 *Victoria's Nature-based Tourism Strategy 2008–2012* was released, suggesting ways to improve the tour operator licensing system as part of a broader plan to co-ordinate policy, planning, sustainable development and marketing of nature-based tourism in Victoria.

To give effect to elements of the Policy Statement and Strategy, in July 2009 the *Crown Land Acts Amendment (Lease and Licence Terms) Bill 2009* was introduced into parliament to make amendments to establish a uniform licensing regime for commercial tour operators on public land. The new legislation will come into operation by 1 July 2011 or earlier by proclamation. The Act established a head of power in the *Crown Land (Reserves) Act 1978*, *Forest Act 1958*, *Land Act 1958*, *National Parks Act 1975*, and the *Wildlife Act 1975* to charge fees for a range of activities. Following consultation with DSE, Parks Victoria and key stakeholders, these fees have been set in draft form in the attached Regulations.

1.1.3 Licensed tour operators

Legislation requires entities who undertake commercial activities associated with recreation and tourism on public land to hold an appropriate licence. For example, currently tour operators may be licensed under a range of acts including the *National Parks Act 1975*, *Crown Land (Reserves) Act 1978*, *Land Act 1958*, *Forest Act 1958*, *Wildlife Act 1975* and *Alpine Resorts Management Act 1997*. Licensing powers and fee setting powers vary under each act. These acts also establish or appoint public land managers.

¹² See Public Land Tour Operator and Activity Provider Licence Reform Project: www.dse.vic.gov.au/licencereforms

¹³ *ibid.*

The majority of licensed tour operators operate on Parks Victoria and DSE managed lands and are licensed through the TOMS. The number of tour operators managed under the TOMS has remained relatively stable over the past 5 years at around 300. Of these licences, approximately three-quarters are issued annually, while the remaining quarter is issued on a 3-yearly basis. Table 3 below shows the total number of licensees from 2004–05 to 2010.

Table 3: Number of licensed tour operators (PV/DSE managed lands only)

Year	2004/05	2005/06	2006/07	2007/08	2008/09	2010
Licensed Operators	269	270	239	267	281	300

Table 4 outlines the types of activities undertaken by tour operator licensees managed under the TOMS. The majority of tours/activities occur in national parks, while a significant proportion also occurs in areas designated as state forests and Crown land reserves. Approximately 90 per cent of tours were conducted in regional or rural areas. Bushwalking tours are the dominant type of licensed activity (27 per cent), while coach/bus tours (14 per cent), bird watching, canoeing/kayaking, 4 wheel drive tours, mountain biking, and coastal walking are also popular licensed activities.

Table 4: Tourism activity type (PV/DSE managed lands only)

Tourism Activity	%
Bushwalking	27
Coach/bus tours	14
Bird watching	9
Canoeing/kayaking	9
Four wheel drive tours	8
Mountain biking	8
Coastal walking	8
Abseiling	6
Rock climbing	6
Horse trail riding	6

Source: Parks Victoria TOMS database, activity type for 2008/09. Numbers rounded.

Tour operator businesses are typically small or very small with 83.3 per cent of tour operators employing less than 5 full time staff. A significant proportion of licensees (36 per cent) had been in business for between 10–19 years, while about one-third were in business for between 3–10 years.

Parks Victoria currently issues licences with a 3-year duration only where the licensee has attained an approved industry accreditation, e.g. EcoTourism Australia accreditation. As a matter of policy, longer term tour operator licences are issued where the licensee has achieved accreditation that would deliver higher environmental and/or social performance.¹⁴

As noted earlier, the proposed Regulations will provide greater consistency across public land in Victoria by setting the fees in relation to tour operators and recreational activities managed by Committees of Management, including the Alpine Resort Management Boards and local government. Fees are currently set by these bodies on an *ad hoc* basis.

While there are around 1,200 Committees of Management in Victoria, only a small number manage business entities that conduct guided tours or outdoor recreational activities on public land.¹⁵ Consultation conducted during the writing of this RIS suggests that there are about 150 such business entities. Activities managed by these committees include surf schools, boat hire, canoeing/sea kayaks, guided walks, horse riding and fitness classes.

There are five Alpine Resort Management Boards in Victoria, which administer the licensing of approximately 10 tour operators. Such operators provide services including ski instruction and a helicopter joy flight.

Local government, as Committees of Management, currently license activities on Crown land such as fitness instruction, yoga, sea plane and helicopter rides, horse riding and kite surfing.

Therefore, the proposed Regulations will apply to approximately 450 business entities that conduct outdoor recreational activities on public land, 300 of whom are currently managed by Parks Victoria while around 150 are currently managed by Committees of Management, Alpine Resort Management Boards and local government.

¹⁴ Department of Sustainability and Environment (2006), Tour Operator Licensing Benchmarking Study, prepared by Market Solutions, p. 9

¹⁵ Of the 33 committees contacted, only those that had turnover of more than \$100,000 licensed such activities and of these, activities were predominantly located in coastal regions

1.1.4 Current regulatory and fee arrangements

Tour operators and activity provider licence

All public land is set aside through legislation for the benefit of the public as a whole. These benefits include protection of natural and cultural values, sustainable resource use and provision for public recreation, enjoyment and education.

Private individuals and groups not undertaking a business activity but engaging in recreational and educational activities are exercising their common law and legislative right to access and use public land and do not require a licence. Primary and secondary schools, TAFEs and universities do not require a licence where activities are conducted by staff as part of the curriculum within the school/institution.

However, all business entities undertaking tours or activities associated with outdoor recreation for profit on public land managed by Parks Victoria and DSE are required to hold a 'tour operator and activity provider licence'. Other Committees of Management have general powers to licence commercial activity on Crown lands, but may not issue tour operator-specific licences at present.

Generally, legislation governing the management of public land requires all business entities to gain the consent of the land manager for access to public land, abide by specified conditions and pay fees to support the licensing system.

The industry has endorsed, and the Victorian Government has funded, a project to develop Adventure Activity Standards (AAS) for the outdoor recreation industry. There are currently AAS for the following licensed activities: abseiling, bushwalking, canoeing/kayaking, four wheel driving, horse trail riding, mountain biking, recreational angling, river rafting, rock climbing, snorkelling, scuba diving, and wildlife swims, surfing sessions and trail bike touring.¹⁶

Compliance with relevant AAS is a condition of all tour operator licences managed by Parks Victoria. For licensed activities where AAS have not been developed, the licence application notes the requirements.

Competitive allocation of licences

The vast majority of commercial tour operator and outdoor activity provider licences on public land in Victoria are issued on a non-competitive basis, i.e. subject to the applicant meeting appropriate conditions, licences are issued following application because no restriction on access to natural resources is considered necessary.

However, there may be circumstances in which a public land manager considers it necessary to restrict the number of licences at a particular site or area, to protect natural or cultural values or visitor safety. In such circumstances, because demand for licences exceeds the available resource, land managers allocate a restricted number of licences through a public competitive process.

In Victoria there are currently two broad categories of tour operator licences that are allocated on a competitive basis: surf school licences and tour operator licences in urban areas (these are currently not administered by the TOMS). Additional details regarding other competitively issued licences and arrangements in other jurisdictions are contained in **Attachment A**.

Section 4.2 of the Policy Statement made a number of statements of principle and policy about competitive allocation of licences:

- Land managers may, as a last resort, restrict the number of licences available for a particular site/activity where necessary to protect natural or cultural values or visitor safety.
- Competitive licence allocation should be delivered through a fair and transparent process.
- 'Price' of a licence should not be the determining factor in awarding competitively allocated licences. The decision to grant a competitively allocated licence should be based on applicants meeting pre-determined and published qualitative criteria.
- The term of a competitively allocated licence will depend on the management objectives for the resource, up to the maximum 10 year licence allowed by legislation.
- Fees for competitively allocated licences may be higher than fees for standard licences, due to the increased costs of administering a competitive process.
- Minimum fees for competitively allocated licences should be at least equivalent to fees for standard tour operator licences.

The Policy Statement did not propose fee categories or levels for competitively allocated licences as at the time of writing it was assumed that fees would continue to be set by public land managers, within the principles outlined above and on the basis of their existing statutory powers to set fees.

However, since 2008 it has been determined that tour operator licence fees should be established in regulation. Consequently, it is necessary to consider possible models for fees for competitively allocated licences for inclusion in these regulations.

The Policy Statement also proposed development of guidelines for competitive allocation of tour operator licences. The purpose of the Guidelines is to provide guidance to public land managers, prospective licensees and the wider community on policy and principles applicable to competitive allocation of tour operator licences, including:

- the circumstances in which competitive allocation of licences should be considered
- using fair and transparent allocation processes, and
- fees for competitively allocated licences (as determined through this RIS process).

Consultation on draft guidelines for Competitive Allocation of Tour Operator Licences will be undertaken with key tourism industry and public land stakeholders during 2010–11 to ensure Guidelines are available before the regulations for tour operator licence fees come into force.

¹⁶ DSE Recreation and Tourism webpage, viewed at 12 August 2010: www.dse.vic.gov.au/licencereforms

Legislation

Public land in Victoria is managed under a number of acts. With respect to the proposed fees, relevant legislation includes the *Crown Land (Reserves) Act 1978*, *Forest Act 1958*, *Land Act 1958*, *National Parks Act 1975*, and the *Wildlife Act 1975*. In July 2009 the *Crown Land Acts Amendment (Lease and Licence Terms) Act 2009* introduced a uniform licensing regime for tour operators on public land into these acts. The main provisions in the amending legislation that will affect tour operators include provisions to: establish a head of power in the acts to provide a consistent fee framework (ss. 16, 23, 33, 39, 45); increase the maximum licence term from 3 years to up to 10 years; introduce an offence to conduct organised tours or recreational activities without a licence; and introduce a power to suspend or cancel licences (ss. 15, 21, 30, 37, 42).

The relevant provisions of this Act will commence on 1 July 2011 or earlier by proclamation. Currently the authority to charge such fees derives from the Ministerial Order made in 1996 and under Committees of Management delegated powers under the *Crown Land Reserves Act 1978*.

The proposed fees will now be subject to the *Monetary Units Act 2004*. Fees set under this Act are set by ‘fee units’. Fee units are indexed annually to ensure that the value of fees is not eroded by price increases over time. The level of a fee unit for 2010–2011 has been set at \$11.95. As an example, a fee initially set at \$100 would be expressed as 8.37 fee units in the regulations. Fees with of an amount less than one fee unit are not indexed annually.

Management

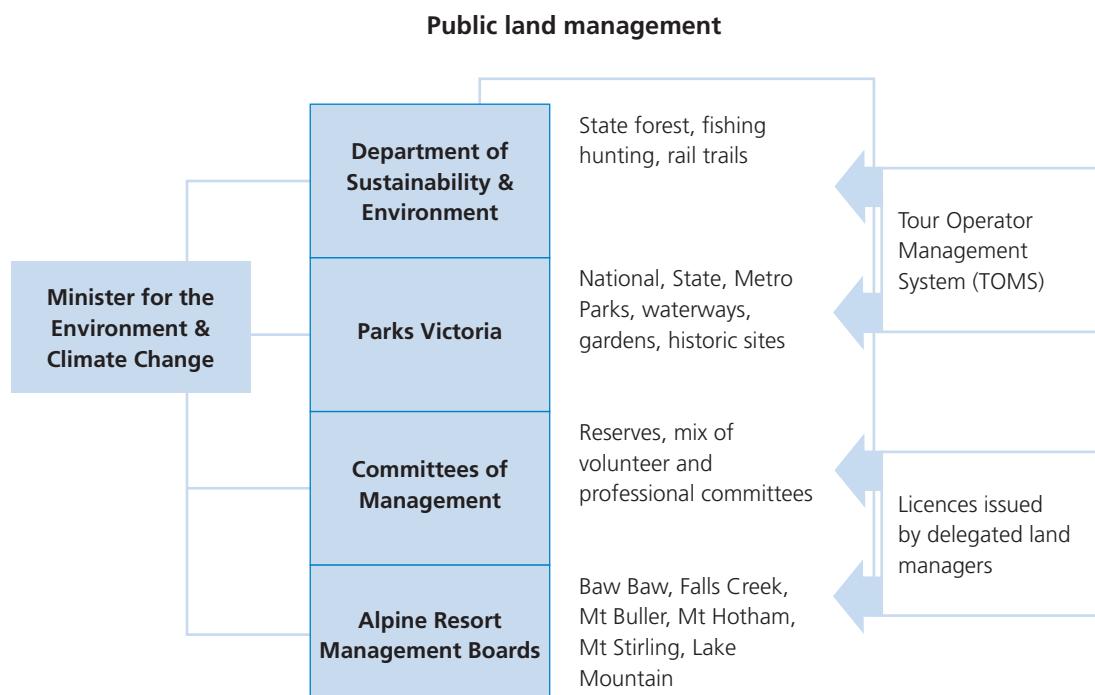
DSE is the government agency with overarching responsibility for the entire public land estate. However, responsibility for the day-to-day management of public land can be delegated to other agencies, such as Parks Victoria, Committees of Management, and Alpine Resort Management Boards. Local government also administers some activities carried out on public land, where they are appointed as Committees of Management. Delegated land managers have various powers and responsibilities over specific Crown land reserves, including licensing responsibilities.

Public land management by Parks Victoria includes national parks, marine national parks, marine sanctuaries, wilderness parks, State parks, metropolitan parks, reservoir parks, natural feature reserves, conservation reserves and indigenous and non-indigenous cultural heritage sites. State forests are the exception to this. While DSE is directly responsible for the management of state forests, it has an agreement with Parks Victoria to administer the licences for tour operators in these forests.

In addition to the parks, reserves and forests managed by DSE and Parks Victoria, there are many hundreds of parcels of public land across Victoria that are managed by independent Committees of Managements, in accordance with the provisions of the *Crown Land (Reserves) Act 1978*. These reserves include alpine resorts, flora and fauna reserves, scenic reserves, mineral springs, coastal reserves and community reserves such as ovals and cemeteries. Some Committees of Management are managed by local government.

Alpine Resort Management Boards are statutory authorities established under the *Alpine Resorts (Management) Act 1997*. They act as Committees of Management with responsibilities including land stewardship, promotion and marketing, provision of a wide range of services and managing development. Figure 2 below illustrates the broad functions of these agencies and committees.

Figure 1: Agency and Committees of Management Responsibilities



1 What is the issue to be addressed?

There are a range of other permits and licences required for activities/uses for commercial and non-commercial businesses on public land (e.g. events, leases and food vans sales). However, the fees subject to this RIS only relate to Tour Operator and Activity Provider Licences.

Fee arrangements

The current fees for Parks Victoria and DSE managed lands, which account for the majority of all tour operator licences, were set in 1996 and have not been reviewed since their introduction.

Committees of Management and Alpine Resort Management Boards currently issue licences to tour operators and activity providers and set licence fees under their delegated powers. Therefore, separate public land managers often charge different fees. Mostly these agencies have only a small number of licences each, with the majority issuing less than 5 licences per year under varying fee models and charging different fees. Some Committees of Management review fees annually while others review fees every 3 years or more.

There are two elements to current licence fees for Parks Victoria and DSE managed lands: a fixed component and a per person or 'use' element. Both the fixed component and use component are set at a level to partially recover the cost of administering tour operator licences.

With respect to the fixed component, an initial application fee for a licence of \$165.00 is charged (this is paid only once) and an annual fee of \$55.00 is paid thereafter. An option exists to pay \$165 for a three-yearly licence, and from 1 July 2011 an option to apply for a licence of up to 10 years will be available.

Under the variable component, licensees are required to pay a 'use' fee of \$1.10 per person per day quarterly in arrears, with the licensee reporting visitor numbers. The fee for students is currently \$0.75. The use fee is capped at \$5,500 per year for any individual licence. There are currently seven licensees who paid the capped use fee (such licensees are not required to submit trip return data at present). Table 5 below shows the total fees collected for the last three financial years, illustrating that approximately half of all visitors are students.

Table 5: Use fee revenue by financial year

Financial Year	% Adult	% Students	Total Use Fees
2007/08	62%	38%	\$89,487
2008/09	48%	52%	\$112,315
2009/10	48%	52%	\$180,252

Source: Parks Victoria TOMS database

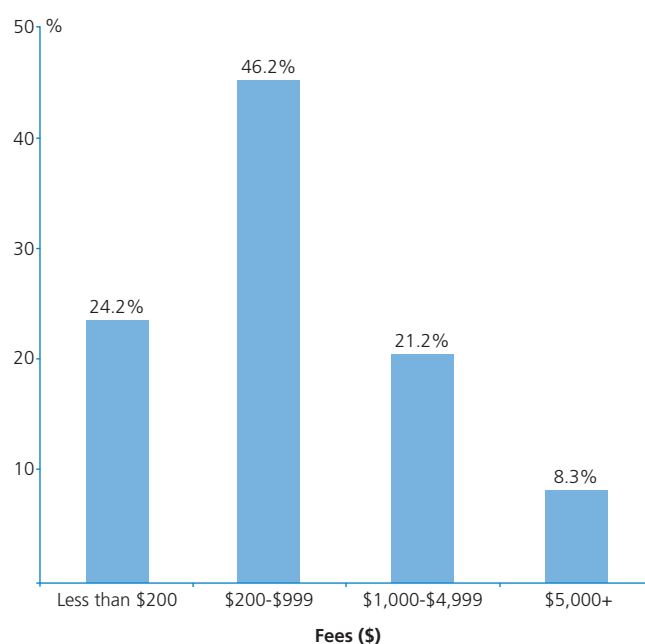
To illustrate the operation of the fee arrangements, a tour operator who commenced operations and provided services for 1,000 people (50 per cent of whom were students) in a year would incur annual fees of \$1,145. The \$925 use element would be paid at the end of each quarter, reflecting the number of persons taking a tour in that quarter. This consists of:

Application fee (initial year only)	\$165	
Annual fee	\$55	
Use fee (500 persons at \$1.10)	\$550	} \$925
Use fee (500 students at \$0.75)	\$375	
Total	\$1,145	

Figure 2 below shows that the majority of tour operators (70 per cent) that are managed by Parks Victoria paid annual fees of less than \$1,000. While the average fee paid across all licensees was \$1,045, average fees for very small businesses were \$533, the average for small business was \$1,101, while the average for medium to large business was \$2,268.¹⁷

Of the fee revenue, 25 per cent came in the form of applications (fixed component), while 75 per cent came from use fees (variable component). Approximately 25 per cent of licences were taken out on a 3-yearly basis, while the remaining 75 per cent of licences were issued annually. As part of the licence reform project, the licence variation fee was abolished in 2009.'

Figure 2: Annual tourism operator licence fees paid



Source: Tour Operator Benchmarking Study 2005

Committees of Management (including Alpine Resort Management Boards and Committees of Management run by local government) charge a range of fees for different activities. There is little consistency between Committees regarding the rate and the method used to determine fees, while some Committees do not charge fees for certain activities at all. Examples of these fees can be found in **Attachment B**.

¹⁷ DSE (2006), *ibid*.

1.2 Rationale for Government Intervention

1.2.1 Recovery of regulated costs

Victoria's *Cost Recovery Guidelines* note that there is often a need for government regulation to reduce the risk of harm or damage that may arise to consumers, the whole community or the environment. On economic efficiency grounds, there is a case for the administrative costs of regulation to be internalised into the cost structure of the regulated industry.¹⁸

The recovery of costs incurred by government in undertaking regulatory activity will lead to what economists refer to as 'allocative efficiency'.¹⁹ Incorporating the costs of administering government regulation into the prices of regulated products and services ensures that the costs to the community of the resources used to allow the regulated activity to take place will become apparent to producers and consumers. In addition, by decreasing the level of general taxation needed to finance government products, services or regulated activities, cost-recovery also reduces the costs of tax administration and compliance and the 'deadweight loss'²⁰ of tax-related distortions.

1.3 Risks of Non-intervention

The risk of not proceeding with the proposed Regulations is that land managers will not receive sufficient cost recovery from the users that capture private benefits from activities on Victoria's public land. To that extent, the Victorian community would be providing a larger subsidy for the management of these activities than is currently the case.

1.4 Type and Incidence of Costs

The *Victorian Guide to Regulation* identifies three categories of regulatory costs: these are compliance costs, market costs and financial costs.²¹ These costs are explained in **Attachment C**. The only relevant costs in the case of the proposed Regulations are financial costs and some administrative costs. Financial costs are the result of a concrete and direct obligation to transfer a sum of money to the government or relevant authority. Such costs include fees. There is also an aspect of administrative costs associated with the proposed Regulations. This relates to the obligation to send in return trip data to Parks Victoria at the end of each quarter.

¹⁸ DTF (2010(a)), *ibid.* p. 14

¹⁹ 'Allocative efficiency' is a situation where economic resources are allocated in a way that maximises the net benefit to society. It is achieved when the value consumers place on a good or service equals the cost of resources used up in production.

²⁰ In economics, a deadweight loss is a loss in economic efficiency that can arise from the imposition of taxes because the tax prevents some people in engaging in what they perceive as mutually-beneficial transactions.

²¹ DTF (2007), *ibid.* p. F-7

1.5 Problems the proposed Regulations seek to address

1.5.1 Nature of problem

Cost recovery

The imposition of fees is required primarily to recover regulatory costs. That is, fees are required to ensure cost-recovery for the administration of the TOMS and other public land licensing systems. As noted above, when designed and implemented appropriately the adoption of cost-recovery principles has the potential to satisfy efficiency and equity objectives. Achieving these objectives is important not only from a government perspective, but also because of the benefits provided to businesses and the community as a whole.²² Fees currently recover approximately 32 per cent of the operating costs of TOMS and have not been reviewed since their introduction in 1996 (over that period inflation has increased by around 44 per cent). The fees are not indexed annually as are most fees in Victoria because most fees are subject to the *Monetary Units Act 2004*.

Consistency and efficiency

The TOMS fees are currently set by Ministerial Order and this does not cover Committees of Management and other land managers. Fees contained in Ministerial Orders are difficult to locate and are not periodically reviewed or indexed annually. Creating an arrangement that treats tour operators who operate on public land in Victoria in a consistent manner is a key objective of the proposal. The current arrangements do not provide this. Specifically, Committees of Management, Alpine Resort Management Boards and local government currently have their own arrangements for charging fees. This means that an operator undertaking activities on Crown land can be charged different fees and have different requirements imposed on them simply because a different body administers them. To improve consistency, transparency and administrative efficiency, tour operators should face the same fees system across Victoria when they operate on public land.

The current approach to granting tour operator licences is complicated and fragmented. Separate land managers have their own guidelines and policies for granting licences and often charge different fees. With respect to the latter, currently fees are charged by Committees of Management and other land managers on an *ad hoc* basis with no consistent methodology underlying their calculation. Consultation revealed that such fees are not set against the principle laid down in the *Cost Recovery Guidelines*, with a general tendency to undercover costs. In some cases, however, there may be instances of over-recovery (e.g. amongst some competitively allocated licences) when considered against the *Cost Recovery Guidelines*. Given the disparate level of fees, the variation between them can raise competitive and efficiency issues.

²² DTF (2007), *ibid.* p. 5

Further, the 2008 Policy Statement made a commitment to introduce a more consistent licensing regime, including greater consistency in fee levels. While the current fees charged by some Committees of Management may be adequate from their perspective, licensed operators are being charged significantly different fees across the State for the right to carry out the same activity, and have no certainty about the fees to be levied by committees in the future. This is a particular issue for small tourism businesses that advertise their tour fees years in advance to the international market. Overall, the new uniform licensing system will help to achieve greater consistency in licensing across all of public land.

Additionally, fees that are currently being charged by Committees of Management for tour operator licence fees are, in most cases, much lower than fees charged in other Australian States and some are even lower than current Parks Victoria fees which are considered to be amongst the cheapest in Australia. Some Committees of Management currently do not charge any fees at all for tour operator licences. The proposed fees will ensure Committees of Management are achieving greater cost recovery of their licensing systems

Some of the larger Committees may currently charge more than the proposed fees, however consultation with these committees indicates revenue from licensing is a very small proportion of their total revenue and therefore changes to the fees levels will not materially affect their revenue.

Generally the TOMS is designed and administered efficiently. However, as part of the review process a number of issues were identified. These included the length of licences (the maximum length is currently 3 years), the frequency of payments (currently quarterly), the absence of discounts for multi-year licences where the entire fee is paid up front, and whether or not a fee for an initial application should be charged in addition to the annual fee.



Managing impacts

Public land is an important asset which is held in trust for the Victorian community. This may be relevant in situations where land managers need to manage impacts (e.g. safety, environmental, large visitor numbers) in high demand locations. While, the number of tour operator licences allocated competitively at present in Victoria is limited (currently around 15 licences), the need for competitive allocation is likely to increase over the life of the proposed Regulations, particularly in fast growing coastal and urban areas. Activities in these areas have potential risks to the public or to species if numbers are not limited, at least for some part of the year.

The proposed Regulations are intended to operate for 10 years. During that period it is likely that additional sites or activities may need to be managed through competitive allocation, this is due to the emergence of new commercial activities, increased population (with increased visitor and recreational needs), greater visitation to the coast, or broader environmental changes.

As the scale, nature and value of these activities are difficult to predict it is important that land managers are provided with a degree of flexibility in the fees they can charge for competitively allocated licences, subject to issuing such licences following an open, fair and transparent process.

1.5.2 Extent of problem

There are currently 300 licensed tour operators in Victoria managed by Parks Victoria and DSE. On average, annual revenue from licence applications and use fees is around \$132,000. This represents approximately 32 per cent of the cost to administer TOMS, which is estimated to cost \$407,200. Compared to full cost-recovery, the current arrangements effectively result in a \$275,000 subsidy for tour operators (or around \$920 per licensee).

Other delegated public land managers independently issue licences and charge fees, and have not previously been required to standardise tour operator licence fees. DSE has contacted Committees of Management, Alpine Resort Management Boards and local government to determine the additional number of licences/operators that would be subject to the new legislation and fees. These replies suggest that there are at least 140 tour/activity providers managed by Committees of Management (including some local governments) and about 10 tour/activity providers managed by Alpine Resort Management Boards.

This provides a total of around 450 tour operator, mostly small, businesses. The extent of the problem, therefore, could be considered relatively minor compared to the Victorian economy overall which contains over 500,000 businesses.²³ Nevertheless, licensed tour operators conduct business activity in sensitive areas where risks need to be appropriately managed (e.g. environment, health and safety).

²³ Victoria contained 503,379 businesses as at 30 June 2007. Source: ABS Cat 8165.0, Counts of Australian Businesses, including Entries and Exits, p. 12

2 Objectives Of Government Intervention

2.1 Government Policy

2.1.1 Tourism

As part of the Public Land Tour Operator and Activity Provider Licence Reform Project, the policy statement *Licensing Systems for Tour Operators and Activity Providers on Public Land in Victoria* was released in May 2008.²⁴ Objective 2 in that statement announced a number of proposals to create a simpler and more efficient licensing system, including revised fee arrangements (the subject of this RIS).²⁵

Victoria's Nature-based Tourism Strategy was also released in 2008. This strategy aims to stimulate and grow nature-based tourism by, amongst other things, creating supportive frameworks and partnerships with the tourism industry. As part of this, it proposed to increase the maximum licence term to 10 years for tour operators on public land.²⁶ As mentioned above, amendments to relevant legislation have been made to give effect to this.

More broadly, in introducing the amending legislation into parliament, the then Minister noted that "The amendments contained in the *Crown Land Acts Amendment (Lease and Licence Terms) Bill 2009* will ensure that Victoria's public land assets continue to provide a foundation for, and a means of, supporting economic development across the state as well as the achievement of broad social, community and environmental outcomes."²⁷

2.2 Objectives

2.2.1 Regulatory objectives

The primary objective of the proposed Regulations is to recover government costs in an efficient, equitable, and effective manner with respect to tour operators on public land in Victoria. These objectives have regard to the following considerations:

- Efficient costs – fees should be set to enhance allocative efficiency, and to minimise distortions and calls on general revenue.
- Equitable costs – fees should not create a barrier for smaller businesses to enter the market, and fees should not deter people from 'consuming' tour/activities services.
- Effective – fees need to be easy to understand and set in a way to encourage compliance.

A secondary objective of the proposed Regulations is to treat tour operators who operate on public land in Victoria in a consistent manner.

2.2.2 Cost-recovery

The *Cost Recovery Guidelines* is the key policy guiding the setting of fees and user-charges imposed by departments and central government agencies in Victoria. As stated in the *Victorian Guide to Regulation*, general government policy is that regulatory fees and user charges should be set on a full cost-recovery basis because it ensures that both efficiency and equity objectives are met. The guidelines also state that there are nevertheless situations where it may be desirable to recover less than full cost, or not to recover costs at all.²⁸

2.2.3 Creating a consistent framework

Creating an arrangement that treats tour operators who operate on public land in Victoria in a consistent manner is a key objective of the proposal. The current arrangements do not provide this. Specifically, Committees of Management, Alpine Resort Management Boards and local government currently have their own arrangements for charging fees. This means that an operator undertaking activities on Crown land can be charged different fees and have different requirements imposed on them simply because a different body administers them. To improve consistency, transparency and administrative efficiency, tour operators should be subject to the same fees system across Victoria when they operate on public land.

2.3 Authorising Provision

The proposed Regulations will prescribe fees in relation to tour operator and activity provider licences as provided by the *Crown Land (Reserves) Act 1978*, *Forest Act 1958*, *Land Act 1958*, *National Parks Act 1975* and the *Wildlife Act 1975*. When the relevant sections of the *Crown Land Acts Amendment (Lease and Licence Terms) Act 2009* are proclaimed new authorising powers will commence operation in these Acts.

The commencement of these provisions will provide the Governor in Council with authority to make regulations for, or with respect to, the fees payable in relation to tour operator licences. A full extract of these authorising provisions is contained in **Attachment D**.

²⁸ DTF (2010a), op cit. p. 6

²⁴ DSE (2008), *ibid*.

²⁵ *ibid*, see Section 2.3 Licences Fees, pp. 10–12

²⁶ State of Victoria Tourism Victoria (2008), *Victoria's Nature-Based Tourism Strategy 2008–2012*, Melbourne. Direction 1, p. 7

²⁷ VicHansard, Assembly, Second Reading Speech, Crown Land Acts Amendment (Lease And Licence Terms) Bill, 7 May 2009, p. 1324

3 Options To Achieve The Objectives

3.1 Principles of Fee Setting

In May 2010 the Victorian Government released its revised *Cost Recovery Guidelines* to clarify its policy principles underpinning cost-recovery arrangements.²⁹ The Guidelines establish a whole-of-government framework thereby ensuring that cost recovery arrangements in Victoria are transparent, efficient, effective and consistent with legislative requirements and government policy. These Guidelines follow 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. Consideration may be given to a regime of partial cost-recovery (if it can be demonstrated that a lower than full cost-recovery does not jeopardise other objectives) and/or to rely on other funding sources (e.g. general taxation) to finance the government activity.

3.2 Options – Limited to Fee Design

In identifying options it seems reasonable to assume that in certain cases the regulations are the only viable option because they 'give effect' or 'operationalise' key elements of the Act. While these suppositions should generally be avoided, clause 2.04 of the *Subordinate Legislation Act 1994 Guidelines* (the Premier's Guidelines) states when the Act requires that a thing or matter be prescribed in regulations, then it must be provided in the Regulations:

"where the authorising Act dictates the form of subordinate legislation required, for example, *where the authorising legislation provides for fees to be prescribed by statutory rule, there is no discretion to set those fees by another method.*"³⁰ (emphasis added)

Given the limited discretion, options in this RIS will focus on fee design elements contained in a statutory rule, rather than considering alternative funding options or use of alternative regulatory/economic instruments. The fee design options considered in this RIS are:

- Design Option 1: Scope of the fees – who is included in the fee base?
- Design Option 2: Cost-recovery – should all, some, or none of the costs to government be recovered?
- Design Option 3: Fee structure
 - is the fixed component versus variable component appropriate?
 - should the variable component be abolished and fees charged by a fixed component only?
 - should students/children receive a discount?
 - should there be a discount for the time value of money?
 - should fees be capped?
- Design Option 4: Competitive allocation of licences.

These options are not mutually exclusive and there are potentially numerous combinations between them. The competitive allocation of licences represents a subset of Design Options 1, 2 and 3 but applies to specific situations under which the number of licences needs to be restricted.

3.3 Fee Design Options

3.3.1 Design Option 1: Scope of fees

Under the legislation, persons that carry on a trade or business on public land are required to hold a licence. The broad rationale for licensing and applying fees is to protect the natural and cultural values of public land by managing access, use and environmental impacts. The question arises, should all businesses or activities be covered by the proposed fee? Should exemptions be granted in some cases?

In terms of fee design (following generally established taxation policy principles), fees should be efficient, equitable, and effective and should have as broad a coverage as possible. Generally it is more efficient to avoid granting exemptions, but if special cases can be made then direct grants or other assistance is usually more appropriate.

²⁹ Department of Treasury and Finance (2010(a)), *Cost Recovery Guidelines*, Melbourne

³⁰ Subordinate Legislation Act 1994 Guidelines, Revised 2007, Section 2.04.



Great Otway National Park. Photo: Parks Victoria

Commercial fitness trainers operating on public lands

Since the Policy Statement was released in 2008, there has been a continued growth in the numbers of commercial fitness trainers offering individual or small group training in public parks, gardens and on beaches, particularly in urban areas. While this broad trend has occurred, it is important to recognise that the proposal in this RIS only applies to a small group of these trainers – those who operate on Crown land managed by a Committee of Management (including local governments acting as such committees). The proposal does not include fitness trainers operating on local government land managed by local government.

Some public land managers, particularly around Port Phillip Bay and in coastal areas, have introduced, or are trialling, permits and fees for commercial fitness trainers, recognising:

- the commercial nature of the activity
- the need to ensure such activities are undertaken safely and in an appropriate location, and
- the need to ensure such activities do not affect public enjoyment of open space.

Many commercial fitness trainers operate on municipal council land and are issued permits and charged fees in accordance with local laws. However, some commercial fitness trainers will be operating on Crown lands or on metropolitan land managed by municipal councils, as delegated managers appointed under the *Crown Land (Reserves) Act 1978*.

While commercial fitness trainers were not explicitly referred to in the Policy Statement, these activities clearly fall within the definition of persons conducting a recreational activity for profit, and will therefore be required to obtain a tour operator licence and pay the regulated fees when operating on public lands. Therefore, there are a number of options that could be considered in relation to setting fees for commercial fitness trainers.

First, the regulations could require commercial fitness trainers to obtain a permit for one-on-one personal training, but not be charged a fee. This approach would enable management of the location and scale of the activity through issue of a permit, but the justification for not charging a fee is not strong. Paid one-on-one personal training is clearly a commercial recreational activity, and when it is proposed to take place on public land the land manager is still required to assess whether the proposed location is appropriate for the activity, the trainer has the appropriate qualifications and insurance, and a need to establish whether a licence requires conditions. These tasks all incur costs, a reasonable proportion of which should be recovered from the applicant. It is also worth noting that other tour operators and recreational activity providers operating on public lands may also offer individual tours or lessons, and are not exempt from fees.

Second, the regulations could require commercial fitness trainers to obtain a permit under which charges are scaled on group size. Some municipal councils and land managers charge a sliding scale of fees based on the size of the group undertaking the activity. Under this model, some councils charge an application fee while others do not. As discussed above, irrespective of group size, the land manager is required to assess the application and issue a permit for a commercial recreational activity and it is appropriate to recover a reasonable proportion of those costs. The proposed Regulations put forward both an annual fee and use fees. The total fees enable recovery of a reasonable proportion of the administrative costs of assessing an application, and as part of this model the proposed use fees operate as a reflection of turnover, or number of customers, over the year. This mechanism provides a degree of equity to operators dealing with smaller groups.

Third, another option is that commercial fitness trainers could be required to obtain a permit at a lower fee than other commercial recreational activity providers. Some councils and land managers are yet to charge fees to commercial fitness trainers, but are considering introducing a fee at a lower rate than for other commercial recreational activity providers. One rationale put forward for this approach is that the land manager wishes to encourage physical activity. While physical activity is an appropriate use of public open space, commercial activity providers are making a profit from accessing public lands, and are therefore required under the new legislation to obtain a licence and pay regulated fees. As previously stated, the costs of assessing the appropriateness of an activity for a specified location remain the same, whether the activity is commercial fitness training or another commercial recreational activity, and it is appropriate to recover a reasonable proportion of those costs.

It is also evident that commercial fitness training is not the only way to participate in physical activity. Members of the community may independently undertake physical activity on public lands, without paying fees to a third party provider. Members of the community may also undertake other forms of physical activity with a licensed tour operator or other commercial activity provider, such as surf lessons, para-sailing, guided nature walks, or horse riding. All of these activities, when carried out for profit on public lands, are required to be licensed and those operators should be required to pay fees. Thus there appears to be no clear rationale for charging commercial fitness trainers lower fees than other commercial recreational activity providers.

This RIS provides an opportunity to engage with the commercial fitness industry and to understand whether there are characteristics of the industry that distinguish them from other commercial recreational activities and would justify a different approach to fees.

3.3.2 Design Option 2: Proportion of cost-recovery

As mentioned above, while the Victorian Government's general policy is that fees should be set on a full cost-recovery basis, there are nevertheless situations where it may be desirable to recover at less than full cost, or not to recover at all. These include circumstances where social policy or equity considerations are considered to outweigh the efficiency objectives associated with full cost-recovery, and/or where full cost-recovery might adversely affect the achievement of other government policy objectives. Therefore proposed fees options considered were:

- Full cost-recovery (relevant fee based on 100 per cent of the average costs (both direct and indirect) of administrating the licensing arrangements)
- Partial cost-recovery (this recognises a 'public good' element and may justify an element of subsidy)
- Partial cost-recovery as represented by the current arrangements – for purposes of comparison, the current fee levels (currently authorised by the Ministerial Order) are presented as an option. This will allow a comparison of the incremental impacts of the options.

3.3.3 Design Option 3: Fee structure

Option 3.1 Fixed versus variable components

The current fees consist of a fixed component and a variable use component (based on visitor numbers). An option could be to remove the use component and recover all costs through a fixed annual fee. Alternatively, costs could potentially be recovered through the use fee alone. In this case, once an operator was licensed monies would be remitted following the end of each quarter or year solely based on the number of persons undertaking a tour or activities.

The hybrid of these options would be to charge both a fixed and a variable component. As discussed earlier, this position represents the current arrangements. Currently approximately 25 per cent of recovered costs are made by way of the fixed component, while the remainder is collected by the use component. Options could include varying these proportions to say 50/50 or 75/25 of the fixed and variable components.

Option 3.2 Fixed component only

As an alternative to splitting the fees into fixed and variable components, the entire amount could be charged through a fixed component. Generally speaking, most fees in Victoria operate in this manner. Under this alternative, the fee structure could consist of a once-off fee at the beginning of each licence period. This would remove the costs of processing use fee applications (\$132 per application), reduce the transaction costs of paying the use fees, may provide greater revenue certainty and could enhance compliance. Overall, the average level of fees would be lower than the existing fees. DSE, however, would lose valuable visitation data.

Option 3.3 Student use fees

The current use fee is levied at \$1.10 per person per day, unless they are a student or child under the age of 16 in which case the fee is \$0.75. These rates represent a discount of approximately 32 per cent for students/children. Presumably this may be considered to approximate a public good value through producing an educational benefit. Options could be to retain the proportion of this discount, vary it, or remove it altogether.

Option 3.4 Discounts for long term fees

A major initiative to arise from the Public Land Tour Operator and Activity Provider Licence Reform Project is the lengthening of tour operator licence terms to a maximum term of 10 years, at the discretion of the land manager. To place the annual cost of multi-year licences on a similar footing, the 'time value of money' could be taken into account by way of a discount for these longer term licences. A range of discount rates could be considered.

Option 3.5 Fee caps

A design feature of the current TOMS licensing system is a cap on the use fees of \$5,500. Given that the current per person use fee is \$1.10, it would be rational for a tour operator to elect to pay the cap if they were likely to have 5,000 or more customers per annum. Currently seven licensed tour operators elect to pay the fee cap. Typically, these operators are represented by bus tour operators.

While operators paying the cap do not currently provide trip returns, anecdotal evidence suggests larger tour companies, particularly those visiting popular natural attractions in the State, provide tours for significantly more visitors than represented by the cap.

The 2005 Directions Paper canvassed introducing a higher fee cap of \$15,000, as well as removal of the cap altogether. Following consideration of stakeholder submissions, the Victorian Government determined to increase the cap to \$12,500³¹ and would require major operators to submit trip returns to enable better analysis of appropriate fee levels in future.

Options could include: maintaining the current cap, adopting the suggested cap in the Policy Statement, setting a cap at a different level, or abolishing the cap altogether.

3.3.4 Design Option 4: Competitively allocated licence fees

The Victorian Government's *Business Licence Review* identifies two broad business licence categories: those that confer a 'privilege' on licensees and those that grant 'permission'.³²

Licences based on privilege refer to those which confer a valuable and exclusive or excludable right to undertake an activity to a limited group of licensees. It is in the nature of these licences that they limit entry to an industry in specific quantitative terms. This means that fewer entrants are permitted to undertake the relevant activity than would be the case in the absence of the licensing regime.

By contrast, licences granting permission do not involve explicit quantity restrictions. They simply confer, on those who can satisfy specified requirements, a conditional right to undertake particular activities.³³ The vast majority of tour operator licences fall into this category.

³¹ DSE (2008), *ibid.*, p. 11

³² Department of Treasury and Finance (2010(a)), *Business Licence Review*, prepared by PricewaterhouseCoopers, January 2010, p. 15

³³ *ibid.*

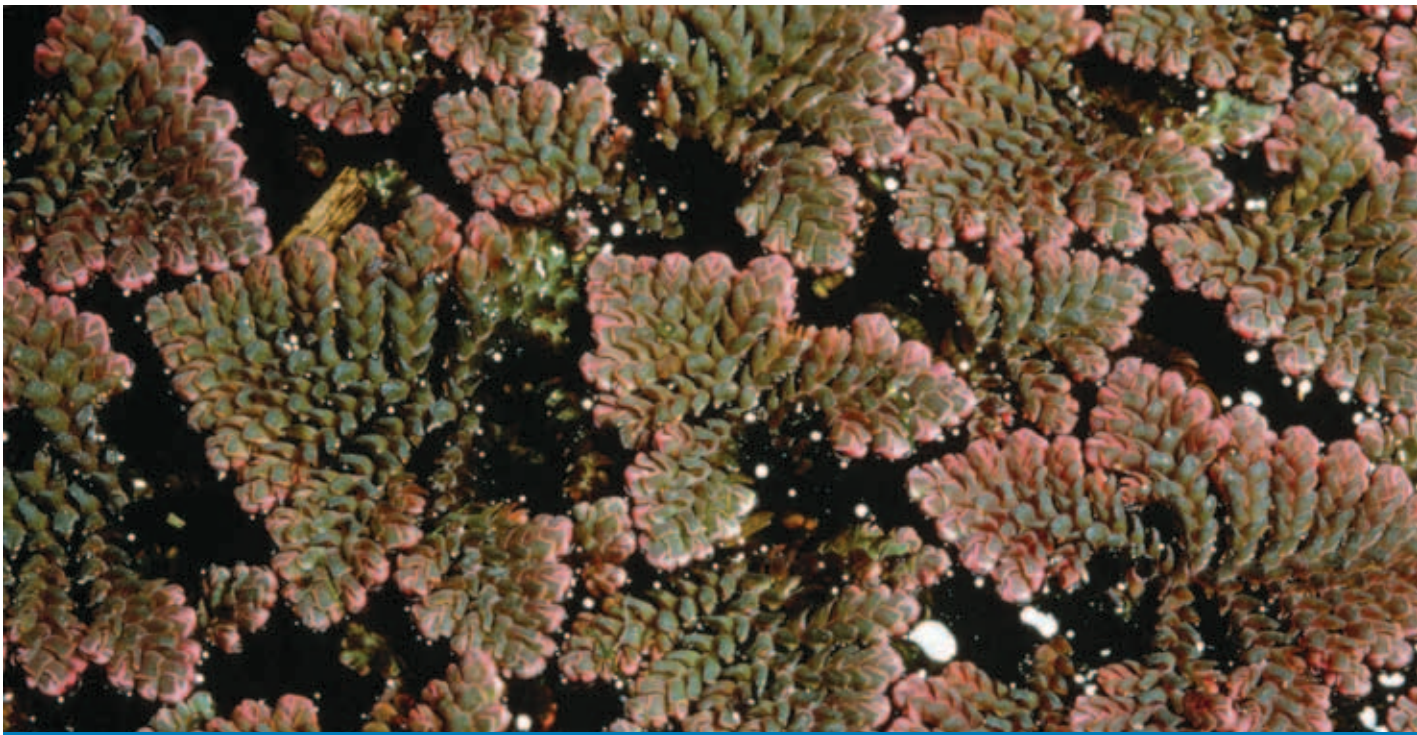
As discussed above, however, in cases where the impacts/ numbers of visitors need to be managed a licence could be issued with privilege characteristics. Such licences are already used by Committees of Managements and some local government with respect to tour operators by way of competitive allocation (for examples see **Attachment A**).

Within the framework of competitive allocation of licences a number of options may be considered. These include:

- fees for competitively allocated fees are the same as standard tour operator licence fees
- minimum fees only prescribed in regulations
- minimum and maximum fees prescribed in regulations
- fees are negotiated directly with successful applicant/s, after evaluation of applications against published qualitative criteria.

3.4 Fee arrangements in other jurisdictions

A summary of tour operator licence fees across the states and territories is shown in **Attachment E**. These results indicate that Victoria's fees are competitive across all Australian jurisdictions. While the proposed fees will increase the current levels, Victorian tour operator fees will still be amongst the most competitive in Australia.



Ferny Azolla (Azolla pinnata) is a native aquatic plant found in still or slow-moving water bodies such as dams. Photo: Ian McCann

4 Costs and benefits of the fee options

4.1 Base Case

The 'base case' describes the regulatory position that would exist in the absence of the proposed Regulations. For the purposes of regulatory analysis, the base case of 'doing nothing' is not considered an alternative given that the government has identified a problem that needs to be addressed. However, it is necessary to establish this position in order to make a considered assessment of the incremental costs and benefits of the viable options. Generally, the normal assumption is that the base case is represented by no regulations (either because regulations have not been made or that existing regulations will sunset).

However, in the present situation the base case is represented by the current fee regime established by the Ministerial Order (MO), and includes fees set by Committees of Management. In the absence of the proposed Regulations the MO would continue to apply into the future as no sun-set clause applies in this case.

4.2 Methodology

4.2.1 Recovery of efficient costs

Two broad approaches to costing might be adopted to allocate direct and indirect costs to outputs – the activity-based costing method and the pro-rata approach.

The activity-based costing method examines the activities undertaken within an organisation, determines what resources are used in the process to deliver a good or service, and then assigns costs to outputs according to the consumption of each activity in the production of the outputs. Each activity is costed on the basis of the resources consumed.

In its simplest form, the pro-rata approach can be used by grouping all indirect costs into a single pool, and then apply a proportional measure. However, the *Cost Recovery Guidelines* state that because of the accuracy of the activity-based costing approach, it is preferred over the pro-rata approach.³⁴ Consequently, this RIS adopts the activity-based costing approach to calculate per licence costs.

³⁴ DTF (2010(a)), *ibid.* p. 51

4.2.3 Multi-criteria analysis

Reflecting the objectives of the proposed Regulations (section 2.3) and the Government's *Cost Recovery Guidelines*, a multi-criteria analysis (MCA) was used to assess the preferred fee option. MCA is presented in this RIS as an alternative assessment tool to complement the financial analysis. The MCA approach is described in part 5–18 of the *Victorian Guide to Regulation*. It represents a convenient way of comparing a range of alternative approaches.

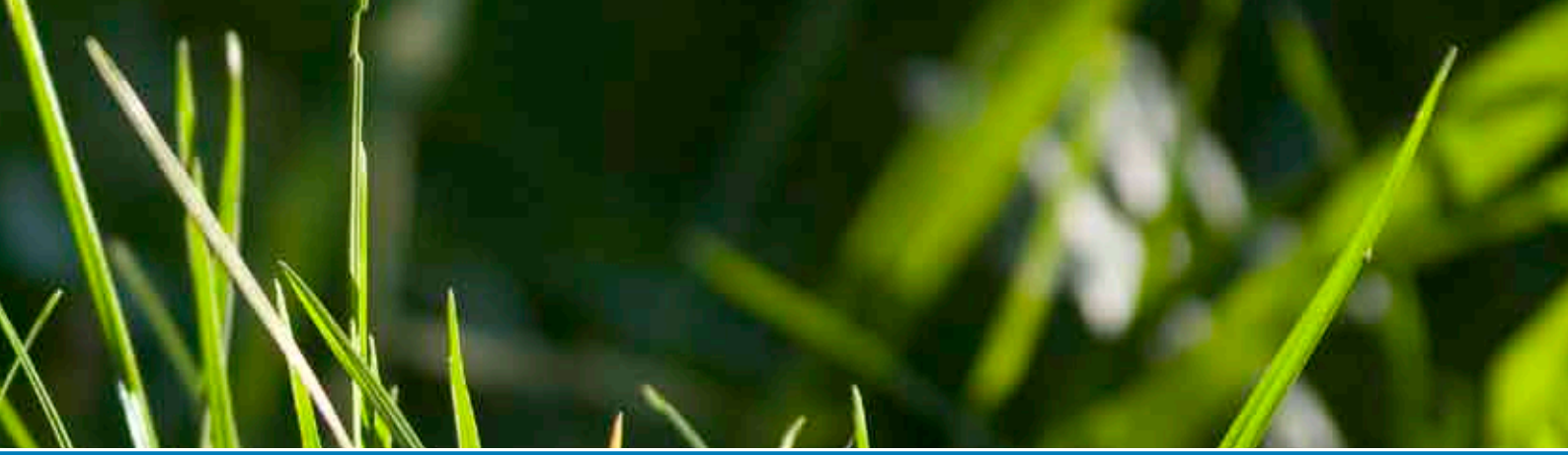
This technique requires judgements about how proposals will contribute to a series of criteria that are chosen to reflect the benefits and costs associated with the proposals. A qualitative score is assigned, depending on the impact of the proposal on each of the criterion weightings, and an overall 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.

Reflecting good design principles of fees and the objectives of the proposed Regulations, three criteria – efficiency, equity, effectiveness – were chosen and weightings selected. These are described in Table 6 below.

Table 6: Multi-criteria Analysis Criteria

Criterion	Description of criterion	Weighting
Efficiency	Fees should be set to enhance allocative efficiency and to minimise distortions and calls on general revenue.	35
Equity	Fees should not create a barrier for smaller businesses to enter the market and should not deter people from 'consuming' tour/activities services.	35
Effectiveness	Fees need to be easy to understand and set in a way to encourage compliance.	30

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 Regulations). Accordingly, the base case scenario overall receives a net score of zero.



4.2.4 Decision criteria

The decision criteria implied by the *Subordinate Legislation Act 1994* is that the benefits of a proposal should outweigh the costs, and that the preferred option is that which results in the largest net benefit. The MCA assessment tool is used 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 the Design Options

4.3.1 Design Option 1 – Scope of fees

Currently anyone operating a tourism or recreation business that conducts organised activities for profit in areas managed by Parks Victoria or DSE requires a tour operator licence. Under the Policy Statement “all business entities undertaking tours or activities associated with outdoor recreation on public land will be required to hold a tour operator and activity provider licence”.³⁵ In 2009 an amending Act gave legislative effect to this policy position.

As a general principle, fees should apply in a consistent manner across all business entities that conduct commercial tours or activities associated with outdoor recreation on public land. For example, inconsistencies arise if a business is required to hold a licence when operating on public land managed by Parks Victoria, but another business is not required to hold a licence because they operate on public land managed by a Committee of Management.

Applying the licensing arrangements to a broader group of tour operators and activity providers broadens the fee base and spreads the cost of administering the system across more users. Importantly, a broader application removes potentially anomalous situations (as mentioned above).

Under the new legislation there will be a consistent licensing system that will apply to all public land managed by Parks Victoria, DSE, Committees of Management and Alpine Resort Management Boards.

Commercial fitness trainers

Commercial fitness trainers, along with other commercial outdoor activity providers who use public land, will be covered by the Act and subject to the licensing arrangements and hence fees. Currently a number of local governments charge fees for commercial fitness trainers and apply a range of permits, which sometimes differ from the fees charged for other commercial recreational businesses (see **Attachment F**).

Design Option 1.1 – Broad Coverage

The growth in the commercial fitness training industry has been considerable in the last few years, and the industry may have limited awareness of the project to reform the framework for licensing tour operators on public lands. Given this situation, an expanded discussion of options for commercial fitness trainers is located at **Attachment F**.

An MCA analysis was conducted to assess the scope of the fee base. Relative to the base case, this option includes all activities managed by Committees of Management, Alpine Resort Management Boards and land managed by local governments as Committees of Management (including fitness trainers). Under this option an additional 150 businesses would be covered compared to the current arrangements. With respect to a broader fee base, a relatively high score of 75 is assigned to the efficiency criterion. This does not receive a full score because some categories are exempt (on policy grounds) such as school groups activities undertaken as part of the school curriculum. A broader coverage has the advantage of removing anomalies and ensuring that resources are allocated on a consistent basis. Similarly, a score of 75 is assigned to the equity criterion. Businesses operating on public land will be treated in a similar manner regardless of the land manager (horizontal equity); however at the extreme margin the proposed fees may deter business from undertaking the activity that are currently not subject to the fees (vertical equity) or discourage less well-off users. With respect to effectiveness, a broader coverage of fees should not present compliance issues and should be relatively easy to understand. Some issues may arise, however, where businesses not previously covered by the arrangements do not comply with the regulations either through a lack of understanding or deliberately. A score of 50 is assigned against this criterion. Taken together, this results in an MCA score of +67.50.

Table 7: Multi-criteria Analysis assessment of the broadest coverage

Criteria	Weighting	Assigned Score	Weighted Score
Efficiency	35	75	26.25
Equity	35	75	26.25
Effectiveness	30	50	15.00
Total	100%		+67.50

³⁵ DSE (2008), *ibid.* p. 5

Design Option 1.2 – Narrow Coverage

It would be possible to exempt certain categories from the proposed fee. For example a provision in the amending Act states that the fee regulations may “provide for the exemption of persons or a class of persons from any of the regulations providing for the imposition of fees”.³⁶ For purposes of analysis in this RIS, a narrower coverage excludes Alpine Resort Management Boards, fitness trainers and activities covered by competitively allocated licences.³⁷ This would result in approximately 105 additional businesses being covered compared to the base case (but about 45 fewer than under the broader coverage).

Assuming these exemptions, the efficiency criterion is assigned a score of 25. Anomalies and inconsistencies would still be present but to a lesser degree than the current arrangements. Likewise, greater coverage would ensure that businesses conducting similar activities are treated in a more consistent way. Consequently a score of 50 is assigned to the equity criterion. Exempting some groups may add complexity to the system and make the requirements more difficult to follow; however, non-compliance issues may not be as prominent. A score of 50 is assigned to the effectiveness criterion. Overall, this results in a score of +41.25.

Table 8: Multi-criteria Analysis assessment of the narrow coverage

Criteria	Weighting	Assigned Score	Weighted Score
Efficiency	35	25	8.75
Equity	35	50	17.50
Effectiveness	30	50	15.00
Total	100%		+41.25

The MCA analysis suggests that a broader coverage is a superior option to a system with exemptions and a narrower coverage. The main benefit of broadening the coverage of the proposed fees is to create consistent treatment between businesses that undertake tours or activities on public land.

Consultation point 1:

- 1.1 Is the proposed coverage of the fee base appropriate?
- 1.2 Should certain commercial tourism or outdoor activities be exempt or pay different fees from the fee base? If so, why and what should the fees be?

³⁶ See s. 16 of the *Crown Land Acts Amendment (Lease and Licence Terms) Act 2009*, which inserts s. 31(3)(b) into the *Crown Land (Reserves) Act 1978*.

³⁷ The number of licensed tour operators managed by Alpine Resort Management Boards is 10; while the number of competitively allocated licences issued is estimated at around 20. There are around 15 personal fitness trainers covered by the proposal. These estimates were obtained from consultation with Committees of Management and local government.

4.3.2 Design Option 2 – Cost-recovery

As noted above, the ABC method examines the activities undertaken within an organisation – in this case Parks Victoria. Each activity is costed on the basis of the resources consumed. To establish the processes and activities required to administer tour operators, DSE and Parks Victoria were consulted. Three broad activity areas were identified: assessing licence applications; processing use fees; program delivery, and enforcement. In terms of fee design and against the principles set out in the *Cost Recovery Guidelines*, the question arises as to the appropriate level of cost-recovery, recognising the need to balance efficiency and equity considerations.

Option 2.1 Full cost-recovery

Following the activity-based costing exercise, the costs of administering tour operators was determined (See Table A, **Attachment G**). Full cost-recovery examines the relevant fee based on 100 per cent recovery of the average costs, both direct and indirect of administering licensing arrangements. Parks Victoria, who administers the TOMS, provided a list of tasks and times required to undertake this administration.³⁸ Parks Victoria also provided details of fixed costs associated with administering the TOMS system, which amounted to around \$407,200 per annum.

To assess this option an MCA assessment was conducted. In terms of the economic efficiency criteria, a maximum score of 100 is assigned. Under this option, tour operators that derive private benefits from activities on public land are required to pay the full amount of the cost incurred to administer the licensing system, and the public is not required to provide a subsidy for these commercial operations. By decreasing the level of general taxation needed to finance regulated activities, cost-recovery also reduces the cost of tax administration and compliance, and the dead-weight loss of tax-related distortions.

Full cost-recovery, however, received a negative score of -50 for the equity criterion (remembering that under the base a significantly lower fee would be paid). The thrust of the Victorian Government’s nature-based tourism strategy is to encourage Victorians to enjoy the recreational and educational values that Victoria’s parks and reserves can offer. At the margin, full cost-recovery may deter some tour operators from participating in the industry, and to the extent that fees are passed on to consumers this may raise affordability issues. This in turn may deter some less well-off members of the community from enjoying the tourism experience.

The effectiveness criterion relates to the likely level of compliance. Fees need to be easy to understand and comply with, and set at a level so as not to encourage evasion/non-compliance. The higher the fee level the more likely that some operators will avoid applying for a licence altogether. In addition, of those who are licensed the use fee element may be understated (this essentially relies on an honesty system of declaring the number of visitors per quarter). Consequently, a score of -25 is assigned to this criterion. Overall, full cost-recovery results in a net score of +10.00.

³⁸ The most significant time item is Item 7 in Table A, **Attachment G**. This allocates 2 hours for examining “Activities and locations examined and application sent to contact officer in appropriate region”. This involves physical inspection (including travel time) of the location and discussions with the licence applicant. More complex applications can take more than 6 hours. Therefore the 2 hour time period is selected following discussion with Parks Victoria to represent an average time.

Table 9: Multi-criteria Analysis assessment of full cost-recovery

Criteria	Weighting	Assigned Score	Weighted Score
Efficiency	35	100	35.00
Equity	35	-50	-17.50
Effectiveness	30	-25	-7.50
Total	100%		+10.00

Option 2.2 Partial cost-recovery

The *Cost Recovery Guidelines* note that if it is determined that full cost-recovery is not consistent with other policy objectives of the government, then it may not be appropriate. Consideration could be given to a regime of partial cost-recovery (if it can be demonstrated that a lower than full cost-recovery does not jeopardise other objectives) and/or to rely on other funding sources to finance the government activity.

Partial cost-recovery can vary in its extent. For example, fees can recover 25 per cent, 50 per cent or 75 per cent of regulated costs. This extent depends on government objectives and the nature of the good/service provided by the operator. An argument could be made that tour operators provide a product that has 'merit good' characteristics. Merit goods, sometimes known by economists as positive externalities, generate benefits to unrelated third parties. Typically, the free market may result in an under-consumption of merit goods from society's point of view (e.g. education, healthcare). Enjoying Victoria's public lands, including nature-based tourism, may deliver environmental awareness, educational and cultural benefits. Fitness and mental well-being benefits may also result in a reduced call on the public health system. In other words, it could be argued that the provision of commercial tourism and recreation services on public land by tour operators generates both private and public benefits.

The question arises as to the division of private versus public benefits: that is, where does the 'good' (tour services in this case) lie on the continuum of pure private and pure public good.³⁹ A figure of 75 per cent cost-recovery was suggested in the Policy Statement resulting from industry consultation. This proportion would appear reasonable and appears to enjoy industry support (that is, DSE has not received feedback that this percentage is too high or too low). It is also important to note that similar regulations dealing with fees for tour operators undertaking tours in relation to marine mammals (the Wildlife (Marine Mammals) Regulations 2009) also found 75 per cent cost recovery was appropriate. For the purposes of this RIS, therefore, a level of 75 per cent cost-recovery is adopted. Implicit in this is an assumption that about three-quarters of the benefits are captured by tour operators and the broader public receives about one-quarter of the benefits (e.g. educational, cultural, well-being benefits). Partial cost-recovery under this scenario would recover approximately \$305,400 per annum, while the Victorian community would provide a small subsidy of around \$100,000 per annum to the sector.

³⁹ '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, aesthetic values are among many public good characteristics provided by forests, along with carbon storage and biodiversity conservation. Economic theory explains why the free market will systematically under-provide such goods, and why collective action, typically by the government, is usually required to ensure their adequate provision.

An MCA assessment was undertaken of this option. Given that full cost-recovery received a score of 100 for the efficiency criterion, an appropriate score for the partial cost-recovery adopted in this RIS is 75. In terms of the equity criterion, a negative score is assigned. This is because the financial cost is greater than the base case (75 per cent recovery compared with the current level of about 30 per cent). However, given that the costs are lower than those under the full cost-recovery option a score of -25 is assigned to this criterion. A relatively small negative score is assigned because the increase in fees is small compared to other operating costs of a tour operator and are unlikely to deter consumers. Economic theory would also suggest that a lower financial cost would result in a greater level of compliance (although in the case of tour operator licences this has not been empirically tested given that the fees have remained at the same level for 14 years). Given the self-assessment element of the regime, a score of -15 is assigned to the effectiveness criterion (because there still may be an element of under-reporting or avoidance).

Overall, assessment of the partial cost-recovery option results in a net score of +13.00. It received a higher score than Option A because the fees recognise equity considerations and may encourage greater compliance and hence effectiveness. In this regard the *Cost Recovery Guidelines* note that efficiency and equity considerations need to be balanced against each other in determining the appropriate form of cost-recovery.⁴⁰

Table 10: Multi-criteria Analysis assessment of partial cost-recovery

Criteria	Weighting	Assigned Score	Weighted Score
Efficiency	35	75	26.25
Equity	35	-25	-8.75
Effectiveness	30	-15	-4.50
Total	100%		+13.00

The MCA assessment above suggests that partial cost recovery achieves both efficiency and equity objectives of the government. Given the importance of the principle of cost-recovery is setting fees, a relatively high proportion of 75 per cent is considered appropriate.

Consultation point 2:

- 2.1 Is partial cost-recovery of 75 per cent appropriate?
- 2.2 Does this level represent a reasonable estimation of the 'public good' benefit provided by licensees?

⁴⁰ DTF (2010a), op cit. p. 5

4.3.3 Design Option 3 – Fee structure

Design Options 1 and 2 above suggest that partial cost-recovery (75 per cent) of costs should occur over a broad base. Within these design parameters, Design Option 3 assesses the costs and benefits of: fixed or variable fee components; the concessional fee for students; discounts for longer term licences; and caps on use fees. Not all of these design options lend themselves to an MCA assessment, therefore the advantages and disadvantages of the fee structure sub-options are discussed and conclusions drawn.

Option 3.1 Fixed and variable fee components

As mentioned above, there are two components to the current fees. A fixed component paid annually and a variable component (i.e. the use fee). Around 25 per cent of revenue is collected from the annual fee and 75 per cent is collected from the use fee. Together these components operate to recover the total costs of the TOMS. In theory, all fees could be collected by either the fixed component or alternatively by way of use fees. Therefore options could include setting the fees at:

- 100 per cent fixed fee component (see discussion below), or
- 75 per cent fixed fee component and 25 per cent from the use fee, or
- 50 per cent fixed fee component and 50 per cent from the use fee, or
- 25 per cent fixed fee component and 75 per cent from the use fee (current structure), or
- 100 per cent use fee component.

A major advantage of the current fee structure is that barriers to entry are relatively low. It is important not to set the initial hurdle too high: smaller operators may be discouraged from providing a service and evasion rates may increase (isolated incidents have been reported regarding unlicensed operators). In addition, the use fee component serves as a good proxy for paying for externalities associated with tour activities (i.e. the greater the number of persons visiting a site, the greater the environmental impact, other things being equal).

Consequently, this RIS finds that a lower fixed component combined with a variable use component is an appropriate design. This ensures that barriers to entry are minimised, while collecting fees on a proportional impact/use basis. Finally, tour operators are familiar with the current arrangements. Major changes would increase familiarisation costs.

Option 3.2 Fixed component only

However as noted above, an option could be to abolish the use fee component and set the fees entirely as a fixed fee. Generally speaking, most fees in Victoria operate in this manner. Under this alternative, the fee structure could consist of a once-off fee at the beginning of each licence period. This would remove the costs of processing use fee applications, reduce the transaction costs of paying the use fees, could provide greater revenue certainty, and could enhance compliance. Overall, the average amount of fees would be lower than the existing fees.

Table E in **Attachment G** suggests that annual fees in the order of \$920 could be charged for each licensee. While fees on average would decline, it is likely that a large number of providers would disappear from the market. It will be recalled that about one-quarter of all licensees currently pay less than \$200 in fees annually (see Figure 2). An advantage of the current approach is that the fees are structured in a manner so as not to disadvantage micro or small businesses. In addition, DSE would lose valuable visitation data and the cost of surveys to obtain such data would reduce some of these savings. This option has the potential to over-recover or under-recover costs because the majority of revenue is based on use fees and therefore visitation levels, which can vary. There also may be compliance issues with the use fees because they are relying on a self-reporting honesty system.

To further explore the merits of these options, an MCA assessment was undertaken. The proposed fee structure of a 25 per cent fixed component with a 75 per cent variable element scores a net score of zero. This is because these proportions represent those that under currently in place, and hence represent the base case.

Setting the proposed fees at a single fixed rate has certain efficiency and effectiveness benefits, but these are offset by affordability considerations. With respect to efficiency, a single rate would be straightforward and would reduce administrative costs (and hence lower average fees would be charged).

A score of 25 is assigned to this criterion. This is because the quantum raised would be of a similar level to the proposal. The prime disadvantage with this approach is that a much larger upfront fee would be required. Given that many businesses are very small, an upfront fee in the order of \$920 as opposed to \$255 may cause financial hardship or cause them to exit the industry. Consequently a score of -65 is assigned to the equity criterion. However, such an approach would be easy to understand and may reduce non-compliance (by removing the self-assessment aspect). A positive score of 50 is assigned to this criterion. This results in a net score of +1.00.

The scoring suggests that this option has some merit. For this to be a superior option to the proposal the efficiency benefits would clearly need to outweigh the financial hardship that such an approach would cause smaller businesses. DSE would like to hear from businesses on the merits of this approach.

Table 11: Multi-criteria Analysis assessment of 100% fixed rate fees

Criteria	Weighting	Assigned Score	Weighted Score
Efficiency	35	25	8.75
Equity	35	-65	-22.75
Effectiveness	30	50	15.00
Total	100%		+1.00

Consultation point 3:

- 3.1 Is the current fee structure of approximately 25 per cent fixed and 75 per cent variable appropriate? If not, what proportion would be most appropriate?
- 3.2 Should the 'use' component be retained?

Option 3.3 Student use fees

Currently, the use fee is levied at \$1.10 per person per day, unless they are a student or child under the age of 16 in which case the fee is \$0.75. These rates represent a discount of approximately 32 per cent for students/children.

The rationale for this may be to help the competitiveness of tour operators that deal with students. The concession may also be provided on public good grounds (i.e. educational benefit elements). However, given that the proposed fees already provide a concession on public good grounds (i.e. through partial cost-recovery) it is not clear that a second concession is warranted. It is also not clear as to the extent that this concession is being passed on in the form of lower student prices for tour operator activities.

Removing the student use fee concession would improve efficiency at the margin. It would recover a greater proportion of costs from students and the non-student use fee could be lowered. A score of 15 is assigned to this criterion. In terms of equity, to the extent that the concession is passed on, then its removal may affect some students from less well-off backgrounds to access the public land experience. This criterion is assigned a score of -15. Removing the concession would simplify the fees, improve their clarity and lower costs associated with proof of age or educational institution therefore a score of 15 is assigned to this criterion. Taken together, this assessment results in a net score of +5.25.

Table 12: Multi-criteria Analysis assessment of removing the student use fee

Criteria	Weighting	Assigned Score	Weighted Score
Efficiency	35	15	5.25
Equity	35	-15	-5.25
Effectiveness	30	15	5.25
Total	100%		+5.25

The MCA assessment finds that removing the student differential may have some merit, although it scores only marginally higher than the base case. While removing the student use fee concession would improve efficiency at the margin, given that the current arrangements have been in place for 14 years and stakeholders are familiar with them, any changes would incur transitional costs. DSE believes that the implementation costs of removing the student discount would outweigh any margin increase in the benefit of streamlining the use fees. That said, the relative closeness of the scores provides a case to consider removing the current differential. DSE seeks input through this RIS process on the merits of standardising the fees.

Consultation point 4:

- 4.1 What are the advantages of the current discount for students/children under 16 years of age?
- 4.2 Should the current concession of approximately 32 per cent be retained?
- 4.3 Is there any evidence that this concession is being passed on?
- 4.4 Should the concession be removed?

(Table C in **Attachment G** shows that the proposed use fee rate for a general visitor is \$2.40, while the proposed student rate is \$1.60. If the use fee was standardised the single use fee would be \$2.00 for all persons.)

Option 3.4 Discounts for long term licences

A major improvement to arise from the Public Land Tour Operator and Activity Provider Licence Reform Project is the lengthening of maximum tour operator licence terms. As noted above, this is now reflected in the legislation and licences may now be issued for a period not exceeding 10 years (the current maximum period is three years).

In the Policy Statement, DSE suggested that discounts be offered for longer term licences. Given that the general principle of fee design is based on cost-recovery, there is limited scope to deviate from this objective. That said, to place the annual costs of multi-year licences on a similar footing to the cost of an annual licence, the 'time value of money' could be taken into account.

A range of discount rates could be considered. For example, discount rates could be set at the Treasurer's rate, a rate linked to inflation, or a rate linked to a government debt instrument (e.g. a government bond). Ideally the discount should reflect more than just the inflation rate. This is because the licence holder could invest those monies with a bank and earn interest. A common measure of the 'risk free rate of return' used in financial analysis is the Commonwealth 10-year bond rate. As at August 2010, a Commonwealth bond covering a similar period to the proposed regulations (maturing in April 2020) has a yield of 5.1 per cent.⁴¹ Therefore, a discount rate of 5 per cent per annum would not seem unreasonable. Accordingly, a rate of 5 per cent is adopted in the draft regulations. See **Attachment H** which shows the discount calculations and explains the approach.

Consultation point 5:

- 5.1 Is a discount of 5 per cent per annum reasonable for multi-year licences?

⁴¹ Reserve Bank of Australia, F16 Indicative mid rates of selected Commonwealth Government Securities, www.rba.gov.au/statistics/tables/index.html#interest_rates

Option 3.5 Fee caps

Currently tour operators may elect to pay a capped fee of \$5,500 in lieu of the use fee element. A rationale for this is that tour operators, typically bus tour operators, who have high visitor numbers may also have low impact on public land. For example, a coach can pull into a car park and visitors do not pass beyond purpose built viewing areas. Operators who pay the capped fee are also currently not required to submit visitation data.

The main advantage of the cap on use fees is that it provides certainty for those who elect to pay it and reduces administrative costs for operators by not having to submit periodic visitor number returns. The main deficiencies of the cap on use fees are that such operators may be receiving a subsidy from smaller operators and use data is not collected. Given the last point, the degree of subsidy, if any, cannot be determined. If there is a significant degree of subsidy then the removal of the caps of use fees would allow fees to be lowered.

In the Policy Statement the government announced that it would be increasing the use fee cap from \$5,500 to \$12,500. This was in part to allow for the effects of inflation and also reduce the implicit discount associated with these fees in light of the growth in tourism in Victoria since 1996.

As a licence condition, Parks Victoria will soon require trip return data to be provided by operators who pay the use fee cap. Once three years of this data has been collected, this RIS recommends that the fee cap arrangements be reviewed to allow the Victorian Government to make a more accurate assessment of the degree of cross subsidy, if any, and ways the fee structure can be improved.

Given that trip return data is currently not available, setting the fee cap at \$12,500 as mentioned in the Policy Statement would not seem unreasonable until the fees are reviewed. Consequently, a use fee cap of \$12,500 has been included in the proposed Regulations.

Consultation point 6:

- 6.1 Is the suggested rationale for the use fee cap (i.e. those who have high visitor numbers may also have low impact on public land) appropriate?
- 6.2 Is a use fee cap of \$12,500 reasonable? If not, at what level should the cap be set?
- 6.3 Should a use fee cap be retained?
- 6.4 What alternatives or arrangements can be made to enable pro-rata payment of use fees?

Option 3.6 Other design issues – Daily use fee versus per activity/per location

The current arrangements under the TOMS system and some use fees charged by other public land managers are based on a daily use fee per adult or student. However, there are some tours and activities that are not of full day duration.

There are also tours that cross land management boundaries. For example, a walking tour may cross one Committee of Management-managed foreshore in the morning and into a national park in the afternoon.

At the administrative level it is expected that operators and land managers agree pro-rata payments of use fees on an hourly basis and apportion use fees appropriately between relevant land managers.

Some committees charge use fees under a different structure for example, based on per person per activity rather than per day. Under this model a use fee for a one day tour could be the same as for a four day tour, which would not necessarily reflect the cost to land managers. Other committees charge use fees differentially on a location basis. Applying this model to the whole public land estate (approximately 8 million hectares) is unlikely to be cost-effective for land managers or industry.

4.3.4 Design Option 4 – Competitively allocated licence

As noted above, the Victorian Government's *Business Licence Review* identifies two broad business licence categories: those that confer a privilege on licensees and those that grant permission.⁴² Licences based on privilege refer to those that confer an exclusive or excludable right to undertake an activity to a limited group of licensees. It is in the nature of these licences that they limit entry to an industry in specific quantitative terms. This means that fewer entrants are permitted to undertake the relevant activity than would be the case in the absence of the licensing regime.

In cases where the impacts/numbers of visitors need to be managed, a licence could be issued with privilege characteristics. Such licences are already issued by a number of Committees of Managements and local government with respect to tour operators by way of competitive allocation.

Cognate to this, in 2006 the Victorian Government responded to the National Competition Policy Review on the *Regulation of commercial activities in Victoria's national parks and Melbourne's waterways*.⁴³ The review noted that an allocation based on the principle of 'first come first served' should not be relied upon to allocate consents except where there is clear excess capacity. The Victorian Government accepted this noting that consents will be allocated through a competitive process except where there are circumstances where competitive allocation is not appropriate.

With respect to the competitive allocation of tour operator licences, there are a range of models that could be put forward for consideration. The discussion below considers the advantages and disadvantages of four options based on existing Victorian and interstate practice, the policy commitments made in 2008, and the need to provide land managers with a degree of flexibility so that they can respond to increasing demand for access to public lands by commercial tour operators.

⁴² Department of Treasury and Finance (2010a), op cit, p. 15

⁴³ Department of Sustainability and Environment (2006), *National Competition Policy Review: Regulation of commercial activities in Victoria's national parks and Melbourne's waterway*, February 2006

Option 1 – Minimum fees only prescribed in regulations.

Under this option minimum fees only would be prescribed in regulations. Fees would be published in the Expression of Interest (EOI) document as part of the application process. An advantage of this option is that it would allow the public land manager to set a fee that takes account of the additional costs of a competitive allocation process. A further advantage of this option is that the fee levels for a competitively allocated licence opportunity are made known to all applicants through publication in the EOI, so that price does not become the determining factor in awarding such licences, consistent with the intent of the Policy Statement.

By not setting a maximum limit, a land manager could set differential fees in response to a range of proposed commercial activities and market values. This option also meets the intent of the Policy Statement.

However, if maximum fees are not set in the regulations then this may disadvantage smaller operators. In addition, no maximum fee limit may lead land managers to focus on potential revenue at the expense of evaluating applications on the basis of qualitative criteria.

Option 2 – Minimum and maximum fees prescribed in regulations

This is similar to the option above except that minimum and maximum fees are prescribed in the regulations. Such fees would be published in the EOI document as part of the application process.

This approach would allow a public land manager to set a fee that takes account of the additional costs of a competitive allocation process, within limits. Setting a maximum fee would prevent land managers from focussing on potential revenue at the expense of evaluating applications on the basis of qualitative criteria.

Against these advantages, establishing maximum fees for competitively allocated licences is inconsistent with the Policy Statement because it states that fees for this class of licence could be higher than for standard licences. Further, establishing maximum fees may prevent land managers from realising full value of a proposed commercial tour or outdoor activity on public land.

Option 3 – Negotiated fees

Under this option fees would be negotiated directly with successful applicant/s, after evaluation of applications against published qualitative criteria. Fees would not be published in the EOI.

An advantage of this approach is that it would allow the land manager to set fees that take account of the specific costs and impacts of the activity to be licensed. It would also allow the land manager to agree to fees that take account of the value of the market opportunity. The main disadvantages of this approach include a lack of transparency, potential disadvantage to smaller operators, and if fees cannot be agreed upon, land manager and applicants may incur additional costs through dispute or the need to repeat the process.

Option 4 – Fee parity with other tour operators

Under this option, fees could be set for competitively allocated licences at the same rate as for standard tour operator licences. The competitive element would be via qualitative assessment against the performance criteria in the EOI document.

An advantage of this approach is that consistent fees would be set across all sites and by all public land managers in Victoria. It would also ensure that evaluation of applications would be solely on the basis of other qualitative criteria. This approach would not disadvantage small operators. However, fees set under this option would not reflect additional costs associated with administering competitively allocated licences, and would not reflect the additional market value inherent in competitively allocated licences. In addition, this would not meet the intent of the Policy Statement.

Preferred option and fee design

Activities covered by competitively allocated licences typically require greater costs for land managers in terms of defining activities/routes etc, processing applications, and ongoing monitoring and enforcement. The Policy Statement and amending Act recognises this and permit higher fees to be charged in relation to these licences. However, another important principle in the Policy Statement is to simplify the current arrangements by avoiding unnecessary complexity.

These options should be considered against the background of broader cost-recovery considerations, including the cost of consideration of applications, and whether caps should be applied.

The Policy Statement proposed a cap on use fees of \$12,500 per annum. However, it did not mention whether the use fee cap would apply to competitively allocated licences, but the Policy Statement did state that fees for competitively allocated licences may be higher than for standard licences.

Logically, applying the use fee cap to competitively allocated licences could lead to licensees with standard licences paying the same total fees as those holding a competitively allocated licence, if they have sufficient business to reach the cap. A higher use fee cap could be set for competitively allocated licences, given the additional value to operators of a licence that has been allocated to exclude a number of competitors. Therefore, the rationale for applying the use fee cap appears weak.

Taking into account the advantages and disadvantages of the proposed models, the preferred fee structure for competitively allocated licences that public land managers may charge is:

- An annual fee, determined on a case-by-case basis, and published in the EOI document. As a minimum, the fee should be set at a level equivalent to the annual fee for general tour operator licences. The activities and management requirements differ significantly and land managers need flexibility to set fees accordingly. By way of illustration, smaller, less complex activities can cost land managers in the around \$2,000 to \$3,000 per licensee to manage. Larger complex activities (for example, tour activities related to marine mammals can cost in excess of \$100,000.
- For consistency with the Policy Statement, use fees should be set at the same rate as for standard tour operator licences.
- Given the privilege characteristics of a competitively allocated licence, no fee cap should apply.

Consultation point 7:

- 7.1 What are the advantages and disadvantages of the competitively allocated licence fees?
- 7.2 How should a competitively allocated licence fee be designed?

4.4 Summary of costs and benefits of options

As noted above, the Premier's Guidelines provide limited discretion concerning options when the primary legislation dictates that the fees are to be prescribed by regulation. Given the limited discretion, options focussed on ensuring that the proposed fees are designed in a way that balances efficiency, equity and effectiveness.

Design Option 1 – Fee scope: The assessment suggests that the scope of the fees should be broad and apply consistently across-the-board to all business entities undertaking tours or activities associated with outdoor or nature-based recreation for profit on Victorian public land.

Design Option 2 – Cost-recovery: The government policy is that regulatory fees 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, then it may not be appropriate to introduce a full cost-recovery regime. The assessment in this RIS found that sound public good arguments may justify less than full cost-recovery. This RIS considers that 75 per cent cost-recovery is an appropriate level.

Design Option 3 – Fee structure: The current fee structure is well known to tour operators and has worked effectively since 1996. The assessment in this RIS found that:

- the fixed (25 per cent) and variable components (75 per cent) were appropriate
- the student discount in the use fee element should be retained, although there is some merit in simplifying the current arrangements and introducing a single fee
- licensees should receive a discount taking into account the time value of money for multi-year licences
- the fee cap should increase to \$12,500 subject to a review following 3 years collection of use fee data.

Design Option 4 – Competitive allocation of licences:

In cases where the impacts/numbers of visitors need to be managed, an option to apply the competitive allocation of licences should be introduced. Fees attached to such licences should have the following characteristics:

- annual fees and use fees will be published in the EOI document and these will vary on a case-by-case basis, however, minimum fees equal to the fees applicable to tour operators should apply
- there should be no cap applied to competitively allocated licences.

4A Impact on small business

Regulation can have a disproportionate impact on small businesses.⁴⁴ Often, small firms have to divert a greater proportion of their resources to meet regulatory requirements. In addition, small businesses are less likely to have specialist staff (such as lawyers, accountants or human resources professionals) with detailed knowledge of regulation. While such impacts may be unavoidable, it is important that decision makers are aware of all impacts on small business.

Tour operators are typically represented by small (<20 staff) or very small (<5 staff) businesses. Of those tour operator businesses that employ full-time staff, 83.3 per cent employ less than 5 staff.⁴⁵ The impact of the proposed Regulations will therefore fall disproportionately on small business (but within the small business segment the impact will fall relatively equally).

To ensure that the proposed fees will not deter small business from entering the industry, the fixed component of the fees has been set at 25 per cent of the required recovered costs. The use element will of course vary according to the number of persons taking tours and engaging in activities.

To increase flexibility licensed tour operators will be able to pay the use fee either annually or quarterly (currently the requirement is quarterly only). This should lower the administrative costs for businesses that currently pay fees quarterly.

Given the relatively low level of the fixed element of the fees, it is unlikely that the proposal will deter small businesses from entering the industry. In fact, a small number of businesses that are not strictly required to be licensed have chosen to become registered (in cost-benefit terms, these businesses value the benefits of receiving industry news, official recognition, invitations to functions, etc, more than the modest cost of fees).

⁴⁴ The ABS defines a small business as a business employing less than 20 people. ABS Cat. 1321.0

⁴⁵ DSE (2005), *ibid.* p. 9

5 Assessment of competition impacts

The guiding principle in assessing competition impacts is that the regulations 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 Regulations can only be achieved by restricting competition. The National Competition Policy 'competition test' was used to assess the proposed Regulations against any possible restrictions on competition. The test asks whether the proposed Regulations:

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

There are two possible test criteria relevant to the proposed Regulations. These are whether the fees impose higher costs on a particular class or type of products or service and whether the regulations impose restrictions on firms entering a market.

Given the relatively low level of the fees, it is assessed that the proposed Regulations do not impose such barriers or impose a cost impost on business so as to affect their competitive positions in the broader market. The proposed fees apply in a similar manner across tour operators. While the quantum of the use component of the fee will vary from business to business based on the number of persons taken on tours, this in itself does not restrict competition. The cap on the fees may at the margin provide an advantage for larger operators; however these operators undertake tourism activities in a different market segment to smaller operators and are unlikely to adversely restrict competition.

The competitive allocation of licences in areas where there are environmental, safety or amenity concerns may restrict the numbers of operators at a particular site. It is considered on these grounds that any restrictions to competition are necessary and in doing so provides a net benefit to the community. Moreover, such licences will be periodically contested in the market to prevent structural entrenchment that may restrict competition. Therefore, the proposed Regulations are considered to meet the NCP 'competition test' as set out in the *Victorian Guide to Regulation*.

In terms of competitive impacts, it should be noted that fees do not apply to educational institutions or not-for-profit organisations or charities (e.g. bushwalking, recreation or sporting clubs). Because of the positive externalities associated with these activities, government policy does not require these groups to be licensed. It is worth noting that many educational institutions hire licensed tour operators to provide these services on school camps, excursions and the like because licensed tour operators can enhance the overall experience and better manage risks. This RIS finds that the relatively small fees imposed by the regulations do not create distortions in the marketplace (e.g. persons do not form clubs to avoid the fees).

6 The preferred option & proposed fees

6.1 Proposed Fees

The Policy Statement proposed establishing fees for tour operator licences based on the costs of administering licensing services on Parks Victoria and DSE-managed land, and structured so as to apportion cost-recovery for the licensing system as equitably as possible across the industry while reducing administrative burden for licensees.

The amending legislation broadened the application of the policy to require a consistent licensing and fee structure for commercial tour operators and activity providers on public lands.

Options in this RIS focused on fee design elements contained in a statutory rule, rather than considering alternative funding options. The fee design options considered in this RIS are:

- scope of the fees – the scope of the fees considered the coverage of businesses. While this is largely governed by the Act, the RIS concluded that a broad coverage delivers the most benefits because it reduces inconsistencies and raises more fee revenue at a lower rate.
- cost-recovery options – considered the most appropriate level of cost-recovery, that is, full or partial recovery. While full cost recovery delivers the most benefits on economic efficiency grounds, this RIS considers that there is sufficient justification for recovering a proportion of the total costs. These arguments include the health, cultural and educational benefits of encouraging Victorians and other visitors to enjoy the activities afforded by public land.
- fee structure – this option examined variations of fixed versus variable fee rates (i.e. what proportion should be fixed and what proportion should be raised by the use fees) and concluded that the current arrangements are appropriate. While a flat fee would reduce administrative costs to a degree, the higher entry level rate would probably result in a significant exiting of the industry by smaller businesses.
- competitive allocation of licences – in some cases activities need to be restricted to manage health and safety and environmental risks. The proposal examines options to manage these risks through competitively allocated licences. A model of an annual fee and a use fee determined in the Expression of Interest is assessed as the preferred model.

With this in mind, the fees sought to improve and simplify the current arrangements while maintaining features familiar to users. These design features have been incorporated into the fees contained in the draft Regulations.

An activity-based costing exercise was undertaken to calculate costs associated with managing the licensing system. There are a number of fixed costs associated with the TOMS system. These costs relate to IT and website maintenance, printing

and publication, information provision to tour operators and enforcement costs. These costs were summed and allocated proportionally against licence applications.

This exercise was undertaken against the fee design principles in the *Cost Recovery Guidelines*. The steps to arrive at the proposed fees were as follows:

- A. Calculate administrative, compliance, program delivery and enforcement costs of TOMS (Table A, **Attachment G**)
- B. Calculate amount required for 75 per cent cost-recovery (Table B, **Attachment G**)
- C. Calculate the proportion required for fixed component (annual) and variable component (use fees) (Table C, **Attachment G**)
- D. Calculate rates for annual, student use fees and adult use fees (Table D, **Attachment G**).
- E. Calculate an appropriate discount for multi-year licences (**Attachment H**).

An important assumption underlying the fee calculations was that the TOMS represents an efficient administrative system. Fees were calculated based on the 300 licensees currently in TOMS rather than examining different costs and approaches used by the more than one hundred Committees of Management that currently charge fees. To that degree, the proposal has calculated 'efficient fees' from the TOMS and applied the fee rates across the board.

It is also important to note that Committees of Management will not be required to use TOMS to implement the proposed regulations, as they are independent delegated land managers appointed by the Minister. Therefore these bodies will retain the fee revenue raised by the proposed fees. Committees of Management will be able to enter into an agreement with Parks Victoria to administer licences or Parks Victoria could provide an adapted version of TOMS to Committees. For Committees of Management that only have a small number of licences they may choose to carry on with their current arrangements but would be required to charge the regulated fees.

Detailed assumptions underlying the cost calculations are contained in **Attachment I** and the proposed fees are shown in Table 13 below. It should be noted that these fees will be indexed annually because they will be subject to the *Monetary Units Act 2004*, however fees under \$11.95 (in this case the 'use' fees) will only be revised when a cumulative effect of the annual increases is considered appropriate or following the expiration of the regulations in 10 years time.⁴⁶

⁴⁶ Fees under one fee unit (currently \$11.95) are not subject to annual indexation under the *Monetary Units Act 2004* (see section 9(1)(g) of this Act).



Nature provides a number of recreational opportunities. Photo: Tourism Victoria

Table 13: Proposed Tour Operator Licence Fees

Category	Current Fee (TOMS (\$))	Proposed Fee (\$)	Percentage increase
Initial application fee	165.00	abolished	n.a
One year licence	55.00	255.00	364%
Licence greater than one year (per annum)*	n.a	200.00	n.a
Premium 10 year licence	n.a	2,000.00	n.a
Use fee** – general visitor	1.10	2.40	118%
Use for – school student and child	0.75	1.60	113%
Use fee cap	5,500.00	12,500.00	127%
Competitively allocated licence minimum annual fee	n.a	255.00	n.a
Competitively Allocated licence use fee general visitor	n.a	\$2.40	n.a
Competitively Allocated licence use fee school student and child	n.a	\$1.60	n.a

a. Three year licences currently cost \$165 under TOMS. ** Use fees for competitively allocated licences will be at a minimum the same as use fees under standard licences.

b. The total cost of the TOMS system is calculated in **Attachment G**, Table B to be \$407,000. Given that the fees are set to recover 75% of costs, this will raise around \$305,000 with respect to the 300 licensees currently administered by DSE and Parks Victoria.

Fees set at the proposed rates in Table 13 will:

- raise approximately \$305,000 per annum⁴⁷ from the 300 licensed operators under the TOMS, which is an additional \$175,000 compared to the fee revenue actually collected under the current rates of around \$130,000
- raise approximately \$165,000 per annum from Committees of Management, Alpine Resort Management Boards and through competitively allocated licences, which represents an additional \$55,000 compared to the current arrangements. It is important to note that committees and boards will retain this fee revenue.

⁴⁷ Based on consultation and current rates, DSE estimates that Committees of Management (\$66,390), Alpine Resort Managements Boards (\$6,660), fitness trainers (\$4,875), and competitively allocated licences (\$31,400) currently raise around \$109,325 fee revenue per annum. Assuming that the proposed fee rates cause these groups the collected 50 per cent more fee revenue, this will result in collections of \$165,000. Given the assumptions underlying this figure, it should be regarded as an order of the magnitude and therefore indicative only.

- raise \$3.9 million (PV⁴⁸) over a 10-year period
- cost approximately \$5.2 million (PV) to administer over a 10-year period
- result in a net cost to tax and rate payers of around \$1.3 million (PV) over a 10-year period.

Multi-year licences still need to be assessed every year to ensure that they have current environmental or other relevant certification and that conditions of licences are updated when AAS industry standards are updated. There is also a requirement to re-check tracks and tour locations to make sure licence conditions are still appropriate. In this sense, administration, monitoring and compliance activities are on-going throughout the licence period and do not just represent a one-off check at the initial application stage.

For illustrative purposes, Table 14 below shows the incremental impact of the proposed fees using the example shown on p. 16 to represent the current arrangements. This illustration shows that for an 'average' licence the proposed fees will raise an additional \$1,000 or so per licensee. Given that inflation has increased by around 43.7 per cent since 1996, this represents a real increase of about \$700. This is the result of increasing the level of cost-recovery from around 32 per cent to 75 per cent.

Table 14: Incremental impact of proposed fees

Fee	Current fee (\$)	Proposed fee(\$)	Incremental Impact (\$)
Application fee	165	n/a	-\$165
Annual fee	55	255	+200
Use fee (500 persons)	550	1,200	+650
Use fee (500 students)	375	800	+425
Total	\$1,145	\$2,255	\$1,110

The costs to business arising from the proposed Regulations are relatively small in the context of general business costs, and a (perhaps significant) proportion of the fees are likely to be passed on to end users. On the other hand, **the main benefit of the proposed fee Regulations is the recovery of regulatory costs from tour operators and activity providers on behalf of the community.**

⁴⁸ Present Value (PV) adjusts (discounts) the value of money in future years to express in terms of today's value of money. The discount rate of 3.5 per cent was used in these calculations (see *Victorian Guide to Regulation*, section C.3, p. C-9).

The design principles identified were used to frame the new regulations in a way that balanced efficiency and equity, while building on a system that is familiar to stakeholders. In light of the foregoing analysis, this Regulatory Impact Statement concludes that:

- the proposed fees are set in accordance with the cost-recovery principles contained in the *Victorian Guide to Regulation*
- the proposed Regulations do not impose restrictions on competition, and
- while the industry is characterised by small and very small businesses, fees have been prescribed at a level that would not impose barriers of entry to the industry.

While the regulations only deal with fees for tour operator licences as opposed to sanctions, the new legislation contains a number of new penalties to enhance enforcement. The new legislation provides that a person must not conduct an organised tour or recreational activity for profit on public land unless that person holds a tour operator licence. The penalty for doing so in the case of a natural person is 20 penalty units⁴⁹ (\$2,389), or 100 penalty units (\$11,945) in the case of a body corporate. The same level of penalties may also apply to a holder of a tour operator licence if they contravene the conditions of the licence. In addition, the new legislation provides that the land manager may suspend or cancel licences if there are reasonable grounds to do so, or the licence holder is guilty of an offence under the legislation or has contravened conditions of the licence.

6.2 Groups Affected

Groups who will be affected by the new fee structure include:

- Licensed Tour Operators, i.e. businesses running guided tours or outdoor recreational activities for profit on public land. The majority of tour operators are small or very small businesses.
 - The RIS process may propose different fee models than proposed in the Policy Statement, and this may give rise to concern.
 - For the majority of tour operators fees will be increased.
 - Consistent fees – All public land managers will be required to charge the same fees, rather than the different fees that are charged at present.
 - There may be a small number of groups who now require a licence to conduct activities despite previously considering themselves ‘non profit’ or ‘charitable’ in nature. This will only occur where there is evidence the group is primarily a business entity e.g. a guide or leader who is paid or compensated.

⁴⁹ The value of a penalty unit for 2010/11 has been set at \$119.45. Source: Victorian Government Gazette, G 10, 11 March 2010

- All contractors, including bus companies, will now require a licence where they are conducting a business on public land. Some charter buses will also require a licence where the tour is advertised and tours are scheduled.
- Bus companies that access public land to deliver an organised commercial tour, as with other commercial tours/activity providers, fall within the definition of a tour operator under the Act and therefore require a licence. Several tour bus companies are already licensed tour operators on public lands.
- Fitness operators – Some public land managers are yet to charge fees to commercial fitness trainers. These groups will be captured by the tour operator licensing reforms, to the extent that they are operating on public lands.
- Committees of Management and Alpine Resort Management Boards
 - All committees will be required to charge the new regulated tour operator licence fees.
 - Committees of management that are currently charging fees for tour operator licences which are likely to be in excess of the fees set through the RIS process may see a change in the revenue generated from licensing.
 - Information collected from surveys completed by a representative sample of Committees of Management indicates that most Committees will have improved revenue and that they are generally supportive of the proposal.

Those indirectly affected include consumers undertaking activities in the following areas: bushwalking, coach/bus tours, bird watching, canoeing/kayaking, four - wheel drive tours, mountain biking, coastal walking, abseiling, rock climbing, horse trail riding and surfing or fitness instruction.

Under the new licensing framework any tour operators and activity providers will be able to apply to the land manager for a licence of up to 10-years maximum term. In order to be considered for a longer licence term the tour business must meet relevant certification. Businesses will have greater security through the option to apply for a 10-year maximum licence. It will be at the discretion of the land manager to determine if a 10-year licence will be granted and will depend on the management objectives for the site and associated natural resources.

Consultation point 8:

- 8.1 Are the proposed fees reasonable?
- 8.2 Are there any unintended consequences associated with the preferred option?

6A Description of the proposed regulations

The Tour Operator Licence Fees Regulations 2011 represent five separate but largely identical regulations. These are the Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2011, Forests (Tour Operator Licence Fee) Regulations 2011, Land (Tour Operator Licence Fee) Regulations 2011, National Parks (Tour Operator Licence Fee) Regulations 2011, and Wildlife (Tour Operator Licence Fee) Regulations 2011. A draft copy of the proposed Regulations is attached to this RIS.

Regulations 1 to 4 are machinery regulations and provide clarification and give operational effect to the regulations. They deal with the objectives, the authority to make the regulations deriving from the principal Act, the date of commencement of the proposed regulations and definitions to assist in interpretation. Regulation 5, 6 and 7 prescribe the fees for standard licences, establish who is required to pay the fees and set down when the fees must be paid. Regulation 8 obligates the holder of a standard licence to report to the land manager the number of persons that have participated in the licensed tours via a trip return form. Regulation 9 provides for competitive allocation of licences. Regulation 10, 11 and 12 prescribe the fees for competitively allocated licences, establish who is required to pay the fees and set down when the fees must be paid. Regulation 13 obligates the holder of a competitively allocated licence to report to the land manager the number of persons that have participated in the licensed tours via a trip return form. Regulation 14 and 15 provide the grounds for the Secretary to reduce, waive or refund fees. Regulation 16 provides for the land manager to refund fees where a licence holder surrenders their licence. Finally, Regulation 17 deals with transitional matters to ensure smooth implementation.

Not-for-profit organisations that operate on a non-commercial basis will not be required to obtain a tour operator licence.

Part 1 — Preliminary – Note: these descriptions are based on the regulations under the *Crown Land (Reserves) Act 1978*. The other four sets of regulations are largely identical (except in relation to the person who may set the annual fee for competitively allocated licences) but they will be made under the relevant sections of each relevant Act.

Regulation 1 describes the objective of the regulations, which is to prescribe the fees payable in respect of tour operator licences relating to Crown land under the *Crown Land (Reserves) Act 1978* and provide for the reduction, waiver or refund of tour operator licence fees.

Regulation 2 provides the regulations are made under section 31 of the *Crown Land (Reserves) Act 1978* (the Act).

Regulation 3 provides that the regulations come into operation on 1 July 2011.

Regulation 4 provides definitions of 'child', 'competitively allocated licence', 'compulsory school age', 'Expression of Interest document', 'school', 'standard licence', 'the Act', 'use fee' and 'use fee cap' for the purposes of the regulations.

Part 2 — Standard Licence Fees

Regulation 5 prescribes that an applicant for a standard licence is not required to pay an application fee but is required to pay an annual licence fee under Regulation 6 if granted that licence.

Regulation 6 prescribes the annual fees for standard tour operator licences and specifies when fees must be paid. The holder of a standard licence granted for one year must pay an annual fee comprising 21.34 fee units (equivalent to \$250) and a use fee calculated in accordance with Regulation 7. The holder of a standard licence granted for more than one year must pay an annual fee comprising 16.73 fee units (equivalent to \$200) for each year the licence is in force and a use fee calculated in accordance with Regulation 7. For a one year standard tour operator licence, the fee is payable on the granting of the licence. For a standard tour operator licence of more than one year duration the fee is payable on the granting of the licence in respect of the first year of the licence, and by 30 June each year after for the duration of the licence or in a lump sum at the start of the licence period.

Regulation 7 prescribes the use fees for standard tour operator licence and specifies when use fees must be paid. The use fees payable by the holder of a standard licence is the amount calculated by the land manager as follows – a fee of \$2.40 in respect of each person, who is not a child and a fee of \$1.60 in respect of each child, for each day the person/child participates in an organised tour or recreational activity for which the holder of the standard licence holds the licence.

If the use fees payable by the holder of a standard licence at the end of each financial year of the licence exceed 1046.02 fee units (equivalent to \$12,500), the holder of the licence is not liable to pay any use fees in excess of that amount. The holder of a standard licence may pay the use fees payable under the licence either quarterly or annually. If the holder of a standard licence pays the use fees payable under the licence and they pay more than the use fee cap, at the end of the financial year that the licence is in force, the licence holder is entitled to a refund for any amount in excess of the use fee cap.

Regulation 8 Regulation 8 deals with recording tour participant numbers under a standard licence. The holder of a standard licence must maintain a record of the number of persons that participate in any organised tour or recreational activity for which the holder of the standard licence holds the licence. A record must be kept in respect of each day the tour or recreational activity is conducted and must be recorded in the form provided in Schedule 1 of the regulations. The record must be provided to the land manager on a quarterly or annual basis.

Part 3 — Competitively Allocated Licence Fees

Regulation 9 prescribes when competitively allocated licence fees apply. Competitively allocated licences apply if a land manager determines that it is necessary to limit the number of tour operator licences granted in respect of land reserved under section 4 of the Act for all or any of the following – environmental reasons, cultural reasons or to ensure public safety.

Regulation 10 prescribes that an applicant for a competitively allocated licence is not required to pay an application fee but is required to pay an annual licence fee under Regulation 11 if granted that licence.

Regulation 11 provides for annual licence fees for competitively allocated tour operator licences and specifies when annual licence fees must be paid. The annual licence fee for a competitively allocated licence comprises the fee fixed by the land manager and set out in the relevant Expression of Interest document for that competitively allocated licence. In determining the fixed fee the land manager must have regard to any guidelines issued by the Minister. The annual licence fee for a competitively allocated licence also comprises a use fee calculated in accordance with Regulation 12. The fee fixed by the land manager must be a minimum of 21.34 fee units (equivalent to \$250).

The holder of a competitively allocated licence must pay the annual licence fee on the granting of the licence in respect of the first year of the licence, and by 30 June each year after for the duration of the licence or in a lump sum at the start of the licence period.

Regulation 12 prescribes the use fees for competitively allocated tour operator licences and specifies when use fees must be paid. The use fees payable by the holder of a competitively allocated licence is the amount calculated by the land manager as follows – a fee of \$2.40 in respect of each person, who is not a child and a fee of \$1.60 in respect of each child, for each day the person/child participates in an organised tour or recreational activity for which the holder of the competitively allocated licence holds the licence. The holder of a competitively allocated licence may pay the use fees payable under the licence either quarterly or annually.

Regulation 13 deals with recording tour participant numbers under a competitively allocated licence. The holder of a competitively allocated licence must maintain a record of the number of persons that participate in any organised tour or recreational activity for which the holder of the competitively allocated licence holds the licence. A record must be kept in respect of each day the tour or recreational activity is conducted and must be recorded in the form provided in Schedule 1 of the regulations. The record must be provided to the land manager on a quarterly or annual basis.

Part 4 — Reduction, Refund and Waiver

Regulation 14 provides that the Secretary may reduce, waive or refund fees paid by a person who holds a tour operator licence. The holder of a standard licence or the holder of a competitively allocated licence may apply to the Secretary for a fee payable under these Regulations to be waived in full or in part, to be reduced or to be refunded. The application must be made in writing.

In determining a reduction, waiver or refund of fees the Secretary must have regard to the following factors, whether payment of the fees would cause or has caused undue financial hardship, whether payment of the fees would be manifestly unfair, or the impact of a natural or unnatural event has had on the ability of the licence holder to continue to conduct organised tours or recreational tours on land reserved under section 4 of the Act.

Regulation 15 prescribes circumstances where fees cannot be waived, reduced or refunded. The holder of a standard licence, or the holder of a competitively allocated licence, whose licence has been suspended or cancelled is not eligible to have outstanding fees payable under these regulation waived or reduced; In regards to refunds, if a licence has been suspended, the holder of the licence is not eligible to have any fees paid under these Regulations refunded. If a licence has been cancelled, in the case of a licence granted for one year, the licence holder is not eligible to have any fees paid under these Regulations refunded or in the case of a licence granted for more than one year any fees paid for any completed or commenced year of the licence refunded.

If a person who has had his or her licence cancelled has held that licence for a period greater than one year before that cancellation, that person remains eligible for a refund on a pro rata basis of fees for a non-commenced year of the licence if that person paid the fees in advance.

Regulation 16 prescribes that a land manager may refund to a holder of a licence on a pro-rata basis for any non-commenced year of the licence any fees paid in advance under these Regulations if the holder of the licence surrenders the licence.

Part 5 — Transitional Provisions

Regulation 17 deals with transitional issues. These Regulations do not apply to a licence to enter land reserved under section 4 of the Act as part of an organised tour or recreational activity for profit conducted by the holder if that licence was in force immediately before 1 July 2011 until that licence expires.

6B Regulatory change measurement

The *Reducing the Regulatory Burden (RRB)* initiative commits the Victorian Government to reducing the compliance burden of regulation. The Victorian Government is committed to cutting the existing burden of regulation by \$500 million by July 2012. In December 2009 the Department of Treasury and Finance released the *Victorian Regulatory Change Measurement Manual*.⁵⁰ The manual sets out the regulatory instruments and categories that are to be measured for the purposes of the RRB initiative. All legally enforceable obligations imposed by State Government Ministers, courts, departments, regulatory agencies and local governments in Victoria are within the scope of the RRB initiative. These obligations must relate to the compliance costs (substantive compliance costs and administrative costs) of regulation.

Accordingly, this RIS uses the methodology set out in the *Regulatory Change Measurement Manual* to measure any changes to the regulatory costs. For the purposes of the measurement of change in the compliance burden, the existing burden forms the base case against which the change is measured.

The types of regulatory costs are described in **Attachment C**. While 'financial cost' (i.e. paying a fee) is not subject to the RRB initiative, 'administrative costs' must be measured. Administrative costs are those costs incurred by business to demonstrate compliance with the regulation or to allow government to administer the regulation. In the case of the proposed Regulations, administrative costs are associated with submitting the trip return data to Parks Victoria. The proposed Regulations will result in two changes:

- a new requirement for those paying the capped fee to submit trip return data, and
- an option to submit returns annually instead of quarterly.⁵¹

The new requirement for those paying capped fees will increase administrative costs, while the option to submit returns annually will reduce costs. On balance it would appear that the proposal will result in small administrative cost savings.

⁵⁰ Department of Treasury and Finance (2009), *Victorian Regulatory Change Measurement Manual*, Melbourne, December.

⁵¹ The use fees are currently paid on a quarterly basis (along with trip return data). The option to submit fees annually should reduce the amount of processing Parks Victoria is required to undertake by replacing four payments with one (thus removing three lots of fee processing).

The reason the savings are not more significant is that the reporting requirements will apply to an additional 150 tour operators (e.g. Committees of Management). Table 15 below estimates these savings to be in the order of \$16,000 per annum (assuming 50 per cent of tour operators elect to submit data annually). Detailed cost calculations and assumptions are contained in Attachment J.

Table 15: Net impact on the Administrative Burden (Annual nominal costs)

Information obligation	Existing administrative burden	Proposed change to the burden (net impact)
Information obligation 1 – New requirement to submit trip data by licensees who pay capped fees	No requirement	\$3,312
Information obligation 2 – Requirement to submit trip return data	Quarterly submission of trip return data by 300 licensees \$81,144	Option to submit trip return data annually (assumes 50% take up) by 450 licensees. \$62,100 therefore net saving of \$19,044.
Net Impact (Saving)		\$15,732

This estimate is sensitive to the number of tour operators that choose to submit trip data annually. If only 37 per cent (instead of the assumed 50 per cent) of tour operators choose to submit trip data annually, then there will be no net change in the administrative burden.⁵²

Given that there would appear to be small administrative savings associated with the proposal, in accordance with and for the purposes of the *Victorian Guide to Regulation* and *Victorian Regulatory Change Measurement Manual*, it has been determined that the proposed Regulations will not lead to a material change in the compliance burden on business, not-for-profit organisations, economic (income generating) activities of private individuals, or government services in Victoria.

⁵² It is worth noting that even if no tour operators elect to submit returns annually then the additional administrative costs will be in the order of \$46,000, which is less than the materiality threshold of \$250,000 set by the Department of Treasury and Finance for the requirement to conduct a formal Regulatory Change Measurement assessment.

7 Implementation and enforcement issues

7.1 Monitoring and Enforcement

DSE advise that there is a high level of compliance concerning the payment of annual fees. The level of compliance for annual fees is expected to be close to 100 per cent. Under the new Act it will be an offence to operate a commercial tour or recreation activity on public land without a licence and if an operator does not pay their fees there would be grounds for a land manager to cancel or suspend their licence. The use fee is an honesty-based system and therefore compliance for this element may be less than 100 per cent.

Delegated land managers are responsible for ensuring licensees comply with licence conditions, including payment of fees. DSE does not monitor compliance in this regard.

As part of the reform process, operators licensed under TOMS have been advised that if they have not submitted the trip return form and paid use fees at the end of each financial year they will be deemed inactive. These operators will not be eligible to apply for a new licence until either their use fees are paid, or adequate explanation is provided in writing.

7.1.1 Strengthened enforcement framework

The amending Act introduced a number of provisions to strengthen enforcement. The legislation makes it an offence to conduct an organised tour or recreation activity on public land if unlicensed. In the case of a natural person the penalty is 20 penalty units (\$2,389) or in the case of a body corporate 100 penalty units (\$11,945). The same level of penalties also apply to a contravention of licence conditions. New provisions have also been introduced to set up processes to suspend or cancel licences if the land manager is satisfied that there are reasonable grounds to do so. These provisions will come into effect upon proclamation of the relevant sections of the Act.

7.1.2 Land managers

DSE officers are authorised under the *Conservation Forests and Lands Act 1987* and are trained in enforcement and compliance. There are currently 322 authorised DSE officers, legally able to undertake enforcement of the Act and regulations. Parks Victoria has approximately 420 authorised officers of whom around 300 have infringement notice books. Such officers may conduct patrols of Victorian forests and, as part of these duties, enforce the statutory requirements. Enforcement involves detecting possible breaches, gathering necessary evidence, taking personal details, and, depending on the significance of the breach, issuing a warning. The past system of imposing demerit points on licensees has been abolished.

Delegated land managers are responsible for ensuring licensees are complying with conditions, including payment of fees. To ensure compliance under the current arrangements, tour operators licensed through TOMS have been advised that if they have not submitted the trip return form and paid use fees at the end of the financial year they will be deemed inactive and will not be eligible to apply for a new licence until use fees are paid or adequate explanation is provided in writing.

As a result of stakeholder consultation, to improve compliance DSE and Parks Victoria will actively promote the requirement for public land tour operators to be licensed. Parks Victoria will also work with Tourism Victoria and the tourism industry to promote licensed operators and actively discourage promotion of unlicensed operators.

DSE will document the complaints process in relation to unlicensed operations or any breach of licence conditions, and Parks Victoria will communicate the process to all parks and forest rangers. An offence reporting hotline will be established by DSE and details made available on Parkweb and DSE websites. To facilitate the complaints process, a toll-free number for licensed tour operators, rangers or visitors will be provided to allow notification of breaches of licence conditions or unlawful operations by unlicensed tour operators. Enforcement will be undertaken strategically in conjunction with whole-of-government compliance initiatives and DSE and Parks Victoria will publicise enforcement action when it takes place.

Committees of Management, Alpine Resort Management Boards and local government will be responsible for monitoring and enforcement on their land.



7.2 Implementation

For the most part, the current fee arrangements have operated since 1996 and stakeholders are familiar with them. Given that the proposed Regulations are substantially similar to the current arrangements and the extensive consultation undertaken with stakeholders, implementation issues are not expected to arise.

DSE will communicate changes of the licensing system to stakeholders and new processes for licence applications ahead of the new licence year. Parks Victoria will introduce the new fees to Parks Victoria and DSE managed lands in July 2011 and Committees of Management will bring in changes at the start of their next licence year following the proclamation of the regulations. This should allow sufficient time for stakeholders to implement the new fee structure.

Committees of Management will be responsible for administering licences on the land that they manage. While some Committees, such as councils, are responsible for managing public lands and adjoining local government-owned lands, the potential of double charging tour operators i.e. personal trainers is negligible given that such Committees and local government are likely to communicate to avoid this situation. The application of the licensed tour operator fees to public lands will be communicated to all Committees, including councils.

As noted above, the proposed Regulations contain a transition provision to ensure a smooth implementation. Given that the system has been in place for 14 years the majority of tour operators are familiar with it and transitional issues are not expected to arise.

Consultation point 9:

- 9.1 Are there any practical difficulties, transitional or implementation issues associated with the preferred option? For example, would there be advantages or disadvantages in phasing in the proposed fees?
- 9.2 Are there any measures that would improve compliance?



Little Desert National Park post fire. Photo: Parks Victoria

8 Evaluation strategy

A deficiency with the trip return data collected by Parks Victoria is that licensees paying the capped use fee are not required under current government policy to submit trip data. Given that such tour operators provide services for comparatively large numbers of people, the exemption from submitting trip returns affects the integrity of the entire trip return dataset. The new requirements for trip returns from these licensees will provide more accurate visitor numbers and thus allow land managers to better evaluate the effectiveness of the licensing system.

To assess the efficiency of the proposed Regulations, this RIS recommends that the use fee arrangements should be reviewed following the collection of three years of trip return data.

The proposed fees will be subject to the *Monetary Units Act 2004*, which automatically increases fees on an annual basis by a rate set by the Treasurer. These increases ensure that general price rises in the economy do not erode the real value of the fees over time. The rate for 2010–2011 has been set at 2.25 per cent.⁵³

In addition, s. 8 of the *Financial Management Act 1994* and r. 16 of the *Financial Management Regulations 1994* sets out standing directions. Standing Direction 3.4 requires each department's chief financial officer and accounting officer approve and review annually the level of charges levied by the department for goods and services it provides.

⁵³ Victorian Government Gazette , G 10, 11 March 2010, p. 449



Orbost in Gippsland. Photo: Tourism Victoria

9 Consultation

In 2006 the *Directions Paper – Public Land Tour Operator and Activity Provider Licence Reform Project* was released for public comment. It outlined a series of broad proposed policy directions intended to improve the licensing system for tour operators, primarily operating on Parks Victoria and DSE-managed land. The paper was developed following a long process of investigation and consultation around licensing issues. As the project was mostly concerned with the commercial sector, consultation was largely targeted at commercial operators and government agencies affected by the proposals being considered.

During 2007 additional stakeholder consultation was undertaken with the Bus Association Victoria, the Outdoor Education Group, the Victorian Outdoor Education Association, Tourism Alliance Victoria and the Department of Education and Early Childhood Development. Tour operators were also given updates and the opportunity to provide feedback through email and Parks Victoria Tour Operator forums.

Over eighty submissions were received in response to the paper. Submissions were received from commercial tour operators (41), non-commercial recreation or community organisations (23), peak bodies or industry organisations (18), private individuals (17), educational organisations (5), government organisations (4), and Members of Parliament (2).

A large number of the submissions were from non-commercial recreation and community organisations, expressing concern that the definition of 'who requires a licence' inappropriately included recreational and community groups. Aside from those submissions that were concerned with the definition, there was broad support for the overall intent of the Directions Paper.

Generally speaking, the submissions demonstrated little opposition to fee increases, with no preferred fee model being identified (but some support for abolishing use fee payments caps). A number of submissions were supportive of a fee increase, conditional on a component of these fees being invested in public land management and public infrastructure. However, as noted in this RIS, fees are charged on a cost-recovery basis for administration of the licensing systems rather than as a levy for public land services and infrastructure. Other submissions indicated a preference for a much higher fee, but it is considered that this may create a barrier to entry for smaller businesses and would not necessarily apportion costs equitably across the industry.

Committees of Management, local government and Alpine Resort Management Boards were contacted in order to establish the number and type of licences issued. Details of this consultation are summarised in Attachments A, B, E and F. The organisations contacted were as follows:

- **Local Government** – 18 councils were contacted during June and July 2010 and 14 responses were received. Only five councils currently issue tour operator licences (four councils issued licences for activities on Crown land, while the other council issued licences for council owned land only). One other council commented that they had issued tour operator licences in the past but currently did not do so. Eight of the councils contacted issue licences for fitness trainers.
- **Committees of Management** – 33 Committees of Management were contacted during June and July 2010. Three of the committees surveyed issued licences for fitness trainers.
 - Committees with annual revenue greater than \$100k – 12 Committees were contacted, with nine responding. Of these responses six committees issue tour operator licences. One other committee called for an expression of interest to grant licences for tour operators but received no responses.
 - Committees with annual revenue between \$50k-\$100k – 10 Committees were contacted and eight responses were received. None of the committees that responded issued tour operator licences.
 - Committees with annual revenue less than \$50k – 11 committees were contacted and all 11 committees responded. Of these committees none of them issued tour operator licences.
- **Alpine Resort Management Boards** – All five Alpine Resort Management Boards were contacted in June 2010. Four responded and of these three issued tour operator licences.
- **Port Managers** – Advice was also sought from seven Port Managers who are committees of management. Two of these committees currently require operators to obtain a licence

To inform the RIS regarding the competitive allocation of licences, data from seven interstate authorities were obtained, along with data from seven Victorian public land managers.

A regular 'Project Update' newsletter for stakeholders is emailed to a DSE mailing list and posted on the DSE website. The newsletter provides information on the RIS process and indicates that all stakeholders will have an opportunity to make a submission to the RIS process and will be informed of the process through project updates. Stakeholder letters were sent to the DSE stakeholder mailing list including 43 Committees of Management and 41 tour operators in mid-April 2010 informing them that a RIS is being prepared and that they may be contacted throughout the process for information relating to licensing fees which would help government to determine appropriate fees for licences. The letter also asked for stakeholders who were interested to attend workshops to provide advice on current practices and processes to register their interest.

Supporting these activities, the tour operator licence reform Project Control Board meets every two months to guide and contribute to the project. Members of this group include Parks Victoria, Tourism Victoria, Tourism Alliance Victoria and DSE.

Presentations were delivered at four Parks Victoria forums across the State in July and August 2010 informing stakeholders about the new licensing framework that will come into effect and the RIS process. Stakeholders including 58 licensed tour operators and Commercial Partners that attended the forums were given the opportunity to ask questions. In addition, a presentation to the Local Government Professionals Property Special Interest Group was conducted on 19 August 2010.

Letters were sent in August 2010 to all 79 councils that are delegated as a Committee of Management under the *Crown Land (Reserves) Act 1978* to advise them of the new tour operator licence framework and RIS process.

Fitness Australia has been consulted to ensure the fitness industry is aware of this project and to understand the characteristics of this industry and how they may be impacted by the new licensing framework.

Finally, it is worth noting that since the draft fees were released in 2008 in the Policy Statement (these fees have been revised in this RIS but are of similar levels and in some cases are lower), the fee levels have not been raised as an issue.

This RIS will be publicly available on the DSE website at www.dse.vic.gov.au/licencereforms and will be advertised in *The Age* newspaper and the Victorian Government Gazette. Copies of this RIS have been forwarded to key stakeholders inviting comments.

This RIS represents another step in the consultation process and DSE welcomes comments or suggestions with respect to the proposed scope of fees and their levels. The *Subordinate Legislation Act 1994* requires that the public be given at least 28 days to provide comments or submissions regarding the proposed Regulations. To provide ample time for comment on the proposal, the consultation period for this RIS will be up to 40 days, with written comments required by no later than

5.00pm, 29 April 2011.



Bushwalker in Baw Baw National Park, in Victoria's Alpine Region.
Photo: Derek Benjamin

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Legislation

- Crown Land Acts Amendment (Lease and Licence Terms) Act 2009*
- Crown Land (Reserves) Act 1978*
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- Forest Act 1958*
- Land Act 1958*
- Monetary Units Act 2004*
- National Parks Act 1975*
- Subordinate Legislation Act 1994*
- Wildlife Act 1975*
- Victorian Government Gazette, G 10, 11 March 2010

10 Attachments

Attachment A

Competitively allocated licences in Victoria and other states

In Victoria, there are currently two broad categories of tour operator licences that are allocated on a competitive basis: surf school licences and tour operator licences in urban areas. These are currently not administered under the TOMS.

Surf Schools

In Victoria there are a number of licences for surf school competitively allocated by Committees of Management along the south west coast, the Great Ocean Road and the Mornington Peninsula.

The need for competitive allocation of these licences usually arises where a land manager has determined that public safety requires the limitation of the number of surf schools operating simultaneously along a section of the foreshore.

In some circumstances, these licences are only competitively allocated for a part of the peak season, when there is significant increased use of the foreshore by the general public. For the remainder of the year, public land managers are often able to offer access to a portion of the foreshore to all operators seeking a licence.

Urban areas

With respect to tour operator licences in urban areas, some Committees of Management (often municipal councils) manage public lands in urban areas on behalf of the Minister for Environment and Climate Change.

Public lands such as parks, gardens and foreshore in these areas are often subject to high demand from outdoor activity providers. As a consequence some land managers, such as Port Phillip City Council (as Committee of Management for the Crown lands within their municipality), offers the majority of their licences for commercial recreational activities on a competitive basis.

Dolphin Swim Permits

In late 2001, there were between five and eight dolphin swim and sightseeing tour operators operating on Port Phillip Bay, catering for more than 10,000 passengers in any one year. Around this time, the Victorian Government responded to growing concerns from tour operators, the public and wildlife experts about the welfare of the bay's dolphin populations and decided to implement the 'Sustainable Dolphin Tourism Program'.

The Dolphin Research Institute was engaged to analyse several years of data on dolphin interactions with tour and recreational vessels in Port Phillip Bay that had been gathered with the assistance of tour operators.

The Co-operative Research Centre (CRC) for Sustainable Tourism was engaged to review local and international research, leading to the *Hale Report* on vessel interaction with dolphin, and the *Higginbottom Report* on sustainable wildlife tourism principles, both submitted to the then Department of Natural Resources and Environment in 2002.

Following consideration of the reports, amendments to *Wildlife Act 1975* were passed, requiring proclamation of the dolphin swim area for Port Phillip Bay and a process for competitive allocation of dolphin swim permits every 2 years.

It is important to note that once applicants have been offered a dolphin swim permit, they must separately apply for a tour operator licence, as the dolphin swim permit focuses solely on applicants' fitness to interact with the dolphin. Issue of a tour operator licence is based on an applicant's fitness to offer commercial tours and/or outdoor activities to the public on public lands.

Other State and Territory approaches

Other jurisdictions have various approaches in place with regard to fee setting for competitively allocated or restricted licences for commercial tour operator and outdoor activities on public lands. Broadly they fall into three categories:

- Fees are charged at the same rate as for other tour operator licences.
- Different and higher fees are set for competitively allocated licences than for non-competitive licences, but are published via an Expression of Interest when the opportunity is offered and known by all operators.
- Fees are negotiated directly with the successful proponent before an agreement is finalised, taking into account administrative, management, environmental, maintenance and any entry fees.

There are also variations in the types of fees charged, which can include:

- application fees (non-refundable)
- initial fees for a new licence
- subsequent annual or monthly licence fees
- percentage of gross turnover
- per person per activities charges, and
- per person per day charges.

Further details on competitively allocated licences and related fees currently issued in Victoria and other jurisdictions are provided overleaf. The relevant land managers are setting fee categories and levels based on their current statutory powers and consequently approaches vary.

Competitively allocated licences – Victoria

Public Land Manager	Description of process	Licence term	Licence Fees	Establishment of fee
DSE/Parks Victoria	3 year permits are offered for whale (dolphin) swim permits	3 years	45 fee units per annum. For 2009-10 a fee unit = \$11.69. Annual licence fee for 2009-10 = \$526.05, over 3 years = \$1578.15 Note: these licensees are also required to pay Parks Victoria LTO fees as well as fees for dolphin swim permit.	Fee set in Wildlife (Marine Mammals) Regulations 2009 (r 20(3)) following RIS process.
Great Ocean Road Coast Committee	All licences are issued through an expression of interest process run by GORCC every 3 years. However, this is an administrative rather than strictly competitive process, as all qualified operators are generally offered a licence through the EOI, without restriction on the number of licences issued. The exception is peak season for surf school licences. In the last EOI in 2008 all 8 operators who applied for a licence to operate surf schools were offered a licence, but specific stretches of beach were allocated to operators. Some share beaches, some are offered multiple stretches of beach. Allocation of beach space is made on the basis of scale of the operation.	3 years	Surf schools are charged a \$500 flat fee per annum plus 'turnover' (daily use) fee which is \$2.50 per lesson per adult \$1.50 per child/student. The use fee is submitted by operators and is an 'honour' system.	Fees are set by the Committee before the EOI process. Fees are set within a reasonable range and represent the cost of reviewing licence applications and ongoing interaction with the licensee. E.g. a higher volume business will tend to generate greater need for interaction and may be charged at the higher end of the range. Fees do not represent cost-recovery for management of the land or activities.
Barwon Coast Committee of Management	For peak season (late Dec-early Feb) only 2 licences are allocated for surf schools. These are limited due to competing demand for beach space by the community during peak season, and consequent safety issues. For the current 3 year licence period there were 8 applicants for the two licences. For the rest of the year (non-peak) all 8 applicants were offered licences.	3 years	No licence application fees or annual flat fees are charged. Surf schools are charged daily use fees only, at the same rate as Parks Victoria (\$1.10 per day per adult, \$0.70 per day per student). Operators pay use fees every 6 months. The largest surf school would contribute about \$3k per annum to Committee revenue.	The Committee considers current State Government policy on fees for tour operator licences. On this basis, and cognisant of the review, this Committee decided to charge the Parks Victoria use fees.
Bellarine Bayside Foreshore Committee of Management	Bellarine-Bayside calls for Expressions of Interest in September each year for recreational activities on the foreshore, but received no applicants last year.	n.a		
Otway Coast Committee	Not at present, but are planning to offer surf school licences competitively in 2010-11.	1 year	Fees to be determined. The Committee currently charge tour operators a use fee of \$1.65 per person per day, but do not charge a licence application fee	Have previously used DSE/PV fees as a basis to set a use fee. Have not changed the fees recently in anticipation of implementation of 2008 DSE policy.
Port Phillip City Council	Council runs an annual application process and applicants are scored against set criteria. The numbers of permits are limited per site so not all applications are successful. This year permits have been issued to operators of – Beach tennis, beach volleyball, kite boarding, stand up paddle boarding and kayak hire. Total of 8 permits granted 2009-10	1 year	\$1500. The fee is a set amount and does not vary by activity. The fee increases by CPI each year.	Annually through Council's budget process and also through any policy review
Surf Coast Shire Council	Surf Coast Shire Council only has one competitively allocated licence in place, for the conduct of tours of the Split Point Lighthouse at Aireys Inlet.	1 year	7.5% of fee per person undertaking guided tour. Payable quarterly	

Competitively allocated licenses – other jurisdictions

State	Public Land Manager	Description of process	Licence term	Licence Fees
New South Wales	Department of Environment, Climate Change & Water	Competitively Allocated Licence only available when it has been determined that the number of licences for a particular activity/location should be restricted for reasons of visitor safety, experience, or to ensure the ongoing protection of the site's natural and cultural values. An Expression of Interest process will be run.	Maximum of 10 years.	<p>None have been issued to date. Standard licence fees will apply (see below)</p> <ul style="list-style-type: none"> - Initial One Year Licence application fee = \$150 (introductory rate until 1 July 2011 only) - Three Year Standard Licence = \$300 per annum - Ten Year Premium Licence = \$350 per annum - Per Head/Use Fee = \$4.60 (\$2.30 conc) - Major amendment fee = \$200 - Minor amendment fee = \$50 <p>This fee schedule applies to new operators from 1 July 2009 and existing licensed operators from 1 July 2010.</p>
Northern Territory	Department of Natural Resources, Environment, the Arts and Sport	None at present.	n/a	n/a
Queensland	Department of Environment and Resource Management (Qld Parks & Wildlife managed land)	When capacity for commercial tour operations has been identified, but demand for licences exceed sustainable visitor capacity of the site. The opportunity is offered to the market via an Expression of Interest document which will include weighted criteria against which applications will be assessed.	Commercial Activity Agreements have terms of 10 years unless environmental, social, or cultural impacts are uncertain and the application of the precautionary principle means a shorter term is appropriate.	<p>Commercial Activity Licensees are charged at the same rate as other licensees i.e.</p> <ul style="list-style-type: none"> - application fee (non-refundable) = \$262.20 - permit fee = \$52.60 for 3 months or less = \$209.50 for 3 months < 1 year = \$420.50 for 1 year , 2 years = \$596.00 for greater than 2 years - Daily use fees vary depending on age of visitor and location <p>Note: fees quoted are inclusive of GST and will increase by 3% from 1 August 2010.</p> <p>Note: Qld has recently changed policy and previously charged a market rate for competitively allocated fees. The rate was previously considered as part of the EOI process.</p>
South Australia	Department for Environment and Heritage	None at present. SA is investigating introducing a limitation on the number of licences for white shark cage diving.	n/a	n/a

State	Public Land Manager	Description of process	Licence term	Licence Fees
Tasmania	Parks and Wildlife Service	<p>Any decision by government to limit the number of licences would need to be made through a public expression of interest process.</p> <p>An EOI program is normally undertaken where:</p> <ul style="list-style-type: none"> - there is more than one proponent seeking a site which can only accommodate one commercial operator because of the requirements of any relevant management plans or for environmental, - a commercial opportunity has been identified and the Government is seeking the best operator and/or financial return from that opportunity. - when a recreation strategy or management plan identifies a recreation opportunity that is currently not being met and could be best met by an operator; - where exclusive rights to a particular operator are to be granted (generally through lease). 	<p>Non-standard licences may be granted up to a maximum of 10 years, but having regard to effects, exclusivity and investment return. The licence terms are negotiated on a case by case basis.</p>	<p>Any fees for a non-standard licence are normally determined in consultation with the successful proponent and are negotiated before any agreement is prepared.</p> <p>For activities requiring exclusive use of an area, the PWS will seek a commercial market return for the use of Crown assets. It is intended that PWS incurred costs will be recovered. Negotiations will take into account:</p> <ul style="list-style-type: none"> - Administration cost - Economic rent - National park entry fees - Field management cost-recovery - Fees for maintenance works directly attributable to use by the operator (often the operator would be required to undertake maintenance or make a financial contribution. Additional fees will be charged for recovery of the cost of maintenance works).
Western Australia	Department of Environment and Conservation	<p>Western Australia periodically runs an Expression of Interest process where a limited number of opportunities are offered for a tourism or commercial recreational operation. The licence that may be granted as a result of this process will be a restricted "E class" licence. An example is commercial tour activities in and around Ningaloo Reef Marine Park.</p>	<p>E class licences can be granted for a period up to five years. However, the length of an E class licence is dependent upon the nature of the operation, environmental and management concerns, the applicant's accreditation and demonstrated ability to conduct the operation in accordance with management objectives.</p>	<p>Licence fees for restricted E class licences are stated in the relevant Expression of Interest documentation.</p> <p>Licence fees for restricted licences are usually a percentage of gross turnover, determined on a per person basis, or a set annual amount.</p>

State	Public Land Manager	Description of process	Licence term	Licence Fees
Commonwealth	Great Barrier Reef Marine Park Authority	<p>The Great Barrier Reef Marine Park offers "Special tourism permissions" via EOI where the opportunity to conduct a particular tourism activity (in a particular area or site) is limited.</p> <p>Limits are determined in consultation with key stakeholders, to ensure the environmental, social and cultural sustainability of the particular tourism activity (in the particular area or site) and set in a manner that does not unnecessarily restrict tourist programs that are unlikely to affect sustainability.</p>	<p>Special permissions (as for other permits) are usually issued initially for 12 months, after which applicants may apply for a further 6 year term.</p> <p>Although operators who have had their product accredited as Ecotourism or Advanced Ecotourism may apply for 15 year terms, this is unlikely to occur for special permissions.</p> <p>Generally GBRMPA is focussed on taking back permits not being used effectively, to meet the very high demand.</p>	<p>Fees are based on the type of operation and will vary depending on its size and potential for environmental impacts. Generally, the bigger the operation, the more likely there will be impacts on the reef, and the cost of the assessment will be greater.</p> <p>If the applicant will only be operating vessels or aircraft and is not applying to operate a structure or facility in the Marine Parks, the fee will be based on the maximum passenger capacity of all vessels or aircraft covered by the application.</p> <p>There are two types of fees:</p> <ul style="list-style-type: none"> * Initial Fees for a new operation, or significantly changing an existing one. * Continuation Fees for operators who already hold a permit, but who wish to continue operations beyond the permit expiry date. <p>Activity that requires use of an aircraft or vessel having a maximum passenger capacity of:</p> <ul style="list-style-type: none"> a) less than 25 passengers (initial) \$630 (continuation) \$630 b) 25 to 50 passengers (initial) \$910 (continuation) \$720 c) 51 to 100 passengers (initial) \$1650 (continuation) \$1000 d) 101 to 150 passengers (initial) \$2740 (continuation) \$1450 e) more than 150 passengers (initial) \$4590 (continuation) \$1830 <p>Activity that requires the use of a facility or structure in the Marine Park (initial) \$2010 (continuation) \$2010</p> <p>Activity that requires a public notice (as it may restrict reasonable use by the public) (initial) \$7340 (continuation) \$2740</p> <p>Activity that requires a public environment report to be prepared (initial) \$36 750 (continuation) \$36 750</p> <p>Continuation of an activity that required a public environment report, where another report is not required \$4 590</p> <p>Activity that requires an environmental impact statement to be prepared (initial) \$99 250 (continuation) \$99 250</p> <p>Continuation of an activity that required an environmental impact statement, where another statement is not required \$4590</p> <p>Any other activity (including moorings) \$630 (continuation) \$630</p>

Attachment B

Licences/fees issued by committees of management on public land (Committees of Management with turnover of \$100,000 or more)

Committee Name	Types of Activities that are licensed	Lengths of Licence terms	Fees
Great Ocean Road Coast Committee Incorporated	Surf schools, guided walks, horse riding and fitness instructors.	3 years.	Surf schools are charged a \$500 flat fee per annum plus a use fee which is \$2.50 per lesson per adult or \$1.50 per child/student. Other licensees are charged between \$250-\$500 per annum flat fee, depending on the nature and scale of the business. These operators tend to be low volume and are not usually charged the use fee.
Barwon Coast Committee of Management Incorporated	Surf schools (incorporating canoeing). Fitness instructors	3 years.	No application fees or annual flat fees are charged. Surf schools are charged only use fees, at the same rate as Parks Victoria (\$1.10 per day per adult, \$0.70 per day per student).
Dromana Foreshore Committee of Management Incorporated	Boat hire	1 year	\$2825.90 per year flat fee.
Otway Coast Committee Inc	Surf schools and sea kayaking	1 year	Charge a use fee of \$1.65 per person per day. Do not charge a licence application fee
Phillip Island Nature Park	Surf schools	1 year	Fees are based on Parks Victoria model
Shoreham Foreshore Com	Surf schools	1 year	Flat fee of \$300; no use fee
Moyne Shire	Canoe hire, camel rides	Daily permit, monthly or annual	\$100 daily, \$200 monthly or \$500 annual
Greater Geelong City Council	Amphibious vehicle, sea plane, dinky train, helicopter rides.	1 year	\$500 annual fee

Note: 14 local government agencies responded to these enquiries and only two of these respondents currently issue standard tour operator licences. Nine committees with annual revenue greater than \$100k responded and of these responses six committees issue tour operator licences.

These queries were also forwarded to 10 committees of management with turnover of between \$50,000–\$100,000 and 11 committees of management with turnover of less than \$50,000. None of these committees reported that activities were conducted on land they manage that would require a licence.

Alpine resort management board – licence/fee arrangements

	Do you licence any tour operators or activity providers to conduct <u>commercial activities</u> for recreation or tourism on the land you manage?	How many licences do you provide to tour operators or activity providers each year?	How long are the licences that you offer (i.e. in years)?	Do you charge a fee for tour operators or activity providers to obtain a licence?
Lake Mountain	Issue licences for operation of ski instruction	Up to 3 per year	Snow seasons	Seasonal fee of \$1,000 plus the normal gate entry and trail fees
Mt Baw Baw	Have just recently issued a licence/authority to a helicopter joy flight service.	At this stage one	Snow seasons	\$3,000 ongoing
Mt Hotham	No	n/a	n/a	n/a
Mt Buller	Yes	6	Annual fee (please note that there may be circumstances where a longer licence may be appropriate)	\$220 initial application fee, \$110 annual renewal fee

Attachment C

Classification of costs

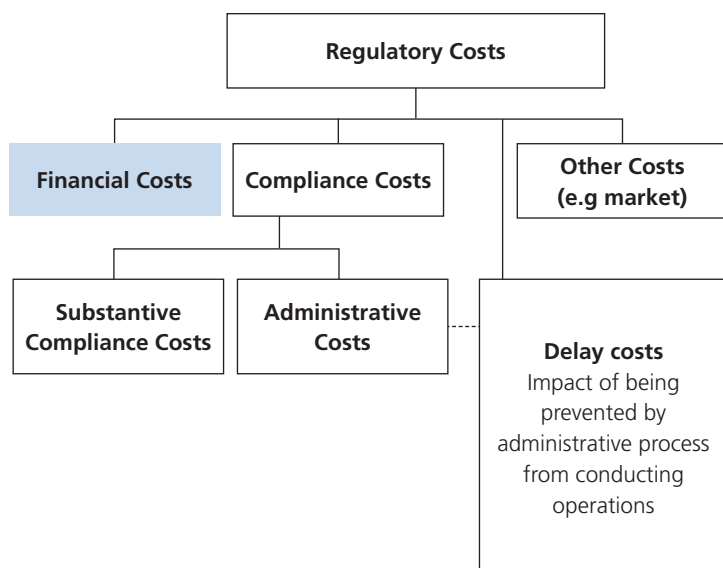
The *Victorian Guide to Regulation* places regulatory costs into three broad categories. Figure 4 below shows these as 1. financial costs, 2. compliance costs and 3. market costs. Only financial costs are relevant for the purposes of this RIS.

Financial costs are the result of a concrete and direct obligation to transfer a sum of money to the government or relevant authority. Such costs include administrative charges, taxes and fees. These costs are the subject of this RIS.

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. These costs are often associated with content-specific regulation and include modifying behaviour or undertaking specified training in order to meet government regulatory requirements. A requirement to hold tourism accreditation would be considered a substantive compliance cost. ‘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. If the processing a licence or approval is delayed, then this can impose costs. ‘Delay costs’ are the expenses and loss of income incurred by a regulated entity through an application delay and/or an approval delay.

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. Given the narrow focus of the regulations, it is not expected that they will impose market costs.

Figure 3: Victorian Guide to Regulation – Categories of Regulatory costs



Attachment D

Authorising provisions

The section below will be included as s. 31 in the *Crown Land (Reserves) Act 1978*, s. 100A in the *Forest Act 1958*, s. 413A in the *Land Act 1958*, s. 48AA in the *National Parks Act 1975*, and s. 87A in the *Wildlife Act 1975*.

Tour operator licence regulations

- (1) The Governor in Council may make regulations for or with respect to—
 - (a) the fees payable in respect of tour operator licences including—
 - (i) requirements for fees to be paid annually; and
 - (ii) methods for calculating fees, including by reference to the following—
 - (A) numbers of persons that may participate in or have participated in tours; and
 - (B) classes of persons that may participate in or have participated in tours; and
 - (b) prescribing tour operator licence conditions.
- (2) A power conferred by subsection (1) to make regulations providing for the imposition of fees in respect of tour operator licences may be exercised by providing for all or any of the following matters—
 - (a) specific fees;
 - (b) maximum fees;
 - (c) minimum fees;
 - (d) fees that vary according to the class of licence to which they apply;
 - (e) the manner of payment of fees, including the payment of fees by instalment;
 - (f) the time at which, or by which, fees are to be paid.
- (3) Regulations made under this Act in respect of tour operator licences may—
 - (a) leave any matter or thing to be decided by a specified person or class of person; and
 - (b) provide for the exemption of persons or a class of persons from any of the regulations providing for the imposition of fees; and
 - (c) provide for the reduction, waiver or refund, in whole or in part, of the fees fixed by regulation made under this section; and
 - (d) provide, in specified circumstances, for the reinstatement or payment, in whole or in part, of any fee reduced, waived or refunded in accordance with the regulations.
- (4) Without limiting subsection (3), if the regulations provide for a reduction, waiver or refund, in whole or in part, of a fee pursuant to subsection (3), the reduction, waiver or refund—
 - (a) may be expressed to apply either generally or specifically—
 - (i) in respect of certain matters or classes of matters;
 - (ii) in respect of certain persons or classes of persons;
 - (b) may be subject to specified conditions.

Attachment E

Comparison of tourism operator licence fees in other Australian jurisdictions

Fees	NSW	VIC	QLD	SA	WA	TAS	ACT	NT
Application Fee	\$150.00 (fee valid until 1 July 2011 only)	\$165.00	\$262.20	\$153.00	\$100.00	\$150.00	Fees are set by the Australian Valuation Office on a case-by-case basis	Fees are calculated on number of visits - \$100 four or less visits; \$500 five or more visits.
Permit Fee 3 months			\$52.60		\$120.00			
Permit Fee 1yr	\$300.00	\$55.00	\$209.50	\$165.00 (for up to 5 vehicles) Additional vehicles \$32.	\$350.00	\$330.00		
Permit Fee 2yrs			\$420.50					
Permit Fee 3yrs	\$900.00	\$165.00	\$596.00		\$1050.00			
Permit Fee 5yrs					\$1750.00			
Permit Fee 10yrs	\$3500.00							
Use Fee (charged per person per day)	Charged per person per day \$4.60 (\$2.30 concession)	Capped at \$5,500 p.a. \$1.10 (\$0.75 concession)	< less than 3hrs \$1.59 or > 3hrs is \$2.85	\$2.50 for all parks except Flinders Chase National Park which is \$7.00 or (\$4.40 concession)				
Additional fees	Major amendment fee: \$200 Minor amendment fee: \$50 Licence restoration fee: \$50 Licence id replacement fee: \$50		Use fees can vary depending on which National Park is visited	Replace lost vehicle permit fee: \$32	Renewal fee: \$100			

Personal fitness trainer licence fees: Current arrangements for selected municipal councils

	Port Phillip	Maribyrnong	Melbourne	Whitehorse
Policy Document	Draft Guidelines have been issued on the use of council reserves by commercial fitness groups and personal trainers, but are not operational. Personal trainers/fitness instructors currently sit outside the commercial recreational permit system because of the way the local laws are written. When that policy is reviewed Personal trainers / fitness instructors will be included but may attract a lower fee, as Council is keen to encourage physical activity in the area.	Guidelines for the Use of Public Open Space for Personal Training	Nil	Use of Public Open Space by Personal Trainers
Permit type	Nil at present.	Personal Trainers Permit	Event permit required for any group of more than 5 people plus trainer (whether commercial or not)	Personal Trainers Permit
Permitted Activities	Draft Guidelines include: Gym sessions (with or without weights, fit balls, skipping ropes etc) Boxing and pad training Organised aerobic activity and running groups Circuit training A combination of any of the above.	Fitness training activity of groups of 3 or more persons	Personal training	To be described in the permit - policy covers use of parks, reserves and sports fields by personal trainers.
Maximum Group size	Draft Guidelines propose: 15 participants	40 participants	10 participants	20 participants
Length of permit	Draft Guidelines propose: Maximum 6 months	12 months	minimum 1 month	maximum 6 months
Permit Fees	Nil during trial	3-5 participants = \$125.00 (six month fee) 6-15 participants = \$360.00 (six month fee) 16-40 participants = \$1,000.00 (six month fee)	\$120 per month, up to 3 months	\$156 per month

	Bayside	Yarra	Mornington Peninsula	Kingston
Policy	Council Open Space – Commercial Health & Fitness Providers Allocation	Commercial Fitness Activity Personal Trainers Policy and Permit System	There is no current policy in relation to personal trainers/boot camp operators but council are working on a draft. At this time operators are not charged.	No separate policy for fitness operators, but do charge a fee and treat fitness groups as other sports clubs - i.e. they receive an allocation of space based on availability of sportsgrounds and/or foreshore.
Permit type	Commercial health and fitness providers permit	Personal Trainers Permit	N/A	Non-irrigation sporting allocation (check title)
Permitted Activities	Gym sessions (with or without hand weights, fitballs, skipping ropes etc) Boxing and pad training Organised aerobic activity and running groups Circuit training Relaxation, meditative, balance and strength activities – such as yoga, Pilates and Tai Chi A combination of any of the above.	Running drills Boxing and pad training Organised aerobic activity Yoga, Tai chi and Pilates classes and like activities Circuit training A combination of any of the above.	N/A	Fitness groups
Maximum Group size	15 participants	20 participants in specified locations	N/A	max 10 hrs per week
Length of permit	6 months	12 months	N/A	6 months
Permit Fees	Application fee = \$80 One on one training = No charge 2-7 participants = \$52 fee per season Invoiced per season or pro-rata Charged per group at \$2 per hour, per location 8-15 participants = \$104 per season Invoiced per season or pro-rata Charged per group at \$4 per hour, per location	Vary between \$50 to \$625 per annum, according to group size and location	N/A	\$275 (max)

Personal fitness trainer licence fees: Current arrangements for selected committees of management/statutory authorities

	Great Ocean Road Coast Committee	Phillip Island Nature Park	Parks Victoria
Policy	Licence issued under <i>Crown Land (Reserves) Act 1978</i>	Issue permits for activity based training or team building exercises.	Currently issue events permits, rather than issuing tour operator permits
Permit type	Licence to use Crown land.	Licence to use Crown land.	Event permit
Permitted Activities	Commercial recreation activities	Activity based training or team building exercises.	Ad hoc fitness events and activities
Maximum Group size	not known	not known	not known
Length of permit	3 years maximum	Annual	not known
Permit Fees	A flat fee between \$350-\$500 per annum.	Location fee per day \$150, also multi use fee available, 2-6 times per year \$450, 7 to 12 times per year \$750, greater than 12 times per year by negotiation.	not known

Attachment F

Discussion of fee options for the commercial fitness industry

1. Commercial fitness trainers require a permit for one-on-one personal training, but are not charged a fee.

This approach still enables management of the location and scale of the activity through issue of a permit, but the rationale for not charging a fee is unclear.

Paid one-on-one personal training is clearly a commercial recreational activity, and when it is proposed to take place on public land the land manager is still required to assess whether:

- the proposed location is appropriate for the activity
- the trainer has the appropriate qualifications and insurance, and
- to establish licence conditions and issue a licence.

These tasks all incur costs, a reasonable proportion of which should be recoverable from applicant. It is also worth noting that other tour operators and recreational activity providers operating on public lands may also offer individual tours or lessons, and are not exempt from fees.

2. Commercial fitness trainers require a permit and are charged scaled fees based on group size.

Some municipal councils and land managers charge a sliding scale of fees to commercial fitness trainers based on the size of the group undertaking the activity. Under this model, there may or may not be an application fee for the permit as well.

As discussed previously, irrespective of group size, the land manager is required to assess the application and issue a permit for a commercial recreational activity and it is appropriate to recover a reasonable proportion of those costs.

The proposed Regulations put forward both an annual application fee and use fees. The total fees enable recovery of a reasonable proportion of the administrative costs of assessing an application, and as part of this model the proposed use fees operate as a reflection of turnover, or number of customers, over the year. This mechanism provides a degree of equity to operators dealing with smaller groups.

3. Commercial fitness trainers require a permit and are charged a lower fee than other commercial recreational activity providers.

Some councils and land managers are yet to charge fees to commercial fitness trainers, but are considering introducing a fee at a lower rate than for other commercial recreational activity providers.

One rationale put forward for this approach is that the land manager wishes to encourage physical activity. While physical activity is an appropriate use of public open space, commercial activity providers are making a profit from accessing public lands, and are therefore required under the new legislation to obtain a licence and pay regulated fees.

As previously stated, the costs of assessing the appropriateness of an activity for a specified location remain the same, whether the activity is commercial fitness training or another commercial recreational activity, and it is appropriate to recover a reasonable proportion of those costs.

It is also evident that commercial fitness training is not the only one way to participate in physical activity. Members of the community may independently undertake physical activity on public lands, without paying fees to a third party provider. Members of the community may also undertake other forms of physical activity with a licensed tour operator or other commercial activity provider, such as surf lessons, para-sailing, guided nature walks, horse riding, to name but a few. All of these activities, when carried out for profit on public lands, are required to be licensed and those operators are required to pay fees.

There appears to be no clear rationale for charging commercial fitness trainers lower fees than other commercial recreational activity providers.

Summary

The draft regulations attached to this RIS do not propose a different fee structure for commercial fitness trainers. The preferred option is to treat commercial fitness trainers the same as other commercial activity providers. The table overleaf summarises the fee models that could be considered for commercial fitness trainers, and DSE welcomes comment from the industry and other stakeholders.

Fee options – commercial fitness trainers

Options	Advantages	Disadvantages
<p>1 – Fees for commercial fitness trainers are the same as for standard tour operator licence fees.</p> <p>(Preferred Option)</p>	<ul style="list-style-type: none"> • Maintains a consistent policy approach, of charging all licensees based on the costs of reviewing licence applications and subsequent administration of the licence, rather than activity-based costing. • For some commercial fitness trainers operating on Crown lands managed by councils, fees may be reduced. 	<ul style="list-style-type: none"> • May increase fees payable by some licensees. • May increase administrative burden for some commercial fitness trainers, where they have not previously collected or submitted use fees. (Although this will also be the case for other tour operators who have not previously been charged use fees on land not managed by Parks Victoria or DSE).
<p>2 – Establish:</p> <p>(a) maximum fees for commercial fitness trainers that are the same as standard tour operator licence fees, and;</p> <p>(b) lower minimum fees.</p>	<ul style="list-style-type: none"> • Allows land managers to charge a lower fee rate for commercial fitness trainers where they already have a lower fee regime in place. • Also allows land managers to charge commercial fitness trainers the same fees as other tour operators, where that is their policy. • Allows land managers to charge consistent fees to commercial fitness trainers across a municipality, where they are managers of both council and Crown lands. 	<ul style="list-style-type: none"> • There is no rationale for treating commercial fitness trainers differently to other commercial outdoor activity providers. • The administrative cost of licensing is no different for commercial fitness trainers than for other commercial outdoor activity providers. • Of those sampled land managers that have specific fees for commercial fitness trainers, several have fees that are considerably higher than the proposed tour operator licence fee, and there is no rationale for reducing the fee even further. • Will lead to preferential pricing for commercial fitness trainers, compared to other licensees.
<p>3 – Establish a tiered fee structure for commercial fitness trainers, based on group size (similar to that adopted by some land managers)</p>	<ul style="list-style-type: none"> • Maintains current approach for a limited number of land managers and operators. 	<ul style="list-style-type: none"> • The tiered structure has not been adopted by all land managers who have a fee policy for commercial fitness operators. • There is no rationale for treating commercial fitness trainers differently to other commercial outdoor activity providers. • Use fees are able to operate as a reflection of group size. • The administrative cost of licensing is no different for commercial fitness trainers than for other commercial outdoor activity providers.

Attachment G

Table a: activity-based costing of tour operator management system

Tour operator and activity provider licence fee calculations			
Activity/Cost	VPS Staff Tariff (\$)	Time (per hour)	Cost (\$)
Licence Applications - Variable Costs			
1. Parks Victoria receives application form,	66.05	0.25	16.51
2. Check for completeness - appropriately filled out, if not, applicant contacted or application returned	66.05	0.25	16.51
3. Base details are entered into TOMS	66.05	0.50	33.03
4. Insurance checked - correct names are noted, insurance is provider is APRA approved, Parks Victoria and Minister for Environment named, all activities applied for are listed	66.05	0.25	16.51
5. Application discussed with Parks Victoria Licensed Tour Operator Business Contact Office (LTOBCO)	66.05	1.50	99.08
6. Certificate of currency copied and converted to pdf file and saved to common drive	66.05	0.25	16.51
7. Activities and locations examined and application sent to contact officer in appropriate region	66.05	2.00	132.10
8. Contact officer sends application to ranger at relevant park or forest	66.05	0.25	16.51
9. Ranger contacts applicant to discuss application. Checks that applicant has read and understood General Conditions and the Licence Suspension and Cancellation information sheet	66.05	0.25	16.51
10. Approval (or otherwise) information is sent back to the contact officer	66.05	0.25	16.51
11. Full TOMS file created for operator and information transcribed from application	66.05	0.25	16.51
12. Application details re-examined and changed from 'in process' to 'ready for execution'	66.05	0.17	11.01
13. Application is sent back to Parks Victoria head office	66.05	0.25	16.51
14. Licence printed (a pdf of final licence form which is available from TOMS)	66.05	0.50	33.03
15. Cover letter is produced	66.05	0.08	5.50
16. Licence signed by General Manager	103.43	0.08	8.62
17. ID cards ordered and prepared	66.05	0.25	16.51
18. ID cards received at head office	66.05	0.08	5.50
19. Licence, ID cards, stickers packaged up	66.05	0.08	5.50
20. Licence and package is sent to the operator	66.05	0.08	5.50
21. Expiry reminder letter sent to operator	66.05	0.25	16.51
22. Insurance/accreditation reminder letters (insurance expires at different times of the year)	66.05	0.25	16.51
Processing User Fee Component			
23. Use fee returns received, entered into database and payment processed	66.05	2.00	132.10
Licence Issue - Fixed Costs			
24. Licence, ID cards, vehicle stickers	\$14,500		
25. TOMS Maintenance and ongoing IT enhancement	\$15,000		
Program Delivery - Fixed Costs			
26. Operators' Forums	\$5,000		
27. Legal costs (review of conditions of licence)	\$5,000		
28. Adventure Activity Standards	\$5,000		
29. Research (additional research for new or unusual tour or activity proposals)	\$5,000		
Fixed costs are summed and distributed over 300 licences	\$49,500		165.00
Enforcement Costs - Parks Victoria and DSE field officers			
30. Enforcement Costs - 1.5 Full Time Equivalents (VPS3), including corporate overheads	\$156,989		
Field enforcements allocated over 300 licences	\$523		523.30
		Total	1,357.42

Notes:

1. Salary tariff is a mid-point VPSG3-G4 casual hourly rate (effective from 1 October 2010). VPSG3 is \$33.73; VPSG4 is \$41.76; which provides a mid-point of \$37.75. This figure is grossed up to allow for labour and corporate on-costs using a factor of 1.75 (see Victorian Guide to Regulation, Section C.2.1 Valuing staff time, p. C-5). This provides an hourly rate of \$66.05 per hour. The costs of a VPSG 6 is \$59.10, which when grossed-up to take account of overheads is \$103.43.

Table b: Proportion of total cost of Tour Operator Management System

Tour Operator and Activity Provider Licence Fee Calculations	
Percentage recovered	\$ Amount
100%	407,225
75%	305,419
50%	203,613

The activity-based costing exercise above in Table A resulted in cost of \$1,357 to administer each licence. The figure has been multiplied by 300 (the number of licensees) to obtain a total cost of \$407,255.

Table c: Calculation of fixed and variable components

Fixed and Variable Fee Components			
Proportion of fee components		Amount to be recovered (\$)	
Fixed	Variable	Fixed	Variable
0%	100%	-	305,419
25%	75%	76,355	229,064
50%	50%	152,709	152,709
75%	25%	229,064	76,355
100%	0%	305,419	-
Amount to be recovered per licence (\$)			
Fixed component - 300 licences		254.52	
Variable component - 300 licences		763.55	

Table d: Recovery of variable component

Calculation of use fees - General visitor and student/under 16 years				
Visitor type	Proportion of general visitors/students	Proposed use Fee (\$)	Number of Visitors	Fee Revenue (\$)
Visitor use fee	50%	2.38	190.89	454.49
Student use fee	50%	1.62	190.89	309.06
				763.55
Single use fee	100%	2.00	381.78	763.55

Table e: Activity-based costing of Tour Operator Management System with no use fee

Tour Operator and Activity Provider Licence Fee Calculations - No use fees			
Activity/Cost	VPS Staff Tariff (\$)	Time (per hour)	Cost (\$)
Licence Applications - Variable Costs			
1. Parks Victoria receives application form,	66.05	0.25	16.51
2. Check for completeness - appropriately filled out, if not, applicant contacted or application returned	66.05	0.25	16.51
3. Base details are entered into TOMS	66.05	0.50	33.03
4. Insurance checked - correct names are noted, insurance is provider is APRA approved, Parks Victoria and Minister for Environment named, all activities applied for are listed	66.05	0.25	16.51
5. Application discussed with Parks Victoria Licensed Tour Operator Business Contact Office (LTOBCO)	66.05	1.50	99.08
6. Certificate of currency copied and converted to pdf file and saved to common drive	66.05	0.25	16.51
7. Activities and locations examined and application sent to contact officer in appropriate region	66.05	2.00	132.10
8. Contact officer sends application to ranger at relevant park or forest	66.05	0.25	16.51
9. Ranger contacts applicant to discuss application. Checks that applicant has read and understood General Conditions and the Licence Suspension and Cancellation information sheet	66.05	0.25	16.51
10. Approval (or otherwise) information is sent back to the contact officer	66.05	0.25	16.51
11. Full TOMS file created for operator and information transcribed from application	66.05	0.25	16.51
12. Application details re-examined and changed from 'in process' to 'ready for execution'	66.05	0.17	11.01
13. Application is sent back to Parks Victoria head office	66.05	0.25	16.51
14. Licence printed (a pdf of final licence form which is available from TOMS)	66.05	0.50	33.03
15. Cover letter is produced	66.05	0.08	5.50
16. Licence signed by General Manager	103.43	0.08	8.62
17. ID cards ordered and prepared	66.05	0.25	16.51
18. ID cards received at head office	66.05	0.08	5.50
19. Licence, ID cards, stickers packaged up	66.05	0.08	5.50
20. Licence and package is sent to the operator	66.05	0.08	5.50
21. Expiry reminder letter sent to operator	66.05	0.25	16.51
22. Insurance/accreditation reminder letters (insurance expires at different times of the year)	66.05	0.25	16.51
Licence Issue - Fixed Costs			
24. Licence, ID cards, vehicle stickers	\$14,500		
25. TOMS Maintenance and ongoing IT enhancement	\$15,000		
Program Delivery - Fixed Costs			
26. Operators' Forums	\$5,000		
27. Legal costs (review of conditions of licence)	\$5,000		
28. Adventure Activity Standards	\$5,000		
29. Research (additional research for new or unusual tour or activity proposals)	\$5,000		
Fixed costs are summed and distributed over 300 licences	\$49,500		165.00
Enforcement Costs - Parks Victoria and DSE field officers			
30. Enforcement Costs - 1.5 Full Time Equivalents (VPS3), including corporate overheads	\$156,989		
Field enforcements allocated over 300 licences	\$523		523.30
	Total		1,225.32
	Cost recovery at 75%		918.99

Notes:

1. Salary tariff is a mid-point VPSG3-G4 casual hourly rate (effective from 1 October 2010). VPSG3 is \$33.73; VPSG4 is \$41.76; which provides a mid-point of \$37.75. This figure is grossed up to allow for labour and corporate on-costs using a factor of 1.75 (see Victorian Guide to Regulation, Section C.2.1 Valuing staff time, p. C-5). This provides an hourly rate of \$66.05 per hour. The costs of a VPSG 6 is \$59.10, which when grossed-up to take account of overheads is \$103.43.

Attachment H

Annual fee for multi-year licences

Year	Annual Licence Fee	Time value discount
1	254.52	254.52
2	254.52	242.40
3	254.52	230.85
4	254.52	219.86
5	254.52	209.39
6	254.52	199.42
7	254.52	189.92
8	254.52	180.88
9	254.52	172.27
10	254.52	164.06

Notes:

1. The undiscounted annual fee is \$254.52 (see Table C, Attachment G). This amount has been rounded to \$255 for the purposes of the draft regulations.
2. In theory, different annual rates could be charged per annum depending on the length of the licence. However, the finance concept of 'duration' used to measure bonds may be useful to obtain an 'average' discounted amount. Simply stated, the middle value (or the fulcrum) of the discounted amounts will be equivalent to an average. Given that the annual fees are paid in advance (i.e. at the start of the period), the middle value in this case will be 1 January Year 6, which is \$199.42. Therefore, an 'average' discounted annual fee of \$200 was selected.

Attachment I

Assumptions

Cost Assumptions

1. The discount rate used in this RIS is 3.5 per cent. In doing so, the RIS adopts the rate published in the *Victorian Guide to Regulation* (Section C.3, p. C-9)
2. An important assumption underlying the fee calculations was that the TOMS represents an efficient administrative system. Fees were calculated based on the 300 licensees currently in the TOM system rather than examining different costs and approaches used by the more than one hundred Committees of Management that currently charge fees. To that degree, the proposal has calculated 'efficient fees' from the TOMS and applied the fee rates across the board to all land managers.
3. A 5 per cent discount rate is used to calculate the annual rate for multi-year licences. This rate has been selected to represent a reasonable 'risk free' rate of return, and was derived from a Commonwealth bond covering a similar period to the proposed regulations (maturing in April 2020) with a yield of 5.1 per cent.
4. Drafting note: The details of fees, licences and arrangements concerning other land managers and in other jurisdictions were correct at the time of writing, but may have changed subsequently.

Attachment J

Indicative regulatory change measurement calculations

Regulatory Change Measurement of proposed Tour Operator Licence Fees Regulations 2010					
Description	Price		Quantity		Administrative Cost
	Tariff(\$) ¹	Time (hours) ²	Population ³	Frequency ⁴	\$
1. New requirement to report trip data by licensees who pay capped fees	34.50	4	6	4	3,312
2. Current quarterly submission of trip return data	34.50	2	294	4	81,144
Annual submission of trip return data (assumes 50%)	34.50	2	450	2	62,100
Change in burden (saving)					19,044
Total Change in administrative burden					15,732

Notes:

1. The cost of an licensee's time used to calculate 'administrative costs' is \$34.50 per hour, which is based on the methodology contained in the Methodology and Value for Staff Time in RIS analysis in the *Victorian Guide to Regulation*. Note that corporate overheads and labour on-costs have been excluded from this rate.
2. Indicative estimates derived from discussions with DSE and Parks Victoria. Note that the time is larger for licensees who pay capped fees because these are larger operators.
3. Population from the TOMS database and DSE estimates. The population of 450 includes Committees of Management.
4. It is assumed that half of all operators will elect to submit data annually.

Tour Operator Licence Fees Regulations 2011

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