

Regulatory Impact Statement

Wildlife (State Game Reserves) Regulations 2014



Wildlife (State Game Reserves) Regulations 2014 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 Wildlife (State Game Reserves) Regulations 2014.

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 businesses 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 different perspectives, and thus improve the overall quality of the regulations. The proposed Regulations are available to key stakeholders and any other interested parties, and feedback is now sought.

Unless otherwise indicated, all submissions will be treated as public documents and will be made available to other parties upon request, or may be published. Written comments and submissions should be forwarded by **5.00pm, Tuesday 30 September 2014** to –

Legislation Unit
Land Management Policy Division
Department of Environment and Primary Industries
PO Box 500
East Melbourne VIC 8002

or email:

stategame.reserves@depi.vic.gov.au

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

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The *Subordinate Legislation Act 1994* and Victorian Guide to Regulation require assessment of alternative non-regulatory and regulatory options. The Victorian Government notes that some options may be inconsistent with current government policy, but recognises the requirement for a range of options to be considered.

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Abbreviations

current Regulations – Wildlife (State Game Reserves) Regulations 2004

DEPI – Department of Environment and Primary Industries

MCA – Multi-criteria Analysis

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

proposed Regulations – Wildlife (State Game Reserves) Regulations 2014

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

RIS – Regulatory Impact Statement

the Secretary – the Secretary of the Department of Environment and Primary Industries

Subordinate Legislation Act – *Subordinate Legislation Act 1994*

VCEC – Victorian Competition and Efficiency Commission

Wildlife Act – *Wildlife Act 1975*

Executive Summary

The *Wildlife (State Game Reserves) Regulations 2004* (current Regulations) will sunset on 30 November 2014. The government proposes to remake these Regulations, with some minor amendments.

The objectives of the proposed *Wildlife (State Game Reserves) Regulations 2014* (proposed Regulations) are to provide for the efficient and effective management of game reserves in Victoria, in ways that:

- preserve wildlife and their habitats (with particular emphasis on indigenous game species)
- allow for hunting of game species during open season
- ensure the safety, enjoyment and recreation of visitors.

Overall, the proposed Regulations seek to continue to provide sustainable recreational hunting opportunities while ensuring the future of game species, and the protection of their habitats.

Under the *Wildlife Act 1975* (Wildlife Act), it is an offence to take wildlife or otherwise hunt or disturb wildlife in State Wildlife Reserves without written authorisation from the Minister. However, this general prohibition does not apply to state game reserves.

In state game reserves, there are little existing limitations (other than the current Regulations) to prevent interference with wildlife and their habitat, which may adversely affect the protection of natural assets and legitimate hunting activities. While those not issued with game licences (or otherwise authorised under the Act) cannot take or destroy game, they may engage in other activities that could damage the wildlife and vegetation in these reserves, as well as affect the opportunities for game hunting in Victoria. This is because the Wildlife Act on its own does not directly regulate access or behaviour in state game reserves, other than conditions attached to game licences.

In the absence of regulations, such as the current Regulations, the residual risks are:

- activities by both hunters and non-hunters could damage the wildlife and habitat that diminishes the value of the natural asset
- activities by both hunters and non-hunters could diminish the quality and opportunity of game hunting in the state game reserves
- activities by both hunters and non-hunters could affect the safety and amenity of other people in (or near) the state game reserves.

The risks of non-intervention are that activities are likely to occur that significantly diminish the value of the natural assets in general, and reduce the opportunities for game hunting in the reserves. Some aberrant behaviour could damage the environment or reserve infrastructure (e.g. bushfires caused by lighting fires in undesignated areas, or facilities being vandalised). In the absence of government intervention, there is a high probability that this would occur

– centuries of human activity and the resultant environmental regulatory controls in practically all international jurisdictions provide testament to this.

The proposed Regulations

The proposed Regulations substantially remake the current Regulations, which are due to expire. The proposed Regulations address the problem identified above through:

- allowing the Secretary to make determinations that can prohibit or restrict access to specified areas of state game reserves
- restricting interference with and feeding of wildlife, or interference with their habitats
- prohibiting other animals or flora being brought into state game reserves (with special regulations to allow horses and dogs to enter and remain, and allow access of dogs for some hunting purposes)
- restricting types of events that can take place in state game reserves, and use of vehicles, vessels and aircraft
- general hygiene and protection of the land from use of poisons, soaps and detergents
- other amenity regulations, such as noise.

The major groups that will be directly affected by the proposed Regulations are game hunters and other people who visit game reserves. Regulatory proposals may place restrictions on practices in Victoria, although these are considered necessary to ensure that the environment is appropriately protected and that game is hunted in a sustainable, controlled, safe and humane manner.

Key changes – Proposed Regulations

The Department of Environment and Primary Industries (DEPI) has identified opportunities to improve the current Regulations. Aside from minor rewording of many regulations to improve clarity and consistency with other similar regulations (with no material change to the substance of the regulations), key changes in the proposed Regulations are:

- introduction of a small number of additional regulations – restrictions on fishing in determined areas, and prohibition on distribution of advertising materials and commercial filming and photography for consistency with other land management regulations – these are discussed in section 3.2.3
- re-defining restrictions on noisy equipment away from listing particular equipment and the manner of use, to being more outcome-focussed by prohibition of the use of any device that produces noise that disturbs another person or disturbs or harasses wildlife. This is consistent with a general regulatory design preference to regulate outcomes rather than inputs
- an expansion of the provisions relating to the use of blinds and hides to ensure that such facilities are fit for purpose and are not constructed through removal of native

vegetation, which is considered to damage the natural values of the reserve. The new provisions will provide for the following:

- a person may no longer construct a blind or hide out of vegetation taken from a reserve;
 - a person will not require a permit to erect nest boxes;
 - a person may erect a temporary and portable tree stand for observing Hog Deer;
 - there is an offence for a person who interferes with another user's blind or hide, as it is conceivable that someone may leave a blind for a number of days to coincide with the period of time that they may camp.
- particular exemptions for traditional owners, including avoiding conflicts between Natural Resource Authorisation Orders issued under the *Traditional Owner Settlement Act 2010*
 - introduction of Sambar Deer hunting by stalking as a seasonal target species in Ewing Morass State Game Reserve for seven months of the year.

Alternative options

The *Subordinate Legislation Act 1994* (Subordinate Legislation Act) requires that regulatory and non-regulatory options must be considered as part of a Regulatory Impact Statement (RIS). The scope of consideration of regulatory

and non-regulatory options in many cases is limited because of the existing powers of the Act and the limited focus of the residual problem. However, three feasible options have been identified. These are:

- Option 1 – Voluntary Codes of Conduct
- Option 2 – Education Campaign
- Option 3 – proposed Regulations.

Voluntary codes and an education campaign are alternatives to remaking the proposed Regulations. Instead of making rules that punish undesirable behaviours, this option would seek to inform and persuade people to voluntarily behave in the desired way.

DEPI considers that, while there is some scope to influence behaviours under Options 1 and 2, problems with enforcement and coverage make these options inferior to Option 3 – the proposed Regulations.

Costs and benefits

It was not practical to quantify the costs and benefits of the options assessed in this RIS. Therefore, a qualitative assessment was undertaken in the form of a multi-criteria analysis. This analysis assessed the options against a 'base case' of no regulations, using the following assessment criteria:

Table 1: Multi-criteria Analysis (MCA) Criteria

Criterion	Description of criterion	Weighting
Conservation of wildlife and habitat	The degree to which an option is effective in addressing residual risks to harm and disturbance to wildlife and their habitats	20
Opportunities for game hunting	The degree to which an option promotes access and quality of game hunting opportunities, including sustainability of game hunting in the future	20
Safety, enjoyment and recreation of visitors	The degree to which an option protects personal safety of visitors, and enhances amenity	10
Costs	The costs of the options, being not only financial costs but any type of burden or onus	50

The assessment of the options is presented in Table 2 below. Having scored a higher overall score against the assessment criteria, Option 3 – the proposed Regulations, is considered to be the preferred option.

Table 2: Summary of MCA Assessment of Options

Criterion	Option 1: Codes of conduct	Option 2: Education campaign	Options 3: Proposed Regulations
Conservation of wildlife and habitat	30	40	60
Opportunities for game hunting	35	40	70
Safety, enjoyment and recreation of visitor	30	40	60
Costs	-10	-15	-30
Total score (Weighted)	11	12.5	17

DEPI notes that the final scores are close, and changes to the weighting of criteria and/or the scores assigned may change the outcome. DEPI therefore seeks comments on the assessment of these options.

DEPI considers that the administrative and enforcement costs associated with the proposed Regulations is in the order of \$544,762 per annum or \$4.5 million (PV)¹ over the ten year life of the proposed Regulations. While options 1 and 2 are both less costly than the proposed Regulations, the analysis suggests that problems with enforcement and coverage associated with these options do not make them superior to the proposed Regulations.

This RIS concludes that the proposed Regulations generally do not restrict competition.

The proposed Regulations include a number of penalties, including penalties for the specific restrictions in relation to the Tower Hill State Game Reserve. The appropriateness of these infringement penalties and their levels was discussed with Criminal Law Policy and the Infringement System Oversight Unit in the Department of Justice.

Conclusion

This RIS concludes that:

- the benefits to society of the proposed Regulations are expected to exceed the costs
- the net benefits of the proposed Regulations are expected to be greater than those associated with any practicable alternatives
- the proposed Regulations do not impose restrictions on competition.

The outcomes may be sensitive to assumptions and judgments made by DEPI, including different weightings given to different policy objectives. DEPI, therefore, encourages comments from stakeholders as to their views on the proposed Regulations.

Public consultation

The prime function of the RIS process is to help members of the public comment on proposed regulations before they are finalised. Public input, which draws on practical experience, can provide valuable information and perspectives, and thus improve the overall quality of regulations. The proposed Regulations are being circulated to key stakeholders.

While the proposed Regulations largely remake the current Regulations, during the preparation of this RIS it became apparent that alternatives to the proposed Regulations were difficult to identify given the relatively narrow 'residual problem' that regulations seek to address. DEPI welcomes comments on alternatives to the proposed Regulations that can minimise costs to stakeholders while achieving the government's objectives.

DEPI welcomes and encourages feedback on the proposal. While in no way limiting comments, stakeholders may wish to comment on the following discussion points:

Discussion Point 1: Are there alternative options, particularly non-regulatory alternatives, which could achieve the Government's objectives more effectively and at a lower cost than the proposed Regulations?

Discussion Point 2: Are the proposed changes to allow Sambar Deer hunting in Ewing Morass State Game Reserve appropriate?

Discussion Point 3: Are the level of penalties proportionate and appropriate?

Discussion Point 4: Are the level of penalties with respect to the Tower Hill state game reserve set at an appropriate level to manage the particular risks associated with this state game reserve?

Discussion Point 5: Are there any practical difficulties associated with the proposed Regulations?

Discussion Point 6: Will any unintended consequences arise from the proposed Regulations?

Discussion Point 7: Can the process of applying for permits be streamlined or simplified?

¹ Annual costs are discounted by 3.5 per cent as suggested in the Victorian Guide to Regulation, Appendix C, 'Choice of discount rate', p. 19.

1. What is the issue/problem to be addressed?

1.1 Background

1.1.1 State Game Reserves

Part II of the Wildlife Act establishes State Wildlife Reserves. These are special areas within the state under the control of the government that allows for effective management and oversight in order to manage wildlife. The Wildlife Act, along with other legislation and policies, determines what can and cannot occur within these areas.

The objective of the Wildlife Act is to establish procedures in order to promote the protection and conservation of wildlife, the prevention of species of wildlife from becoming extinct, and the sustainable use of and access to wildlife. The Wildlife Act prohibits and regulates the conduct of persons engaged in activities concerning or related to wildlife.

State Wildlife Reserves may by Order of the Governor in Council be further classified as state game reserves designated for game hunting. There are 199 state game reserves in Victoria which are typically wetlands and encompass some 60,000 hectares in total.

Traditionally, state game reserves were set aside for game duck hunting only. However, in recent years some reserves have been opened for Stubble Quail and Hog Deer hunting. More specifically:

- all state game reserves are available for duck hunting during the open season
- Hog Deer may be hunted in six state game reserves between 1 to 30 April of each year
- Stubble Quail may be hunted during the prescribed Stubble Quail Season in the 16 state game reserves.

The policy to allow both Hog Deer and quail hunting in some reserves was based on the premise that these reserves were specifically set aside for game duck hunting. However, where other game hunting activities negatively impact on game ducks or their habitat, it was not appropriate to allow these opportunities.

The Victorian Government's approach to managing state game reserves is to principally provide for waterfowl hunting during the open season and the protection of waterfowl habitat. This supports the legitimate pursuit and recreational benefits of game hunting and ensures the safety, enjoyment and recreational activities of visitors. This approach is consistent with international standards that promote the wise use of natural resources without wasting them.

1.1.2 Game hunting in Victoria

Recreational game hunting is a form of sustainable use that has been undertaken for many centuries as a cultural tradition. People participate in hunting for a variety of reasons. Often the focus is not solely on the act of taking game, but rather companionship with others who enjoy the same interests. This can include recreational shooting, training and hunting with dogs, enjoying the experiences

of camping and the outdoors, learning about the ecology and behaviour of game and other wildlife, and cooking and eating game. Hunters come from a wide range of social and economic backgrounds, and, unlike game hunting in Europe, which was traditionally reserved for the aristocracy or wealthy; there is an egalitarian element to game hunting in Victoria.

In Victoria, eight species of native duck, one species of native quail, six species of introduced deer and introduced pheasants, partridges and quail are declared as 'game' and may be hunted during the respective open season. Sometimes a hunter may erect a 'blind' or a 'hide', which is a camouflaged shelter used to conceal the hunter from the game.

There are approximately 46,000 licensed game hunters in Victoria who spend around 300,000 in total days hunting each year.

In terms of land area, Victoria is the smallest mainland state in Australia but has the second highest population (around 25 per cent of the Australian total) and the largest number of licensed game hunters. Since 2001, the number of licensed game hunters in Victoria has increased by 56 per cent cementing it as a significant industry for Victoria and its regional centres. Accordingly, Victoria experiences high hunting pressure and there is growing competition between hunters and other users for access to areas of public land for recreational, commercial and environmental use. This competition can be pronounced in particular areas and conflicts between competing groups can arise.

Game hunting may occur across a variety of land classifications in Victoria, including State forest and other unoccupied Crown land, some lake reserves, water reserves, wetlands and waterways and on private land with the landowner's permission. The *National Parks Act 1975* and the National Parks Regulations 2013 also provide for deer, duck and quail hunting in some National, Coastal and Wilderness Parks, subject to varying conditions. The *Forests Act 1958* and the Forests (Recreation) Regulations 2010 also provide for deer hunting in specified Forest Reserves and Forest Parks, subject to varying conditions. The current Regulations currently provide for the hunting of game duck on 199 state game reserves in Victoria, the hunting of indigenous quail on 16 reserves and the hunting of Hog Deer on six reserves.

Game hunting is also a part of economic activity. The total expenditure for hunting game animals was estimated to be \$282 million in 2013. The share of Gross State Product (GSP) attributable to game-licence holders in 2013 (including game animal groups, deer, duck and quail) was estimated to be \$118 million, with flow-on effects of \$177 million. There were an estimated 1,115 jobs (full-time equivalent) generated directly by hunting-related expenditure with a further 1,268 jobs stemming from flow-on employment, giving a total employment impact of 2,382 jobs.²

2 Department of Environment and Primary Industries, 2014, *Estimating the economic impact of hunting in Victoria in 2013*.

1.1.3 Regulation of game hunting

Game hunting has occurred in Victoria for over 150 years and has been regulated since the early 1860s. The most commonly applied harvest regulation mechanisms have been length of season, bag limits and controlling the methods of take however, in certain instances, more specific and tighter controls (e.g. balloted hunting) have been used to achieve particular management objectives. Historically, the only areas where a person could not hunt game in Victoria were in game sanctuaries proclaimed under the *Game Act 1890* and subsequent Game Acts.

Open seasons for native game birds are timed to coincide with peaks in population levels and avoid periods of vulnerability (e.g. breeding, moulting), stress (e.g. food shortages or extremes in weather) and low populations. This allows game species to breed to maximum capacity and minimise any long-term effects of harvesting on the population or on the future productivity of game populations. Under extreme environmental conditions, seasons can be modified or cancelled. For example, during the period 1995 to 2009, four duck hunting seasons were cancelled and eight seasons were modified (reduced length and/or bag limit) owing to drought conditions, which resulted in reduced populations concentrated into areas of limited habitat and with little breeding.

The public has become increasingly aware of hunting and demands a responsible management approach to ensure that hunting is conducted safely and that animal welfare concerns are addressed. As such, there is a responsibility to manage game species and the habitats in which they occur in the best interests of the wider community while continuing to provide sustainable recreational hunting opportunities.

1.1.4 Who uses State Game Reserves?

State game reserves are not only about allocating areas of land for game hunting. As Crown land reserves, they are also important natural assets held on behalf of the whole community, preserving a wide range of wildlife other than game animals as well as native vegetation.

There are three broad categories of users relevant for considering the regulation of state game reserves:

During game hunting seasons persons not engaged in hunting and not holding appropriate licenses are excluded from state game reserves. This is to ensure that game hunters may pursue game hunting without interference and to reduce risks to public safety. Despite this restriction, it is observed that game hunters and other users tend to separate themselves automatically, in any event, with bird watchers and other recreational users more likely to visit state game reserves outside the hunting season. There is also a tendency for tourists who do not hunt to visit outside the hunting season.

The separation of hunters and non-hunters (generally anti-hunting protestors) is mostly enforced through Part VIIA of the Wildlife Act. Some of the offences in the proposed Regulations protect hunters from interference by non-hunters (e.g. the removal of blinds or hides by someone other than the person who constructed that blind or hide). However it is intended that enforcement is primarily pursued through the relevant provisions of the Wildlife Act itself.

Under Part VIIA of the Wildlife Act, an authorised officer or member of the police force who suspects on reasonable grounds that a person is committing or has committed a specified offence, wholly or partly, in a designated area may issue the person a notice banning him or her from the designated area or part of the designated area for the remainder of the duck season in which it was issued and only during those periods of heightened hunting activity. It is an offence to contravene a banning notice.

In addition, there is ability for the courts to make an exclusion order, prohibiting persons from entering the designated area or parts of a designated area for a period of up to 12 months. Within this period, exclusion from the designated area may only apply during any duck hunting season, including up to 24 hours prior to the commencement of these periods. It is an offence to contravene an exclusion order.

Table 3: User-groups of State Game Reserves

Group	Activities
Hunters	<ul style="list-style-type: none"> • High visitation during hunting season
Nature lovers	<ul style="list-style-type: none"> • Visitation outside of the hunting season with a focus on appreciating the conservation values • Appreciate and advocate for the wetland values and listed vegetation communities as well as the migratory and resident bird species • Opportunities for bird watching and wildlife watching as well as camping and bushwalking • Love of natural quiet and wild 'feel'
Tourists	<ul style="list-style-type: none"> • Recreational opportunities outside hunting season such as canoeing, bush walking, fishing, wildlife watching, bird watching, camping, picnicking, look outs and natural vistas • State game reserves have been featured in tourist information published by the State Government, local councils and local tourism boards and promotional groups for all major areas – Gippsland, Alps, south-west and Warrnambool and the River Red Gum Country of the Murray River

1.2 Regulatory Framework – State Game Reserves

Under the Wildlife Act, it is an offence to take wildlife or otherwise hunt or disturb wildlife in State Wildlife Reserves without written authorisation from the Minister. However, this general prohibition does not apply to state game reserves.

The Wildlife Act provides for general offences against the hunting, taking and destroying of threatened wildlife, or protected wildlife outside of open season. There is also a general prohibition on the hunting, taking or destroying any game in closed season. The Game Management Authority may license a person to hunt, take or destroy game. Game licences are regulated under the Wildlife Act and in the Wildlife (Game) Regulations 2012, which provide for licence conditions and regulate methods of hunting.

However, in state game reserves, there are little existing limitations (other than the current Regulations) to prevent interference with wildlife and their habitat, which may adversely affect the legitimate hunting activities. While those persons not issued with game licences (or otherwise authorised under the Wildlife Act) cannot take or destroy game, they may engage in other activities that affect the opportunities for game hunting in Victoria. This is because the Wildlife Act on its own does not directly regulate access or user behaviour in state game reserves, other than through conditions attached to game licences.

Many other public land types (e.g. national parks) have similar regulations, which make (in the absence of specific regulations) state game reserves particularly vulnerable areas, (i.e. wetlands) which also require protection.

The current Regulations address these gaps through:

- allowing the Secretary to make determinations that can prohibit or restrict access to specified areas of state game reserves
- restricting interference with and feeding of wildlife, or interference with their habitats
- prohibiting other animals or flora being brought into state game reserves (with special regulations to allow horses and dogs to enter and remain, and allow access of dogs for some hunting purposes)
- restricting types of events that can take place in state game reserves, and use of vehicles, vessels and aircraft
- general hygiene and protection of the land from use of poisons, soaps and detergents
- other amenity regulations, such as noise.

By doing these, the current Regulations seek to effectively manage state game reserves for the purpose of allowing recreational game hunting, conservation of wildlife, and ensuring safety and amenity of visitors. DEPI considers the current Regulations have been broadly effective in meeting these purposes. This is the rationale for continued regulation of these matters in the proposed Regulations.

It is worth reiterating that the *activity* of game hunting is principally managed by other mechanisms: namely, through the Wildlife (Game) Regulations 2012 and firearms legislation and regulations. The proposed Regulations are not directly related to hunting as such, but seek to manage the land on which game hunting may occur. It is also relevant to note that in addition to state game reserves, game may be hunted in State forests, forest parks and other unoccupied Crown land; licensed Crown land (subject to the permission of the licensee), and in a limited number of national parks and coastal parks. These other public land tenures all have similar regulations to manage impacts on flora and fauna, and in many cases are similar or the same as the proposed Regulations. Many of the provisions in the proposed Regulations are closely based on the recent National Parks Regulations 2013.

1.3 Rationale for Government Intervention

This section deals with the overarching rationale for regulating activities in state game reserves. Much of this is regulated through the Wildlife Act and other legislation. However, it provides an important context against which the residual issues the proposed Regulations seek to manage can be assessed.

Public policy generally begins from the premise that any economic activity should be free of regulation unless it can be shown that:

- there is a recognised market failure; or
- un-regulated activity will not achieve social or equity objectives. In the case of state game reserves, this includes community expectations about the protection of animals, environment protection and equity of access to a common resource; or
- regulation is needed to manage risks to the public. Game hunting involves the use of firearms, bows or crossbows and can present safety risks to both participants and members of the public if not appropriately managed.

1.3.1 Market failures

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

In relation to state game reserves, clearly there are some activities undertaken by some people that, if not controlled, will negatively affect other people who intend to use state game reserves for hunting. Opportunities for game hunters will be diminished where other people (both other licensed hunters and non-hunting persons) disrupt wildlife or their habitats (through direct interference or other activities that

cause noise), negatively affect the quality or use of a area (e.g. through litter or waste), or affect the amenity and/or safety of visitors to that area.

A common regulatory solution to correct the externalities identified with 'tragedy of the commons'³ is to establish rules and requirements governing the use of and access to certain areas, and where relevant, to establish systems of permits and/or licences.

1.3.2 Social and equity objectives

The *Victorian Guide to Regulation* notes that government intervention may be justified in the pursuit of social and equity objectives.

As part of the National Competition Policy legislation review in the early 2000s, the National Competition Council (NCC) assessed the market characteristics of public land (in this case State forests) and found that government intervention is justified on public interest grounds.⁴ The NCC noted that public land provides a wide range of benefits to the community, from the conservation of biological diversity, soil productivity and water quality to recreational experiences, timber production and stock grazing. From a social point of view, there is a public expectation that government takes a leading role in protecting State forests. Arguably, community expectations have increased regarding the government's role in protecting Victoria's natural assets because of a heightened awareness of environmental issues in recent years.

In addition, sharing of resources among the community (i.e. for consumptive and non-consumptive uses) is also a rationale for government intervention on equity grounds. This includes competing for alternative uses of Crown land by other recreational users (e.g. bush walkers, campers, four-wheel drivers). As far as possible, multiple uses of land should be available, but not to the extent where they are in conflict (i.e. one activity affects the other), or where the total impact of all activities affects the ability to sustain the activities in the future. In this case, rules may be needed to give effect to the preferred uses for particular areas of land.

1.3.3 Risks to public safety

Another justification for government intervention lies in the need to manage and minimise public safety risks. There is a public expectation that government takes a leading role in protecting the public from harm in state reserves. Community expectations have also increased regarding government's role in protecting Victorians from potential health and safety harms.

A particular form of social regulation relates to requirements that seek to reduce or manage the risk of harm to health, safety or welfare of individuals in the community. In this regard, activities in state reserves can present public safety risks if not appropriately managed. Thus, intervention may also be justified on public safety grounds.

1.4 Residual problem and the risks of non-intervention

The core mechanism to address the problems above is set out in the Wildlife Act and other legislation. However, in the absence of regulations such as the current Regulations, there are 'regulatory gaps'. These represent the residual problem of which the risks are identified as:

- activities by both hunters and non-hunters could damage the wildlife and habitat that diminishes the value of the natural asset
- activities by both hunters and non-hunters could diminish the quality and opportunity of game hunting in the reserves
- activities by both hunters and non-hunters could affect the safety and amenity of other people in (or near) the reserves.

The risks of non-intervention are that activities are likely to occur that significantly diminish the value of the natural assets in general, and reduce the opportunities for game hunting in the reserves. Some aberrant behaviour could damage the environment or reserve infrastructure (e.g. bushfires caused by lighting fires in undesignated areas, or facilities being vandalised). In the absence of government intervention, there is a high probability that this would occur – centuries of human activity and the resultant environmental regulatory controls in practically all international jurisdictions provide testament to this.

Specifically, the risk associated with not remaking the current Regulations is that the regulatory framework established by the Wildlife Act for managing recreation in Victoria's game reserves would be weakened. Enforcement mechanisms and the efficient operation of the Wildlife Act would be adversely affected because there would be no basis for restrictions on activities such as camping, vehicle access, horse riding, damage to flora, interference with fauna, and other non-commercial activities. A range of offences would not be prescribed, and there would be a high probability that the ability of the Victorian Government to manage game reserves effectively would be compromised given the magnitude of the potential risks.

1.5 Extent of the problem and rationale for change

It has not been possible to quantify the extent of the problem, as activities in Victoria's state game reserves have been regulated for a long time. It is also difficult to measure the effectiveness against a relevant benchmark, as the public land classifications and different regulatory instruments that apply across the state make a like-for-like comparison difficult.

3 The 'tragedy of the commons' argument states that free access to and unrestricted demand for a finite resource ultimately dooms the resource through over-use. See: Hardin, G., *Science*, 13 December 1968, Vol. 162. No. 3859, pp. 1243–1248.

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

However, data on offences indicates that the current Regulations are somewhat effective. Since 2004 there have been only 3 infringements issued and 45 prosecutions.

It is difficult to say whether this indicates that there would be a high level of undesirable activities in the absence of the current Regulations, or whether the current Regulations embody generally observed behaviours that are little affected by the Regulations. In the first case, this suggests a strong rationale for remaking the current Regulations; in the second case, this suggests that, so long as compliance costs are low, continuation of the current Regulations serves as an option with minimal-intervention to address any residual risks that may arise. While the number of offences is low, the types of offences recorded could still have had a significant impact — offences were predominantly related to noise negatively affecting wildlife or visitors, use of vehicles, and removing/destroying flora. There were also a small number of instances of unauthorised use of firearms, which while infrequent could significantly affect personal safety. We can, therefore, conclude that the number of offences committed per year are significantly outweighed by the number of visitors who comply with the current Regulations.

Overall, DEPI considers there is a strong rationale for the continuation of the current requirements in the proposed Regulations.

That said, DEPI has identified opportunities to improve the current Regulations. Aside from minor rewording of many regulations to improve clarity and consistency with other similar regulations (with no material change to the substance of the regulations), key changes in the proposed Regulations are:

- introduction of a small number of additional regulations — restrictions on fishing in determined areas, and prohibition on distribution of advertising materials and commercial filming and photography for consistency with other land management regulations – these are discussed in section 3.2.3.

- re-defining restrictions on noisy equipment away from listing particular equipment and the manner of use, to being more outcome-focussed by prohibiting use of any device that produces noise that disturbs another person or disturbs or harasses wildlife. This is consistent with a general regulatory design preference to regulate outcomes rather than inputs
- an expansion of the provisions relating to the use of blinds and hides to ensure that such facilities are fit for purpose and are not constructed by removal of native vegetation, which is considered to damage the natural values of the reserve. The new provisions will provide for the following:
 - a person may no longer construct a blind or hide out of vegetation taken from a reserve
 - a person will not require a permit to erect nest boxes
 - a person may erect a temporary and portable tree stand for observing Hog Deer
 - there is an offence for a person who interferes with another user’s blind or hide, as it is conceivable that someone may leave a blind for a number of days to coincide with the period of time that they may camp.
- particular exemptions for traditional owners, including avoiding conflicts between Natural Resource Authorisation Orders issued under the *Traditional Owner Settlement Act 2010*
- following consultation with stakeholders as well as the primary land manager (Parks Victoria) and the Game Management Authority it is proposed that Ewing Morass State Game Reserve should be available for Sambar Deer hunting for the first time between 1 May and 30 November of each year. It will continue to be prohibited in all other state game reserves.

Table 4: Penalties under the current Regulations, 2004–2014

Enforcement type	Descriptions	Total number
Infringement	Vehicle entered or remained in a restricted area (2)	3
	Operate vehicle in contravention of a notice or sign (1)	
Prosecution	Damage flora in a reserve (18)	45
	Use noise equipment likely to cause nuisance in game reserve (13)	
	Use noise equipment likely to disturb wildlife (8)	
	Possess flora taken from game reserve (3)	
	Conduct commercial activities (1)	
	Possess or carry firearm or bow in game reserve (1)	
	Use a firearm or bow in a game reserve (1)	

2. Objectives of government intervention

2.1 Government policy

The Victorian Coalition Government encourages people to make the most of the opportunities to hunt and fish and enjoy recreational activities that form part of our heritage.⁵

The government is committed to providing even better opportunities for Victoria's 46,000 licensed hunters to enjoy their recreation and to promote the growth of hunting businesses in regional areas across the State.⁶ As part of this commitment, the government established the Game Management Authority in July 2014 which will, amongst other things, work with public land managers to improve the management of state game reserves and other public land where hunting is permitted. The Victorian Government is also supporting the long term growth in hunting by developing a state-wide Hunting and Game Management Action Plan, which will be released later in 2014.⁷

Game hunting in Victoria is regulated to:

- provide continued sustainable, humane, ethical and safe recreational hunting opportunities
- ensure equitable sharing of game resources between stakeholders
- minimise the destruction of non-game species
- ensure the protection of wildlife habitats.

2.2 Objectives

The objectives of the proposed Regulations are to provide for the efficient and effective management of state game reserves in Victoria, in ways that:

- conserve wildlife and their habitats (with particular emphasis on indigenous game species)
- allow for hunting of game species during open season
- ensure the safety, enjoyment and recreation of visitors.

Overall, the proposed Regulations seek to continue to provide sustainable recreational hunting opportunities while ensuring the future of game species, and the protection of their habitats.

2.3 Authorising provision

The proposed Regulations are made under section 87 of the Wildlife Act, which provides that the Governor in Council may make regulations for the management, control, conservation and propagation of wildlife, for the preservation and maintenance of wildlife habitat, and provide for the effective management of hunting.

⁵ The Hon Peter Walsh MP, Media Release, 'Creation of Game Victoria signals new era', Wednesday 28 December 2011.

⁶ State of Victoria, 2012, *Victorian Hunting Guide 2012*, Department of Primary Industry, Melbourne; also at: <http://www.dpi.vic.gov.au/game-hunting/about-game-hunting/publications/hunting-guide>.

⁷ Department of Environment and Primary Industries, 2014, *Victorian Hunting Guide 2014*, Melbourne, February, p. 4.

3. Options to achieve the objectives

3.1 Regulatory and non-regulatory options

The Subordinate Legislation Act requires that regulatory and non-regulatory options must be considered as part of a RIS. Further, the Premier's Guidelines provide guidance on alternative methods by which the Government's objectives may be achieved. Alternatives to subordinate legislation include:

- providing better information to affected groups to raise awareness of their rights and/or obligations
- introducing voluntary Codes of Conduct
- expanding the coverage of existing primary legislation
- encouraging organisations and individuals to consider the impact of their activities on the community and the environment
- establishing a code of practice for the conduct of an activity
- developing efficient markets that would deal with the issue.

The scope of consideration of regulatory and non-regulatory options in many cases is limited because of the existing powers of the Wildlife Act and the limited focus of the residual problem. This chapter will consider alternative options around the residual problems that are likely to have potentially large impacts.

3.2 Alternative options to be considered

The problem identified in Section 1 is essentially about a small number of people doing things or activities which are undesirable, because they are likely to adversely affect wildlife, game hunting, safety or amenity. To this end, three options have been identified. These are:

- Option 1 – voluntary Codes of Conduct
- Option 2 – education campaign
- Option 3 – proposed Regulations.

Another feasible alternative would be, rather than control activities in game reserves, to instead prohibit any access to all state game reserves to all persons other than licensed game hunters, whose behaviours could be controlled through licence conditions. However, as this is clearly a 'heavy handed' approach which unnecessarily will exclude some legitimate uses of Crown land, it has not been formally assessed further in this RIS.

Expanding the coverage of existing primary legislation to regulate matters in the proposed Regulations was not considered to be superior to the proposal. This option would essentially replicate the statutory rules, but in a more costly and less flexible manner.

3.2.1 Option 1 – Voluntary Codes of Conduct

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

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

Codes are more likely to be effective in situations where there is relative homogeneity amongst users, which is generally the case with respect to game hunters or other groups such as bird-watchers or four-wheel drivers. Together, these groups could adopt a code of conduct that broadly covers matters contained in the proposed Regulations.

However, the major disadvantage associated with voluntary codes is the absence of a mechanism to ensure compliance and enforcement. Disciplinary processes, where they exist, may not be transparent. Self-regulation is typically suitable for cases where the problem to be addressed is a low-risk event, or event of low impact.⁸ Hunting activities and impacts on wetlands present a number of risks to environmental sustainability and human safety, and self-regulation by itself may not be appropriate to manage these risks. In addition, self-regulation is more effective where non-compliance can be observed and negative impacts are imposed on a person's reputation. This may make self-regulation unsuitable where many actions are unobservable, such as engaging in recreational activities, including hunting on public land designated as game reserves.

3.2.2 Option 2 – Education Campaign

As an alternative and non-regulatory means to meet the government's objectives, DEPI could undertake an education campaign aimed at game hunters, other recreation users and anti-hunting protestors or lobby groups.

This option would involve a multifaceted campaign to inform game hunters and other users about the conservation and environmental values of state game reserves and the potential for negative impacts associated with inappropriate or excessive levels of human activity.

⁸ Department of Treasury and Finance, 2011, *ibid.*, Appendix B–3.

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

An education campaign is likely to be successful where the target can be easily identified and reached economically. A game hunter education campaign could include advertising in specialist hunting magazines, a media strategy focused on print, electronic, specialist, regional and stakeholder media, using approaches including booked advertising, radio media releases and shell media releases, online communications via the DEPI website, soliciting user groups or associations to disseminate information, or targeted mail-outs to affected groups (e.g. licensed game hunters). Advisory information could also be broadcast or distributed highlighting that visiting state game reserves during hunting seasons is restricted to those holding appropriate licences or authorisations.

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

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

Education and social marketing can be an important complementary policy tool in achieving compliance (e.g. *Get on board with lifejackets* compliance with boating safety requirements) or behavioural change (e.g. *Bloody Idiots* drink driving campaign, *Quit* tobacco campaign). It can also be important in cases where stakeholders generally want to do the right thing, but may lack knowledge or awareness of the consequences of their actions.

3.2.3 Option 3 – Proposed Regulations

The proposed Regulations substantially remake the current Regulations, which are due to expire. The proposed Regulations address the problem identified in Section 1 through:

- allowing the Secretary to make determinations that can prohibit or restrict access to specified areas of state game reserves
- restricting interference with and feeding of wildlife, or interference with their habitats
- prohibiting other animals or flora being brought into state game reserves (with special regulations to allow horses and dogs to enter and remain, and allow access of dogs for some hunting purposes)
- restricting types of events that can take place in state game reserves, and use of vehicles, vessels and aircraft
- general hygiene and protection of the land from use of poisons, soaps and detergents
- other amenity regulations, such as noise.

While the proposed Regulations cover a wide number of types of activities, they align to achieve the objectives set out in section 2.2 above. For example:

- restrictions on the taking or damaging of flora and fauna protect the natural wildlife and habitat as well as providing conditions suitable for game hunting in open season
- restrictions on the introduction of flora and animals are required to protect the natural characteristics of the reserves
- restrictions on use of vehicles is to protect wildlife and habitats
- restrictions on use of firearms and other equipment are to avoid disturbance to wildlife and safety of other visitors.

The table below sets out the general content of each of the proposed Regulations. It also indicates the equivalent current regulation. Many of the regulations have been amended for wording or clarity, with no change of substance. Material changes are separately indicated in the table.

Table 5: Description of proposed Regulations

Proposed Regulations No.		Equivalent Current Regulation	Change
1	Objective	1	Expanded objective to better reflect the Wildlife Act
2	Authorising provision	2	
3	Commencement	3	Proposed Regulations will revoke and replace the current Regulations from 15 October 2014
4	Revocation	4	
5	Definitions	5	Minor consequential changes
6/7	Application of regulations	6	
8	Exemption for traditional owners		New exemption
9	Secretary may prohibit or restrict access to any area of a state game reserve	16	
10	Offence to enter prohibited or restricted area		
11	Request to leave area	37	
12	Requirement to close gates	22	
13	Interfering with animals	7	
14	Feeding animals	8	
15	Secretary may prohibit fishing in an area of a state game reserve		New power
16	Restriction on bringing animals (other than dogs and horses) into a reserve	19	
17	Restrictions on dogs except specified circumstances	18	
18	Dogs must be under control		
19	Gundogs allowed		
20	Responsibility for dogs		
21	Dog owner to remove dog faeces		
22	Secretary may determine areas for dogs		
23	Horses prohibited except in specified circumstances		
24	Horses must be under control		
25	Responsibility for horses		
26	Secretary may determine areas for horses		
27	Use and carriage of poisons and traps	9	
28	Possession or carriage of firearms or bows	10	Inclusion of Sambar Deer as a species to be hunted in Ewing Morass State Game Reserve with firearms and bows

Table 5: Description of proposed Regulations continued

Proposed Regulations No.		Equivalent Current Regulation	Change
29	Use of firearms and bows	11	Inclusion of Sambar Deer as a species to be hunted in Ewing Morass State Game Reserve with firearms and bows
30 & 31	Protection of flora; areas for collecting firewood	12	
32	Introducing flora	13	
33	Interfering with rocks or natural objects	14	
34	Introduction of material prohibited	15	
35	Specific restrictions in Tower Hill State Game Reserve	38	
36	Restriction on noisy devices	31	
37	Secretary may prohibit areas for sport or recreational activity	32	
38	Prohibition on organised events	33	
39	Prohibition on rallies, festivals and public meetings		
40	Prohibition on demonstrations		
41	Prohibition on commercial activities	34	
42	Prohibition on distributing advertising material		New restriction
43	Prohibition on public address systems	31	
44	Prohibition on commercial filming and photography		New restriction
45	Secretary may determine areas where camping is prohibited	23	
46	Restrictions on camping	24 & 25	
47	Restrictions on fire; persons lighting fires in accordance with regulation must clear area and extinguish fire when leaving	17	
48	Disposal of soap and detergents	26	
49	Hygiene	27	
50	Secretary may determine areas when vehicles are prohibited or restricted	28	
51	Contravention of determination		
52	Secretary may specify direction of movement of vehicles within a reserve		
53	Secretary may restrict parking		
54	Secretary may prohibit or restrict vessels	29	
55	Aircraft are prohibited to launch or land	30	
56	Offence to occupy buildings	20	
57	Offence to interfere with signs, fences or structures	20	

Table 5: Description of proposed Regulations continued

Proposed Regulations No.		Equivalent Current Regulation	Change
58	Secretary may prohibit areas for blinds, hides or tree stands	21	Some changes to requirements on blinds and hides (cannot build from native vegetation)
59	Secretary may restrict areas for blinds, hides or tree stands		
60	Requirements for the use and construction of blinds, hides and tree stands		
61	Requirement to dismantle blind, hide or tree stand		
62	Secretary may set conditions on any determination; must cause sign to be erected at entrance	36	
63	Offence to not comply with conditions		
64	Secretary may issue permits		
65	Secretary may cancel permits	35	
66	Offence to not comply with permit		

There are a number of minor changes from the current Regulations. The rationale for these changes is:

- prohibition on distributing advertising material – this activity may contribute to litter or spoil the visual amenity of users. Any such activities must be conducted in accordance with a permit.
- prohibition on commercial filming and photography – a permit is required for professional and some amateur filming and photography in areas managed by Parks Victoria across Victoria’s public land estate.⁹ Permits are required so filming and photography in parks is managed safely and responsibly. Parks Victoria places conditions on permits to minimise the impact on the park, park visitors, tenants and tour operators.
- exemptions for Traditional owners – this is required to ensure that Traditional owners are not committing an offence when carrying out traditional activities in accordance with a Natural Resource Authorisation Order given under the *Traditional Owner Settlement Act 2010*.
- power to prohibit fishing – during open seasons it may be dangerous to undertake fishing activities, or the restriction may be required for biodiversity reasons.

Stakeholders have requested that Ewing Morass State Game Reserve be opened for Sambar Deer hunting, as large numbers of Sambar Deer inhabit the reserve. Following consultation with stakeholders as well as the primary land manager (Parks Victoria) and the Game Management Authority it is proposed that Ewing Morass State Game Reserve should be available for Sambar Deer hunting for the

first time between 1 May and 30 November of each year. Hunting of Sambar Deer will continue to be prohibited in all other state game reserves.

Currently, Ewing Morass State Game Reserve has no restriction on the time or number of people that can access it. Parks Victoria, as the land manager for Ewing Morass State Game Reserve, has assessed that hunting Sambar Deer by stalking will have a very low impact on vegetation because hunters spread out and do not tend to congregate. This minimises any long-term disturbance or impacts to vegetation and habitat that supports game species or other native biodiversity within Ewing Morass State Game Reserve. Also, Sambar Deer are present in the forested areas in the north of the reserve, which is situated away from the wetlands where waterfowl are hunted during open season for duck hunting. Ewing Morass State Game Reserve is a very large reserve and the numbers of Sambar Deer are continuing to increase, which impacts upon the natural environment. It is considered appropriate that Sambar Deer populations be managed by hunting between May and November.

Ewing Morass State Game Reserve is located between Lakes Entrance and Marlo, bordering State Forest which is open to Sambar Deer hunting by stalking year round, and is large enough (6,700 hectares) to support the sustainable hunting of Sambar Deer without impacting on waterbirds or their habitat. Duck hunting in Ewing Morass State Game Reserve occurs at the southern strip of the reserve, running east to west while Sambar Deer hunting opportunities would occur in the heavy forested areas away from duck hunting.

9 For details on this policy see: <http://parkweb.vic.gov.au/park-management/applications,-licences-and-permits/filming-and-photography>.

It is a logical addition to the area of State forest currently open to Sambar Deer hunting. The reserve forms part of a contiguous forested landscape that will always provide habitat and corridors for deer.

Ewing Morass State Game Reserve is not a high use public area other than for hunting. Presently, hunting of Hog Deer is permitted for one month of the year (April) with the breeding season occurring between December and January. Duck hunting is permitted between 1 March and 30 June of each year.

In order to strike an appropriate balance between hunting of duck, Hog Deer and Sambar Deer in Ewing Morass State Game Reserve, Sambar Deer will be permitted to be hunted by stalking only between 1 May and 30 November of each year. This will avoid the disturbance of any ground nesting birds, will remove any competition between Hog Deer and Sambar Deer hunters and will not significantly impact on breeding seasons. There will be no significant impact on vegetation and habitat that supports game species or other native biodiversity within the reserve.

3.3 Groups affected

The major group that will be directly affected by the proposed Regulations are game hunters who hunt in state game reserves (this is a subset all of game hunters). Any extension of hunting in state game reserves, for example Sambar Deer hunters in Ewing Morass State Game Reserve, will benefit deer hunters, but may impinge upon other users. Some individuals from the general community may also be affected by the proposed Regulations, as access to certain wetlands during specified times over the opening weekend of the duck hunting season will be limited to persons with a current game licence. These may include bird watchers, campers, hikers and other recreational users. Persons wishing to protest against game hunting will also be restricted from state game reserves during hunting seasons. It should be noted, however, that most state game reserves are limited in size and are characterised as wetland, tending to attract smaller numbers of visitors than national and state parks.

4. Costs and benefits of the options

4.1 Base case

The 'base case' describes the position that would exist in the absence of the proposed Regulations. It is necessary to establish this position to make a considered assessment of the incremental costs and benefits of the viable options.

For this RIS, the base case is the absence of specific regulations in relation to state game reserves. Under this situation game hunting could occur, but without strict controls. Other general regulations that would remain in force, however, include the Wildlife (Game) Regulations 2012 and the Firearms Regulations 2008. This scenario allows us to examine the residual problem, which will focus on behaviours that may negatively affect legitimate users, the environment and amenity.

The proposed Regulations create positive obligations to do certain things. These include obligations to close gates, to keep dogs and horses under control, to remove faeces, to dismantle blinds, and to extinguish fires. Even in the absence of regulations, DEPI expects that the majority of people visiting game reserves would exhibit these behaviours anyway. Similarly, in the absence of specific provisions against interfering with animals or flora, or introducing new animals or flora, most people would already exhibit the behaviour expected. In this regard, it is highlighted that the majority of visitors 'self-regulate' their behaviours and generally act in accordance with the regulations.

As part of the base case there is published information that may assist visitors act in appropriate ways, for example the *Victorian Hunting Guide 2014*, *Victorian State Game Reserves: a hunter's guide*, the Game Management Authority website and the DEPI website. In addition, hunting groups also have codes of conduct that seek to regulate the conduct of their members.

4.2 Methodology

4.2.1 Assessment of costs

The Subordinate Legislation Act requires, amongst other things, a RIS to assess the costs and benefits of proposed regulations. This legislation also requires that a RIS identify practicable alternatives to the proposed Regulations and assess their costs and benefits as compared to the proposed Regulations. The RIS is not required to identify alternatives which are not feasible or practicable.

4.2.2 Type and incidence of costs

The *Victorian Guide to Regulation* identifies three categories of regulatory costs: compliance costs, market costs and financial costs.¹⁰ The only relevant costs in the case of the proposed Regulations are compliance costs. Compliance costs, in turn, may be placed into two categories:

'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 restriction on an activity would be considered a substantive compliance cost. Almost all matters managed in the proposed Regulations are substantive compliance costs

'Administrative costs', often referred to as red tape, are those costs incurred by businesses 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. An application for a permit is considered to be an administrative cost. Although a minor part of the proposed Regulations, there are around 20 permits that may be applied for under the proposed Regulations.

4.2.3 Multi-criteria Analysis (MCA)

For the proposed Regulations, the costs and benefits proved difficult to quantify in monetary terms. Multi-criteria Analysis (MCA) is presented in this RIS as an alternative assessment tool. The MCA approach is described in the *Victorian Guide to Regulation*.¹¹ This approach is useful where it is not possible to quantify and assign monetary values to the impacts of a proposed measure (e.g. measures that have behavioural or environmental impacts). Furthermore, it represents a convenient way of comparing a range of alternative approaches.

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

Three criteria – conservation of wildlife and habitat, opportunities for game hunting, and safety and amenity – were chosen and weightings selected (see Table 6). They broadly reflect the government's objectives and weighting priorities in the context of game hunting. Cost is also included as a criterion, with 50 per cent weighting, as it is important to consider both costs and benefits when assessing regulatory options. Here, costs include both compliance costs to individuals of having to comply with the regulations, as well as costs to government of administering them.

10 DTF 2011, *ibid*.

11 DTF 2011, *ibid.*, p. 85.

Table 6: Multi-criteria Analysis Criteria

Criterion	Description of criterion	Weighting
Conservation of wildlife and habitat	The degree to which an option is effective in addressing residual risks to harm and disturbance to wildlife and their habitats relative to the base case of unrestricted access to state game reserves by hunters and non-hunters.	20
Opportunities for game hunting	The degree to which an option promotes access and quality of game hunting opportunities, including sustainability of game hunting in the future	20
Safety, enjoyment and recreation of visitors	The degree to which an option protects personal safety of visitors, and enhances the amenity	10
Costs	The costs of the options, being not only financial costs but any type of burden or onus	50

Under an MCA, each option is assessed against each criterion and scored from -100 to +100. Scores are relative to the base case, so the scoring reflects than an option can be either better or worse than the base case. Scores against individual criterion are then weighted and added to achieve an overall score for that option. Scores of other options can then be directly compared. The higher MCA scores indicate a preferred approach.

4.2.4 Decision Rule

Given the difficulty in measuring costs and benefits associated with state game reserves, this RIS uses the MCA assessment tool to assess the costs and benefits of the viable options. As noted above, the option with the highest score represents the preferred approach. Overall, the option with the highest MCA score is preferred.

4.3 Assessment of options

4.3.1 Option 1 – voluntary codes of conduct

The government could establish a number of codes of conduct for game hunters. Codes could be developed by hunting groups which would mean that government would play a minimal role, or, the government in partnership with hunting groups could develop codes of conduct/practices to reduce the impacts on state game reserves as a result of human behaviour. It is worth noting that many hunting groups currently publish codes of ethics and safety rules, although these generally promote higher level principles and do not seek to regulate activities covered by the proposed Regulations.

The main benefit of voluntary codes is that they can utilise hunter expertise and are usually associated with stakeholder buy-in, which may encourage compliance. In addition, codes can be tailored to the needs of particular groups and are generally more flexible than regulations. The main disadvantages of this alternative — as with an education campaign below — are the possibilities of non-compliance and difficulties associated with enforceability, as well as whether or not the actions of members are observable. Hunting groups would be expected to enforce their own voluntary codes and voluntary codes may not easily apply to cases where hunters are not members of hunting groups. It is also evident that anti-hunting groups would be unlikely to comply with ‘hunting codes’. In these cases, action could not be taken against non-compliers because they are not members of a hunting group.

Industry codes are generally cost effective methods of regulation. Such codes could each cost in the order of \$50,000 to develop, implement and communicate. Therefore, if three or four codes were developed for particular user groups, the cost over a ten year period could be in the order of \$150,000 to \$200,000, with initial costs being incurred in the early years and minor ongoing costs associated with updates and dissemination.

A number of hunting groups currently require their members to adhere to codes of conduct or ethical standards. For example, Field and Game Australia has such a code requiring its members to act ethically and respectfully.¹² This code itself relies on government regulations, noting that

12 Source: Field and Game Australia Inc, ‘Hunting Code of Conduct & Ethics’: <http://www.fga.net.au/hunting-code-of-conduct-ethics/w3/i1028105/>

Respect for Rules, Regulations and People – Hunters are required to obtain the appropriate licenses from the relevant state regulatory body before participating in hunting on private or public lands and must be familiar with and comply with ALL relevant legislation. At all times hunters must: Act in a responsible and respectful manner; observe and adhere to all appropriate camping regulations – especially taking home what was taken in. Public Land – Shooters hunting on public land must observe and respect the natural environment and ensure they: are alert to and aware of other land users who may be in the area; observe all regulations regarding the internal and external boundaries of public land areas referring to maps and regulations to ensure compliance is maintained; [and] have all relevant permits and licenses and understand guidelines pertaining to game species, seasons and bag limits. Conduct – Good hunting behaviour will reflect on people’s opinions of all hunters. It is important to: Respect the views of other members of the community and the opinions of non-hunters; be considerate and courteous always demonstrating to the public that hunters behave responsibly and practice ethical and sustainable hunting practices.

all hunters should act in accordance with legislation and regulation. Similarly, the Australian Deer Association has a code of conduct that includes member requirements to avoid confrontation with and not infringe on the activities of other hunting groups, landowners, government employees and the general public. It also requires members to exercise care with fires, leave campsites clean, and take care not to damage vehicle access tracks.¹³ These codes currently supplement the regulations rather than replace them.

While voluntary codes (in the absence of any specific regulations) would be an improvement over the base case, this RIS finds that there is justification for further intervention to meet government objectives. Moreover, the government may lose the ability to exercise discretion concerning areas it considers necessary to regulate. These

problems would be less pronounced under a compulsory code. However, compliance and enforcement would remain significant issues. Again, codes may be relatively effective in addressing simple information gaps, but may have little effect on reducing aberrant or illegal behaviour. For similar reasons outlined relating to an education campaign, this alternative is not considered a superior option to the proposed Regulations.

As noted above, voluntary codes of conduct are best suited to situations in which the risks associated with non-compliance are low. This RIS argues that the risks are not low in the case of game hunting or impacts on wetland areas. Non-compliance could lead to environmental harms and risks to public safety.

This option has been assessed against the MCA criteria as follows.

Table 7: MCA assessment of Option 1 – Voluntary Codes of Conduct

Criterion	Assessment	Score
Conservation of wildlife and habitat	Likely to be a minor impact, although lack of compulsion/penalty likely to have limited impact on some aberrant behaviours.	30
Opportunities for game hunting	In the absence of being able to define clear areas for game hunting, people are more likely to use these areas of state game reserves for other activities such as camping, organised events, etc. This inhibits the opportunities for game hunting. Voluntary codes may improve people's appreciation of the need for state game reserves, but without the powers to determine areas and restrict access and activities, there is likely to be a lack of coordination as to which areas are to be kept for hunting at certain times. This option would therefore have a positive impact but is likely to be less effective than an education campaign (which scored 40 for this criterion) because awareness of codes may be limited to those in hunting groups.	35
Safety, enjoyment and recreation of visitor	While voluntary codes are likely to improve awareness of the activities in state game reserves, lack of clearly defined restrictions on access to particular areas and limitations on types of activities is likely to see an increase (from that under the current Regulations) in the number of non-hunting visitors to the state game reserves. This increases risks to safety and amenity. Therefore, while voluntary codes would still improve against the base case, this option is scored less than the proposed Regulations and education campaign.	30
Costs	The cost of developing codes had been estimated to be in the order of \$150,000 to \$200,000 over a ten year period. This represents the least expensive option.	-10
Total score (Weighted)		11

13 Australian Deer Association, 'Code of Conduct': <http://austdeer.com.au/code-of-conduct>

Variations of this option by mandating membership of a hunting group (with well-developed codes) would improve this score marginally, but it would still clearly not be superior to Option 3.

4.2.3 Option 2 – Education campaign

The main advantage of this alternative is that it could address information shortfalls. For example, it could clarify requirements under the Wildlife Act and provide persons with guidance about how to minimise their impacts on the amenity of others and on the environment.

The main and most significant disadvantages of this alternative are ensuring compliance and providing an enforcement mechanism through sanctions and penalties. In terms of enforcement, this alternative may be less effective than other approaches as it relies on voluntary compliance rather than being supplemented by the element of coercion. It would be feasible to target this campaign at game licence holders. However, the efficacy of the campaign is likely to be uneven amongst hunters (i.e. many would no doubt diligently study the information, whilst others may not). An information campaign also raises practical difficulties given that some of the proposed Regulations adopt elements of the Wildlife Act and do not relate to information problems.

The cost of education campaigns vary considerably, ranging from many millions of dollars to targeted mail-outs to certain professions or licensees. The *Get on board with lifejackets* campaign may be relevant in estimating an indicative cost for an education campaign, given that it targets a specific set of recreational users. The initial *Get on board with lifejackets* campaign cost in the order of \$750,000 over three years. With this figure in mind, for the purposes of this RIS, a total cost over a 10year period of \$1 million is assumed.

Finally, the risks associated with non-compliance are relatively high, i.e. serial non-compliance could result in serious harm to the environment or risks to public safety.

Given the practical difficulties associated with an education campaign, it is unlikely that this alternative alone would be as effective as the proposed Regulations given the voluntary nature of compliance and enforceability. The score for this option is similar to Option 1 (voluntary codes of conduct), but scores slightly higher reflecting a possible broader coverage of information compared to codes managed by hunting groups (not all hunters are members of hunting associations).

That said, DEPI currently provides a number of information sources including the annual *Victorian Hunting Guide*, flyers and brochures, and includes information about hunting game on its website. **Therefore, an information campaign is considered a valuable complementary non-regulatory tool to improve compliance.** However, by itself, it is unlikely to achieve the government's objectives to a sufficient degree.

This option has been assessed against the MCA criteria as follows.

Table 8: MCA assessment of Options 2 – Education Campaign

Criterion	Assessment	Score
Conservation of wildlife and habitat	Likely to be a minor impact, although lack of compulsion/penalty likely to have limited impact on some aberrant behaviours. This criterion scores slightly higher than Option 1 because the regulatory message is likely to reach a broader audience (not all hunters, or other users of state game reserves are members of hunting associations and hence may be unaware of their codes of conduct).	40
Opportunities for game hunting	In the absence of being able to define clear areas for game hunting, people are more likely to use these areas of state game reserves for other activities such as camping, organised events, etc. This inhibits the opportunities for game hunting. An education campaign may improve people’s appreciation of the need for state game reserves, but without the powers to determine areas and restrict access and activities, there is likely to be a lack of coordination as to which areas are to be kept for hunting at certain times. This option would therefore only have a small positive impact.	40
Safety, enjoyment and recreation of visitors	An education campaign focussing on safety and enjoyment of recreational opportunities in state game reserves is likely to resonate with a broader audience. Voluntary codes of conduct are usually provided in printed form to members and/or are placed on websites. These can be difficult to locate, especially for non-hunters or hunters who are not members of groups. Public education may also provide a ‘nudge’ for many recreational users who generally want to do the right thing, but may be ignorant of the consequences of their impacts. It is therefore assessed that the greater resonance with a broader audience and easier accessibility make this option slightly superior to the reliance on voluntary codes – a score of 40 (compared to 30 for Option 1) is assigned to this criterion.	40
Costs	A proposed education campaign would require further research to design a communications strategy in order to most effectively target the information, and there can be an estimated total cost over a ten year period of approximately \$1 million. However, it is likely that this option would cost less than enforcing regulations. While an education campaign is considerably less costly than the proposed Regulations, it is likely to be more expensive than the development of voluntary codes. Therefore, the cost score assigned to this criterion is greater than that assigned to Option 1.	-15
Total score (Weighted)		12.5

4.3.3 Option 3 – Proposed Regulations

The proposed Regulations are aimed at giving reasonable protection to wildlife, wildlife habitats, and both human and wildlife safety and amenity. These are areas of improvement over the base case, and represent the expected benefits of the proposed Regulations. DEPI expects the proposed Regulations to be relatively effective, as the number of offences under the current Regulations has been low.

The proposed Regulations also impose different kinds of costs. While the complete set of costs cannot be meaningfully quantified, the proposed Regulations impose a series of costs on visitors to game reserves and to government.

The table below outlines the costs imposed by the proposed Regulations.

Table 9: Costs imposed by the proposed Regulations

Reg. No.	Description	Burden Type	Burdened group
Substantive compliance costs			
12	Obligation to close gates	Substantive compliance burden	Visitors
17	Requirements for dogs	Substantive compliance burden	Visitors
18, 24	Dogs and horses must be under control	Substantive compliance burden	Visitors
21	Owner to remove faeces	Substantive compliance burden	Dog owners
49	Burying faeces	Substantive compliance burden	Visitors
61	Requirement to dismantle blind etc	Substantive compliance burden	Visitors
47	Fires – clear area, extinguish fire	Substantive compliance burden	Visitors
Limitations on actions			
10	Offence to enter prohibited or restricted area	Limitation	Visitors
13, 14, 15	Restriction on interfering with animals, feeding, fishing	Limitation	Visitors
16, 17, 23	Animals prohibited	Limitation	Visitors
27	Restrictions on poisons and traps	Limitation	Visitors
28, 29	Restrictions on firearms and bows	Limitation	Visitors
30, 31, 33	Offence to damage flora, introduce flora, interfere with natural objects, introduce material	Limitation	Visitors
35	Restrictions on discharge of firearms in Tower Hill	Limitation	Visitors
36	Restrictions on producing noise	Limitation	Visitors
37 – 44	Restrictions on sport, recreational activities, organised events, etc.	Limitation	Visitors
45, 46, 48	Restrictions on camping	Limitation	Visitors
47	Restriction on fires	Limitation	Visitors
51, 53–55	Restrictions on vehicles, vessels, aircraft	Limitation	Visitors
52	To obey one way directions	Limitation	Visitors
56	Offence to occupy buildings	Limitation	Visitors
57	Offence to interfere with signs	Limitation	Visitors
58, 59	Restrictions on blinds, etc	Limitation	Visitors
Costs to government			
9, 22, 26, 31	Secretary may make determinations	Administrative cost to government	Government
64	Issue of permits in writing	Administrative cost to government	Government
62	Secretary to display signs or notices	Substantive cost to government	Government
All	Costs of enforcing regulations (monitoring, issue warnings, prosecutions, etc).	Enforcement cost	Government

It has proven difficult to quantify these costs. There are a small number of positive obligations on visitors to game reserves that are likely to be more common. However, there is no available data on the frequency of these, so the cost of the obligations is unknown. Further, in most cases, the desired behaviours would likely occur without regulation, so the additional burden caused by the proposed Regulations is likely to be very small overall. While there are restrictions, in practice the cost of these restrictions are really only imposed on those with aberrant behaviour.

Administrative costs – cost to applicant

While most costs associated with the proposed Regulations proved difficult to quantify, a reasonable estimation of the administrative costs to persons applying for permits and costs to government could be made.

As noted above, an application for a permit is considered an administrative cost. The proposed Regulations are generally prohibitive in nature. However, to provide flexibility the proposed Regulations contain a range of ‘permissions’ that allow a person to undertake certain activities that would normally be prohibited under the proposed Regulations. Table 10 below shows that type of activities for which a permit may be obtained. Proposed regulation 64 provides for the issuing of permits by the Secretary. Despite the wide range of permits that may be applied for, DEPI advises that only around 25 permits are applied for and received annually.

Table 10: Permits issued by the Secretary

Regulation	Permission to undertake activities restricted by the proposed Regulations
10	Offence to enter prohibited or restricted access area
13	Interfering with animals
14	Feeding animals restricted
16	Animals other than dogs or horses
17	Dogs prohibited except in specified circumstances
23	Horses prohibited except in specified circumstances
27	Use and carriage of poisons and traps
28	Possession or carriage of firearms or bows in reserves
29	Use of firearms or bows
33	Interfering with rocks or natural objects
36	Noisy devices or equipment
37	Engaging in sport or recreational activity
38	Organised events
39	Rallies, festivals and public meetings
40	Demonstrations and similar events
41	Commercial activities
42	Advertising material
43	Public address of a commercial nature
44	Commercial filming and photography
55	Aircraft
57	Offence to interfere with signs, buildings and other structures

The administrative costs associated with permit applications to undertake particular activities in state game reserves have been estimated to be in the order of \$8,000 (PV) over a 10-year period.¹⁴

Government costs

The Government incurs costs to administer and enforce regulations. It was estimated in the Wildlife (Game) Regulations 2012 RIS that Parks Victoria incurred \$3,650 in general management costs per state game reserve, or equivalent to \$678,000 in total per annum. Over a ten year period this was equivalent to \$5.6 million (PV).¹⁵ Based on the increase from 186 state game reserves in 2012 to the current figure of 199, this figure is adjusted at \$726,350 per annum with a projected cost of \$6 million over a ten year period (PV). These costs result from enforcement and compliance activities for a number of regulations that apply to state game reserves and cannot be fully attributed to the discussion above.

proposed Regulations. It is assumed for the purpose of this RIS that 75 per cent of those costs of \$726,350 per annum are directly attributable to the proposed Regulations.¹⁶ This is equivalent to \$544,762 per annum or \$4.5 million (PV) over a ten year period.¹⁷

As noted, the number of infringements and prosecutions under the current Regulations is low, so the cost of enforcing the current Regulations could be a smaller percentage of overall enforcement costs relevant to the sector. While some other costs to government are notionally quantifiable (e.g. the cost of erecting signs), these are largely already in place and would not need to be redone under the proposed Regulations.

Multi-criteria assessment

The following MCA scores were determined based on the

Table 11: MCA assessment of Options 3 – Proposed Regulations

Criterion	Assessment	Score
Conservation of wildlife and habitat	The proposed Regulations restrict unauthorised interference and destruction of wildlife and their habitats. The current Regulations are considered to be relatively effective in achieving this, given the low level of non-compliance. Furthermore, the element of coercion associated with penalties may serve as a deterrent from engaging in harmful actions.	60
Opportunities for game hunting	The proposed Regulations are aimed at preserving defined areas for the primary use as game hunting. Restrictions on other activities and noise are designed to ensure game hunting can be pursued. An enforceable framework is likely to improve opportunities for hunting compared with other regulatory options that rely on voluntary actions.	70
Safety, enjoyment and recreation of visitors	Some of the proposed Regulations are aimed at ensuring safety and protecting amenity of visitors to state game reserves. Again, clearly stipulated obligations, buttressed with enforceable actions, are likely to be more effective in prevent aberrant or unsafe behaviours.	60
Costs	Government administration and enforcement costs have been estimated at \$544,762 per annum or \$5.4 million (PV) over a ten year period. In addition, administrative costs of \$8,000 per annum have been estimated for permit applicants. The costs of this option are expected to be higher than Options 1 and 2.	-30
Total score (Weighted)		17

14 Calculations and assumptions underlying this figure are contained in Attachment A.

15 Department of Primary Industries, Game Victoria, Wildlife (Game) Regulations 2012 Regulatory Impact Statement, July 2012.

16 The Wildlife (Game) Regulations 2012 Regulatory Impact Statement attributed 25 per cent of general management costs in state game reserves to the Wildlife (Game) Regulations 2012.

17 Annual costs are discounted by 3.5 per cent as suggested in the Victorian Guide to Regulation, Appendix C, 'Choice of discount rate', p. 19.

4.4 Preferred option

Having scored a higher overall score against the assessment criteria, Option 3 – the proposed Regulations, is considered to be the preferred option.

Table 12: Summary of MCA Assessment of Options

Criterion	Option 1: Codes of conduct	Options 2: Education campaign	Options 3: Proposed Regulations
Conservation of wildlife and habitat	30	40	60
Opportunities for game hunting	35	40	70
Safety, enjoyment and recreation of visitor	30	40	60
Costs	-10	-15	-30
Total score (Weighted)	11	12.5	17

The Department notes that the final scores are close, and changes to the weighting of criteria and/or the scores assigned may change the outcome. DEPI, therefore, seeks comments on the assessment of these options.

5. Assessment of competition effects

Competition impacts

At the Council of Australian Governments meeting in April 1995 (reaffirmed in April 2007), all Australian governments agreed to implement the National Competition Policy.

As part of the *Competition Principles Agreement*, all governments, including the Victorian Government, agreed to review legislation containing restrictions on competition under the following guiding principle:

Legislation (including Acts, enactments, Ordinances or Regulations) should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the restriction to the community as a whole outweigh the costs; and
- (b) the objectives of the regulation can only be achieved by restricting competition.

The *Victorian Guide to Regulation* adopts these fundamental principles and states that a legislative measure is likely to have an impact on competition if any of the following questions can be answered in the affirmative:

- Is the proposed measure likely to affect the market structure of the affected sector(s), i.e. will it reduce the number of participants in the market, or increase the size of incumbent firms?
- Will it be more difficult for new firms or individuals to enter the industry after the imposition of the proposed measure?
- Will the costs/benefits associated with the proposed measure affect some firms or individuals substantially more than others (e.g. small firms, part-time participants in occupations, etc)?
- Will the proposed measure restrict the ability of businesses to choose the price, quality, range or location of their products?
- Will the proposed measure lead to higher ongoing costs for new entrants that existing firms do not have to meet?
- Is the ability or incentive to innovate or develop new products or services likely to be affected by the proposed measure?

The proposed Regulations will enable access to state game reserves to be limited and prohibit certain kinds of activities in game reserves.

The major group that will be affected by the proposed Regulations are game hunters, who will be required to comply with the proposed Regulations when hunting game. Some individuals from the general community may also be affected by the proposed Regulations.

As the proposed Regulations relate to recreational, non-profit activities, there is no market as defined under competition policy. The proposed Regulations relate to recreational rather than commercial activities and are required to ensure the long-term conservation of Victoria's game species and other wildlife. It is worth noting, that there are a small number of privately run game hunting businesses conducted on private property. However, there is nothing in the proposed Regulations that impinges upon these businesses.

Some commercial activities may be indirectly affected by the proposed Regulations, although these restrictions are common across other public land tenures. For example, the proposed Regulations prohibit commercial filming and photography in the reserves and some other commercial activities. However, from a competition point of view, these apply to everyone and, therefore, do not affect competition *within* a market or *between* market participants.

Overall, the assessment of competition impacts concludes that the regulations generally do not restrict competition.

6. Implementation and enforcement issues

Given that similar regulations have been in place for 20 years (and game hunting has been regulated in Victoria for 150 years), DEPI considers that stakeholders will be familiar with the requirements and no implementation issues should arise. A program will be developed and delivered to inform the public of the new and revised regulations to ensure there is a clear understanding and to maximise voluntary compliance with the new arrangements.

The enforcement of the proposed Regulations will be principally undertaken by authorised officers from Parks Victoria, particularly during the seasons for hunting. In addition, other authorised officers from DEPI and other agencies (Victoria Police and the Game Management Authority) will also enforce the proposed Regulations. These other agencies, in many cases, are responsible in part for enforcing the proposed Regulations, as the broad regulation of game hunting includes compliance with land management legislation as well as laws relating to the use of firearms, weapons and vehicles/boats.

As noted in this RIS, the number of offences actually committed under the current Regulations has been low, suggesting a good level of compliance.

The Tower Hill State Game Reserve has been a relatively 'dry' wetland for many years and is now mostly used for recreational purposes by the public. While it is still classified as a state game reserve it is only available for duck hunting during the open season during the dawn and dusk period, but not during the day.

The penalties have remained at 10 penalty units since 1994. Consideration was given to increasing these penalty amounts given the different user-characteristics of the Tower Hill State Game Reserve. However, following further consideration of the high rate of compliance with the current Regulations it has been decided that the current rates are adequate to manage compliance.

The appropriateness of these penalties and their levels was discussed with Criminal Law Policy and the Infringement System Oversight Unit in the Department of Justice.

7. Consultation

DEPI wrote to key stakeholders in September 2013 to seek their views on the remaking of the current Regulations. Thirty-seven organisations likely to be interested in the regulations were contacted, including hunting groups, outdoor recreation groups, environmental groups, Catchment Management Authorities, and a local government representative group. Responses were received from the following stakeholders:

- Four Wheel Drive Victoria
- Australian Deer Association (Victoria)
- Field and Game Australia
- Sale Field and Game Association Inc.
- Goulburn Broken Catchment Management Authority
- Victorian Game and Deerstalking Association
- North Eastern Deerstalkers Association
- Sporting Shooters Association of Australia (Victoria)

The table below outlines significant issues identified in the responses and how these have been considered. There was also a range of other drafting or minor changes suggested which have been considered by DEPI.

Table 13: Issues raised during stakeholder consultation

Issue raised	Response
Objective/purpose of Regulations does not reflect game hunting	The objective of the proposed Regulations has been expanded and now reflects the need to provide for game hunting.
State game reserves should be managed by Game Victoria (now the Game Management Authority)	DEPI is responsible for the management of Crown land. The Game Management Authority does not have a role in land management activities.
There is a need to allow revegetation and replanting in reserves	While this may be appropriate in some areas, it is preferred that this is managed DEPI to ensure activities are coordinated. Therefore, the general prohibition on introduction of flora remains.
Gun dogs should be allowed for Hog Deer hunting	Hog Deer, the species most sensitive to harvesting pressure due to their relatively small numbers and restricted range, cannot be hunted with gun dogs. This issue is governed by the Wildlife (Game) Regulations 2012, not the proposed Regulations.
Ewing Morass State Game Reserve should be opened up to Sambar Deer hunting	It has been determined that Sambar Deer hunting by stalking as a seasonal target species in Ewing Morass State Game Reserves is an appropriate recreational hunting opportunity.
Lack of definitions of some terms (e.g. there is currently no definition of 'blind' or 'hide')	Defined terms have been reviewed and appropriate changes made. Some new definitions (e.g. blinds and hides) have been added to the proposed Regulations.
Access to state game reserves for the training of retrieving dogs, or other training activities or events organised for hunters	The proposed Regulations allow for the granting of permits. It is considered appropriate to consider these on a case by case basis.
State game reserves should be open to legitimate guides to hunt game birds with their international clients (i.e. a commercial activity)	The proposed Regulations allow for the granting of permits. It is considered appropriate to consider these on a case by case basis.
Regulation on annoying activities is overly prescriptive	The regulation on noise has been redrafting to focus on the outcome rather than particular causes of noise.
State Game Reserves should be open to hunting of pest animals	The core purpose of state game reserves is to provide for the hunting of game species. It is not considered appropriate that pest animals be hunted in state game reserves as this may disrupt breeding wildlife. Pest animals are hunted in state game reserves via controlled programs and through the granting of permits.

Stakeholders have requested that Ewing Morass State Game Reserve be opened for Sambar Deer hunting, as large numbers of Sambar Deer inhabit the reserve. Following consultation with stakeholders as well as the primary land manager (Parks Victoria) and the Game Management Authority it was determined that Ewing Morass State Game Reserve should be available for Sambar Deer hunting for the first time between 1 May and 30 November of each year. It will continue to be prohibited in all other state game reserves.

There was some support for increasing some penalties for failing to comply with determinations. The Premier's Guidelines recommend that penalties attracting more than 20 penalty units be placed in primary legislation rather than regulations (cl. 43).¹⁸ The penalties in the proposed Regulations have been reviewed and discussed with the Infringement System Oversight Unit in the Department of Justice.

Further issues have been raised in preliminary consultation as to how particular provisions will be used (for example, seasonal or temporary closure of tracks, or particular areas that could be allowed for hunting). DEPI will continue to work with relevant stakeholders in the exercise of the regulations.

This RIS represents another step in the consultation process and DEPI welcomes comments or suggestions with respect to the proposed Regulations and ways to improve their design and application. This RIS will be publicly available on the DEPI website. Copies of this RIS have been forwarded to key stakeholders inviting comments.

The Subordinate Legislation Act requires that the public be given at least 28 days to provide comments or submissions regarding the proposed Regulations. Given that the proposed Regulations are similar to the current Regulations (and where changes have occurred, these have tended to lower regulatory burdens, update technical specifications or streamline arrangements), the consultation period for this RIS will be 28 days. Written comments are required by no later than **5.00pm, 30 September 2014**.

¹⁸ Subordinate Legislation Act 1994 Guidelines ('Premier's Guidelines'), clause 43, [http://www.ocpc.vic.gov.au/CA2572B3001B894B/WebObj/sla26Guidelines20110818/\\$File/sla26Guidelines20110818.pdf](http://www.ocpc.vic.gov.au/CA2572B3001B894B/WebObj/sla26Guidelines20110818/$File/sla26Guidelines20110818.pdf).

Bibliography

Department of Environment and Primary Industries, 2014, *Estimating the economic impact of hunting in Victoria in 2013*

Department of Environment and Primary Industries, 2012, *Victorian Hunting Guide 2012*, Melbourne

Department of Environment and Primary Industries, 2014, *Victorian Hunting Guide 2014*, Melbourne, February

Department of Natural Resources and Environment, 1997, *National Competition Policy Review of the Prevention of Cruelty to Animals Act 1986*, prepared by KPMG Management Consulting, Melbourne

Department of Primary Industries, Game Victoria, Wildlife (Game) Regulations 2012 Regulatory Impact Statement, July 2012

Department of Sustainability and Environment, 2004, *Victorian State Game Reserves: a hunters' guide*, State of Victoria, East Melbourne

Department of Treasury and Finance, 2011, 2.1 ed, *Victorian Guide to Regulation incorporating: Guidelines made under the Subordinate Legislation Act 1994*, Melbourne, August

Department of Treasury and Finance, 2013, *Victorian Regulatory Change Measurement Manual*, Melbourne, November

National Competition Council, 2003, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume two – Legislation review and reform*, AusInfo, Canberra

The Hon Peter Walsh MP, Media Release, 'Creation of Game Victoria signals new era', Wednesday 28 December 2011

Attachment A

Administrative costs – costs to applicants of applying for permits

Administrative Costs: Regulation 64 – Issuing of Permits					
Regulatory compliance costs	Price		Quantity		Cost (\$)
Administrative costs	Tariff ¹	Time ²	Population ³	Frequency ⁴	
Application for permits	39.24	1.0	25	1	981
Total					981

Discounted (10 years)				
Year	Cost (\$)			Discounted Cost (\$) ⁵
1	981			948
2	981			916
3	981			885
4	981			855
5	981			826
6	981			798
7	981			771
8	981			745
9	981			720
10	981			695
Total				8,159

Notes

1. Tariff the value of a person's time. See Assumption 2.
2. Expressed in hours, e.g. 30 minutes equals 0.5.
3. Number of permits issued annually advised by DEPI.
4. Events per annum, e.g. annual equals 1.
5. Assumes a discount rate of 3.5 per cent. See Assumptions.

Assumptions

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

$$HR_x = (AE_x / AW_x \times AH_x), \text{ where:}$$

AE_x = average weekly earnings multiplied by 52;

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

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

See *Victorian Guide to Regulation* (Appendix C, 'Valuing staff time', p. 15).

This provides an hourly value of a person's time of **\$39.24** (i.e. \$1,361.60 × 52 divided by (44 × 41)).

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