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LEGISLATION

Proclamations



New South Wales

Proclamation

under the

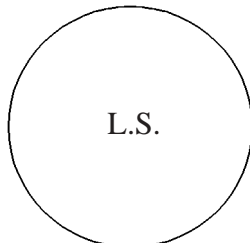
**Crimes Legislation Amendment (Penalty Notice Offences) Act
2002 No 46**

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 2 (1) of the *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002*, do, by this my Proclamation, appoint 1 September 2002 as the day on which the whole of that Act (other than Schedule 1 [2] to that Act) commences.

Signed and sealed at Sydney, this 28th day of August 2002.

By Her Excellency's Command,



L.S.

BOB DEBUS, M.P.,
Attorney General

GOD SAVE THE QUEEN!

Explanatory note

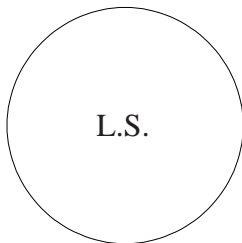
The object of this Proclamation is to commence the whole of the *Crimes Legislation Amendment (Penalty Notice Offences) Act 2002* (other than Schedule 1 [2] to that Act). Schedule 1 [2] makes an amendment to the *Criminal Procedure Act 1986* consequent on the commencement of the *Criminal Procedure Amendment (Justices and Local Courts) Act 2001*.

Protection of the Environment Operations Amendment (Tradeable Emission Schemes Fund) Act 2002 No 61—Proclamation

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 2 of the *Protection of the Environment Operations Amendment (Tradeable Emission Schemes Fund) Act 2002*, do, by this my Proclamation, appoint 1 September 2002 as the day on which that Act commences.

Signed and sealed at Sydney, this 28th day of August 2002.



By Her Excellency's Command,

BOB DEBUS, M.P.,
Minister for the Environment

GOD SAVE THE QUEEN!

Regulations



New South Wales

Drug Misuse and Trafficking Amendment (Cash Sales of Precursors) Regulation 2002

under the

Drug Misuse and Trafficking Act 1985

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Drug Misuse and Trafficking Act 1985*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to prohibit the cash sale of certain drug precursors.

This Regulation is made under the *Drug Misuse and Trafficking Act 1985*, including section 24A (2A) and section 45 (the general regulation-making power).

Clause 1 Drug Misuse and Trafficking Amendment (Cash Sales of Precursors)
 Regulation 2002

Drug Misuse and Trafficking Amendment (Cash Sales of Precursors) Regulation 2002

under the

Drug Misuse and Trafficking Act 1985

1 Name of Regulation

This Regulation is the *Drug Misuse and Trafficking Amendment (Cash Sales of Precursors) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Amendment of Drug Misuse and Trafficking Regulation 2000

The *Drug Misuse and Trafficking Regulation 2000* is amended as set out in Schedule 1.

Drug Misuse and Trafficking Amendment (Cash Sales of Precursors)
Regulation 2002

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 3)

[1] Clause 7B

Insert after clause 7A:

7B Cash sales of precursors

- (1) A person must not supply any of the following substances to a person unless the person being supplied has an account with the supplier and payment for the supply is made through the account:
 - (a) a substance listed in Schedule 2 (other than a substance referred to in paragraph (b) or (c)),
 - (b) Ephedrine, Phenylpropanolamine or Pseudoephedrine or a salt of Ephedrine, Phenylpropanolamine or Pseudoephedrine,
 - (c) Phenylacetic acid or a salt or ester of Phenylacetic acid.Maximum penalty: 10 penalty units.
- (2) Subclause (1) does not apply to the supply of a substance referred to in subclause (1) (b) if:
 - (a) the substance is supplied for therapeutic use within the meaning of the relevant therapeutic goods laws, and
 - (b) the substance is packaged and labelled in accordance with the relevant therapeutic goods laws, and
 - (c) the supplier is authorised, by the relevant therapeutic goods laws, to supply the substance.
- (3) In this clause *relevant therapeutic goods laws* means:
 - (a) the *Poisons and Therapeutic Goods Act 1966*, and
 - (b) the regulations under that Act, and
 - (c) the Commonwealth therapeutic goods laws within the meaning of that Act as those laws apply as a law of this State.
- (4) In this clause, a reference to a substance does not include a reference to a preparation, admixture, salt, isomer, ester or ether of a substance listed in Schedule 2 or a salt of such an isomer, ester or ether, unless otherwise specified.

Drug Misuse and Trafficking Amendment (Cash Sales of Precursors)
Regulation 2002

Schedule 1 Amendments

[2] Schedule 2 Precursors

Omit "Clause 7A". Insert instead "Clauses 7A and 7B".

Electricity Supply (Safety and Network Management) Regulation 2002

under the

Electricity Supply Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Electricity Supply Act 1995*.

KIM YEADON, M.P.,
Minister for Energy

Explanatory note

The object of this Regulation is to replace the *Electricity Supply (Safety Plans) Regulation 1997*. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation makes substantial changes to the planning and reporting regime under the repealed regulation. The principal changes are as follows:

- (a) more extensive planning and reporting requirements for network operators,
- (b) further provision for the auditing of plans lodged by network operators,
- (c) further provision for exemptions from and modifications to the planning and reporting requirements.

The Regulation requires the following plans to be lodged and implemented by network operators, when required by the Director-General of the Ministry of Energy and Utilities:

- (a) a network management plan, for the purpose of ensuring that transmission or distribution systems provide an adequate, reliable and safe supply of electricity of appropriate quality,
- (b) a customer installation safety plan, for the purpose of ensuring the provision of safe electrical installations and connections,

Electricity Supply (Safety and Network Management) Regulation 2002

Explanatory note

- (c) a public electrical safety awareness plan, for the purpose of providing a warning to the public of the hazards associated with electricity networks,
- (d) a bush fire risk management plan, for the purpose of ensuring public safety and for other related purposes.

The Regulation makes provision for the content of those plans, auditing of those plans and compliance with those plans.

This Regulation is made under the *Electricity Supply Act 1995*, including section 106 (the general regulation-making power), in particular section 106 (1) (g1) and (g2).

The Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Electricity Supply (Safety and Network Management) Regulation 2002

Contents

Contents

		Page
Part 1	Preliminary	
	1 Name of Regulation	5
	2 Commencement	5
	3 Definitions	5
	4 Notes	5
Part 2	Plans to be lodged and implemented by network operator	
	5 Network operators may be required to lodge plans	6
	6 Network management plans	7
	7 Customer installation safety plans	8
	8 Public electrical safety awareness plans	9
	9 Bush fire risk management plan	10
Part 3	Audit requirements	
	10 Director-General may require plans to be audited	12
	11 Nomination of auditor to conduct audit	12
	12 Requirements of audit	13
	13 Additional report requirements—network management plan	13
	14 Additional audits may be required	14
Part 4	Compliance with plans	
	15 Availability of plans	15
	16 Network operators to measure and report on network performance	15
	17 Further reports to be submitted to Director-General	16
	18 Certain work to be carried out in accordance with plans	16
	19 Director-General may direct compliance with plans	16
	20 Director-General may direct amendment of plans	17

Page 3

Electricity Supply (Safety and Network Management) Regulation 2002

Contents

Part 5	Miscellaneous	
21	Exemptions	18
22	Savings provision	18
Schedule 1	Network management plans	19

Electricity Supply (Safety and Network Management) Regulation 2002	Clause 1
Preliminary	Part 1

Electricity Supply (Safety and Network Management) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Electricity Supply (Safety and Network Management) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Electricity Supply (Safety Plans) Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

Director-General means the Director-General of the Ministry of Energy and Utilities.

plan means a plan referred to in clause 5 (1).

the Act means the *Electricity Supply Act 1995*.

4 Notes

Notes included in this Regulation do not form part of this Regulation.

Clause 5 Electricity Supply (Safety and Network Management) Regulation 2002

Part 2 Plans to be lodged and implemented by network operator

Part 2 Plans to be lodged and implemented by network operator

5 Network operators may be required to lodge plans

- (1) The Director-General may, by notice in writing to a network operator, require the network operator to lodge any or all of the following plans with the Director-General, within such period as may be specified in the notice:
 - (a) a network management plan,
 - (b) a customer installation safety plan,
 - (c) a public electrical safety awareness plan,
 - (d) a bush fire risk management plan.
- (2) A network operator must not fail to comply with a requirement made by the Director-General under subclause (1).

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).
- (3) A network operator must implement any plan that is lodged with the Director-General by the network operator under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).
- (4) In exercising his or her functions under this clause, the Director-General is to have regard to the following:
 - (a) the size, nature and complexity of the network operator's transmission or distribution system,
 - (b) any inadequacy in the planning, design, construction, operation or maintenance of that system that has given rise to, or may give rise to, a failure to provide an adequate, reliable or safe supply of electricity of appropriate quality.
- (5) This Regulation applies in respect of a network operator only if the network operator is required to lodge a plan under this clause, and only in respect of those plans that it is required to lodge.

Electricity Supply (Safety and Network Management) Regulation 2002

Clause 6

Plans to be lodged and implemented by network operator

Part 2

6 Network management plans

- (1) The object of a network management plan is to ensure that the transmission system or distribution system to which it relates provides an adequate, reliable and safe supply of electricity of appropriate quality.
- (2) A network management plan must include (but is not limited to) the following:
 - (a) a commitment by the network operator to ensuring the safe operation of its transmission or distribution system, and to giving safety the highest priority over all other aspects of network management,
 - (b) a description of the transmission or distribution system and its design, construction, operation and maintenance,
 - (c) a description of the planning process employed for the purpose of assessing the adequacy of the transmission or distribution system and the need for development of the transmission or distribution system, including if appropriate:
 - (i) demand management methodologies, and
 - (ii) system reliability planning standards on a customer class or group, or geographic basis, for each distinct voltage level,
 - (d) a description of the asset management strategies employed for the purposes of the design, construction, operation and maintenance of the transmission or distribution system, including:
 - (i) risk management and public liability insurance arrangements, and
 - (ii) planned customer technical service standards for quality and reliability of supply,
 - (e) a description of the safety management strategy employed for the purpose of ensuring the safe operation of the transmission or distribution system, including:
 - (i) an analysis of hazardous events, and
 - (ii) the procedures to be implemented in the event of an emergency, and
 - (iii) the procedures and standards designed to ensure that the network operator's employees, contractors to the network operator and their employees and any other persons working on or near the system's electricity

Clause 6 Electricity Supply (Safety and Network Management) Regulation 2002

Part 2 Plans to be lodged and implemented by network operator

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- works have the competencies required to undertake the work safely, and
- (iv) a strategy to ensure adherence to safe working procedures,
- (f) a description of the plan's objectives and of appropriate performance indicators,
- (g) a schedule of reports to be made to the Director-General in relation to the management and performance of the transmission or distribution system,
- (h) a description of the codes, standards and guidelines that the network operator intends to follow in the design, installation, operation and maintenance of the transmission or distribution system.
- (3) The plan must comply with Schedule 1.
- (4) In developing and implementing a network management plan, a network operator must take into account such codes, standards or guidelines as the Director-General, by notice in writing to the network operator, requires to be taken into account in the development and implementation of the network management plan.
- (5) The plan must specify where it or its implementation departs from the provisions of any such code, standard or guideline and what arrangements are in place to ensure an equal or better outcome.
- (6) The schedule of reports referred to in subclause (2) (g) must include such reports as the Director-General, by notice in writing to the network operator, directs to be included in the schedule in relation to the management and performance of the network operator's transmission or distribution system.
- (7) A network operator must lodge with the Director-General the reports specified in the schedule of reports referred to in subclause (2) (g), in accordance with requirements of the network management plan.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

7 Customer installation safety plans

- (1) The object of a customer installation safety plan is to ensure the provision of safe electrical installations for connection to the transmission or distribution system to which it relates and the safe connection of such installations to that system.

Electricity Supply (Safety and Network Management) Regulation 2002	Clause 7
Plans to be lodged and implemented by network operator	Part 2

- (2) A customer installation safety plan must include (but is not limited to) the following:
 - (a) design, construction and maintenance standards required of customers for their electrical installations,
 - (b) testing, connection and notification criteria for contractors installing electrical installations,
 - (c) an inspection regime and procedures for directions to remedy faulty work and disconnections of unsafe installations by the network operator.
- (3) In developing and implementing a customer installation safety plan, a network operator must take into account such codes, standards or guidelines as the Director-General, by notice in writing to the network operator, requires to be taken into account in the development and implementation of the customer installation safety plan.
- (4) The plan must specify where it or its implementation departs from the provisions of any such code, standard or guideline and what arrangements are in place to ensure an equal or better safety outcome.
- (5) This clause does not apply to electrical installations that take a supply at or above 132,000 volts (nominal).

8 Public electrical safety awareness plans

- (1) The object of a public electrical safety awareness plan is to warn the public of the hazards associated with electricity in relation to a network operator's transmission or distribution system. The plan must be based on an assessment of the risks associated with the system and an analysis of any accidents or incidents.
- (2) In developing and implementing a public electrical safety awareness plan, a network operator must take into account such codes, standards or guidelines as the Director-General, by notice in writing to the network operator, requires to be taken into account in the development and implementation of the public electrical safety awareness plan.
- (3) The plan must specify where it or its implementation departs from the provisions of any such code, standard or guideline and what arrangements are in place to ensure an equal or better outcome.

Clause 9 Electricity Supply (Safety and Network Management) Regulation 2002

Part 2 Plans to be lodged and implemented by network operator

9 Bush fire risk management plan

- (1) The objects of a bush fire risk management plan are as follows:
 - (a) to ensure public safety,
 - (b) to establish standards that must be observed when electricity lines operate near vegetation,
 - (c) to reduce interruptions to electricity supply that are related to vegetation,
 - (d) to minimise the possibility of fire ignition by electricity lines.
- (2) A bush fire risk management plan is to include (but is not limited to) the following:
 - (a) provisions that identify bush fire prone areas and that set out a process for identifying network assets capable of initiating bush fires and a system for ensuring that that information is kept up-to-date,
 - (b) provisions that ensure that network assets located in bush fire prone areas and capable of initiating bush fires are inspected, tested and maintained in accordance with the maintenance schedule set out in analysis of hazardous events in the network management plan,
 - (c) provisions that ensure that tree clearances are maintained in accordance with such codes, standards or guidelines as the Director-General, by notice in writing to the network operator, may require,
 - (d) provision for the review of equipment types or construction methods known in their operation or design to have bush fire ignition potential and a mitigation strategy in relation to their use,
 - (e) information relating to rights and duties of the customers with private lines and the dangers of trees coming into contact with those lines,
 - (f) provisions that ensure that any private overhead electricity lines located in bush fire prone areas and capable of initiating a bush fire are inspected, tested and maintained in accordance with the maintenance schedule set out in the analysis of hazardous events in the network management plan, and that standards are enforced by the network operator,

Electricity Supply (Safety and Network Management) Regulation 2002

Clause 9

Plans to be lodged and implemented by network operator

Part 2

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- (g) provision for a complaints recording system in relation to bush fire risk management and provisions that ensure that appropriate investigations and remedial actions are undertaken as required,
 - (h) provision for liaison and consultation with the NSW Rural Fire Service, New South Wales Fire Brigades, councils for relevant local government areas and any other relevant government departments,
 - (i) information for the general public about the fire hazards associated with overhead power lines and vegetation, particularly during storms and conditions of high fire hazard,
 - (j) a description of any special procedures or precautions proposed to be taken during conditions of very high fire danger, including work practices by staff, fault location procedures, automatic and manual reclosing of lines and protection settings,
 - (k) a schedule of reports to be made to the Director-General in relation to the control of the risk of bush fire resulting from the network operator's transmission or distribution system.
- (3) The schedule of reports referred to in subclause (2) (k) must include such reports as the Director-General, by notice in writing to the network operator, directs to be included in the schedule relating to the control of the risk of bush fire resulting from the network operator's transmission or distribution system.
- (4) A network operator must lodge with the Director-General the reports specified in the schedule of reports referred to in subclause (2) (k), in accordance with requirements of the bush fire risk management plan.
- Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Clause 10 Electricity Supply (Safety and Network Management) Regulation 2002

Part 3 Audit requirements

Part 3 Audit requirements

10 Director-General may require plans to be audited

- (1) The Director-General may, by notice in writing to a network operator, require the network operator to cause its network management plan or bush fire risk management plan to be audited in accordance with the requirements of this Regulation and such further requirements as the Director-General may specify.
- (2) A network operator must:
 - (a) cause an audit to be carried out in accordance with a notice referred to in subclause (1), and
 - (b) lodge with the Director-General a report prepared by the auditor in relation to that audit, within a time specified in the notice referred to in subclause (1).

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units in any other case.

11 Nomination of auditor to conduct audit

- (1) An audit of a plan is to be carried out by a person who has been nominated by the network operator by notice in writing to the Director-General.
- (2) The nominated auditor is to be a person who:
 - (a) is independent of the network operator, and
 - (b) is competent to exercise the functions of an auditor under this Regulation in respect of the plan.
- (3) The nomination of an auditor by a network operator ceases to have effect for the purposes of this Regulation if the Director-General advises the network operator, by notice in writing, that the nomination is not acceptable or has ceased to be acceptable.
- (4) The Director-General may nominate an auditor to carry out an audit of a network operator's plan, and the person so nominated is taken to have been nominated by the network operator, if:
 - (a) the nomination of an auditor by the network operator ceases to have effect, or

Electricity Supply (Safety and Network Management) Regulation 2002

Clause 11

Audit requirements

Part 3

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- (b) the network operator fails to nominate an auditor to carry out the audit in accordance with any requirements specified by the Director-General by notice in writing to the network operator.

12 Requirements of audit

- (1) The report prepared by an auditor in relation to an audit of a network operator's network management plan or bush fire risk management plan is to include an audit certificate.
- (2) An *audit certificate* is a certificate that certifies the auditor's opinion as to the following matters:
 - (a) whether the plan complies with this Regulation,
 - (b) whether the plan is appropriate having regard to the size and complexity of the transmission or distribution system (subject to any exemptions given under this Regulation),
 - (c) whether the plan is being properly implemented,
 - (d) whether properly trained and equipped personnel are available to implement the procedures set out in the plan.
- (3) The audit certificate must also include a summary of the standards, procedures, tests, inspections and maintenance measures contained in the plan.

13 Additional report requirements—network management plan

The report prepared by an auditor in relation to an audit of a network management plan must also include the following:

- (a) a review of the plan for adequacy and appropriateness having regard to any changes in the network operator's transmission or distribution system since the previous audit,
- (b) an appraisal of the organisational quality management arrangements intended to ensure that the transmission or distribution system is planned, designed, constructed, operated and maintained in accordance with the plan,
- (c) an appraisal of the reliability and integrity of information reported under the plan, including an analysis of the following:
 - (i) the documented procedures for measuring, processing and reporting data, measurement systems, information systems and quality controls,
 - (ii) the extent to which relevant staff demonstrate an understanding of those documented procedures,

Clause 13 Electricity Supply (Safety and Network Management) Regulation 2002

Part 3 Audit requirements

- measurement systems, information systems and quality controls,
- (iii) evidence that those documented procedures, measurement systems, information systems and quality controls are being observed or properly implemented,
- (iv) the extent to which any reported data have been estimated or extrapolated rather than measured directly,
- (d) an appraisal of the involvement by senior management and the board of the network operator in approving the plan.

14 Additional audits may be required

- (1) Without limiting clause 10, the Director-General may, by notice in writing to a network operator, require the network operator to carry out, or to provide such assistance and cooperation as is reasonable for the purposes of carrying out, a further audit of a network management plan or bush fire risk management plan if:
 - (a) the Director-General is not satisfied as to any aspect of an audit carried out by an auditor nominated by the network operator, or
 - (b) the Director-General is satisfied that a further audit is required in order to verify that the relevant plan is being implemented.
- (2) The Director-General may require such a further audit to be carried out by an auditor nominated or appointed by the Director-General.
- (3) The audit may relate to any or all of the matters referred to in clause 12 or 13.
- (4) A network operator must not fail to comply with a requirement made by the Director-General under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Electricity Supply (Safety and Network Management) Regulation 2002

Clause 15

Compliance with plans

Part 4

Part 4 Compliance with plans

15 Availability of plans

A network operator:

- (a) must cause copies of each of its plans to be kept at its principal office, and
- (b) must cause copies of each of its plans to be made available for inspection on the website (if any) of the network operator, and
- (c) must cause copies of each of its plans to be made available in such a way that, as far as practicable, the provisions are brought to the notice of the persons likely to be involved in their implementation.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

16 Network operators to measure and report on network performance

- (1) A network operator must measure its performance against each plan that it is required to lodge under this Regulation, and against any relevant standards required by the Director-General after consultation.
- (2) A network operator must:
 - (a) publish the results of its performance measurements annually, and
 - (b) cause copies of those results:
 - (i) to be kept at its principal office, and
 - (ii) to be made available for inspection on the website (if any) of the network operator, and
 - (iii) to be made available in such a way that, as far as practicable, the results are brought to the notice of customers and the public.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Clause 16 Electricity Supply (Safety and Network Management) Regulation 2002

Part 4 Compliance with plans

- (3) A network operator must, before publishing the results of its performance measurements, give the Director-General notice in writing of its intention to publish those results and of the date from which it proposes to make those performance measurements available under subclause (2) (b).

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

17 Further reports to be submitted to Director-General

- (1) The Director-General may, by notice in writing to a network operator, require the network operator to lodge with the Director-General, within the time specified in the notice, a report relating to any injury, incident, system failure or other matter relating to the network operator's transmission or distribution system.
- (2) A network operator must not fail to comply with a requirement made by the Director-General under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

18 Certain work to be carried out in accordance with plans

A person must not carry out work on or near a network operator's transmission or distribution system and a network operator must not allow a person to carry out work on or near its transmission or distribution system unless:

- (a) the person is qualified, under the relevant requirements of the network operator's network management plan, to carry out the work, and
- (b) the work is carried out in accordance with the relevant requirements of that plan.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

19 Director-General may direct compliance with plans

- (1) If the Director-General is of the opinion that a network operator is not:
- (a) complying with the requirements of one of the network operator's plans or any codes, standards or guidelines set out or referred to in such a plan, or

Electricity Supply (Safety and Network Management) Regulation 2002

Clause 19

Compliance with plans

Part 4

(b) following any procedures set out or referred to in such a plan, the Director-General may, by order in writing, direct the network operator to take such action as is specified in the order to comply with those requirements, codes, standards or guidelines or follow those procedures.

- (2) A network operator must not fail to comply with any direction made by the Director-General under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

20 Director-General may direct amendment of plans

- (1) If the Director-General is of the opinion:

- (a) that a network operator's plan will not produce a satisfactory outcome in terms of providing an adequate, reliable and safe supply of electricity of appropriate quality, or
- (b) that its implementation has given rise to, or may give rise to, a situation that is unsafe or where the adequacy of the network is unsatisfactory,

the Director-General may, by order in writing, direct the network operator to amend the plan in such manner as is specified in the order, or to lodge with the Director-General an action plan in relation to the matters specified in the order.

- (2) A network operator must not fail to comply with any direction made by the Director-General under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

- (3) The Director-General must not direct that an amendment to a plan be made if the amendment would make it inconsistent with the National Electricity Code.

Clause 21 Electricity Supply (Safety and Network Management) Regulation 2002

Part 5 Miscellaneous

Part 5 Miscellaneous

21 Exemptions

- (1) The Director-General may exempt a network operator from any requirement of this Regulation if the requirement is, in the Director-General's opinion, inappropriate having regard to the nature, size and complexity of the network operator's transmission or distribution system.
- (2) The Director-General may revoke any such exemption.

22 Savings provision

- (1) Any act, matter or thing that, immediately before the repeal of the *Electricity Supply (Safety Plans) Regulation 1997 (the repealed Regulation)*, had effect under the repealed Regulation continues to have effect under this Regulation.
- (2) In particular, a reference in any other Regulation to a safety plan under the repealed Regulation is taken to include a reference to a network management plan under this Regulation.

Electricity Supply (Safety and Network Management) Regulation 2002

Network management plans

Schedule 1

Schedule 1 Network management plans

(Clause 6)

1 Description of transmission or distribution system

A description of a transmission or distribution system and its planning, design, construction, operation and maintenance must include the following:

- (a) references to maps showing the location of the system's electricity works and the procedures for gaining access to those maps,
- (b) design and construction standards and procedures for the system's electricity works,
- (c) system reliability planning standards,
- (d) technical customer service standards for quality and reliability of supply,
- (e) maintenance standards and procedures for the system's electricity works,
- (f) operation and work procedures for the system (including procedures for work on or near both de-energised and live electricity works),
- (g) safety equipment design, use and maintenance standards and procedures for the system,
- (h) a description of the engineering records, drawings and maps that the network operator maintains on the system.

2 Description of planning process

A description of the planning process employed for the purpose of assessing the adequacy of the transmission or distribution system and the need for development of the transmission or distribution system must include the following:

- (a) the process used for setting system reliability planning standards and identifying development needs and demand management opportunities,
- (b) strategies for managing and complying with that process and those standards.

Electricity Supply (Safety and Network Management) Regulation 2002

Schedule 1 Network management plans

3 Description of asset management strategies

A description of the asset management strategies employed for the purposes of the design, construction, operation and maintenance of the transmission or distribution system must include the following:

- (a) the process used for setting design, construction, operation and maintenance standards and customer technical service standards for quality and reliability of supply,
- (b) strategies for managing and complying with that process and those standards.

4 Analysis of hazardous events

- (1) An analysis of hazardous events must, consistent with the size and complexity of the transmission or distribution system:
 - (a) systematically identify hazardous events that might be expected to occur, and
 - (b) identify the potential causes of those events, and
 - (c) state the possible consequences of those events, and
 - (d) specify operational, maintenance and organisational safeguards intended to prevent those events from occurring or, should they occur, intended to protect operating personnel, plant, equipment, the community and the environment.
- (2) The operational and maintenance safeguards must include a maintenance schedule indicating, among other things, the type and frequency of inspections and tests of the transmission or distribution system (including checks on protection devices).
- (3) In the case of new transmission or distribution systems, an analysis of hazardous events should also take into account hazardous events occurring during construction.

5 Emergencies

- (1) The types of emergencies in respect of which procedures are to be implemented include:
 - (a) fires, explosions and impacts (with particular reference to those caused by the activities of other parties), and
 - (b) natural disasters, and
 - (c) civil disturbances.

Electricity Supply (Safety and Network Management) Regulation 2002

Network management plans

Schedule 1

-
- (2) A plan must demonstrate that the network operator regularly tests and, as far as practicable, has proved the emergency procedures.



Electronic Transactions Amendment (Poisons and Therapeutic Goods) Regulation 2002

under the

Electronic Transactions Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Electronic Transactions Act 2000*.

CRAIG KNOWLES, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to exempt the *Poisons and Therapeutic Goods Act 1966*, and the regulations under that Act, from the operation of Divisions 1 and 2 of Part 2 of the *Electronic Transactions Act 2000*. The effect of the exemption will be that electronic transactions with respect to matters arising under the *Poisons and Therapeutic Goods Act 1966* will be permissible only to the extent provided by or under that Act.

This Regulation is made under the *Electronic Transactions Act 2000*, including section 15 (the general power to make regulations) and sections 7 and 12.

Clause 1 Electronic Transactions Amendment (Poisons and Therapeutic Goods)
 Regulation 2002

Electronic Transactions Amendment (Poisons and Therapeutic Goods) Regulation 2002

under the

Electronic Transactions Act 2000

1 Name of Regulation

This Regulation is the *Electronic Transactions Amendment (Poisons and Therapeutic Goods) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Amendment of Electronic Transactions Regulation 2001

The *Electronic Transactions Regulation 2001* is amended as set out in Schedule 1.

Electronic Transactions Amendment (Poisons and Therapeutic Goods)
Regulation 2002

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 3)

[1] Clause 4 Certain laws excluded from section 7 (1) of the Act

Insert in alphabetical order in the list of laws referred to in clause 4:

Poisons and Therapeutic Goods Act 1966, and any regulations
under that Act

[2] Clause 7 Certain laws excluded from Division 2 of Part 2 of the Act

Insert in alphabetical order in the list of laws referred to in clause 7:

Poisons and Therapeutic Goods Act 1966, and any regulations
under that Act

Fair Trading (General) Regulation 2002

under the

Fair Trading Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fair Trading Act 1987*.

JOHN AQUILINA, M.P.,
Minister for Fair Trading

Explanatory note

The object of this Regulation is to consolidate the following Regulations:

- (a) the *Fair Trading (Product Safety Standards) Regulation 2000*,
- (b) the *Fair Trading (Product Information Standards) Regulation 1997*,
- (c) the *Fair Trading (Penalty Notices) Regulation 1998*,
- (d) the *Fair Trading (Savings and Transitional) Regulation 1997*.

The *Fair Trading (Product Information Standards) Regulation 1997* is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. The other three Regulations are repealed on that date by this Regulation so as to permit the consolidation.

The changes made by the new Regulation are not substantial, consisting mainly of the omission of various transitional provisions that are now spent, and the updating of references to such Australian, American and International Standards adopted by the Regulation as have been replaced or amended since their adoption by the *Fair Trading (Product Information Standards) Regulation 1997* or the *Fair Trading (Product Safety Standards) Regulation 2000*.

This Regulation does the following:

- (a) it prescribes safety standards for various goods (such as spa outlets, children's toys and protective helmets for cyclists),

Fair Trading (General) Regulation 2002

Explanatory note

- (b) it prescribes the product information standards to be used for:
 - (i) textile products, and
 - (ii) the “care” labelling of clothing and certain other softgoods, and
 - (iii) the retail sale of regular unleaded petrol at petrol stations,
- (c) it prescribes certain offences under the *Fair Trading Act 1987* as offences in respect of which penalty notices may be issued,
- (d) it provides a savings provision in respect of the four repealed Regulations,
- (e) it makes other provisions of a formal nature (such as the commencement provision).

This Regulation refers to the following standards:

- (a) Australian Standards:
 - AS 1754—1991, *Child restraint systems for use in motor vehicles*,
 - AS 1754—1975, *Child Restraints for Passenger Cars and Derivatives*,
 - AS 1647.2—1992, *Children’s toys (safety requirements)*, Part 2: *Constructional requirements*,
 - AS 1900—1991, *Flotation toys and swimming aids for children*,
 - AS 1512—1996, *Personal flotation devices—Type 1*,
 - AS 1499—1996, *Personal flotation devices—Type 2*,
 - AS 1698—1988, *Protective helmets for vehicle users*,
 - AS 1182—1997, *Size coding scheme for infants’ and children’s clothing—Underwear and outerwear*,
 - AS 1067.1—1990, *Sunglasses and fashion spectacles*, Part 1: *Safety requirements*,
 - AS 1926.3—1993, *Swimming pool safety*, Part 3: *Water recirculation and filtration systems*.
- (b) Australian/New Zealand Standards:
 - AS/NZS 1249:1999, *Children’s nightwear and limited daywear having reduced fire hazard*,
 - AS/NZS 2172:1995, *Cots for household use—Safety requirements*,
 - AS/NZS 2392:1999, *Textiles—Labelling of clothing, household textiles and furnishings*,
 - AS/NZS 2211.1:1997, *Laser safety*, Part 1: *Equipment classification, requirements and user’s guide*,

Page 2

Fair Trading (General) Regulation 2002

Explanatory note

AS/NZS 2512.1:1998, *Methods of testing protective helmets*, Method 1: *Definitions and headforms*,

AS/NZS 1927:1998, *Pedal bicycles—Safety requirements*,

AS/NZS 2063:1996, *Pedal cycle helmets*,

AS/NZS 1957:1998, *Textiles—Care labelling*,

AS/NZS 2450:1994, *Textiles—Natural and man-made fibres—Generic names*,

AS/NZS 2622:1996, *Textile products—Fibre content labelling*.

(c) American and International Standards:

American National Standard ASME/ANSI A112.19.8M—1987, *Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Bathtub Appliances* of the American Society of Mechanical Engineers,

Consumer Product Safety Standard for Cigarette Lighters (16CFR1210) published in the Federal Register of the United States of America, Volume 58, No 131,

International Standard ISO 6941 *Textile fabrics—Burning behaviour—Measurement of flame spread properties of vertically oriented specimens* of the International Organization for Standardization,

1995 Standard for Protective Headgear for Use in Bicycling including the Child Helmet Addendum to Standards for Protective Headgear published by the Snell Memorial Foundation of the United States of America,

United States standard entitled *Standard Consumer Safety Specification for Infant Walkers* of the American Society for Testing and Materials.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*—namely, matters of a machinery nature, direct repeals, matters of a savings nature, matters arising under legislation that is substantially uniform or complementary with legislation of the Commonwealth or another State or territory, and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

In so far as it replaces the *Fair Trading (Product Information Standards) Regulation 1997*, this Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Fair Trading (General) Regulation 2002

Explanatory note

This Regulation is made under the *Fair Trading Act 1987* and, in particular, under sections 26 (Safety standards), 38 (Prescribing of product information standards), 64 (Penalty notices for certain offences) and 92 (the general regulation-making power).

Fair Trading (General) Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	10
2 Commencement	10
3 Definition	10
4 Notes	10
5 Compliance with specification	10
Part 2 Product safety standards	
Division 1 Preliminary	
6 Product safety standards	11
7 Exceptions	11
Division 2 Swimming pools: outlets	
8 Definitions	12
9 Safety standard	12
Division 3 Spas: outlets	
10 Definitions	12
11 Safety standard	13
12 Requirements for lids for potty skimmers	14
13 Requirements for outlets other than potty skimmers	14
14 Single blockage test for potty skimmers	14
15 Total blockage test for potty skimmers	15
Division 4 Sunglasses and fashion spectacles	
16 Definitions	15
17 Safety standard	16
18 Variation of AS 1067.1	16

Page 5

Fair Trading (General) Regulation 2002

Contents

Division 5	Pedal bicycles	
19	Definitions	17
20	Safety standard	17
21	Variation of AS/NZS 1927	17
Division 6	Protective helmets for pedal cyclists	
22	Definitions	18
23	Safety standard	18
24	Exceptions	19
25	Variation of AS/NZS 2063	19
26	Variation of Snell standard	20
Division 7	Protective helmets for motor cyclists	
27	Definitions	20
28	Safety standard	20
29	Variation of AS 1698	20
Division 8	Children's toys	
30	Definitions	21
31	Safety standard	22
32	Variation of AS 1647. 2	22
Division 9	Flotation toys and swimming aids	
33	Definitions	24
34	Safety standard	25
35	Variation of AS 1900	25
Division 10	Children's nightwear and paper patterns for children's nightwear	
36	Definitions	25
37	Safety standard for children's nightwear	26
38	Safety standard for paper patterns for children's nightwear	26
39	Variation of AS/NZS 1249	26
40	Variation of ISO 6941	27
Division 11	Child restraints	
41	Definitions	27
42	Safety standard for child restraints	28

Fair Trading (General) Regulation 2002

Contents

43	Variation of AS 1754—1991	28
44	Supply of components for child restraints complying with AS 1754—1975	29
Division 12 Bean bags		
45	Definitions	29
46	Safety standard	30
Division 13 Elastic luggage straps		
47	Definition	30
48	Safety standard	31
Division 14 Projectile toys		
49	Definitions	31
50	Safety standard	31
Division 15 Baby walkers		
51	Definition	32
52	Safety standard	32
Division 16 Disposable cigarette lighters		
Subdivision 1 Preliminary		
53	Definitions	32
54	Meaning of “lighter” and types of lighters	33
55	Safety standard	34
Subdivision 2 Flame testing, structural safety and labelling		
56	Application of this Subdivision	35
57	Testing procedures	35
58	Ignition and adjustment of flame	35
59	Abnormal burning	35
60	Flame height	35
61	Flame extinction	36
62	Structural safety	36
63	Labelling	36

Fair Trading (General) Regulation 2002

Contents

Subdivision 3 Child resistance		
64	Application of this Subdivision	37
65	Child resistance	38
66	Certification	38
Subdivision 4 Indexation		
67	Definitions	38
68	Indexed amount	39
Division 17 Children's household cots		
69	Definitions	41
70	Safety standard	41
Division 18 Laser pointers		
71	Definitions	42
72	Safety standard	43
73	Testing of laser pointers	43
74	Production of reports	43
Part 3	Product information standards	
Division 1 Preliminary		
75	Information standards	44
Division 2 Fibre content labelling of textile products		
76	Definitions	44
77	Product information standard	44
78	Form of information	45
Division 3 Care labelling of certain goods		
79	Definitions	45
80	Application of Division	45
81	Product information standard	46
82	Variation of product information standards	46
83	Form of information for prescribed goods	47
84	Care instructions for goods unable to be washed or dry-cleaned	48

Fair Trading (General) Regulation 2002

Contents

Division 4	Petrol price signs	
85	Definitions	48
86	Product information standard	49
87	Planning restriction not affected	49
Part 4	Penalty notice offences	
88	Penalty notice offences: section 64	50
Part 5	Miscellaneous	
89	Repeal and savings	51
Schedule 1	Penalty notice offences	52

Clause 1 Fair Trading (General) Regulation 2002

Part 1 Preliminary

Fair Trading (General) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Fair Trading (General) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Definition

In this Regulation:

the Act means the *Fair Trading Act 1987*.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

5 Compliance with specification

For the purposes of this Regulation, goods do not fail to comply with a standard referred to in a Division relating to those goods merely because they do not comply with a provision of the standard:

- (a) that is expressed to be a recommendation, or
- (b) in relation to which the word “should” or “preferably” is used to indicate that the provision is of an advisory nature only.

Fair Trading (General) Regulation 2002	Clause 6
Product safety standards	Part 2
Preliminary	Division 1

Part 2 Product safety standards

Division 1 Preliminary

6 Product safety standards

The standards set out in the other Divisions to this Part are prescribed under section 26 of the Act as product safety standards for the goods to which those Divisions apply.

Note. The consequences of failing to comply with a product safety standard are set out in section 27 of the Act.

7 Exceptions

The product safety standards prescribed by this Regulation do not apply to the supply of goods in the following circumstances:

- (a) if the goods are supplied as scrap, that is, for the value of the materials of which the goods are composed and not for use as finished articles,
- (b) in the case of goods supplied under a credit sale contract (within the meaning of the *Credit Act 1984*) or a credit contract (within the meaning of the *Consumer Credit (New South Wales) Code*) or under any agreement for the purchase of goods by instalments (such as a hire-purchase agreement), if the supplier has at no time had possession of the goods and only became the owner of the goods at or after the time of entering into the agreement,
- (c) in the case of goods that are damaged, if the goods are supplied to a person who carries on a business of buying damaged goods and repairing or reconditioning them for resale, or to a person by whom the goods were insured against damage,
- (d) in the case of goods that are let on hire, or that are supplied to another person for the purpose of being let on hire by the other person, if the letting is incidental to the letting of premises or if the letting was lawful at the time when it began.

Clause 8 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 2 Swimming pools: outlets

Division 2 Swimming pools: outlets

8 Definitions

In this Division:

AS 1926.3 means the Australian Standard entitled AS 1926.3—1993, *Swimming pool safety, Part 3: Water recirculation and filtration systems*, as published by Standards Australia on 26 July 1993.

outlet means an opening in a swimming pool wall or floor through which water leaves the pool.

potty skimmer means an outlet attached to or set in a pool wall at water level:

- (a) that is used as the main suction point for the filter pump and is intended to draw water from the pool surface to remove and collect debris, and
- (b) that resembles a child's chamber-pot and is commonly known as a potty skimmer.

swimming pool means any excavation or structure containing water to a depth greater than 300 millimetres and used primarily for swimming, wading, paddling or the like, and includes a bathing or wading pool, but does not include a spa.

9 Safety standard

The product safety standard prescribed for swimming pools having outlets in the form of potty skimmers is that each such outlet must comply with Clause 4.2 of AS 1926.3.

Division 3 Spas: outlets

10 Definitions

In this Division:

ANSI A112 means the American National Standard entitled *Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Whirlpool Bathtub Appliances* and numbered ASME/ANSI A112.19.8M—1987, of the American Society of Mechanical Engineers, as published on 31 December 1987.

Fair Trading (General) Regulation 2002	Clause 10
Product safety standards	Part 2
Spas: outlets	Division 3

AS 1926.3 means the Australian Standard entitled AS 1926.3—1993, *Swimming pool safety, Part 3: Water recirculation and filtration systems*, as published by Standards Australia on 26 July 1993.

outlet means an opening in a spa wall or floor through which the water leaves the spa.

potty skimmer means a surface mounted outlet in a spa that resembles a child's chamber-pot and is commonly known as a potty skimmer.

spa means a water-retaining structure with a capacity of at least 680 litres with which is associated the facility for heating the water contained in it and injecting air bubbles or jets of turbulent water.

surface mounted outlet means an outlet mounted at or near the water surface level of the spa for the purpose of surface skimming.

11 Safety standard

The product safety standard prescribed for spas having outlets in the form of potty skimmers is that the spas are constructed so that:

- (a) each pump is connected to at least 2 outlets from the spa by means of a common line, and
- (b) the pipes of all outlets connected to the common line have the same diameter, and
- (c) at least 2 outlets on the common line function at the same time (except when the spa is being cleaned), and
- (d) each outlet connected to the common line is at least 600 millimetres distant from every other outlet connected to that line, and
- (e) each potty skimmer:
 - (i) is fitted with a lid complying with clause 12, and
 - (ii) passes the single blockage and total blockage tests set out in clauses 14 and 15, and
- (f) each outlet other than a potty skimmer:
 - (i) is fitted with a protective cover that can be removed only with the use of a tool, and
 - (ii) complies with clause 13.

Clause 12 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 3 Spas: outlets

12 Requirements for lids for potty skimmers

- (1) A lid for a potty skimmer must carry the following warning:

WARNING: LID IS NOT TO BE REMOVED WHILE SPA IS
OPERATING

- (2) The warning:

- (a) must be visible on the upper surface of the lid, and
- (b) must be moulded or engraved in (or otherwise permanently attached to) the lid in such a way that it will remain legible despite normal use and handling of the lid, and
- (c) must show the word “WARNING” in upper case letters at least 5 millimetres high, and
- (d) must show the remaining words in upper case letters at least 2.5 millimetres high.

13 Requirements for outlets other than potty skimmers

An outlet other than a potty skimmer (whether surface mounted or not):

- (a) must pass the Hair Entrapment Test set out in Clauses 5.1–5.3 of ANSI A112 (in which an outlet is referred to as a “suction fitting”), or
- (b) must comply with Clause 5.1 (a) of AS 1926.3.

14 Single blockage test for potty skimmers

- (1) The single blockage test for a potty skimmer is to be conducted as follows:
- (a) the potty skimmer lid, and any other safety features of the potty skimmer that can be removed without the use of a tool or excessive force, is to be removed,
 - (b) the spa is to be operating with other normal safety features (such as cut-out switches, if supplied, and protective covers on outlets other than potty skimmers) functioning or in place,
 - (c) after the spa has been operating for at least one minute, the potty skimmer is to be blocked.
- (2) Suction in the blocked potty skimmer is to be measured for at least 15 seconds after the blockage.
- (3) The suction must not exceed 12 kilopascals.

Fair Trading (General) Regulation 2002

Clause 15

Product safety standards

Part 2

Spas: outlets

Division 3

15 Total blockage test for potty skimmers

- (1) The total blockage test for a potty skimmer is to be conducted as follows:
 - (a) the potty skimmer lid, and any other safety features of the potty skimmer that can be removed without the use of a tool or excessive force, is to be removed,
 - (b) the spa is to be operating with other normal safety features (such as cut-out switches, if supplied, and protective covers on outlets other than potty skimmers) functioning or in place,
 - (c) after the spa has been operating for at least one minute, all outlets are to be blocked simultaneously, with outlets other than surface mounted outlets being sealed.
- (2) Suction in the blocked potty skimmer is to be measured for at least 15 seconds, beginning one second after blockage.
- (3) The suction must not exceed 1 kilopascal.

Division 4 Sunglasses and fashion spectacles**16 Definitions**

In this Division:

AS 1067.1 means the Australian Standard entitled AS 1067.1—1990, *Sunglasses and fashion spectacles, Part 1: Safety requirements* published by Standards Australia on 17 September 1990, as amended by Amendment No 1 of 10 December 1990 and Amendment No 2 of 12 July 1993.

sunglasses and *fashion spectacles* mean sunglasses and fashion spectacles having lenses of nominally zero refractive power and include sunglasses and fashion spectacles of the one-piece or visor type and clip-on sunglasses, but do not include:

- (a) glasses for special use (such as glasses for use while target shooting) that do not primarily provide protection against sunglare or radiation from natural sunlight in the circumstances set out in Clause 1.3.7.2 or 1.3.7.3 of AS 1067.1, or
- (b) goggles that are held in position by means of a strap passing around the back of the head, or

Clause 16 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 4 Sunglasses and fashion spectacles

- (c) glasses that, in industrial environments, provide protection from radiation other than solar radiation or protection from physical impact, or
- (d) glasses for use as toys that are clearly and legibly labelled as toys.

17 Safety standard

The product safety standard prescribed for sunglasses and fashion spectacles is that they must comply with AS 1067.1.

18 Variation of AS 1067.1

For the purposes of this Division, AS 1067.1 is taken to have been amended as follows:

- (a) by omitting Clause 1.1,
- (b) by inserting in Clause 2.2.1 (b) after the words “this point” the following words:

except for children’s sunglasses.

Children’s sunglasses with frames too small for measurement from 32 millimetres from the centreline of the frame are to be measured at 6 selected points within a circle of 30 millimetres diameter around the datum centre of each lens.

- (c) by inserting in Clause 2.2.1 (c) after the words “these points” the following words:

except for children’s sunglasses.

Children’s sunglasses with frames too small for measurement from 32 millimetres from the centreline of the sunglass are to be measured from a point 25% of the width of the lens measured on either side of the centreline that lies in the horizontal plane that would bisect the eyes when the visor is worn and at 6 selected points within a circle of 30 millimetres diameter centred on these points.

- (d) by omitting the words “classification of the eyewear and other relevant” from the second sentence in Clause 4.2.1,
- (e) by omitting the box around the marking set out in Clause 4.2.2,
- (f) by omitting the words “The marking for general-purpose sunglasses shall be as follows:” and the box and the words contained in the box from Clause 4.2.3,

Fair Trading (General) Regulation 2002	Clause 18
Product safety standards	Part 2
Sunglasses and fashion spectacles	Division 4

- (g) by omitting the box around the markings specified for Type (a) and Type (b) specific purpose sunglasses in Clause 4.2.4.

Division 5 Pedal bicycles

19 Definitions

In this Division:

AS/NZS 1927 means the Australian/New Zealand Standard entitled AS/NZS 1927:1998, *Pedal bicycles—Safety requirements*, as published jointly by Standards Australia and Standards New Zealand on 5 September 1998.

pedal bicycle means a two-wheeled pedal vehicle that is designed to be solely human-powered, and includes a fully assembled or partially assembled bicycle, but does not include any such vehicle:

- (a) that has a wheelbase of less than 640 millimetres, or
- (b) that is designed, promoted and supplied primarily for use in cycling competitions, or
- (c) that is a one-of-a-kind bicycle, being a bicycle that is uniquely constructed to the specifications of an individual consumer, or
- (d) that is designed to be hinged or folded, or to be taken apart beyond removal of the front wheel, for ease of storage or portability, or
- (e) that is a tandem bicycle, or
- (f) that is a second-hand bicycle.

20 Safety standard

The product safety standard prescribed for pedal bicycles is that they must comply with AS/NZS 1927.

21 Variation of AS/NZS 1927

For the purposes of this Division, AS/NZS 1927 is taken to have been amended as follows:

- (a) by omitting Clause 1.2,
- (b) by omitting from Clause 1.3 the words “New Zealand Traffic Regulations 1976”,
- (c) by omitting from Clause 1.5 (a) the words “or New Zealand”,

Clause 21 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 5 Pedal bicycles

- (d) by omitting Clause 2.15.1,
- (e) by omitting from Clause 2.16 the words “NOTE: There is no regulatory requirement in New Zealand for a warning device to be fitted to a bicycle.”,
- (f) by omitting Clause 2.17.1.

Division 6 Protective helmets for pedal cyclists

22 Definitions

In this Division:

AS/NZS 2063 means the Australian/New Zealand Standard entitled AS/NZS 2063:1996, *Pedal cycle helmets* published jointly by Standards Australia and Standards New Zealand on 5 May 1996, as amended by Amendment No 1 of 5 November 1996.

AS/NZ 2512.1 means the Australian/New Zealand Standard entitled AS 2512.1:1998, *Methods of testing protective helmets*, Method 1: *Definitions and headforms*, as published jointly by Standards Australia and Standards New Zealand on 5 September 1998.

protective helmet means a helmet designed to mitigate the adverse effects of a blow to the head.

Snell standard means the standard entitled *1995 Standard for Protective Headgear for Use in Bicycling including the Child Helmet Addendum to Standards for Protective Headgear* published by the Snell Memorial Foundation of the United States of America.

Note. This standard is available on the Internet as the document www.smf.org/standards/b95std.html.

23 Safety standard

The product safety standard prescribed for protective helmets for pedal cyclists is that they must comply with:

- (a) AS/NZS 2063, or
- (b) the Snell standard.

Fair Trading (General) Regulation 2002	Clause 24
Product safety standards	Part 2
Protective helmets for pedal cyclists	Division 6

24 Exceptions

- (1) This Division does not apply to the following helmets:
- (a) helmets that are of a size too small to be fitted to Headform A (as specified in Table 2 in AS/NZS 2512.1),
 - (b) helmets that are designed and constructed principally for use by cyclists engaged in competitive racing and that are marked in accordance with subclause (2),
 - (c) helmets that are designed and constructed principally for use as toys and that are marked in accordance with subclause (3), or that are not so marked but are unlikely to be mistaken for helmets providing significant protection against impact.
- (2) In the case of a helmet of the kind referred to in subclause (1) (b), the words “WARNING: racing headgear only—inadequate impact protection for normal road use” must be marked clearly and legibly in a conspicuous position:
- (a) on the helmet or on a label attached to the helmet, and
 - (b) on a principal outer display face of any packaging in which the helmet is supplied,
- with the word “WARNING” in capital letters at least 5 millimetres high and the remaining words in letters at least 2.5 millimetres high.
- (3) In the case of a helmet of the kind referred to in subclause (1) (c), the words “WARNING: toy helmet only—do not use as safety headgear” must be marked clearly and legibly in a conspicuous position:
- (a) on the helmet or on a label attached to the helmet, and
 - (b) on a principal outer display face of any packaging in which the helmet is supplied,
- with the word “WARNING” in capital letters at least 5 millimetres high and the remaining words in letters at least 2.5 millimetres high.

25 Variation of AS/NZS 2063

For the purposes of this Division, AS/NZS 2063 is taken to have been amended follows:

- (a) by omitting Clause 1,

Clause 25 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 6 Protective helmets for pedal cyclists

(b) by inserting after Clause 5.6 the following:

5.7 BMX helmets Helmets designed and constructed principally for use by cyclists engaged in BMX competition racing need not comply with provisions regarding ventilation openings or type testing.

(c) by omitting Clause 8.1 (e).

26 Variation of Snell standard

A person is not required to comply with a provision of the Snell standard that requires the person to obtain third party certification of a helmet.

Division 7 Protective helmets for motor cyclists

27 Definitions

In this Division:

AS 1698 means the Australian Standard entitled AS 1698—1988, *Protective helmets for vehicle users*, as published by Standards Australia on 9 May 1988.

protective helmet means a helmet designed to mitigate the adverse effects of a blow to the head.

28 Safety standard

The product safety standard prescribed for protective helmets for use by motor cyclists is that they must comply with AS 1698.

29 Variation of AS 1698

For the purposes of this Division, AS 1698 is taken to have been amended as follows:

- (a) by omitting from Clause 4.4 the matter “AS 1609” and by inserting instead the matter “AS 1609—1981”,
- (b) by omitting Clause 8 (g).

Fair Trading (General) Regulation 2002	Clause 30
Product safety standards	Part 2
Children's toys	Division 8

Division 8 Children's toys

30 Definitions

In this Division:

AS 1647.2 means the Australian Standard entitled AS 1647.2—1992, *Children's toys (safety requirements), Part 2: Constructional requirements* published by Standards Australia on 14 September 1992, as amended by Amendment No 1 of 5 March 1995.

children's toys means toys for children under 3 years of age, being objects or groups of objects manufactured, designed, labelled or marketed as playthings for a child or children of an age less than 3 years, including but not limited to:

- (a) rattles, dummies, toy dummies, teething rings and squeeze toys, and
- (b) toys to be affixed to a crib, stroller, playpen or baby carriage, and
- (c) pull and push toys, pounding toys, blocks and stacking toys, and
- (d) toys for use in bath-tubs, and
- (e) rocking, spring and stick horses and other figures, and
- (f) musical chime toys and jacks-in-the-box, and
- (g) stuffed, plush and flock animals and other figures, and
- (h) games, puzzles and dolls, and
- (i) toy cars, trucks and other vehicles,

but not including:

- (j) balloons, marbles and gramophone records, or
- (k) books, or
- (l) writing materials, including crayons, chalk, pencils and pens, or
- (m) paints (including finger paints and water paints), paint brushes and other painting implements, or
- (n) modelling materials, including clay, plasticine and play-dough, or
- (o) flotation aid toys, or
- (p) bicycles having a wheelbase of at least 640 millimetres, or

Clause 30 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 8 Children's toys

- (q) toys that are made wholly from highly porous fabric material such as cheesecloth, or
- (r) playground equipment for parks, schools and domestic use (including swings, see-saws, slides, agility apparatus, climbing, swinging, rotating and rocking apparatus, cubby houses, sand pits, apparatus for use in sand, sliding poles and ladders), or
- (s) goods supplied in a wholly or partially unassembled state for assembly by an adult after supply, provided that, when assembled in accordance with the instructions supplied in writing with the goods, the goods comply with the requirements of this Division, or
- (t) toys made from closed cell polyethylene, ethylene vinyl acetate or like material with the word "WARNING" in red upper case letters at least 5 millimetres high on a white background adjacent to the words "NOT SUITABLE FOR CHILDREN UNDER 3 YEARS AS FOAM PIECES MAY BREAK OFF AND CAUSE A CHOKING HAZARD" in red upper case letters at least 2.5 millimetres high on a white background marked legibly in a conspicuous position:
 - (i) on the toys, or
 - (ii) if the toys are displayed in packaging for retail sale—on a principal outer display face of the packaging in which the toys are displayed.

31 Safety standard

- (1) The product safety standard prescribed for children's toys is that they must comply with Clauses 7.1, 7.2, 7.10 (d), 7.15.6 (a) (iv), 9.4 and 10 and Appendix A, Appendices D to S inclusive and Appendices U and V of AS 1647.2.
- (2) The definitions in Clause 4.2, 4.3, 4.4, 4.5, 4.9, 4.10, 4.11, 4.12, 4.16, 4.20, 4.21, 4.22, 4.23, 4.24, 4.25 and 4.26 of AS 1647.2 apply for the purposes of this clause.

32 Variation of AS 1647. 2

For the purposes of this Division, AS 1647.2 is taken to have been amended as follows:

- (a) by omitting Clause 7.2 and by inserting instead the following Clause:

Fair Trading (General) Regulation 2002

Clause 32

Product safety standards

Part 2

Children's toys

Division 8

7.2 Stuffed toys Stuffed toys must not produce an ingestion or inhalation hazard if tested in accordance with Appendix O.

- (b) by omitting from Clauses 10.2.1, 10.3.1–10.3.7, 10.3.10 and 10.3.13 the words “a hazardous sharp edge, a hazardous sharp point or, if applicable,” wherever occurring,
- (c) by omitting from Clause 10.3.9 the words “fracture or break” and by inserting instead the words “produce an ingestion or inhalation hazard”,
- (d) by omitting from Clause 10.3.11 the words “a hazardous sharp edge, a hazardous sharp point or”,
- (e) by inserting in Clause 10.3.14 the words “and that produce an ingestion or inhalation hazard” after the word “toy” where secondly occurring,
- (f) by omitting from Clause 10.3.15 the words “shall not—” and paragraphs (a) and (b) and by inserting instead the words “shall not produce an ingestion or inhalation hazard.”,
- (g) by omitting the word “If” from Clause D5 and by inserting instead the words “Subject to Clause 9.4, if”,
- (h) by omitting from Clauses F5 (d), G6 (i), H5 (f), I5 (g), J5 (e), K5 (h), L5 (f), M5 (h), N6 (i), Q5 (g) and R5 (h) all words after the word “with” wherever occurring and by inserting instead the matter “Appendix D”,
- (i) by omitting Clauses F6 (d) (i), F6 (d) (ii), G7 (c) (i), G7 (c) (ii), H6 (c) (i), H6 (c) (ii), I6 (d) (i), I6 (d) (ii), J6 (b) (i), J6 (b) (ii), K6 (a), K6 (b), L6 (b) (i), L6 (b) (ii), M6 (d) (i), M6 (d) (ii), N7 (d) (i), N7 (d) (ii), Q6 (a) (i), Q6 (a) (ii), R6 (d) (i) and R6 (d) (ii),
- (j) by omitting from Clauses L5 (b) and L5 (g) the words “a hazardous sharp edge, hazardous sharp point or” wherever occurring,
- (k) by omitting from Clause N2 the words “neither developed a hazardous sharp edge nor a hazardous sharp point, nor, if applicable, produced” and by inserting instead the words “did not produce”,
- (l) by inserting in Clause U6 (b) the words “and whether these objects produced an ingestion or inhalation hazard” after the word “outlet”,

Clause 32 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 8 Children's toys

- (m) by omitting from Clause V6 (a) the words “fractured through the entire thickness or matter visible to the naked eye has become detached from any portion of the test specimen” and by inserting instead the words “produced an ingestion or inhalation hazard”.

Division 9 Flotation toys and swimming aids

33 Definitions

In this Division:

AS 1499 means the Australian Standard entitled AS 1499—1996, *Personal flotation devices—Type 2*, as published by Standards Australia on 5 January 1996.

AS 1512 means the Australian Standard entitled AS 1512—1996, *Personal flotation devices—Type 1*, as published by Standards Australia on 5 January 1996.

AS 1900 means the Australian Standard entitled AS 1900—1991, *Flotation toys and swimming aids for children* published by Standards Australia on 16 September 1991, as amended by Amendment No 1 of 16 August 1993.

children's flotation toys and swimming aids means flotation toys and swimming aids likely to be used by children of any age less than 15 years in recreational activities or to assist in swimming tuition, including but not limited to:

- (a) rings, partial rings, arm bands, and kick boards, that are inflatable, hollow moulded or made substantially from expanded foam, and
- (b) inflatable toy boats having fewer than 3 separate chambers, or having a length and width the sum of which is less than 3 metres, and
- (c) swimming vests and flotation bubbles,

but not including:

- (d) goods for therapeutic use by disabled persons, or
- (e) goods for use as life jackets that comply, or that comply substantially, with AS 1512, or

Fair Trading (General) Regulation 2002	Clause 33
Product safety standards	Part 2
Flotation toys and swimming aids	Division 9

- (f) goods for use as buoyancy vests that comply, or that comply substantially, with AS 1499, or
- (g) goods for use primarily as a means of flotation for persons in water and in need of rescue, including goods carried in or on ships or boats for such a purpose.

34 Safety standard

The product safety standard prescribed for children's flotation toys and swimming aids is that they must comply with AS 1900.

35 Variation of AS 1900

For the purposes of this Division, AS 1900 is taken to have been amended by omitting Clause 1.1.

Division 10 Children's nightwear and paper patterns for children's nightwear

36 Definitions

In this Division:

AS 1182 means the Australian Standard entitled AS 1182—1997, *Size coding scheme for infants' and children's clothing—Underwear and outerwear*, as published by Standards Australia on 5 March 1997.

AS/NZS 1249 means the Australian/New Zealand Standard entitled AS/NZS 1249:1999, *Children's nightwear and limited daywear having reduced fire hazard*, as published jointly by Standards Australia and Standards New Zealand on 5 April 1999.

children's nightwear includes children's dressing-gowns, pyjamas, pyjama-style overgarments, nightdresses, nightshirts, bathrobes and infant sleepbags, and garments such as all-in-ones and boxer shorts that may be suitable for daywear or nightwear, of any of the sizes 00–14 (as specified in AS 1182), but does not include t-shirts and any article of headwear, leggings (either with or without feet), footwear or handwear.

ISO 6941 means the International Standard entitled *Textile fabrics—Burning behaviour—Measurement of flame spread properties of vertically oriented specimens* and numbered ISO 6941:1984, published by the International Organization for

Clause 36	Fair Trading (General) Regulation 2002
Part 2	Product safety standards
Division 10	Children's nightwear and paper patterns for children's nightwear

Standardization on 15 August 1984, as amended by Amendment No 1 of 15 October 1992.

37 Safety standard for children's nightwear

The product safety standard prescribed for children's nightwear is that it must comply with AS/NZS 1249.

38 Safety standard for paper patterns for children's nightwear

- (1) The product safety standard prescribed for paper patterns for children's nightwear is that they must comply with Clauses 0.2 and 5.6 of AS/NZS 1249.
- (2) The definitions in Clause 0.5.2, 0.5.3, 0.5.6, 0.5.10 of AS/NZS 1249 apply for the purposes of this clause.

39 Variation of AS/NZS 1249

- (1) For the purposes of clause 37, AS/NZS 1249 is taken to have been amended as follows:
 - (a) by omitting the second sentence from Clause 0.1,
 - (b) by inserting in Clause 1.2 (a), after the first paragraph, the following paragraphs:

If there is insufficient fabric for three lengthwise and three widthwise test specimens, as cited in Clause 8.7 of ISO 6941, the flame spread time is to be determined on three lengthwise test specimens only.

If the textile material or garments are constructed with one fabric overlaying another (for example quilted fabrics), specimens must be cut and tested as a combination, that is to say as if the overlay were applied to the under fabric.
 - (c) by omitting from the third paragraph of Clause 1.2 (a) the words "four or more of six specimens" wherever occurring and by inserting instead the words "three or more specimens",
 - (d) by omitting from the note after the third paragraph of Clause 1.2. (a) the words "another set of three specimens are" and by inserting instead the words "another specimen is",

Fair Trading (General) Regulation 2002	Clause 39
Product safety standards	Part 2
Children's nightwear and paper patterns for children's nightwear	Division 10

- (e) by inserting after "use of trims." in Clause 1.3 the following words:
The outer fabric of a composite or appliqued area must be considered the fabric face and must be tested so that the flame impinges on that surface.
- (f) by omitting Clause 5.6.
- (2) For the purposes of clause 38, AS/NZS 1249 is taken to have been amended as follows:
 - (a) by omitting the notes from Clause 0.5.3,
 - (b) by omitting the words "(See Note 1 to Clause 0.1)" from Clause 0.5.10,
 - (c) by inserting the words "clearly visible" between the words "shall bear a" and "warning paragraph" in Clause 5.6.

40 Variation of ISO 6941

ISO 6941 is taken to have been amended as follows:

- (a) by omitting the words "test another set of three specimens for that direction or face" from Clause 8.8 wherever occurring and by inserting instead "test another specimen for that direction or face",
- (b) by omitting Clause 10 k) 4) and by inserting instead the following:
if only four specimens are tested, determine the mean from all the results that burn to the respective marker threads. Report the number of specimens that failed to burn to the marker.

Division 11 Child restraints

41 Definitions

In this Division:

AS 1754—1975 means the Australian Standard entitled *AS 1754—1975, Child Restraints for Passenger Cars and Derivatives*, as amended by Amendment No 1 of February 1976, Amendment No 2 of March 1978, Amendment No 3 of July 1979, the Corrigendum of October 1979 and Amendment No 4 of July 1985.

Clause 41 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 11 Child restraints

AS 1754—1991 means the Australian Standard entitled AS 1754—1991, *Child restraint systems for use in motor vehicles* published on 24 December 1991, as amended by Amendment No 1 of 12 October 1992 and Amendment No 2 of 15 February 1993.

chaise means a device used for raising a child's position in a motor vehicle or adapting an adult seat belt to make it suitable for a child, being a device having a back above the seating plane.

child restraint means a device designed to reduce the risk of bodily injury to a child passenger in a motor vehicle in the event of a motor vehicle impact and includes:

- (a) components designed to restrain the child in the device, and
- (b) components to anchor the device to the motor vehicle, and
- (c) (if supplied) components to restrain a motor vehicle seat, and
- (d) chaises, and
- (e) cushions,

but does not include a child restraint that is an integrated feature of a motor vehicle.

cushion means a device used for raising a child's position in a motor vehicle or adapting an adult seat belt to make it suitable for a child, being a device having no back above the seating plane.

42 Safety standard for child restraints

The product safety standard prescribed for child restraints is that they must comply with AS 1754—1991.

43 Variation of AS 1754—1991

For the purposes of this Division, AS 1754—1991 is taken to be amended as follows:

- (a) by omitting from Clause 1.1 the words “passenger cars and their derivatives,” and by inserting instead the words “motor vehicles”,
- (b) by omitting the second sentence from Clause 1.1,
- (c) by omitting Clause 2.4.

Fair Trading (General) Regulation 2002

Clause 44

Product safety standards

Part 2

Bean bags

Division 12

44 Supply of components for child restraints complying with AS 1754—1975

For the purposes of this Division, components for child restraints that are made to the requirements of AS 1754—1975 must comply with the relevant requirements of AS 1754—1975.

Division 12 Bean bags

45 Definitions

(1) In this Division:

bean bag means a cushion or similar item that consists of a bag or cover surrounding bean bag filling, and includes a bean bag for use in a swimming pool.

bean bag cover means a bag or cover capable of being filled with bean bag filling and that, if filled with bean bag filling, would constitute a bean bag and includes a bag or cover intended as a separate inner lining.

bean bag filling means pellets, or small particles of polystyrene or other similar synthetic material capable of being used as filling for a cushion, but does not include any such pellets or particles when they are mixed with material that is not capable of being so used.

child resistant slide-fastener means a slide-fastener having a sliding piece of a kind referred to in the definition of **slide-fastener** that:

- (a) does not have attached to it any tag, handle or other object that would facilitate the movement of the sliding piece, and
- (b) incorporates a locking mechanism that prevents the sliding piece opening the slide-fastener unless a wholly separate device is used to disengage the locking mechanism and act as a handle in the moving of the sliding piece between the teeth of the slide-fastener.

package means bag, box or other similar container, but does not include a bean bag cover.

slide-fastener means a device comprising two sets of teeth, each set of teeth being located on adjacent edges of the device, and having an attached sliding piece that, when moved between the two sets of teeth, causes one set of teeth to interlock or cease to interlock with the other set of teeth.

Clause 45 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 12 Bean bags

- (2) If a slide-fastener has more than one sliding piece of a kind referred to in the definition of *slide-fastener* in subclause (1), a reference in the definition of *child resistant slide-fastener* in that subclause to a sliding piece includes, in relation to that slide-fastener, a reference to each of those sliding pieces.

46 Safety standard

- (1) The product safety standard prescribed for a bean bag or a bean bag cover is that:
- (a) it must bear a label that:
 - (i) is secured to the bag or cover in such a manner that the label will, despite normal handling, remain fixed to the bag or cover, and
 - (ii) contains the following warning:
 WARNING. Small Light-weight Beads Present A Severe Danger To Children If Swallowed Or Inhaled.
 - (b) it must be constructed so that any opening through which bean bag filling may be inserted or removed is fitted with a child resistant slide-fastener.
- (2) The product safety standard prescribed for a package containing bean bag filling is that it must bear a label that:
- (a) is secured to the package in such a manner that the label will, despite normal handling, remain fixed to the package, and
 - (b) contains the warning referred to in subclause (1) (a) (ii).
- (3) The warning referred to in subclause (1) (a) (ii):
- (a) must be printed in red letters at least 5 millimetres high on a white background, and
 - (b) must have the word "WARNING" printed in capital letters and the remaining words printed in upper and lower case letters.

Division 13 Elastic luggage straps

47 Definition

In this Division:

elastic luggage strap means an elastic strap or cord or 2 or more elastic straps or cords permanently joined and:

Fair Trading (General) Regulation 2002	Clause 47
Product safety standards	Part 2
Elastic luggage straps	Division 13

- (a) having a hook, buckle or other fastening device at each extremity, and
- (b) designed to be used for the purpose of securing luggage or other objects.

48 Safety standard

- (1) The product safety standard prescribed for elastic luggage straps is that they must have a label permanently affixed to them bearing the following warning:

WARNING. Avoid eye injury. DO NOT overstretch. ALWAYS keep face and body out of recoil path. DO NOT use when strap has visible signs of wear or damage.

- (2) A label referred to in subclause (1):
- (a) must bear the word “WARNING” in upper case black letters of at least 4 millimetres in height on a yellow background, and
 - (b) must bear the words “do not” and “always” in upper case black letters at least 2 millimetres in height on a yellow background, and
 - (c) must bear the remaining words in lower case black letters at least 2 millimetres in height on a yellow background, and
 - (d) must be clearly displayed.

Division 14 Projectile toys

49 Definitions

In this Division:

AS 1647.2 means the Australian Standard entitled AS 1647.2—1992, *Children’s toys (safety requirements), Part 2: Constructional requirements*, as published by Standards Australia on 14 September 1992.

projectile toy means any toy to which Clause 7.15 of AS 1647.2 applies.

50 Safety standard

The product safety standard prescribed for projectile toys is that they must comply with the requirements of Clause 7.15 (including

Clause 50 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 15 Baby walkers

Clause 7.15.1 (subparagraph (i) excepted), 7.15.2, 7.15.3, 7.15.4 (paragraph (a) excepted), 7.15.5 and 7.15.6) of AS 1647.2.

Division 15 Baby walkers

51 Definition

In this Division:

baby walker means a device that consists of a frame on wheels designed to support, inside the frame and with the child's feet touching the ground, a child who has not learned to walk, being a device that is propelled by the movement of the child.

F 977-00 means the United States standard entitled *Standard Consumer Safety Specification for Infant Walkers* approved on 10 April 2000 and published in July 2000 by ASTM (the American Society for Testing and Materials).

52 Safety standard

The product safety standard prescribed for baby walkers is that they must comply with Sections 6.1, 6.4 and 9.3 of F 977-00.

Division 16 Disposable cigarette lighters

Subdivision 1 Preliminary

53 Definitions

In this Division:

adjustable lighter means a lighter with provision for flame height adjustment.

American Standard means the Consumer Product Safety Standard for Cigarette Lighters (16 CFR 1210):

- (a) set out in Part 1210, Title 16 of the *Code of Federal Regulations*, and
- (b) published in the Federal Register of the United States of America, Volume 58, No 131, on 12 July 1993 and revised as of 1 January 2001.

Fair Trading (General) Regulation 2002

Clause 53

Product safety standards

Part 2

Disposable cigarette lighters

Division 16

customs value for a device means the customs value determined for the device under section 159 of the *Customs Act 1901* of the Commonwealth.

disposable lighter—see clause 54 (4).

ex works agreement means an agreement for the supply of goods under which the supplier's obligation to deliver the goods is fulfilled when the supplier makes the goods available to the buyer at the supplier's premises.

indexed amount—see clause 68.

lighter—see clause 54.

non adjustable lighter means a lighter with no provision for flame height adjustment.

novelty lighter—see clause 54 (5).

refillable lighter—see clause 54 (6).

safe operation means the operation of a lighter so that it:

- (a) does not spit or sputter, and
- (b) does not produce an abnormal or unsafe flame, and
- (c) cannot be operated easily by a young child.

spit or sputter for a flame produced by a lighter means the escape of liquid fuel from the lighter producing burning liquid droplets that separate from the flame.

the Table means the Table to this Division.

young child means an individual who is under 5 years of age.

54 Meaning of "lighter" and types of lighters

- (1) A **lighter** is a flame producing device that:
 - (a) is designed to light cigarettes, cigars and pipes, and
 - (b) is an eligible device.
- (2) For the purposes of subclause (1), a flame producing device is an **eligible device** if:
 - (a) it is designed to be discarded when its fuel supply is exhausted, or
 - (b) it is designed to incorporate a separate container of fuel that is designed to be discarded when empty, or

Clause 54 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 16 Disposable cigarette lighters

- (c) it is designed to have an entertaining audio or visual effect (other than production of a flame), or

Note. An example of paragraph (c) is a device that plays musical notes or displays flashing lights.

- (d) it is designed to depict or resemble, in physical form or function, an article commonly recognised as appealing to, or intended for use by, a young child.

Note. Examples of paragraph (d) include a beverage, cartoon character, food, gun, musical instrument, toy, toy animal, watch or vehicle.

- (3) For the purposes of subclause (1), a flame producing device is also an *eligible device* if:

- (a) it is designed to be refilled with fuel, and
 (b) its value is less than the relevant amount.

- (4) A *disposable lighter* is a lighter that is an eligible device mentioned in subclause (2) (a) or (b).

- (5) A *novelty lighter* is a lighter that is an eligible device mentioned in subclause (2) (c) or (d).

- (6) A *refillable lighter* is a lighter that is an eligible device mentioned in subclause (3).

- (7) For the purposes of subclause (3):

relevant amount means:

- (a) for a device imported into Australia before 1 October 2002—\$2, or
 (b) for another device supplied by its manufacturer under an ex works agreement before 1 October 2002—\$2, or
 (c) in any other case—the indexed amount.

value for a device means:

- (a) for a device imported into Australia—its customs value, or
 (b) for another device—its supply price.

55 Safety standard

The product safety standard prescribed for lighters is that they must comply with the requirements of this Division.

Fair Trading (General) Regulation 2002	Clause 56
Product safety standards	Part 2
Disposable cigarette lighters	Division 16

Subdivision 2 Flame testing, structural safety and labelling

56 Application of this Subdivision

This Subdivision does not apply to a lighter that:

- (a) is a novelty lighter, and
- (b) is not a disposable lighter or a refillable lighter.

57 Testing procedures

When a lighter is tested in accordance with the procedures described in Part 2, 3, 4, 5 or 6 of the Table, the test must be performed in accordance with the procedures described in Part 1 of the Table.

58 Ignition and adjustment of flame

- (1) A lighter must be designed so that deliberate action is necessary to ignite and sustain a flame.
- (2) An adjustable lighter must be designed so that deliberate action is necessary to adjust the height of the flame.

59 Abnormal burning

A lighter, after being tested in accordance with Parts 4, 5 and 6 of the Table, must not, when tested in accordance with Parts 2 and 3 of the Table, spit or sputter or produce an abnormal or unsafe flame.

60 Flame height

- (1) A lighter must comply with subclause (2) when tested in accordance with Part 2 of the Table:
 - (a) after being tested in accordance with Part 4 or 5 of the Table, or
 - (b) after being tested in accordance with Parts 4 and 5 of the Table.
- (2) For the purposes of subclause (1), the height of the flame produced by a lighter must not exceed:
 - (a) in the case of a non-adjustable lighter, 50 millimetres, and
 - (b) in the case of an adjustable lighter:
 - (i) where the lighter is adjusted to produce the maximum flame height, 150 millimetres, and

Clause 60 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 16 Disposable cigarette lighters

- (ii) where the lighter is adjusted to produce the minimum flame height, 100 millimetres.
- (3) If the flame height of an adjustable lighter has not been adjusted after being supplied in trade or commerce, the lighter must not, when first used after being supplied, produce a flame exceeding 125 millimetres in height.

61 Flame extinction

- (1) A lighter must comply with subclause (2) after being tested in accordance with the procedures described in Parts 3, 4 and 5 of the Table.
- (2) For the purposes of subclause (1), where:
- (a) a non-adjustable lighter produces a flame for 10 seconds, or
 - (b) an adjustable lighter:
 - (i) produces a flame for 5 seconds at the maximum flame height adjustment, or
 - (ii) produces a flame for 10 seconds at the minimum flame height adjustment,

the flame produced must extinguish after cessation of the action sustaining the flame within two seconds if the lighter has no flameguard or four seconds if it has a flameguard.

62 Structural safety

- (1) A lighter must have no sharp external edges.
- (2) A lighter, when tested in accordance with Part 3, 4 or 5 of the Table, must not be damaged so as to affect its safe operation.
- (3) A lighter, when tested in accordance with Part 4 of the Table, must not spontaneously ignite.
- (4) The internal pressure of the fuel reservoir of a lighter when tested in accordance with Part 6 of the Table must not suddenly decrease.

63 Labelling

- (1) A lighter must incorporate (as a permanent part of the lighter) in a legible form:
 - (a) the name or other identification of the manufacturer or distributor of the lighter, and

Fair Trading (General) Regulation 2002

Clause 63

Product safety standards

Part 2

Disposable cigarette lighters

Division 16

- (b) where the lighter is an adjustable lighter, symbols indicating the direction in which force is to be applied to increase or decrease the flame height and the effect of the application of force in that direction.
- (2) In addition to subclause (1), either:
- (a) the following information that is enclosed by inverted commas must be displayed in a legible form on a lighter, or on an adhesive label that is affixed to the lighter:
- (i) “WARNING” in capital letters and adjacent to the words that must be displayed under subparagraphs (ii)–(ix),
 - (ii) “KEEP AWAY FROM CHILDREN” or “KEEP OUT OF REACH OF CHILDREN” in capital letters,
 - (iii) “Ignite lighter away from face and clothing”,
 - (iv) “Never expose to heat above 50°C or to prolonged sunlight”,
 - (v) “Never puncture or put in fire”,
 - (vi) for a lighter that contains flammable gas under pressure—“Contains flammable gas under pressure”,
 - (vii) for a lighter that contains flammable liquid—“Contains flammable liquid”,
 - (viii) for a self-extinguishing lighter—“Be sure flame is out after use”,
 - (ix) for a non-self-extinguishing lighter—“This lighter does not extinguish itself—close the cover to put out”, or
- (b) if a lighter is contained in a package when it is sold at retail—the information in paragraph (a) must be displayed in a legible form on the package.

Subdivision 3 Child resistance

64 Application of this Subdivision

This Subdivision applies only to a lighter to which the American Standard would apply if the lighter were imported into the United States of America after 12 July 1994.

Clause 65 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 16 Disposable cigarette lighters

65 Child resistance

- (1) A lighter must be of a kind that has been:
 - (a) tested in the manner set out in section 1210.4 of the American Standard, and
 - (b) shown to be resistant to successful operation by at least 85 per cent of the child-test panel when tested in that manner.
- (2) The mechanism or system of a lighter that is designed or intended to make the lighter resistant to successful operation by at least 85 per cent of the child-test panel must:
 - (a) reset itself automatically after each operation of the ignition mechanism of the lighter, and
 - (b) not impair safe operation of the lighter when used in a normal and convenient manner, and
 - (c) be effective for the functional life of the lighter, and
 - (d) not be easily overridden or deactivated.

66 Certification

A certificate of compliance, within the meaning of the American Standard, must have been issued for the lighter in accordance with that Standard.

Subdivision 4 Indexation

67 Definitions

In this Division:

CPI number means the All Groups Consumer Price Index number (that is the weighted average of the 8 capital cities) published by the Australian Statistician.

earlier CPI number means the CPI number for the July quarter in 1997.

July quarter means the 3 months starting on 1 July in a year.

latest CPI number means the CPI number for the July quarter in 2002.

Fair Trading (General) Regulation 2002	Clause 68
Product safety standards	Part 2
Disposable cigarette lighters	Division 16

68 Indexed amount

- (1) The indexed amount is the amount worked out in accordance with the formula:

$$\frac{\$2 \times \text{latest CPI number}}{\text{earlier CPI number}}$$

- (2) If, apart from this subclause, the indexed amount under this clause would be an amount of dollars and cents, the amount is to be rounded to the nearest 25 cents, and if the amount to be rounded is 12.5 cents, rounded up.
- (3) If at any time the Australian Statistician publishes for a particular July quarter a CPI number in substitution for a CPI number previously published by the Australian Statistician for the quarter, the publication of the later CPI number is to be disregarded for this clause.
- (4) However, if at any time the Australian Statistician changes the reference base for the Consumer Price Index, then in applying this clause after the change is made, regard is to be had only to numbers published in terms of the new reference base.

Table Test procedures for lighters

Part 1 General test procedures

- (1) The lighter must be maintained at a temperature of 23 ± 2 degrees Celsius for at least 10 hours immediately preceding testing in accordance with Parts 2, 3 and 4 of this Table.
- (2) The area in which tests are carried out must be maintained at a temperature of 23 ± 2 degrees Celsius during testing in accordance with Parts 2, 4 and 5 of this Table.
- (3) The lighter to be tested must be new, free of mechanical damage and must not (except where required by this Division) have been previously tested.

Part 2 Flame height test procedures

- (1) The test must be carried out inside a draught-free chamber constructed from suitable non-flammable material. The flame height must be measured to the nearest 10 millimetres.

Clause 68 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 16 Disposable cigarette lighters

- (2) Adjustable lighters must be tested with the lighter adjusted to produce the maximum flame height and then with the lighter adjusted to produce the minimum flame height.
- (3) The lighter must produce a flame for a continuous 5 second period and the flame height must be determined by measuring from the tip of the flame to the top of the flameguard or to the base of the flame (in the case of a lighter that does not have a flameguard) by means of a board positioned at least 25 millimetres behind the lighter and marked with 10 millimetre increments.

Part 3 Inversion test procedures

The lighter (adjustable lighters adjusted to produce a 50 millimetre flame) must be operated to produce a flame, for a continuous 10 second period in a draught-free chamber, while being held at 45 degrees below the horizontal.

Part 4 Drop test procedures

- (1) The lighter must be allowed to fall three times onto a concrete surface from a point 1.5 metres above it, from the following positions:
 - (a) firstly, an upright position,
 - (b) secondly, an inverted position,
 - (c) thirdly, a horizontal position.
- (2) The lighter must be inspected after every fall and any spontaneous ignition or damage must be recorded.

Part 5 Temperature test procedures

- (1) An oven capable of withstanding the explosion of a lighter when being tested and of maintaining a temperature of 54 ± 2 degrees Celsius must be used in the test.
- (2) The lighter must be placed in the oven for four hours during which time the oven temperature must be maintained at 54 ± 2 degrees Celsius.
- (3) The lighter when removed from the oven must, when cool, be tested in accordance with Part 3 of this Table.

Part 6 Pressure test procedure

- (1) The test apparatus must consist of a device capable of producing gauge pressure of 2 (MPa).

Fair Trading (General) Regulation 2002	Clause 68
Product safety standards	Part 2
Children's household cots	Division 17

- (2) The lighter must be emptied of fuel.
- (3) The fuel reservoir of the lighter must be subjected to an internal pressure equal to twice the vapour pressure at 54 degrees Celsius of the fuel normally used in the lighter. The pressure rise must not exceed a rate of 69 kPa per second.

Division 17 Children's household cots

69 Definitions

In this Division:

AS/NZS 2172 means the Australian/New Zealand Standard entitled AS/NZS 2172:1995, *Cots for household use—Safety requirements*, as published jointly by Standards Australia and Standards New Zealand on 5 April 1995.

household cot means a cot designed for use in household situations, but does not include:

- (a) a folding portable cot, or
- (b) a carry cot, or
- (c) a cradle.

70 Safety standard

- (1) The product safety standard prescribed for children's household cots is that they must comply with Clauses 5, 6, 8, 9, 11 and 12 of AS/NZS 2172.
- (2) The definitions in Clause 3 of AS/NZS 2172 apply for the purposes of this clause.
- (3) Subclause (1) does not apply in respect of a household cot that is an antique or collectable cot, but only if the antique or collectable cot:
 - (a) is accompanied by a certificate from the supplier to the consumer stating that it is not safe to place a child in the cot, and
 - (b) has two clearly visible warning statements (one external, one internal) permanently attached to the cot in the form of a metal plaque glued or affixed by nails or screws to the upper half of the side or end of the cot and containing the following warning in the form required by subclause (4):

Clause 70 Fair Trading (General) Regulation 2002

Part 2 Product safety standards

Division 17 Children's household cots

WARNING: this cot does not meet the mandatory safety standard. For display purposes only. It is dangerous to place a child in this cot.

- (4) The warning referred to in subclause (3) (b) must:
- (a) contain the upper case and underlining shown in that paragraph, and
 - (b) have upper case lettering at least 5 mm high and lower case letters at least 2.5 mm high, and
 - (c) have lettering that is in sharp contrast to its background.

Division 18 Laser pointers

71 Definitions

In this Division:

AS/NZS 2211 means the Australian/New Zealand Standard entitled AS/NZS 2211.1:1997, *Laser safety, Part 1: Equipment classification, requirements and user's guide*, as published jointly by Standards Australia and Standards New Zealand on 5 March 1997.

Class 1 laser product has the same meaning as it has in Clause 3.15 of AS/NZS 2211.

Class 2 laser product has the same meaning as it has in Clause 3.16 of AS/NZS 2211.

laser means any device that can be made to produce or amplify electromagnetic radiation in the wavelength range from 100 nanometres to 1 millimetre primarily by the process of controlled stimulation emission.

laser pointer means a hand-held laser product that is battery-operated and produces a beam of electromagnetic radiation, but does not include any such product that is a therapeutic good (as defined in the *Therapeutic Goods Act 1989* of the Commonwealth) listed or registered in the Australian Register of Therapeutic Goods maintained under that Act.

laser product means any product or assembly of components that constitutes, incorporates or is intended to incorporate a laser or laser system, and that is not intended for sale to another manufacturer for use as a component (or replacement for a component) of an electronic product.

Fair Trading (General) Regulation 2002	Clause 71
Product safety standards	Part 2
Laser pointers	Division 18

laser system means a laser in combination with an appropriate laser energy source with or without additional incorporated components.

72 Safety standard

The product safety standard prescribed for laser pointers is that they must be a Class 1 laser product or a Class 2 laser product.

73 Testing of laser pointers

A person who, in trade or commerce, supplies a laser pointer must hold a test report issued by a laboratory indicating:

- (a) that the laser pointer has been tested, or is part of a batch from which samples have been tested, by the laboratory, and
- (b) the method used to carry out the test and the results of the test, and
- (c) that the results of the test show that each laser pointer tested is a Class 1 laser product or Class 2 laser product.

74 Production of reports

A person who, in trade or commerce, supplies laser pointers must, on request, make available for inspection by an investigator any report required under clause 73.

Maximum penalty: 10 penalty units.

Clause 75 Fair Trading (General) Regulation 2002

Part 3 Product information standards

Division 1 Preliminary

Part 3 Product information standards

Division 1 Preliminary

75 Information standards

The standards set out in the other Divisions to this Part are prescribed under section 38 of the Act as product information standards for the goods to which those Divisions apply.

Note. The consequences of failing to comply with a product information standard are set out in section 39 of the Act.

Division 2 Fibre content labelling of textile products

76 Definitions

In this Division:

AS/NZS 2392 means the Australian/New Zealand Standard entitled *AS/NZS 2392:1999, Textiles—Labelling of clothing, household textiles and furnishings*, as published jointly by Standards Australia and Standards New Zealand on 5 July 1999.

AS/NZS 2450 means the Australian/New Zealand Standard entitled *AS/NZS 2450:1994, Textiles—Natural and man-made fibres—Generic names*, as published jointly by Standards Australia and Standards New Zealand on 17 October 1994.

AS/NZS 2622 means the Australian/New Zealand Standard entitled *AS/NZS 2622:1996, Textile products—Fibre content labelling*, as published jointly by Standards Australia and Standards New Zealand on 5 September 1996.

textile product has the same meaning as it has in Clause 5.3 of *AS/NZS 2622*.

77 Product information standard

The product information standard for textile products is that they must comply with *AS/NZS 2622*.

Fair Trading (General) Regulation 2002	Clause 78
Product information standards	Part 3
Fibre content labelling of textile products	Division 2

78 Form of information

The label in which any statement required for a textile product by AS/NZS 2622 is contained must comply with AS/NZS 2392 and AS/NZS 2450.

Division 3 Care labelling of certain goods

79 Definitions

In this Division:

AS/NZS 1957 means the Australian/New Zealand Standard entitled AS/NZS 1957:1998, *Textiles—Care labelling*, as published jointly by Standards Australia and Standards New Zealand on 5 January 1998.

80 Application of Division

- (1) This Division applies to any of the following goods that are made from textiles, plastics, plastic coated fabrics, suede, skins, hides, grain leathers or furs, and that are not excluded goods:
 - (a) clothing,
 - (b) household textiles,
 - (c) apparel,
 - (d) furnishings or upholstered furniture,
 - (e) bedding, mattresses or bed bases,
 - (f) piece goods or yarns.
- (2) In this clause:

excluded goods means:

 - (a) second-hand goods,
 - (b) the following kinds of clothing (namely, unsupported coats (including overcoats, jackets and the like) of PVC film, handkerchiefs, braces, garter suspenders, arm bands, belts and headwear),
 - (c) all footwear (including textile materials used in the manufacture of footwear but excluding all types of hosiery),
 - (d) the following kinds of drapery (namely, floor cloths, dish cloths, dusters, cleaning cloths and pressing cloths),

Clause 80 Fair Trading (General) Regulation 2002

Part 3 Product information standards

Division 3 Care labelling of certain goods

- (e) the following kinds of haberdashery (namely, ornaments, artificial flowers, sewing and embroidery threads and all other small items of haberdashery used in the making of clothing and textile products where instructions are not needed to ensure that the clothing or textile product is not damaged during cleaning and maintenance),
- (f) the following kinds of furnishings (namely, oil baize, window blinds, shade blinds, sun blinds, awnings, floor coverings, light fittings, lampshades, tapestries, wall hangings, ornaments, handicraft items, draught excluders, non-upholstered furniture and cushions and cushion covers manufactured from remnants and labelled by the manufacturer with the following disclaimer “cushion cover manufactured from remnants, care treatment unknown”),
- (g) all jute products,
- (h) all medical and surgical goods (namely, bandages, dressings, sanitary pads and materials forming part of manufactured medical and surgical goods),
- (i) the following kinds of canvas goods (namely, beach and garden umbrella coverings),
- (j) the following kinds of miscellaneous goods (namely, cords, twines, lashings, garden hose, toys, umbrellas and parasols, shoelaces, woven labels, flex coverings, goods manufactured for sporting purposes (including sporting gloves but excluding all other apparel), articles intended for one-time use only, mops, basket hangers, shoe holders, remnants, industrial gloves, polypropylene webbing furniture and all bags and cases (including handbags, purses, wallets, travel bags, school bags, sports bags, briefcases and wash bags)).

81 Product information standard

The product information standard for goods to which this Division applies is that the goods must comply with AS/NZS 1957.

82 Variation of product information standards

For the purposes of this Division, AS/NZS 1957 is taken to have been amended as follows:

- (a) by omitting Clauses 1.2, 1.3, 1.4, 2.1.3 and 2.2 (b),

Fair Trading (General) Regulation 2002	Clause 82
Product information standards	Part 3
Care labelling of certain goods	Division 3

- (b) by omitting Clause 2.2 (c) and by inserting instead:
 - (c) The wording of the label shall be in English and be clearly legible.
- (c) by omitting Note 1 to Clause 2.2,
- (d) by inserting “This includes individual pieces of household textile products sold as sets (eg napkin and tablecloth sets).” at the end of Note 5 to Clause 2.2,
- (e) by inserting after Clause 2.3:

2.4 Alternative care instructions Where in this standard there is a requirement for care instructions from categories in Tables 1, 2 or 3 to be provided on or with articles, words that have a similar meaning to the care instructions listed in Tables 1, 2 or 3 may be used.
- (f) by omitting “each of” from Clause 3.4,
- (g) by omitting “each of” from Clause 3.5,
- (h) by omitting “each category” from Clause 3.6 and inserting “the categories” instead,
- (i) by omitting “For upholstered furniture, bedding and other furnishings in Table 2, instructions shall be given from each category and a prohibitive instruction given if a cleaning method is unsuitable.” from Clause 3.6.

83 Form of information for prescribed goods

- (1) The care instructions for goods to which this Division applies that are prescribed goods may be given:
 - (a) on a removable ticket or label attached to the goods, or
 - (b) on a pamphlet accompanying the goods, or
 - (c) as printed instructions on the wrapper or other matter in which the goods are packaged.
- (2) In this clause:

prescribed goods means:

 - (a) the following kinds of adult’s, children’s and baby clothing (namely, collars, neckwear, bow ties, gloves, mittens, all types of hosiery, incontinence garments, reversible garments, fur garments, bibs, washable nappies, squares of flannelette, terry towelling or muslin and baby pilchers),

Clause 83 Fair Trading (General) Regulation 2002

Part 3 Product information standards

Division 3 Care labelling of certain goods

- (b) the following kinds of drapery (namely, face washers, serviettes, doilies, table cloths, tray cloths, centres, runners, duchess sets, mosquito netting and covers made from mosquito netting, butter muslin and gauze, tea towels, place mats, pot holders, finger tips, appliance covers for teapots, toasters and the like and hot water bottle covers),
- (c) the following kinds of haberdashery (namely, elastic, elastic threads, ribbons, zips, iron-on binding patches or trim, velcro-type fasteners, curtain making kits and all other small items of haberdashery used in the making of clothing and textile products where instructions are needed to ensure that the clothing or textile product is not damaged during cleaning and maintenance),
- (d) all shower curtains,
- (e) all gardening gloves.

84 Care instructions for goods unable to be washed or dry-cleaned

Where goods are unable to be washed or dry-cleaned, the permanent label must include appropriate instructions in words that:

- (a) warn that the goods are unable to be washed or dry-cleaned, and
- (b) adequately describe the care treatment for the goods.

Division 4 Petrol price signs

85 Definitions

In this Division:

consent authority, development application and *development consent* have the same meanings as they have in the *Environmental Planning and Assessment Act 1979*.

petrol station means a building or place used for the fuelling of motor vehicles involving the sale by retail of petrol, whether or not any other fuel or other product is sold there and whether or not the building or place is used for any other purpose, but does not include a place where the primary business is the hiring, leasing or sale of motor vehicles.

Fair Trading (General) Regulation 2002	Clause 86
Product information standards	Part 3
Petrol price signs	Division 4

86 Product information standard

The product information standard for regular unleaded petrol supplied at a petrol station is that the price at which that petrol is supplied to retail customers at the petrol station must be disclosed by being displayed at the petrol station on one or more signs (*petrol price signs*) that comply with the following requirements:

- (a) a petrol price sign must be so positioned and lit that any price and other matter that it displays will be readily seen by motorists approaching the petrol station at any time that the petrol station is open for business for the supply of petrol,
- (b) a price displayed on a petrol price sign must be a price per litre of petrol.

87 Planning restriction not affected

The product information standard specified in clause 86 does not apply to the extent of any inconsistency with:

- (a) a requirement or prohibition imposed by or under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993* (other than a requirement that development consent be obtained), or
- (b) a requirement under the *Environmental Planning and Assessment Act 1979* that development consent be obtained, but only if that development consent has been applied for and refused.

Clause 88 Fair Trading (General) Regulation 2002

Part 4 Penalty notice offences

Part 4 Penalty notice offences

88 Penalty notice offences: section 64

For the purposes of section 64 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is a prescribed offence, and
- (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 1.

Fair Trading (General) Regulation 2002

Clause 89

Miscellaneous

Part 5

Part 5 Miscellaneous

89 Repeal and savings

- (1) The following Regulations are repealed:
 - (a) the *Fair Trading (Penalty Notices) Regulation 1998*,
 - (b) the *Fair Trading (Product Safety Standards) Regulation 2000*,
 - (c) the *Fair Trading (Savings and Transitional) Regulation 1997*.
- (2) Any act, matter or thing that, immediately before the repeal of:
 - (a) a Regulation referred to in subclause (1), or
 - (b) the *Fair Trading (Product Information Standards) Regulation 1997*,

had effect under (or was done for the purposes of) any of those Regulations continues to have effect under (or is taken to have been done for the purposes of) this Regulation.

Note. This provision operates to preserve (among other things) the effect of clause 4 of the *Fair Trading (Savings and Transitional) Regulation 1997*, which provides that a person appointed by the Property Services Council under section 83 of the *Property, Stock and Business Agents Act 1941* (as in force immediately before 1 August 1997) to examine the trusts and other accounts kept by a licensee (within the meaning of that Act) in connection with the licensee's business is taken to have been appointed under section 64S of that Act by the Director-General of the Department of Fair Trading to examine the accounts kept by that licensee (or former licensee) in connection with the licensee's business.

Fair Trading (General) Regulation 2002

Schedule 1 Penalty notice offences

Schedule 1 Penalty notice offences

(Clause 88)

Column 1	Column 2
Offences under the Fair Trading Act 1987	
Section 27 (1)	\$550
Section 32 (1)	\$550
Section 32 (2)	\$550
Section 34 (9)	\$550
Section 34 (10)	\$550
Section 39 (1)	\$550
Section 40 (1)	\$550



New South Wales

Fisheries Management (Aquaculture) Regulation 2002

under the

Fisheries Management Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

The Hon EDWARD OBEID, M.L.C.,
Minister for Fisheries

Explanatory note

The object of this Regulation is to remake, without substantial alteration, the *Fisheries Management (Aquaculture) Regulation 1995*, which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. That Regulation supplements Part 6 of the *Fisheries Management Act 1994*, which relates to aquaculture management.

This Regulation includes provisions dealing with the following:

- (a) the classification of aquaculture permits,
- (b) applications for, and the issue of, aquaculture permits,
- (c) financial arrangements to be entered into by class A and class B permit holders to provide security for the due performance of certain obligations of the permit holders arising under the Act,
- (d) the maintenance of a trust account in relation to contributions payable by class A permit holders of a class 1 lease,
- (e) the classification of aquaculture leases,
- (f) applications for, and the grant and renewal of, aquaculture leases,
- (g) the rent payable under aquaculture leases,
- (h) the Minister's consent to the subletting and transfer of aquaculture leases,
- (i) the transmission of an aquaculture lease on the death of the lessee,
- (j) the surrender and consolidation of aquaculture leases,

Fisheries Management (Aquaculture) Regulation 2002

Explanatory note

- (k) requirements that leased areas, boat channels and access ways be marked,
- (l) diseased fish and marine vegetation,
- (m) the marking of containers consigning or conveying unopened shellfish for sale,
- (n) the gathering or collection of marine vegetation for commercial purposes.

This Regulation is made under the *Fisheries Management Act 1994* and, in particular, under Part 6 (Aquaculture management) and section 289 (the general regulation-making power).

Fisheries Management (Aquaculture) Regulation 2002

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	7
2 Commencement	7
3 Definitions	7
Part 2 Aquaculture permits	
Division 1 Classification of permits	
4 Kinds of aquaculture permits that can be issued	9
Division 2 Applications for, and issue of, permits	
5 Fee payable when applying for an aquaculture permit	10
6 Additional grounds for refusing an aquaculture permit	10
Division 3 Contributions by permit holders to pay for costs of administration	
7 Aquaculture permit holders liable to pay contributions towards cost of administration	11
8 Costs of administration that are directly attributable to industry	12
9 Exemptions	12
10 Minister may waive payment of contribution	12
Division 4 Contributions by permit holders to pay for research	
11 Aquaculture permit holders liable to pay contributions for research	13
12 Research trust accounts to be maintained for the purposes of this Division	14
13 Where research trust account money is to be kept and how the account is to be operated	15
14 Money held in research trust account to be invested	15
15 Purposes for which money held in research trust account can be used	15
16 Committees in respect of research trust account	15
Part 3 Security arrangements for aquaculture permit holders	
Division 1 Preliminary	
17 "Payment obligation" defined	16

Fisheries Management (Aquaculture) Regulation 2002

Contents

		Page
Division 2 Security to be provided by class A and class B permit holders		
18	Persons to whom this Division applies	17
19	Class A and B permit holders to enter into financial arrangement to provide security	17
20	When secured amounts are liable to be forfeited	18
21	What happens to an arrangement when a person stops being a permit holder	19
Division 3 Financial arrangements by way of contributions taken to be entered into by certain class A permit holders		
22	Persons to whom this Division applies	19
23	Contributions to be made by certain class A permit holders	20
24	Minister may suspend requirement to make contributions	21
25	Minister to enforce permit holder's obligations	21
26	Trust account to be maintained for the purposes of this Division	22
27	Purposes for which money held in trust account can be used	22
28	Where trust account money is to be kept and how the account is to be operated	22
29	Money held in trust account may be invested	23
Part 4 Aquaculture leases		
Division 1 Classification of leases		
30	Classes of aquaculture leases	24
Division 2 Applications for, and grant and renewal of, aquaculture leases		
31	Procedure for applying for an aquaculture lease	25
32	Applicant's obligations to mark area applied for	25
33	Offer of aquaculture lease by auction, public tender or ballot	26
34	Offer of aquaculture lease by auction	27
35	Offer of aquaculture lease for public tender	28
36	Offer of aquaculture lease by ballot	29
37	Minister's obligations when granting an aquaculture lease	30
38	Application for renewal of an aquaculture lease	31
39	Process for renewing an aquaculture lease	31
Division 3 Rent for aquaculture leases		
40	Minimum rent for leased area	32
41	How rent for an aquaculture lease is to be calculated	32

Fisheries Management (Aquaculture) Regulation 2002

Contents

	Page
42 When rent payable	33
43 Rent for leased area less than 1 hectare	34
Division 4 Subletting, transferring and transmission of aquaculture leases	
44 Fee payable for Minister's consent to subletting of leased area	34
45 Procedure for getting Minister's consent to transfer of aquaculture lease	34
46 Transmission of aquaculture lease on lessee's death	35
Division 5 Surrender, consolidation and subdivision of aquaculture leases	
47 Aquaculture lease may be surrendered	36
48 Aquaculture leases may be consolidated	37
49 Aquaculture leases may be subdivided	38
Division 6 Aquaculture lease plans and documents	
50 Certified copy of lease or plan	39
51 Minister's duties with respect to endorsing lease documents	39
52 When Minister can require aquaculture lessee to lodge lease document	40
53 Minister can correct errors in aquaculture leases and other documents	40
Division 7 Marking of leased areas, boat channels and access ways	
54 Obligations of aquaculture lessee to mark out leased area	40
55 Obligations of aquaculture lessee to mark out boat channel	42
56 Obligations of aquaculture lessee to mark out an access way	42
57 Notice to maintain markings	44
58 Minister may modify boundaries of leased area	44
Division 8 Public rights	
59 Additional public right to which aquaculture lease is subject	44
Part 5 Diseased fish and marine vegetation	
60 Diseases declared for purposes of Division 4 of Part 6 of the Act	46
61 Notification of diseases	47
62 Order declaring quarantine area	47

Fisheries Management (Aquaculture) Regulation 2002

Contents

	Page
Part 6	Miscellaneous
63	Withdrawal of application under this Regulation and refund of certain fees 48
64	Information to be specified on containers of shellfish for sale 48
65	Obligations of authorised deposit-taking institutions concerning trust accounts 49
66	Permit required to gather marine vegetation for commercial purposes 49
67	Fee for permit under section 37 50
68	Saving 50
69	Transitional provision concerning security arrangements for class A permit holders of class 1 leases 51
Schedules	
1	Provisions relating to members and procedure of committees 52
2	Forms 56

Clause 1	Fisheries Management (Aquaculture) Regulation 2002
Part 1	Preliminary

Fisheries Management (Aquaculture) Regulation 2002

under the

Fisheries Management Act 1994

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Fisheries Management (Aquaculture) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Fisheries Management (Aquaculture) Regulation 1995* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

ballot application means an application to participate in a public ballot for the allocation of an aquaculture lease area.

extensive aquaculture means aquaculture undertaken without providing supplementary food for the fish or marine vegetation that are being cultivated.

food includes any form of nutrient.

intensive aquaculture means aquaculture undertaken by providing supplementary food for the fish or marine vegetation that are being cultivated (whether or not naturally occurring food is consumed or available for consumption by the fish or marine vegetation).

the Act means the *Fisheries Management Act 1994*.

water production area means a water area available for aquaculture but does not include any water storage area or effluent storage area.

(2) In this Regulation, a reference to a permit of a particular class is a reference to a permit of that class as referred to in clause 4.

Clause 3 Fisheries Management (Aquaculture) Regulation 2002
Part 1 Preliminary

- (3) Notes included in this Regulation do not form part of this Regulation.

Fisheries Management (Aquaculture) Regulation 2002

Clause 4

Aquaculture permits

Part 2

Part 2 Aquaculture permits

Division 1 Classification of permits

4 Kinds of aquaculture permits that can be issued

- (1) The following classes of aquaculture permits are prescribed for the purposes of section 144 (2) of the Act:
 - (a) a class A permit authorising extensive aquaculture on public water land,
 - (b) a class B permit authorising intensive aquaculture on public water land,
 - (c) a class C permit authorising extensive aquaculture to be undertaken otherwise than on public water land,
 - (d) a class D permit authorising intensive aquaculture to be undertaken otherwise than on public water land,
 - (e) a class E permit authorising extensive freshwater aquaculture to be undertaken at 2 or more privately owned locations otherwise than on public water land,
 - (f) a class F permit authorising a person to operate a fish pond, tank or other structure with a view to charging members of the public for the right to fish in the pond, tank or structure,
 - (g) a class G permit authorising experimental aquaculture to be undertaken,
 - (h) a class H permit authorising a fish hatchery to be operated,
 - (i) a class I permit authorising aquaculture to be undertaken for a charitable or non-profit making purpose.
- (2) A class I permit cannot be issued for a period of more than 3 months.
- (3) In this clause, *fish hatchery* means a place where the progeny of fish are produced for the purpose of selling them.

Note. *Public water land* is defined in section 4 (1) of the Act.

Clause 5 Fisheries Management (Aquaculture) Regulation 2002

Part 2 Aquaculture permits

Division 2 Applications for, and issue of, permits

5 Fee payable when applying for an aquaculture permit

- (1) Subject to subclause (2), the fee required to accompany an application for an aquaculture permit is as follows:
- (a) for a class A permit—\$214,
 - (b) for a class B permit—\$214,
 - (c) for a class C permit—\$321,
 - (d) for a class D permit—\$535,
 - (e) for a class E permit—\$428,
 - (f) for a class F permit—\$321,
 - (g) for a class G permit—\$535,
 - (h) for a class H permit—\$535,
 - (i) for a class I permit—\$54.

Note. See section 145 (2) (c) of the Act.

- (2) If a person makes more than one application for an aquaculture permit at the same time, the total fee required to be paid for those applications is the sum of the highest application fee that applies to any one of those applications, and:
- (a) for each additional application for a class I permit—\$54, or
 - (b) for each other application—\$103.

6 Additional grounds for refusing an aquaculture permit

The Minister must refuse to issue an aquaculture permit if the Minister believes on reasonable grounds that there is a real risk that if the activity to which the permit relates were authorised:

- (a) fish (whether cultivated or naturally occurring) could become infected with a particular disease, or
- (b) the environment of the area where it is proposed to carry on the activity would be damaged.

Note. See section 146 (2) (h) of the Act.

Fisheries Management (Aquaculture) Regulation 2002

Clause 7

Aquaculture permits

Part 2

Division 3 Contributions by permit holders to pay for costs of administration

7 Aquaculture permit holders liable to pay contributions towards cost of administration

- (1) Each holder of an aquaculture permit must pay to the Minister an annual contribution for the period of 12 months beginning on 1 July in each year towards the costs of administration of Part 6 of the Act that are directly attributable to industry.
Note. See section 156 (1) (a) of the Act.
- (2) The amount of the annual contribution is \$375.
- (3) The annual contribution is payable, at the permit holder's option, either:
 - (a) within 30 days after the issue of the permit, or
 - (b) by instalments.
- (4) For the purposes of subclause 3 (b), the Minister is required:
 - (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
 - (b) to determine the dates on which the instalments are payable, and
 - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the permit holder concerned.
- (5) If there is a failure to pay an instalment in accordance with such a notice, the Minister may treat the total unpaid balance of the annual contribution as an overdue amount of contribution.
- (6) A person must pay the annual contribution under this clause in respect of a period of 12 months referred to in subclause (1) if the person holds an aquaculture permit at any time during the period concerned.
- (7) However, if a person is issued with an aquaculture permit after 1 July in any year:
 - (a) the Minister may reduce, on a pro rata basis, the person's contribution for the 12 month period concerned, and
 - (b) the contribution must be paid within 30 days after the issue of the permit, or by instalments in such manner as is advised by the Minister in accordance with subclause (4).

Clause 8 Fisheries Management (Aquaculture) Regulation 2002

Part 2 Aquaculture permits

8 Costs of administration that are directly attributable to industry

For the purposes of section 156 (1) (a) of the Act, the following costs of administration of Part 6 of the Act are directly attributable to industry:

- (a) the cost of developing, implementing and ensuring compliance with, strategies, policies and regulations under Part 6 of the Act for the orderly management and development of sustainable and viable aquaculture industries,
- (b) the cost of providing administrative services in connection with aquaculture permit and aquaculture lease transactions, in particular, the costs associated with the following:
 - (i) the collection of fees and contributions,
 - (ii) the assessment of permits,
 - (iii) the granting of leases.

9 Exemptions

The Minister may exempt a permit holder or class of permit holders from paying an annual contribution under this Division in respect of a aquaculture permit if the Minister is satisfied that an exemption is warranted because:

- (a) the permit is a class I permit (a permit issued for charitable or non-profit purposes), or
- (b) the permit is a class F permit and the permit holder only conducts extensive fish-out operations, or
- (c) the permit is issued for the purpose of authorising embryonic or experimental aquaculture operations.

10 Minister may waive payment of contribution

The Minister may waive payment of all or part of an annual contribution payable under this Division if the Minister considers it appropriate to do so.

Fisheries Management (Aquaculture) Regulation 2002

Clause 11

Aquaculture permits

Part 2

Division 4 Contributions by permit holders to pay for research

11 Aquaculture permit holders liable to pay contributions for research

- (1) Each holder of an aquaculture permit must pay to the Minister an annual contribution of the prescribed amount for the period of 12 months beginning on 1 July in each year for the purposes of meeting:
 - (a) the cost of carrying out research that will benefit the New South Wales aquaculture industry (including research by the Fisheries Research and Development Corporation established under the *Primary Industries and Energy Research and Development Act 1989* of the Commonwealth), and
 - (b) the costs incurred in maintaining any relevant research committee established under section 157 (4) of the Act.

Note. See section 156 of the Act (Annual contribution to cost of administration or research or to other industry costs).
- (2) This clause does not apply to the holder of a class G or a class I permit.
- (3) The prescribed annual contribution is (subject to subclause (4)) \$22 for each hectare, or part of a hectare, of the area of the aquaculture farm or farms to which the permit relates.
- (4) If the aquaculture farm or farms to which the permit relates are not located on public water land, the prescribed annual contribution is:
 - (a) in the case of a class D or H permit, the greater of:
 - (i) \$107, or
 - (ii) \$22 per hectare of the total water production area on the aquaculture farm or farms, or
 - (b) in the case of a class C, E or F permit, \$107.
- (5) A contribution under this clause must be paid, at the permit holder's option, either:
 - (a) on or before 31 July in each year for which it is payable, or
 - (b) by instalments.
- (6) For the purposes of subclause (5) (b), the Minister is required:
 - (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and

Clause 12 Fisheries Management (Aquaculture) Regulation 2002

Part 2 Aquaculture permits

- (b) to determine the dates on which the instalments are payable, and
 - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the permit holder concerned.
- (7) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of contribution even if payment by instalments has begun.
- (8) If the total area of the aquaculture farm or farms to which an aquaculture permit relates is less than 1 hectare, the contribution payable by the holder of the permit under this clause is that payable for 1 hectare.
- (9) If a person holds 2 or more aquaculture permits, the prescribed annual contribution for that person is the highest annual contribution that applies to any one of that person's permits.
- (10) If a person is issued with an aquaculture permit after 31 July in any period of 12 months referred to in subclause (1):
- (a) the Minister may reduce, on a pro rata basis, that person's contribution for that financial year, and
 - (b) the contribution must be paid within 30 days after the issue of the permit, or by instalments in such manner as is advised by the Minister in accordance with subclause (6).

Note. *Public water land* is defined in section 4 (1) of the Act.

12 Research trust accounts to be maintained for the purposes of this Division

- (1) The Minister is required to maintain a separate research trust account for the purposes specified in clause 11 (1).
- (2) The trust account is to consist of:
 - (a) all contributions paid or recovered under this Division by or from permit holders, and
 - (b) the interest or other income accruing from investing the money in the trust account.
- (3) The money held in the trust account is vested in the Minister as trustee and is to be applied in accordance with this Division.

Fisheries Management (Aquaculture) Regulation 2002

Clause 13

Aquaculture permits

Part 2

13 Where research trust account money is to be kept and how the account is to be operated

- (1) The Minister must keep at an authorised deposit-taking institution located in New South Wales a research trust account for the purposes specified in clause 11 (1). The name of the account must include the relevant purpose and the words “NSW Fisheries Trust Account”.
- (2) The Minister must ensure that all money referred to in clause 12 (2) is paid to the credit of the relevant trust account.
- (3) Subject to this Division, the Minister is responsible for determining the manner in which the trust account is to be operated.

14 Money held in research trust account to be invested

The Minister may invest money held in a research trust account that is not immediately required for the purposes of this Division:

- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
- (b) on deposit with the Treasurer.

15 Purposes for which money held in research trust account can be used

Money held in a research trust account may be applied only for:

- (a) meeting the costs incurred in carrying out the purpose for which the trust account was established, and
- (b) meeting the expenses incurred by the Minister in administering the trust account.

16 Committees in respect of research trust account

Schedule 1 applies to committees appointed by the Minister in respect of research trust accounts under section 157 of the Act.

Clause 17 Fisheries Management (Aquaculture) Regulation 2002

Part 3 Security arrangements for aquaculture permit holders

Part 3 Security arrangements for aquaculture permit holders

Division 1 Preliminary

17 "Payment obligation" defined

In this Part, *payment obligation*, in relation to a permit holder, means:

- (a) an obligation of the permit holder to pay a debt to the Minister in consequence of the Minister or an agent of the Minister having undertaken work under section 162 (4), 170 (4) or 171 (4) of the Act, or
- (b) an obligation of the permit holder to pay a debt to the Minister arising in consequence of a fisheries officer having taken action under section 183 (6) of the Act, or
- (c) an obligation of the permit holder arising under section 213 of the Act to pay a debt in consequence of a fisheries officer having taken measures to destroy noxious fish.

Note. The above provisions of the Act provide, among other things, for the following:

- (a) Section 162 of the Act enables the Minister or an agent of the Minister to enter an area to which an aquaculture permit relates and carry out work necessary to achieve compliance with a notice requiring the area to be kept in a tidy condition, or to remove from land (other than that area) anything that has been left there by the permit holder or that has come from that area and become deposited on that land.
- (b) Section 170 of the Act enables the Minister or an agent of the Minister to enter a leased area to remove any fence unlawfully erected on the area.
- (c) Section 171 of the Act enables the Minister or an agent of the Minister to enter an area that was held by a former lessee who has failed to comply with a notice requiring improvements on the area to be removed, and to remove those improvements from the area.
- (d) Section 183 of the Act enables a fisheries officer to enter an area quarantined because of a fish disease to take action required by an order to enforce the quarantine.
- (e) Section 213 of the Act enables a fisheries officer to enter premises where noxious fish are believed to be located and to take measures to destroy the fish if a notice served on the owner or occupier of the premises to destroy the fish has not been complied with.

Generally, the costs incurred in taking the above measures (after certain deductions) are a debt owing to the Minister.

Fisheries Management (Aquaculture) Regulation 2002

Clause 18

Security arrangements for aquaculture permit holders

Part 3

Division 2 Security to be provided by class A and class B permit holders

18 Persons to whom this Division applies

This Division applies to and in respect of class A and class B permit holders.

19 Class A and B permit holders to enter into financial arrangement to provide security

- (1) It is a condition of every class A or class B permit that the permit holder must enter into, and maintain, one of the following arrangements:
 - (a) the depositing with the Minister by the permit holder of the required amount of cash to secure the due performance of the permit holder's payment obligations under the Act,
 - (b) a guarantee issued by an authorised deposit-taking institution, or by a corporation authorised to carry on insurance business in Australia, indemnifying the Crown to the extent of the required amount to secure that performance,
 - (c) a financial arrangement approved by the Minister under which a corporation of which the permit holder is a member agrees with the Minister to indemnify the Crown to the extent of an amount specified in the agreement to secure that performance.
- (2) However, a class A permit holder of a class 1 lease (as referred to in clause 30) may decide not to enter into, or to cease, an arrangement under subclause (1). In that case, the permit holder is taken to have entered into a financial arrangement for the payment of annual contributions as provided by Division 3 and that arrangement is taken to be a condition of the permit.
- (3) A permit holder may choose which kind of arrangement is to be entered into under subclause (1), and may, with the concurrence of the Minister, change the chosen arrangement to another arrangement at any time while the permit is in force.
- (4) For the purposes of this clause, the required amount is \$1,000 for each hectare (or part of a hectare) of the leased area or areas held by the permit holder or permit holders concerned.

Clause 20	Fisheries Management (Aquaculture) Regulation 2002
Part 3	Security arrangements for aquaculture permit holders

- (5) The Minister is required to keep a separate account in respect of cash deposited under this clause and to invest the cash:
- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the cash were trust funds, or
 - (b) on deposit with the Treasurer.
- (6) The Minister may:
- (a) reduce the amount otherwise payable by a class A permit holder of a class 1 lease under an arrangement referred to in subclause (1) (a) or (b), or
 - (b) reduce the amount of annual contributions otherwise payable by a class A permit holder of a class 1 lease under an arrangement referred to in subclause (2), or
 - (c) exempt a class A permit holder of a class 1 lease from the operation of subclause (1),
- if the Minister considers that the reduction or exemption is just and reasonable, given the type of aquaculture to which the permit and lease relate and the manner in which the aquaculture is to be undertaken.
- (7) The Minister may revoke a grant of a reduction or exemption if the Minister is satisfied that the reduction or exemption is no longer warranted.
- (8) The Minister may grant, or revoke a grant of, a reduction or exemption:
- (a) in a particular case, by instrument in writing served on the permit holder, or
 - (b) in a particular class of case, by notice published in the *Gazette*.
- (9) The grant, or revocation of a grant, of a reduction or exemption takes effect on and from the date specified in the instrument or notice, as the case may be.

20 When secured amounts are liable to be forfeited

- (1) If it appears to the Minister that a permit holder who has entered into an arrangement referred to in clause 19 (1) has incurred a payment obligation under the Act, the Minister may serve on the permit holder a notice requiring the permit holder to perform the obligation within a period specified in the notice (being not less than 14 days).

Fisheries Management (Aquaculture) Regulation 2002

Clause 21

Security arrangements for aquaculture permit holders

Part 3

- (2) If the permit holder fails to perform the payment obligation within the period specified in the notice, the Minister may forfeit the amount deposited or secured under the arrangement to the Crown to the extent of that obligation.
- (3) If the amount forfeited is an amount secured under an arrangement of a kind referred to in clause 19 (1) (b) or (c), the guarantor or the party to the financial arrangement concerned must, within 7 days after being served by the Minister with a notice declaring the amount to be forfeited, pay the amount to the Minister. The amount is recoverable by proceedings brought in a court of competent jurisdiction as a debt due to the Crown.
- (4) An amount may be forfeited under this clause even though the person who entered into the arrangement concerned is no longer a permit holder.

21 What happens to an arrangement when a person stops being a permit holder

- (1) Any arrangement of a kind referred to in clause 19 (1) that a person who is a class A or class B permit holder has entered into ceases at the time at which the person ceases to be the holder of the permit, but only if the Minister is satisfied that the person has no payment obligations outstanding.
- (2) If the arrangement is a deposit of cash with the Minister, the person (or the person's legal personal representative) is entitled to:
 - (a) a refund of the cash, and
 - (b) payment of the interest accruing on the investment of the deposit,
 less any amount that the Minister certifies to be attributable to administration costs.

Division 3 Financial arrangements by way of contributions taken to be entered into by certain class A permit holders

22 Persons to whom this Division applies

This Division applies to every class A permit holder of a class 1 lease (as referred to in clause 30) who, by virtue of clause 19 (2), is taken to have entered into a financial arrangement for the payment of annual contributions in accordance with this Division.

Clause 23 Fisheries Management (Aquaculture) Regulation 2002

Part 3 Security arrangements for aquaculture permit holders

23 Contributions to be made by certain class A permit holders

Note. The obligations imposed by this clause are a continuation of the obligations imposed by clause 19 of the *Fisheries Management (Aquaculture) Regulation 1995* as in force immediately before the repeal of that Regulation.

- (1) A class A permit holder to whom this Division applies must pay to the Minister to secure the due performance of the permit holder's payment obligations under the Act:
 - (a) for the period of 12 months beginning on 1 January 2002—an annual contribution of \$20 for each hectare, or part of a hectare, of the aquaculture farm or farms to which the permit relates, and
 - (b) for the period of 12 months beginning on 1 January 2003—an annual contribution of \$30 for each hectare, or part of a hectare, of the aquaculture farm or farms to which the permit relates, and
 - (c) for the period of 12 months beginning on 1 January 2004 and on 1 July in each subsequent year—an annual contribution of \$40 for each hectare, or part of a hectare, of the aquaculture farm or farms to which the permit relates.
- (2) If the total area of the aquaculture farm or farms to which an aquaculture permit relates is less than 1 hectare, the contribution required by this clause is that payable for 1 hectare.
- (3) A contribution required by this clause must be paid, at the permit holder's option, either:
 - (a) on or before 31 January in the period of 12 months for which it is payable, or
 - (b) by instalments.
- (4) For the purposes of subclause (3) (b), the Minister is required:
 - (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
 - (b) to determine the dates on which the instalments are payable, and
 - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the permit holder concerned.
- (5) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of contribution even if payment by instalments has begun.

Fisheries Management (Aquaculture) Regulation 2002

Clause 24

Security arrangements for aquaculture permit holders

Part 3

(6) A class A permit holder to whom this Division applies may at any time elect to enter into an arrangement of a kind referred to in clause 19 (1). However, such an election does not affect the liability of the permit holder to pay the contribution for the period of 12 months in which the election is made.

(7) A contribution paid under this clause is not refundable.

24 Minister may suspend requirement to make contributions

(1) The Minister may, by order published in the Gazette, suspend the operation of clause 23 for a particular period of 12 months if satisfied that the amount held in the trust account kept under clause 26 is for the time being sufficient for the purposes of the account.

(2) The Minister must also notify in writing the effect of an order made under this clause to all permit holders affected by the order. However, failure to comply with this subclause does not affect the validity of the order.

25 Minister to enforce permit holder's obligations

(1) If it appears to the Minister that a class A permit holder to whom this Division applies has incurred a payment obligation under the Act, the Minister may, by notice in writing served on the permit holder, require the permit holder to perform the obligation within a period specified in the notice (being not less than 14 days).

(2) If:

(a) the permit holder has failed to perform the payment obligation within the period specified in the notice, and

(b) the Minister certifies in writing that all reasonable practicable steps have been taken to recover the debt arising from the permit holder's failure to perform that obligation or the permit holder's whereabouts are unknown,

the Minister may then (and only then) withdraw from the trust account under clause 26 an amount equal to that debt.

(3) In order to reduce the amounts withdrawn under subclause (2) from the trust account, the Minister is to arrange for aquaculture leases to be inspected every 2 years for matters that may give rise to payment obligations by the lessees.

Clause 26	Fisheries Management (Aquaculture) Regulation 2002
Part 3	Security arrangements for aquaculture permit holders

- (4) Subclause (2) applies even if proceedings brought under the Act to recover the debt have been unsuccessful and even if the person who has failed to perform the obligation concerned has ceased to be a permit holder.

26 Trust account to be maintained for the purposes of this Division

- (1) The Minister is required to maintain a trust account for the purposes of this Division.
- (2) The trust account is to consist of:
- (a) all contributions and additional contributions paid or recovered under this Division by or from class A permit holders to whom this Division applies, and
 - (b) all money required to be paid to the trust account in accordance with this Division, and
 - (c) the interest or other income accruing from investing the money in the trust account.
- (3) The money held in the trust account is vested in the Minister as trustee and is to be applied in accordance with this Division.

27 Purposes for which money held in trust account can be used

Money held in the trust account under clause 26 may be applied only for the following purposes:

- (a) subject to clause 25, meeting the expenses incurred by the Minister in carrying out a payment obligation of a class A permit holder to whom this Division applies,
- (b) meeting the expenses incurred by the Minister in administering the trust account and of any committee appointed by the Minister in respect of that trust account.

28 Where trust account money is to be kept and how the account is to be operated

- (1) The Minister must maintain the trust account under clause 26 at an authorised deposit-taking institution located in New South Wales. The name of the account must include the words “NSW Fisheries Trust Account”.
- (2) The Minister must ensure that all amounts referred to in clause 26 (2) are paid to the credit of the trust account.

Fisheries Management (Aquaculture) Regulation 2002	Clause 29
Security arrangements for aquaculture permit holders	Part 3

- (3) Subject to this Division, the Minister is responsible for determining the manner in which the trust account is to be operated.

29 Money held in trust account may be invested

The Minister may invest money held in the trust account under clause 26 that is not immediately required for the purposes of this Division:

- (a) in accordance with Division 2 of Part 2 of the *Trustee Act 1925* as if the money were trust funds, or
- (b) on deposit with the Treasurer.

Clause 30 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

Part 4 Aquaculture leases

Division 1 Classification of leases

30 Classes of aquaculture leases

- (1) The kinds of aquaculture leases that may be granted under Part 6 of the Act are as follows:
 - (a) a class 1 lease for a leased area:
 - (i) where extensive cultivation of fish or marine vegetation is undertaken and a majority of the area under cultivation is in water the depth of which is less than 6 metres, or
 - (ii) where the leased area comprises or includes a bed from which oysters are dredged (whether the bed is at a depth of less than 6 metres or not),
 - (b) a class 2 lease for a leased area where:
 - (i) extensive cultivation of fish or marine vegetation is undertaken and a majority of the area under cultivation is in water the depth of which is 6 metres or more, and
 - (ii) the area does not comprise or include a bed of the kind referred to in paragraph (a) (ii),
 - (c) a class 3 lease for a leased area where intensive cultivation of fish or marine vegetation is undertaken,
 - (d) a class 4 lease for a leased area where fish ranching is undertaken.
- (2) For the purposes of this clause, *fish ranching* is the artificial stocking of an area with juvenile fish of a species that is able to roam freely and feed on naturally available food.
- (3) The depths referred to in this clause are to be measured at lowest astronomical tide.

Fisheries Management (Aquaculture) Regulation 2002

Clause 31

Aquaculture leases

Part 4

Division 2 Applications for, and grant and renewal of, aquaculture leases

31 Procedure for applying for an aquaculture lease

- (1) An application for an aquaculture lease is to be made to the Minister and must:
 - (a) be in accordance with a form provided or approved by the Director, and
 - (b) be accompanied by the processing fee prescribed by subclause (2).
- (2) The processing fee is as follows:
 - (a) for a class 1 lease—\$535,
 - (b) for a class 2 lease—\$535,
 - (c) for a class 3 lease—\$535,
 - (d) for a class 4 lease—\$856.

Note. Section 163 (7) of the Act makes provision for the advertising and grant of an application for an aquaculture lease. If the lease is to be offered by auction, public tender or ballot, the other provisions of this Part apply.

32 Applicant's obligations to mark area applied for

- (1) The Director may give to an applicant for an aquaculture lease directions for marking out the boundaries of the area applied for.
- (2) Within 30 days after the Director has given to an applicant for an aquaculture lease directions under subclause (1) (or within such extended period as the Director may allow), the applicant is to mark out in accordance with those directions the boundaries of the area concerned.
- (3) The Minister may refuse to consider an application for an aquaculture lease unless the applicant has marked out the boundaries of the area concerned, and is maintaining the markings, in accordance with the directions given under this clause.
- (4) The applicant must remove the markings:
 - (a) within 30 days after the application for the aquaculture lease is granted, refused or withdrawn, or
 - (b) within such further period as the Director may allow.

Maximum penalty: 10 penalty units.

Clause 33 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

33 Offer of aquaculture lease by auction, public tender or ballot

- (1) If the Minister decides that an area should be offered for lease by auction, public tender or ballot, the Minister must publish, in the Gazette and in a newspaper circulating in the district in which the area is located, a notice:
 - (a) describing the area to be leased sufficiently to identify it, and
 - (b) specifying the method by which the lease is to be offered, and
 - (c) specifying a deadline for persons to lodge with the Minister objections to the leasing of the area, and
 - (d) specifying any covenants or conditions to which the disposal of the lease will be subject.

The deadline must be not less than 30 days after the date of publication of the notice or, if the publications in the Gazette and in the newspaper are on different dates, from the later of those dates.

- (2) The Minister must also send a copy of any such notice published in the Gazette to any association representing aquaculture farmers that has notified the Minister of its interest in being notified of any such area being considered for leasing.
- (3) The Minister may decide that an area should be offered for lease by auction, public tender or public ballot even though the Minister has received an application to lease the area.
- (4) If the Minister, after considering objections to the leasing of an area, decides to proceed with the leasing of the area by auction, public tender or ballot, the Minister must publish, in the Gazette and in a newspaper circulating in the district in which the area is located, a notice containing the following information:
 - (a) a description sufficient to identify the area to be leased,
 - (b) the term for which the area is to be leased,
 - (c) how details of the proposed covenants and conditions can be obtained,
 - (d) the proposed annual rent,
 - (e) the value of any improvements to the area,
 - (f) the time and place of the auction, or the time and place for receipt of tenders or ballot applications,

Fisheries Management (Aquaculture) Regulation 2002

Clause 34

Aquaculture leases

Part 4

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- (g) if the lease is to be offered by public ballot—the amount of any premium that is required to be paid by the successful applicant,
 - (h) any special particulars that are to be provided by bidders, tenderers or applicants for the lease.

34 Offer of aquaculture lease by auction

- (1) If an aquaculture lease is offered at an auction, the bid of the person who offers the highest premium is to be accepted, subject to the bidder being approved by the Minister.
- (2) Immediately after the auction has taken place, the successful bidder must pay to the auctioneer the premium offered for the lease at the auction. If that premium is not paid at that time, the auctioneer must offer the lease again until a successful bidder pays the premium offered or the offer of the lease is withdrawn from the auction.
- (3) Immediately after the auction has taken place, the successful bidder must lodge with the Minister an application for the lease in accordance with clause 31 (1), together with the appropriate processing fee prescribed by clause 31 (2).
- (4) If the Minister does not approve the highest bidder, the Minister may approve the person who has made the next highest bid and so on until the Minister approves a bidder.
- (5) The Minister may refuse to approve a bidder only on the ground that:
 - (a) the bidder has not complied with subclause (3), or
 - (b) in the case of a bidder who is not a corporation—the bidder is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (c) in the case of a bidder that is a corporation—the bidder, or any of the directors or other persons concerned in the management of the bidder, is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (d) the bidder has rent, contributions or other amounts payable to the Minister that are outstanding in respect of other aquaculture leases, or
 - (e) the bidder has, in the Minister's opinion, a poor record of managing one or more other leased areas, or
 - (f) in the Minister's opinion, it would otherwise not be in the public interest to grant the lease to the bidder.

Clause 35 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

- (6) The term of an aquaculture lease offered at an auction is to begin on and from the date decided by the Minister and specified in the lease. That date must not be earlier than the date of approval of the successful bidder by the Minister.

35 Offer of aquaculture lease for public tender

- (1) A person who wishes to tender for an aquaculture lease that is being offered for public tender must lodge with the Minister a tender in writing containing the following:
- (a) an application for the lease in accordance with clause 31 (1), together with the appropriate processing fee prescribed by clause 31 (2),
 - (b) a statement of the amount of the premium tendered.
- (2) The tender of the person who offers the highest premium is to be accepted, subject to the tenderer being approved by the Minister.
- (3) If the Minister does not approve the tenderer who offers the highest premium, the Minister may approve the tenderer who has offered the next highest premium and so on until the Minister approves a tenderer.
- (4) The Minister may refuse to approve a tenderer only on the ground that:
- (a) the tenderer's tender does not comply with subclause (1), or
 - (b) in the case of a tenderer who is not a corporation—the tenderer is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (c) in the case of a tenderer that is a corporation—the tenderer, or any of the directors or other persons concerned in the management of the tenderer, is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (d) the tenderer has rent, contributions or other amounts payable to the Minister that are outstanding in respect of other aquaculture leases, or
 - (e) the tenderer has, in the Minister's opinion, a poor record of managing one or more other leased areas, or
 - (f) the tenderer's tender contains conditions that are unacceptable to the Minister, or
 - (g) in the Minister's opinion, it would otherwise not be in the public interest to grant the lease to the tenderer.

Fisheries Management (Aquaculture) Regulation 2002

Clause 36

Aquaculture leases

Part 4

-
- (5) The successful tenderer must pay the amount of the premium tendered to the Minister within 14 days after being notified in writing of the Minister's approval under this clause.
 - (6) If the premium tendered is not paid within that period or the successful tenderer withdraws the tender, the Minister may offer the lease to the next highest tenderer and so on until the Minister approves a tenderer who pays the premium tendered.
 - (7) The term of an aquaculture lease offered for tender is to begin on the date decided by the Minister and specified in the lease. That date must not be earlier than the date on which the successful tenderer is approved by the Minister.

36 Offer of aquaculture lease by ballot

- (1) A person who wishes to apply for an aquaculture lease that is being offered by ballot must lodge with the Minister in writing an application for the lease in accordance with clause 31 (1), together with the appropriate processing fee prescribed by clause 31 (2).
- (2) The ballot application that is drawn first is to be accepted, subject to the successful applicant being approved by the Minister.
- (3) If the Minister does not approve the successful applicant, the Minister may approve:
 - (a) the applicant whose name was next drawn at the ballot in case the previously successful applicant's application should not be approved under this clause or is withdrawn, or
 - (b) the successful applicant at a later ballot.
- (4) The Minister may refuse to approve an application only on the ground that:
 - (a) the application does not comply with subclause (1), or
 - (b) in the case of an applicant who is not a corporation—the applicant is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (c) in the case of an applicant that is a corporation—the applicant, or any of the directors or other persons concerned in the management of the applicant, is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (d) the applicant has rent, contributions or other amounts payable to the Minister that are outstanding in respect of other aquaculture leases, or

Clause 37 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

- (e) the applicant has, in the Minister's opinion, a poor record of managing one or more other leased areas, or
 - (f) in the Minister's opinion, it would otherwise not be in the public interest to grant the lease to the applicant.
- (5) The successful applicant must pay to the Minister within 14 days after being notified of the Minister's approval of the applicant's application the premium (if any) specified in the notice published under clause 33 (4).
- (6) If the premium is not paid within that period, the Minister may offer the lease either:
- (a) to the applicant whose name was next drawn at the ballot in case the successful applicant should default in complying with subclause (5) or withdraw the application, or
 - (b) to the successful applicant at a later ballot,
- and so on until the Minister approves a successful applicant who pays the requisite premium.
- (7) The term of an aquaculture lease offered by ballot is to begin on the date decided by the Minister and specified in the lease. That date must not be earlier than the date on which the successful applicant was approved by the Minister.

37 Minister's obligations when granting an aquaculture lease

- (1) If the Minister decides to grant an aquaculture lease, the Minister must provide the proposed lessee with the following documents:
- (a) a copy of the plan of the area,
 - (b) a draft lease document that is in accordance with Form 1 in Schedule 2,
 - (c) a statement of the fees, rent or other amounts payable by the lessee in connection with the grant of the lease.
- (2) The Minister must not grant an aquaculture lease unless, before the deadline, the proposed lessee lodges with the Minister:
- (a) the draft lease document (signed by the proposed lessee), and
 - (b) all amounts (including rent) payable by the proposed lessee in connection with the grant of the lease.

The deadline is the end of the period of 90 days (or such further period as the Minister may allow) after the proposed lessee is provided with the documents referred to in subclause (1).

Fisheries Management (Aquaculture) Regulation 2002

Clause 38

Aquaculture leases

Part 4

-
- (3) After granting an aquaculture lease, the Minister must publish in the Gazette notice of the granting of the lease and the person to whom it is granted.

38 Application for renewal of an aquaculture lease

- (1) An application for renewal of an aquaculture lease is to be made to the Minister and must:
- (a) be accompanied by the lease document and the appropriate processing fee prescribed by subclause (2), and
 - (b) be in accordance with a form provided or approved by the Director.
- (2) The fee to accompany an application under this clause is as follows:
- (a) in the case of a class 1 lease—\$428,
 - (b) in the case of a class 2 lease—\$321,
 - (c) in the case of a class 3 lease—\$535,
 - (d) in the case of a class 4 lease—\$321.
- Note.** See section 167 of the Act (Renewal of lease).
- (3) The Minister may refuse to accept an application under this clause that is made earlier than 12 months before the term of the lease is due to expire.

39 Process for renewing an aquaculture lease

- (1) If the Minister decides to renew an aquaculture lease, the Minister must provide the applicant with the following documents:
- (a) a copy of the plan of the area,
 - (b) a draft lease document that is in accordance with Form 1 in Schedule 2,
 - (c) a statement of the fees, rent or other amounts payable by the lessee in connection with the renewal of the lease.
- (2) The Minister must not renew an aquaculture lease unless, before the deadline, the applicant for renewal lodges with the Minister:
- (a) the draft lease document (signed by that applicant), and
 - (b) all amounts (including rent) payable by that applicant in connection with the renewal of the lease.

The deadline is the end of 90 days (or such further period as the Minister may allow) after that applicant is provided with the documents referred to in subclause (1).

Clause 40 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

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- (3) Subject to section 167 of the Act, the Minister may refuse an application for the renewal of an aquaculture lease on the ground that:
- (a) in the case of an applicant who is an individual—the applicant is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (b) in the case of an applicant that is a corporation—the applicant, or any of the directors or other persons concerned in the management of the applicant, is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (c) the applicant has rent, contributions or other amounts payable to the Minister that are outstanding in respect of that or other leases, or
 - (d) the applicant has, in the Minister’s opinion, a poor record of managing one or more other leased areas, or
 - (e) in the Minister’s opinion, it would otherwise not be in the public interest to renew the lease.
- (4) After renewing an aquaculture lease, the Minister must publish in the Gazette notice of the renewal of the lease.

Note. Section 167 (2) of the Act provides that the Minister may renew a lease if satisfied that the area should continue to be available for aquaculture. However a lessee is entitled to the renewal of the lease if it is the first renewal of the lease after it was granted.

Division 3 Rent for aquaculture leases

40 Minimum rent for leased area

- (1) The minimum rent payable per year for a lease (of any class) is the greater of:
 - (a) \$107, and
 - (b) \$40 for each hectare or part of a hectare of the area or areas leased.
- (2) When 2 or more leases of the same class are held by the same lessee, the leases are to be treated as if they were a single lease for the purpose of determining the minimum rent applicable to those leases.

Note. See section 165 (5) of the Act.

41 How rent for an aquaculture lease is to be calculated

- (1) The lessee under an aquaculture lease must pay the rent payable under the lease to the Minister.

Fisheries Management (Aquaculture) Regulation 2002

Clause 42

Aquaculture leases

Part 4

- (2) The first payment of rent for an aquaculture lease that is granted or renewed is to be calculated as follows:

$$AP = \frac{DR}{365} \times AR$$

where:

AP represents the amount to be paid.

DR represents the number of days during the period beginning on the date when the lease begins and ending with 31 December next following.

AR represents the amount of rent payable under the lease for a full year.

- (3) In the year in which an aquaculture lease expires, the amount of rent payable is to be calculated as follows:

$$AP = \frac{DR}{365} \times AR$$

where:

AP represents the amount to be paid.

DR represents the number of days during the period beginning on 1 January in the year concerned and ending with the date on which the lease ends.

AR represents the amount of rent payable under the lease for a full year.

- (4) If the rent payable under an aquaculture lease is redetermined by the Minister or otherwise altered, the Minister must make an appropriate adjustment to the rent payments.
- (5) If an aquaculture lease is terminated for any reason and rent, contributions or other amounts have been paid to the Minister for a period occurring after the date of termination, the Minister must refund the appropriate proportion of rent, contributions or other amounts paid in advance.

42 When rent payable

- (1) The first payment of rent under an aquaculture lease is payable before the lease is granted or renewed or within such period after the grant or renewal as the Minister allows.

Clause 43 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

- (2) After the first payment, the rent under an aquaculture lease is payable yearly in advance, either (at the lessee's option):
 - (a) on or before 31 January in each year, or
 - (b) by instalments.
- (3) For the purpose of subclause (2) (b), the Minister is required:
 - (a) to determine the amounts of the instalments that are payable, or the manner in which they are to be calculated, and
 - (b) to determine the dates on which the instalments are payable, and
 - (c) to notify the amounts (or the manner of the calculation) of the instalments, and the dates on which they are payable, to the lessee concerned.
- (4) If there is a failure to make a payment in accordance with such a notice, the Minister may treat the total unpaid balance as an overdue amount of rent even if payment by instalments has begun.

43 Rent for leased area less than 1 hectare

- (1) When calculating the rent for a leased area that is less than 1 hectare, the rent payable is a proportionate part of that rent per hectare.
- (2) However, when calculating the rent for a leased area of less than 0.1 hectare, the area is to be treated as if it were 0.1 hectare.

Division 4 Subletting, transferring and transmission of aquaculture leases

44 Fee payable for Minister's consent to subletting of leased area

An application for the Minister's consent under section 172 of the Act to the subletting of a leased area must be accompanied by a processing fee of \$375.

Note. Section 172 of the Act allows a lessee of a leased area to sublet the area or a part of it, but only with the consent of the Minister.

45 Procedure for getting Minister's consent to transfer of aquaculture lease

- (1) An application for the Minister's consent under section 173 of the Act to the transfer of an aquaculture lease must be in a form approved by the Minister.

Fisheries Management (Aquaculture) Regulation 2002

Clause 46

Aquaculture leases

Part 4

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- (2) Such an application must be accompanied by:
- (a) a transfer duly stamped in accordance with the *Duties Act 1997*, and
 - (b) the lease document, and
 - (c) a processing fee of \$589.
- (3) Despite subclause (2) (c), if more than one such application is made by the same applicant and lodged on the same day, the processing fee that must accompany the second (and each further) such application is \$54.
- (4) The Minister may refuse such an application only on the ground that:
- (a) the application does not comply with this clause, or
 - (b) if the transferee is an individual—the transferee is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (c) if the transferee is a corporation—the transferee, or any of the directors or other persons concerned in the management of the transferee, is disqualified under section 161 of the Act from holding an aquaculture permit, or
 - (d) the transferor or the transferee has rent, contributions or other amounts payable to the Minister that are outstanding in respect of that or another aquaculture lease, or
 - (e) the transferee has, in the Minister's opinion, a poor record of managing one or more other leased areas, or
 - (f) in the Minister's opinion, it would otherwise not be in the public interest to grant the application.

Note. Section 173 of the Act allows the lessee under an aquaculture lease to transfer the lease, but only with the consent of the Minister.

46 Transmission of aquaculture lease on lessee's death

- (1) An aquaculture lease is transmissible by operation of law on the death of the lessee, subject to there being lodged with the Minister:
- (a) such evidence of the death and the entitlement of the person claiming the lease as the Minister requires, and
 - (b) a processing fee of \$375.

Clause 47 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

- (2) Despite subclause (1) (b), if more than one such claim is made by the same applicant and lodged on the same day, the processing fee that must accompany the second (and each further) such claim is \$54.

Division 5 Surrender, consolidation and subdivision of aquaculture leases

47 Aquaculture lease may be surrendered

- (1) An application to surrender an aquaculture lease must be in a form approved by the Minister, be lodged with the Minister and be accompanied by:
- (a) the lease document, and
 - (b) a processing fee of \$268.
- (2) Despite subclause (1) (b), if more than one such application is made by the same applicant and lodged on the same day, the processing fee that must accompany the second (and each further) such application is \$54.
- (3) An application to surrender part of a leased area must be in writing, be lodged with the Minister and be accompanied by:
- (a) a description of the part that is affected sufficient to identify it, and
 - (b) a survey diagram or plan depicting that part, and
 - (c) the lease document, and
 - (d) a processing fee of \$375.
- (4) The surrender of a lease or of part of a leased area does not have effect unless the Minister has consented to it and the lessee has complied with any conditions that the Minister has imposed in giving the consent.
- (5) If, when giving consent to the surrender of part of a leased area, the Minister redetermines the rental of the lease, the Minister must provide the lessee with:
- (a) an amended lease, and
 - (b) a certified copy of an amended plan of the leased area which excludes the part surrendered.
- (6) The Minister may, in a particular case, waive the fee required under subclause (1), (2) or (3).

Fisheries Management (Aquaculture) Regulation 2002

Clause 48

Aquaculture leases

Part 4

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- (7) The fee for the surrender of an aquaculture lease is not payable if the surrender is for the purpose of consolidating leases into a single lease.
- (8) The Minister may suspend or refund rent, contributions or other amounts payable or paid in respect of a leased area, or part of a leased area, that is the subject of an application under this clause if the rent, contributions or amounts relate to a period after the application was made and the Minister is satisfied that the lessee was not using the leased area or part as an aquaculture farm during that period.

Note. Section 174 of the Act enables a lessee to surrender the lease with the approval of the Minister.

48 Aquaculture leases may be consolidated

- (1) A lessee of 2 or more adjoining leased areas may apply for the consolidation of the leases into a single lease.
- (2) An application must:
- (a) be in a form approved by the Minister, and
 - (b) be lodged with the Minister, and
 - (c) be accompanied by the lease documents and a processing fee of \$428.
- (3) The Minister may grant, or refuse to grant, an application.
- (4) If an application is granted, the Minister may decide any matters relating to:
- (a) the term of the consolidated lease, and
 - (b) the covenants and conditions of the lease, and
 - (c) the rent payable for the lease, and
 - (d) any other matters necessary for the preparation of the lease document.
- (5) A lessee is entitled to a consolidated lease only if the lease document for each of the leases that is to be consolidated is first lodged with the Minister for replacement.
- (6) The Minister must, when an application for consolidation has been granted, provide the lessee with a certified copy of the plan of the leased area comprised in the consolidated lease.
- (7) The Minister must publish in the Gazette notice of the consolidation of the lease.

Clause 49 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

49 Aquaculture leases may be subdivided

- (1) A lessee may apply for the subdivision of a lease (*the original lease*) into 2 or more leases.
- (2) An application for subdivision must:
 - (a) be in a form approved by the Minister, and
 - (b) be lodged with the Minister, and
 - (c) be accompanied by the lease document for the original lease and a processing fee of \$428.
- (3) The Minister may grant, or refuse to grant, an application.
- (4) If an application is granted, the terms of the leases that result from the subdivision are to be the same as the remainder of the term of the original lease.
- (5) The Minister may decide any matters relating to:
 - (a) the covenants and conditions of the leases that result from the subdivision, and
 - (b) the rent payable for the leases, and
 - (c) any other matters necessary for the preparation of the lease documents.
- (6) A lessee is entitled to the leases that result from a subdivision only if the lease document for the original lease is lodged with the Minister for replacement.
- (7) The Minister must, when an application for subdivision has been granted, provide the lessee with a certified copy of the plan of the leased area comprised in each lease.
- (8) The Minister must publish notice of the subdivision of the lease in the Gazette.
- (9) The subdivision of an original lease into 2 or more leases does not affect the application of section 167 (3) of the Act to the first renewal of those leases after the grant of the original lease.

Fisheries Management (Aquaculture) Regulation 2002

Clause 50

Aquaculture leases

Part 4

Division 6 Aquaculture lease plans and documents**50 Certified copy of lease or plan**

- (1) If an aquaculture lease document or a plan annexed to such a document is lost or destroyed, the Minister may issue to the lessee a certified copy of the document or plan subject to:
 - (a) payment of a fee of \$54, and
 - (b) provision of a statutory declaration setting out the circumstances in which the original document or plan was lost or destroyed.
- (2) A certified copy of an aquaculture lease document may be lodged with the Minister instead of the original if at any time the document is required to be lodged with the Minister under this Regulation or with any other person for any other lawful purpose.
- (3) The Minister may:
 - (a) provide any person with a copy of a survey plan or map relating to an aquaculture lease, and
 - (b) certify the copy as being a true copy of the original, and
 - (c) charge a fee for the copy not exceeding \$54.

51 Minister's duties with respect to endorsing lease documents

- (1) The Minister must make any endorsement on an aquaculture lease document necessary to record:
 - (a) any transfer, subletting, partial surrender, withdrawal or access way affecting the lease, or
 - (b) if the lease is cancelled, the cancellation of the lease.
- (2) The Minister may make any endorsement on an aquaculture lease document necessary to record any consent or other matter affecting the lease.
- (3) The Minister must, at the request of the lessee and the other party to the dealing, endorse on an aquaculture lease document the particulars of any mortgage, charge or other interest to which the document is subject.
- (4) If a mortgage, charge or other interest affecting an aquaculture lease is discharged, the Minister must, at the request of the lessee and the other party to the dealing, endorse on the lease document particulars of the discharge.

Clause 52 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

- (5) The Minister may refuse to consent to a dealing relating to an aquaculture lease, and the Minister may refuse to make an endorsement on an aquaculture lease document under subclause (1), if an undischarged mortgage, charge or other interest is endorsed on the lease document and the mortgagee, chargee or holder of the interest concerned has not consented to the dealing.

52 When Minister can require aquaculture lessee to lodge lease document

- (1) The Minister may, by notice in writing, direct a lessee or other person in possession of an aquaculture lease document to lodge the lease document with the Minister, within such period as is specified in the notice, in order to enable the Minister to endorse the lease document or for any other lawful purpose.
- (2) The Minister must return an aquaculture lease document lodged under this clause as soon as practicable after it has been endorsed or the purpose for which the document was lodged has been achieved. This subclause does not apply when the endorsement relates to a cancellation of the lease.
- (3) A person who fails, without reasonable excuse, to comply with a direction under this clause is guilty of an offence.

Maximum penalty: 10 penalty units.

53 Minister can correct errors in aquaculture leases and other documents

The Minister may correct an error in an aquaculture lease document or in any map, plan or other document relating to an aquaculture lease.

Division 7 Marking of leased areas, boat channels and access ways

54 Obligations of aquaculture lessee to mark out leased area

- (1) A lessee must mark out in accordance with this clause the boundaries of the area leased:
- (a) within 30 days after the beginning of the lease, or
- (b) within such further period as the Minister may allow.

Maximum penalty: 10 penalty units.

Fisheries Management (Aquaculture) Regulation 2002

Clause 54

Aquaculture leases

Part 4

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- (2) The boundaries of an area must be marked out by erecting a post at each corner of the leased area. Each of the posts must:
- (a) have at least 1.25 metres showing above high-water mark (spring tides), and
 - (b) have fixed to it at or near the top a sign identifying the leased area in a form approved by the Minister, and
 - (c) have a minimum diameter of 150 millimetres or a square cross-section with sides of not less than 150 millimetres.
- (3) If the Minister or a fisheries officer directs the lessee by notice in writing that he or she is satisfied that the method of marking out prescribed by subclause (2) is impracticable or unsuitable in a particular case and directs the lessee to mark out the boundaries of the area in some other way, those boundaries must be marked out in that way.
- (4) Such a direction may require the boundaries of an area to be marked out in accordance with any relevant aquaculture industry development plan.
- (5) The Minister may charge a fee of \$54 for each additional lease sign supplied after the initial issue of a sign.
- (6) A lessee must ensure that the boundaries of the leased area continue to be marked as required by this clause for the duration of the lease.
Maximum penalty: 10 penalty units.
- (7) A person must not mark out an area of public water land as an aquaculture farm, or in a way that is likely to lead persons to believe that the area is an aquaculture farm, unless the person is the lessee of the area or is authorised by the lessee to mark out the area.
Maximum penalty: 10 penalty units.
- (8) This clause applies to:
- (a) a lease that consolidates 2 more leases that have been surrendered, and
 - (b) a lease part of the area of which has been surrendered, and
 - (c) a renewed lease,
- in the same way as it applies to a new lease.

Clause 55 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

55 Obligations of aquaculture lessee to mark out boat channel

- (1) A lessee of an area that adjoins a boat channel must, before the deadline, mark out the boat channel in accordance with this clause. The deadline is the end of 30 days after the date of service on the lessee of a direction in writing by the Minister or a fisheries officer directing the lessee to comply with this clause.
- (2) A boat channel must be marked out by erecting posts along the boundary of the leased area which adjoins the boat channel. Each of the posts must:
 - (a) have at least 1.25 metres showing above high-water mark (spring tides), and
 - (b) have a minimum diameter of 100 millimetres or a square cross-section with sides of not less than 100 millimetres, and
 - (c) be located at intervals not exceeding 2 metres or at such other intervals as may be specified in the direction to the lessee.
- (3) If the Minister or a fisheries officer directs the lessee by notice in writing that he or she is satisfied that the method of marking out prescribed by subclause (2) is impracticable or unsuitable in a particular case and directs the lessee to mark out the area in some other way, the boat channel must be marked out in that way.
- (4) Such a direction may require a boat channel to be marked out in accordance with any relevant aquaculture industry development plan.
- (5) A lessee must ensure that, while a direction under this clause remains in force in relation to a boat channel, the channel continues to be marked as required by this clause for the duration of the aquaculture lease concerned.

Maximum penalty: 10 penalty units.

56 Obligations of aquaculture lessee to mark out an access way

- (1) An application under section 175 (1) of the Act must be accompanied by a certified copy of the map of the leased area marked with the proposed access way.

Fisheries Management (Aquaculture) Regulation 2002

Clause 56

Aquaculture leases

Part 4

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- (2) If the Minister has determined an access way under section 175 (2) of the Act, the lessee must, before the deadline, mark out the access way in accordance with this clause. The deadline is the end of 30 days after the date of service on the lessee of a direction given in writing by the Minister or a fisheries officer requiring the access way to be marked out or such further period as the Minister may allow.
- (3) In the case of an access way determined in respect of a class 1 or class 4 lease, the access way must be marked out by erecting posts along the boundaries of the way. Each of the posts must:
- show at least 1.25 metres above high-water mark (spring tides), and
 - have a minimum diameter of 100 millimetres or a square cross-section with sides of not less than 100 millimetres, and
 - be located at intervals not exceeding 2 metres or at such other intervals as may be specified in the direction to the lessee.
- Each of the posts, or such of the posts as may be specified in the direction, must have fixed to it at or near the top a white sign or a batten that complies with subclause (4).
- (4) A sign or batten complies with this subclause if:
- it has the words "ACCESS WAY" depicted on it, and
 - those words are in black letters that are not less than 75 millimetres high.
- (5) Marking out as prescribed by subclause (3) must, if the Minister so requires, be carried out in accordance with the Minister's directions.
- (6) In the case of an access way determined in respect of a class 2 lease or a class 3 lease, the lessee must mark out the access way in the manner prescribed by the determination.
- (7) A lessee must ensure that the markings required by this clause are maintained for the duration of the term of the aquaculture lease concerned, unless the access way is terminated before that lease is terminated.

Maximum penalty: 10 penalty units.

Note. Section 175 of the Act allows the Minister to determine an access way for a leased area.

Clause 57 Fisheries Management (Aquaculture) Regulation 2002

Part 4 Aquaculture leases

57 Notice to maintain markings

- (1) If at any time during the term of an aquaculture lease it appears to the Minister that the markings required by this Division are not being properly maintained, the Minister may, by notice in writing served on the lessee, require the lessee, within a period specified in the notice, to ensure that the markings comply with this Division. The period specified must be not less than 7 days after the service of the notice.
- (2) If, on being served with such a notice, the lessee fails to comply with the notice within the specified period, any fisheries officer may, with or without assistants, enter the lessee's area and undertake such work (including the installation of posts, signs and other structures) as may be necessary to ensure that the markings comply with this Division.
- (3) The Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt due to the Crown the cost of carrying out work under this clause.

58 Minister may modify boundaries of leased area

- (1) The Minister may, at any time, modify the boundaries of a leased area for the purpose of rectifying errors of measurement.
- (2) If such a modification increases or reduces the area of a leased area, the Minister may make a proportionate increase or reduction, as appropriate, to the rent, contributions and other amounts that the lessee is required to pay for the area.

Division 8 Public rights

59 Additional public right to which aquaculture lease is subject

- (1) The right of the owner or the lawful occupier of any land adjoining a leased area to drain the surface water off the land on to the area is a recognised right for the purposes of section 164 (3) of the Act. This subclause does not apply to water accumulated by an act of that owner or occupier, or an agent of either of them, or as a result of works on the land carried out by or with the approval of that owner or occupier.

Fisheries Management (Aquaculture) Regulation 2002

Clause 59

Aquaculture leases

Part 4

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- (2) A lessee is not entitled to compensation for any damage to the leased area or to the stock on the area caused by the reasonable exercise of the right referred to in subclause (1).

Note. The right conferred by this clause is in addition to the right of fishing conferred by section 164 (3) of the Act.

Clause 60 Fisheries Management (Aquaculture) Regulation 2002

Part 5 Diseased fish and marine vegetation

Part 5 Diseased fish and marine vegetation

60 Diseases declared for purposes of Division 4 of Part 6 of the Act

- (1) The diseases listed in this clause are declared to be diseases in respect of which Division 4 of Part 6 of the Act applies.
- (2) The following diseases are declared to be class A diseases:
 - (a) in relation to finfish:
 - (i) epizootic haematopoietic necrosis,
 - (ii) infectious haematopoietic necrosis,
 - (iii) viral haemorrhagic septicaemia,
 - (iv) bacterial kidney disease,
 - (v) epizootic ulcerative syndrome,
 - (vi) infectious pancreatic necrosis,
 - (vii) *Aeromonas salmonicida* infection,
 - (viii) viral nervous necrosis,
 - (ix) yersiniosis,
 - (x) whirling disease,
 - (b) in relation to molluscs:
 - (i) bonamiosis,
 - (ii) haplosporidiosis,
 - (iii) marteiliosis,
 - (iv) mikrocytosis,
 - (v) perkinsosis,
 - (vi) iridoviroses,
 - (c) in relation to crustaceans:
 - (i) baculoviral midgut gland necrosis,
 - (ii) crayfish plague,
 - (iii) infectious hypodermal and haematopoietic necrosis,
 - (iv) baculovirus infection,
 - (v) yellowhead disease,
 - (vi) white tail disease,
 - (vii) white spot syndrome virus.

Fisheries Management (Aquaculture) Regulation 2002

Clause 61

Diseased fish and marine vegetation

Part 5

-
- (3) The following diseases are declared to be class B diseases:
- (a) Northern Pacific sea-star,
 - (b) toxic dinoflagellates.

61 Notification of diseases

- (1) If the owner or occupier of any place to which this clause applies becomes aware that it is or may be infected with a class A or class B disease, the owner or occupier must notify a fisheries officer as soon as practicable of the infection or suspected infection.

Maximum penalty: 10 penalty units.

- (2) This clause applies to the following places:
- (a) an area to which an aquaculture permit relates,
 - (b) a pet shop,
 - (c) an aquarium kept for commercial purposes,
 - (d) a research establishment,
 - (e) a farm containing a dam or other impounded waters.
- (3) A person is not required to notify a fisheries officer under this clause if the infection or suspected infection has already been notified to a fisheries officer.

62 Order declaring quarantine area

An order under section 183 of the Act declaring a quarantine area is authorised to contain the following provisions:

- (a) provisions that require all or any specified classes of fish or marine vegetation taken in or from a quarantine area to be landed at a location or locations in or near the quarantine area determined by the Minister and notified to the occupier of the quarantine area concerned,
- (b) provisions that require all or any specified classes of fish or marine vegetation taken in or from a quarantine area to be inspected, tested or cooked, or otherwise treated or handled, in any other specified manner before the fish or marine vegetation are sold, removed from a location or locations referred to in paragraph (a), or removed from the vicinity of the quarantine area.

Clause 63 Fisheries Management (Aquaculture) Regulation 2002

Part 6 Miscellaneous

Part 6 Miscellaneous

63 Withdrawal of application under this Regulation and refund of certain fees

- (1) This clause applies to:
 - (a) an application for an aquaculture lease, and
 - (b) an application for the renewal of such a lease, and
 - (c) an application for consent to sublet such a lease, and
 - (d) an application for consent to transfer such a lease, and
 - (e) an application to surrender such a lease or part of a leased area, and
 - (f) an application to consolidate 2 or more such leases.
- (2) The applicant in relation to an application to which this clause applies may withdraw the application by notice in writing served on the Minister.
- (3) The applicant in relation to an application to which this clause applies is not entitled to a refund of the processing fee payable to the Minister by the applicant in respect of the application if the application is withdrawn or refused.
- (4) However, the Minister may refund the whole or a part of that fee in such circumstances as the Minister considers appropriate.

64 Information to be specified on containers of shellfish for sale

- (1) The purpose of this clause is to prevent the spread of fish diseases and noxious fish.
- (2) A person must not consign or convey unopened shellfish for sale in a container that does not have marked legibly on the outside:
 - (a) the name of the consignor or packer, and
 - (b) the name in full of the estuary, bay or other area where the shellfish were grown, and
 - (c) the species of shellfish that it contains.Maximum penalty: 50 penalty units.
- (3) A person must not, without reasonable excuse, consign or convey for sale in the same container unopened shellfish of different species.
Maximum penalty: 50 penalty units.

Fisheries Management (Aquaculture) Regulation 2002

Clause 65

Miscellaneous

Part 6

-
- (4) This clause does not apply to the consignment of shellfish from one area to another area for further growth.
 - (5) In this clause, *shellfish* means aquatic molluscs, crustaceans or echinoderms.

65 Obligations of authorised deposit-taking institutions concerning trust accounts

- (1) An authorised deposit-taking institution does not, in relation to a transaction on a trust account kept under this Regulation:
 - (a) incur any obligation to make inquiries, or any liability, other than an obligation or liability to which it would be subject apart from this Regulation, or
 - (b) have imputed to it any knowledge of the right of a person to money credited to the account,that it would not incur, or have imputed to it, if the account were kept by the authorised deposit-taking institution for a person absolutely entitled to the money credited to it.
- (2) An authorised deposit-taking institution at which the Minister keeps a trust account under this Regulation has no recourse against money at credit in the account in respect of a liability of the Minister to the authorised deposit-taking institution other than a liability in respect of the account.
- (3) In subclause (2), *recourse* includes any right by way of set off, counter-claim or charge or otherwise.

66 Permit required to gather marine vegetation for commercial purposes

- (1) A person must not gather marine vegetation for a commercial purpose from any area of public water land except under the authority of a permit issued by the Minister under this clause.
Maximum penalty: 50 penalty units.
- (2) A permit applies to the gathering of marine vegetation only in the area specified in the permit.
- (3) A permit is not required for the gathering of marine vegetation in accordance with an aquaculture permit or a permit under Part 7 of the Act.
- (4) A permit may apply to marine vegetation generally or to a particular class of marine vegetation specified in the permit.

Clause 67 Fisheries Management (Aquaculture) Regulation 2002

Part 6 Miscellaneous

- (5) An application for a permit is to be made in writing to the Minister in a form approved by the Minister.
- (6) If a person duly makes an application for a permit, the Minister may issue, or may refuse to issue, a permit.
- (7) A permit remains in force, unless sooner cancelled or suspended by the Minister, until the expiration of the period specified in the permit.
- (8) A permit is subject to the following conditions and such further conditions as are attached to the permit by the Minister:
 - (a) marine vegetation must not be gathered from any area if commercial fishing is taking place in the area unless, at the time the commercial fishing commenced in that area, marine vegetation was being gathered from the area in accordance with the permit,
 - (b) marine vegetation must not be gathered from any land that is held under any title granted by the Crown,
 - (c) marine vegetation must not be gathered from any marked navigation channel,
 - (d) marine vegetation must not be gathered from any area in which a public work is being carried out.
- (9) The Minister may, from time to time, by notice given to the permit holder, vary the further conditions of a permit.
- (10) The fee for a permit under this clause, or for the renewal of such a permit, is \$107.
- (11) In this clause, *gather* includes collect.

67 Fee for permit under section 37

- (1) An application for a permit under section 37 (1) of the Act, being a permit that authorises a person to take and possess fish or marine vegetation for aquaculture purposes, is to be accompanied by a processing fee of \$161.
- (2) The Minister may waive all or part of the fee payable under this clause in such cases as the Minister considers appropriate.

68 Saving

Any act, matter or thing that, immediately before the repeal of the *Fisheries Management (Aquaculture) Regulation 1995*, had effect under that Regulation is taken to have effect under this Regulation.

Fisheries Management (Aquaculture) Regulation 2002

Clause 69

Miscellaneous

Part 6

69 Transitional provision concerning security arrangements for class A permit holders of class 1 leases

Note. This clause remakes such of the provisions of clause 63 of the *Fisheries Management (Aquaculture) Regulation 1995* (as in force immediately before the repeal of that Regulation) as are of ongoing effect.

Despite clause 19, the amount payable by a class A permit holder of a class 1 lease under an arrangement referred to in clause 19 (1) (a) or (b) is as follows:

- (a) for any such arrangement entered into during the period of 12 months beginning on 31 January 2002—one half of the amount that would otherwise be payable under clause 19,
- (b) for any such arrangement entered into during the period of 12 months beginning on 31 January 2003—three quarters of the amount that would otherwise be payable under clause 19,
- (c) for any such arrangement entered into on or after 31 January 2004—the full amount payable under clause 19.

Fisheries Management (Aquaculture) Regulation 2002

Schedule 1 Provisions relating to members and procedure of committees

Schedule 1 Provisions relating to members and procedure of committees

(Clause 16)

1 Definitions

In this Schedule:

committee means a committee appointed by the Minister in respect of a trust account under section 157 (4) of the Act.

member means a member of a committee.

2 Appointment of members

- (1) The Minister may convene a selection committee (including representatives of the aquaculture industry) for the purpose of recommending persons for appointment as members of a committee.
- (2) The chairperson of a committee is to be the member of the committee for the time being appointed by the Minister as chairperson.

Note. Section 157 (4) of the Act provides that the Minister is to appoint members of a committee to advise the Minister as to the amount of contributions that are to be paid into a trust account established under section 157 (2) of the Act and of the money held in the trust account. Section 157 (7) of the Act requires the Minister to ensure that a majority of the members of the committee are representatives of the aquaculture industry.

3 Deputy members

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and may at any time revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (3) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Fisheries Management (Aquaculture) Regulation 2002

Provisions relating to members and procedure of committees

Schedule 1

4 Terms of office of member

Subject to this Schedule, a member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

5 Allowances for member

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

6 Vacancy in office of member

The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under section 157 (9) of the Act, or
- (e) is absent from 3 consecutive meetings of the committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the committee for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

7 Filling of vacancy in office of member

If the office of a member becomes vacant, a person is, subject to the Act, required to be appointed to fill the vacancy.

Fisheries Management (Aquaculture) Regulation 2002

Schedule 1 Provisions relating to members and procedure of committees

8 Disclosure of pecuniary interests

- (1) A member of a committee:
- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the committee, and
 - (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,
- must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the committee.
- (2) A disclosure by a member of a committee at a meeting of the committee that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,
- is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.
- (3) Particulars of any disclosure made under this clause must be recorded by the members of the committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members of the committee.
- (4) After a member of the committee has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the other members of the committee otherwise determine:
- (a) be present during any deliberation of the committee with respect to the matter, or
 - (b) take part in any decision of the committee with respect to the matter.
- (5) For the purposes of the making of a determination by the members of the committee under subclause (4), a member of the committee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

Fisheries Management (Aquaculture) Regulation 2002

Provisions relating to members and procedure of committees

Schedule 1

-
- (a) be present during any deliberation of the other members of the committee for the purpose of making the determination, or
 - (b) take part in the making by the other members of the committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the committee.
- (7) A member is taken not to have an interest in a matter for the purposes of this clause merely because the member is the holder of an aquaculture permit or aquaculture lease.

9 General procedure for calling and holding meetings of a committee

The procedure for the calling and holding of meetings of a committee is, subject to any direction by the Minister, to be determined by the committee.

10 Quorum

The quorum for a meeting of a committee is a majority of its members for the time being.

11 Presiding member and voting rights

- (1) The chairperson of a committee or, in the absence of the chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the committee.
- (2) The person presiding at a meeting of a committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Voting

A decision supported by a majority of the votes cast at a meeting of a committee at which a quorum is present is the decision of the committee.

Fisheries Management (Aquaculture) Regulation 2002

Schedule 2 Forms

Schedule 2 Forms**Form 1**

(Clauses 37 (1) (b) and 39 (1) (b))

Fisheries Management Act 1994

AQUACULTURE LEASE/RENEWAL OF AQUACULTURE LEASE

I, the Minister for....., lease on behalf of the Crown the aquaculture farm described below to you, the lessee, for the term, at the rent and on the conditions (if any) specified below.

Your name	
Your residential address	
The area of your lease permit	
The description of the leased area	
The date when the lease starts	
The rent payable for the lease (per year)	
Special conditions applicable to the lease	<ol style="list-style-type: none"> 1. 2. 3. 4. 5. 6.

Note. The rent is subject to periodic redetermination as provided by section 165 (2) of the *Fisheries Management Act 1994*.

Lessee's covenants

You, the lessee, agree that you will:

- (a) comply with the provisions of the *Fisheries Management Act 1994* ("the Act") and the *Fisheries Management (Aquaculture) Regulation 2002* ("the Regulation"), and
- (b) pay rent for your farm yearly in advance or by instalments as required by the Act and the Regulation, and
- (c) ensure that your farm is used only for aquaculture and that the cultivation of fish or marine vegetation on the farm is carried out in accordance with any relevant aquaculture industry development plan notified from time to time by the Director of NSW Fisheries, and

Fisheries Management (Aquaculture) Regulation 2002

Schedule 2 Forms

(d) ensure that your farm is kept in a neat and tidy condition to the satisfaction of the Director of NSW Fisheries.

You also agree to adjust the areas of cultivation on your farm so as to allow safe navigation if existing channels change or something else happens that requires those channels to be altered.

Conditions of the lease

It is a condition of this lease that I may cancel it if you fail to comply with a notice served on you in accordance with section 162 (2) or 213 (3) of the Act (in your capacity as the holder of an aquaculture permit) within the period specified in the notice.

Note. This is a condition of the lease referred to in section 177 (1) (d) of the Act. Section 177 specifies other grounds on which the lease may be cancelled, including non-payment of rent.

Dated this..... day of..... 20.....

.....
My or my delegate's signature

.....
Witness to my or my delegate's signature

.....
Your signature

.....
Witness to your signature



New South Wales

Fisheries Management (Aquatic Reserves) Regulation 2002

under the

Fisheries Management Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

The Hon EDWARD OBEID, M.L.C.,
Minister for Fisheries

Explanatory note

The object of this Regulation is to remake, without substantial alteration, the provisions of the *Fisheries Management (Aquatic Reserves) Regulation 1995*. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the following in relation to the management and protection of aquatic reserves in New South Wales:

- (a) formal matters of a machinery nature (Part 1),
- (b) the regulation of activities in the Long Reef Aquatic Reserve (Part 2),
- (c) the regulation of activities in the Shiprock Aquatic Reserve (Part 3),
- (d) the regulation of activities in the Julian Rocks Aquatic Reserve (Part 4),
- (e) the regulation of activities in the North Harbour Aquatic Reserve (Part 5),
- (f) the regulation of activities in the Bushranger's Bay Aquatic Reserve (Part 6),
- (g) the regulation of activities in the Fly Point–Halifax Park Aquatic Reserve (Part 7),
- (h) the regulation of activities in the Towra Point Aquatic Reserve (Part 8),
- (i) miscellaneous matters (Part 9).

This Regulation is made under the *Fisheries Management Act 1994* and, in particular, under sections 197 (Regulations relating to aquatic reserves) and 289 (the general regulation-making power).

Fisheries Management (Aquatic Reserves) Regulation 2002

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Notes	4
5 Relationship of Regulation to other instruments under the Act	4
6 Director's consent	4
Part 2 Long Reef	
7 The Reserve	5
8 Taking of fish or marine vegetation prohibited	5
9 General exemption	5
Part 3 Shiprock	
10 The Reserve	6
11 Taking of fish or marine vegetation prohibited	6
12 General exemption	6
Part 4 Julian Rocks	
13 The Reserve	7
14 Taking of fish or marine vegetation prohibited	7
15 General exemption	7
Part 5 North Harbour	
16 The Reserve	8
17 Taking of fish or marine vegetation prohibited	8
18 General exemption	8
19 Exemption for commercial fishers	9
Part 6 Bushranger's Bay	
20 The Reserve	10
21 Taking of fish or marine vegetation prohibited	10
22 General exemption	10
Part 7 Fly Point-Halifax Park	
23 The Reserve	11
24 Taking of fish or marine vegetation prohibited	11

Fisheries Management (Aquatic Reserves) Regulation 2002

Contents

	Page
25 General exemption	11
Part 8 Towra Point	
26 The Reserve	12
27 Taking of fish or marine vegetation prohibited	12
28 General exemption	12
29 Exemption for commercial fishers	13
Part 9 Miscellaneous	
30 Savings	14
Schedules	
1 Long Reef Aquatic Reserve	15
2 Shiprock Aquatic Reserve	16
3 Julian Rocks Aquatic Reserve	17
4 North Harbour Aquatic Reserve	18
5 Bushranger's Bay Aquatic Reserve	19
6 Fly Point-Halifax Park Aquatic Reserve	20
7 Towra Point Aquatic Reserve	21

Clause 1	Fisheries Management (Aquatic Reserves) Regulation 2002
Part 1	Preliminary

Fisheries Management (Aquatic Reserves) Regulation 2002

under the

Fisheries Management Act 1994

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Fisheries Management (Aquatic Reserves) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Fisheries Management (Aquatic Reserves) Regulation 1995* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

In this Regulation:

the Act means the *Fisheries Management Act 1994*.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

5 Relationship of Regulation to other instruments under the Act

Nothing in this Regulation affects any other restriction or prohibition imposed by or under the Act.

6 Director's consent

The Director may grant a consent to a person under this Regulation by means of a written notice given to the person and may, in the same manner, vary or revoke a consent so granted.

Clause 7 Fisheries Management (Aquatic Reserves) Regulation 2002

Part 2 Long Reef

Part 2 Long Reef

7 The Reserve

In this Part:

Reserve means the Long Reef Aquatic Reserve declared by notification published in Gazette No 80 of 30 May 1980, at page 2787, being the land described in Schedule 1 together with the waters within the Reserve.

8 Taking of fish or marine vegetation prohibited

(1) A person must not:

- (a) take, or attempt to take, fish from the Reserve, or
- (b) gather, or attempt to gather, marine vegetation from the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(2) A person must not:

- (a) wilfully disturb, injure or interfere with fish in the Reserve, or
- (b) wilfully damage, destroy or interfere with marine vegetation in the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(3) This clause is subject to the other provisions of this Part.

9 General exemption

A person:

- (a) may, by means of a spear or a hook and line, take, or attempt to take, from the Reserve fish that have fins, and
- (b) may, in accordance with the written consent of the Director, do anything else prohibited by clause 8 (1) or (2).

Fisheries Management (Aquatic Reserves) Regulation 2002

Clause 10

Shiprock

Part 3

Part 3 Shiprock

10 The Reserve

In this Part:

Reserve means the Shiprock Aquatic Reserve declared by notification published in Gazette No 46 of 26 March 1982, at page 1336, being the land described in Schedule 2 together with the waters within the Reserve.

11 Taking of fish or marine vegetation prohibited

(1) A person must not:

- (a) take, or attempt to take, fish from the Reserve, or
- (b) gather, or attempt to gather, marine vegetation from the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(2) A person must not:

- (a) wilfully disturb, injure or interfere with fish in the Reserve, or
- (b) wilfully damage, destroy or interfere with marine vegetation in the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(3) This clause is subject to the other provisions of this Part.

12 General exemption

A person may, in accordance with the written consent of the Director, do anything prohibited by clause 11 (1) or (2).

Clause 13 Fisheries Management (Aquatic Reserves) Regulation 2002

Part 4 Julian Rocks

Part 4 Julian Rocks

13 The Reserve

In this Part:

Reserve means the Julian Rocks Aquatic Reserve declared by notification published in Gazette No 46 of 26 March 1982, at page 1336, being the land described in Schedule 3 together with the waters within the Reserve.

14 Taking of fish or marine vegetation prohibited

(1) A person must not:

- (a) take, or attempt to take, fish from the Reserve, or
- (b) gather, or attempt to gather, marine vegetation from the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(2) A person must not:

- (a) wilfully disturb, injure or interfere with fish in the Reserve, or
- (b) wilfully damage, destroy or interfere with marine vegetation in the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(3) This clause is subject to the other provisions of this Part.

15 General exemption

A person:

- (a) may, by means of a hook and line, take, or attempt to take, from the Reserve fish that have fins, and
- (b) may, in accordance with the written consent of the Director, do anything else prohibited by clause 14 (1) or (2).

Fisheries Management (Aquatic Reserves) Regulation 2002

Clause 16

North Harbour

Part 5

Part 5 North Harbour

16 The Reserve

In this Part:

Reserve means the North Harbour Aquatic Reserve declared by notification published in Gazette No 46 of 26 March 1982, at page 1336, being the land described in Schedule 4 together with the waters within the Reserve.

17 Taking of fish or marine vegetation prohibited

(1) A person must not:

- (a) take, or attempt to take, fish from the Reserve, or
- (b) gather, or attempt to gather, marine vegetation from the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(2) A person must not:

- (a) wilfully disturb, injure or interfere with fish in the Reserve, or
- (b) wilfully damage, destroy or interfere with marine vegetation in the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(3) This clause is subject to the other provisions of this Part.

18 General exemption

A person:

- (a) may, by means of a hook and line, take, or attempt to take, from the Reserve fish that have fins, and
- (b) may, in accordance with the written consent of the Director, do anything else prohibited by clause 17 (1) or (2).

Clause 19 Fisheries Management (Aquatic Reserves) Regulation 2002

Part 5 North Harbour

19 Exemption for commercial fishers

A commercial fisher:

- (a) may take, or attempt to take, from the Reserve a rock lobster in accordance with the *Fisheries Management (Lobster Share Management Plan) Regulation 2000*, and
- (b) may, on a weekday, take, or attempt to take, from the Reserve fish by means of a hauling net, but only from the part of the Reserve north of Cannae Point and east of a line drawn from Cannae Point to Manly Point.

Fisheries Management (Aquatic Reserves) Regulation 2002

Clause 20

Bushranger's Bay

Part 6

Part 6 Bushranger's Bay

20 The Reserve

In this Part:

Reserve means the Bushranger's Bay Aquatic Reserve declared by notification published in Gazette No 65 of 14 May 1982, at page 2104, being the land described in Schedule 5 together with the waters within the Reserve.

21 Taking of fish or marine vegetation prohibited

(1) A person must not:

- (a) take, or attempt to take, fish from the Reserve, or
- (b) gather, or attempt to gather, marine vegetation from the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(2) A person must not:

- (a) wilfully disturb, injure or interfere with fish in the Reserve, or
- (b) wilfully damage, destroy or interfere with marine vegetation in the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

(3) This clause is subject to the other provisions of this Part.

22 General exemption

A person may, in accordance with the written consent of the Director, do anything prohibited by clause 21 (1) or (2).

Clause 23	Fisheries Management (Aquatic Reserves) Regulation 2002
Part 7	Fly Point-Halifax Park

Part 7 Fly Point-Halifax Park

23 The Reserve

In this Part:

Reserve means the Fly Point-Halifax Park Aquatic Reserve declared by notification published in Gazette No 16 of 28 January 1983, at page 446, being the land described in Schedule 6 together with the waters within the Reserve.

24 Taking of fish or marine vegetation prohibited

- (1) A person must not:
- (a) take, or attempt to take, fish from the Reserve, or
 - (b) gather, or attempt to gather, marine vegetation from the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

- (2) A person must not:
- (a) wilfully disturb, injure or interfere with fish in the Reserve, or
 - (b) wilfully damage, destroy or interfere with marine vegetation in the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

- (3) This clause is subject to the other provisions of this Part.

25 General exemption

A person:

- (a) may, by means of a hook and line, take, or attempt to take, fish that have fins, but only from the jetties in the Reserve or the beach between those jetties, and
- (b) may, in accordance with the written consent of the Director, do anything else prohibited by clause 24 (1) or (2).

Fisheries Management (Aquatic Reserves) Regulation 2002

Clause 26

Towra Point

Part 8

Part 8 Towra Point

26 The Reserve

In this Part:

refuge zone means the area shown lightly dotted in the diagram in Schedule 7.

Reserve means the Towra Point Aquatic Reserve declared by notification published in Gazette No 49 of 12 April 1990, at page 3070, being the land described in Schedule 7 together with the waters within the Reserve.

sanctuary zone means the area (generally referred to as Stinkpot Bay, Quibray Bay and Weeney Bay) shown hatched in the diagram in Schedule 7.

27 Taking of fish or marine vegetation prohibited

- (1) A person must not:
- (a) take, or attempt to take, fish from the Reserve, or
 - (b) gather, or attempt to gather, marine vegetation from the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

- (2) A person must not:
- (a) wilfully disturb, injure or interfere with fish in the Reserve, or
 - (b) wilfully damage, destroy or interfere with marine vegetation in the Reserve.

Maximum penalty: 100 penalty units in the case of a corporation, 50 penalty units in any other case.

- (3) This clause is subject to the other provisions of this Part.

28 General exemption

- (1) A person:
- (a) may take, or attempt to take, fish from the refuge zone by means of:
 - (i) a hook and line, or

Clause 29 Fisheries Management (Aquatic Reserves) Regulation 2002

Part 8 Towra Point

- (ii) a net that may lawfully be used otherwise than by a commercial fisher, and
 - (b) may, in accordance with the written consent of the Director, do anything else prohibited by clause 27 (1) or (2).
- (2) The exemption under subclause (1) (a) does not authorise a person to take, or attempt to take, fish from the sanctuary zone.

29 Exemption for commercial fishers

- (1) A commercial fisher may take, or attempt to take, fish from the refuge zone by means of:
 - (a) lawful hauling nets or garfish nets (bullringing), or
 - (b) lawful meshing nets, but only when used by the method known as splashing (that is, shooting the net, splashing the water in the vicinity and fully retrieving the net from the water without delay), or
 - (c) lawful fish traps.
- (2) The exemption under subclause (1) does not authorise a person to take, or attempt to take, fish from the sanctuary zone.

Fisheries Management (Aquatic Reserves) Regulation 2002

Clause 30

Miscellaneous

Part 9

Part 9 Miscellaneous

30 Savings

Any act, matter or thing that had effect under the *Fisheries Management (Aquatic Reserves) Regulation 1995* immediately before the repeal of that Regulation is taken to have effect under this Regulation.

Fisheries Management (Aquatic Reserves) Regulation 2002

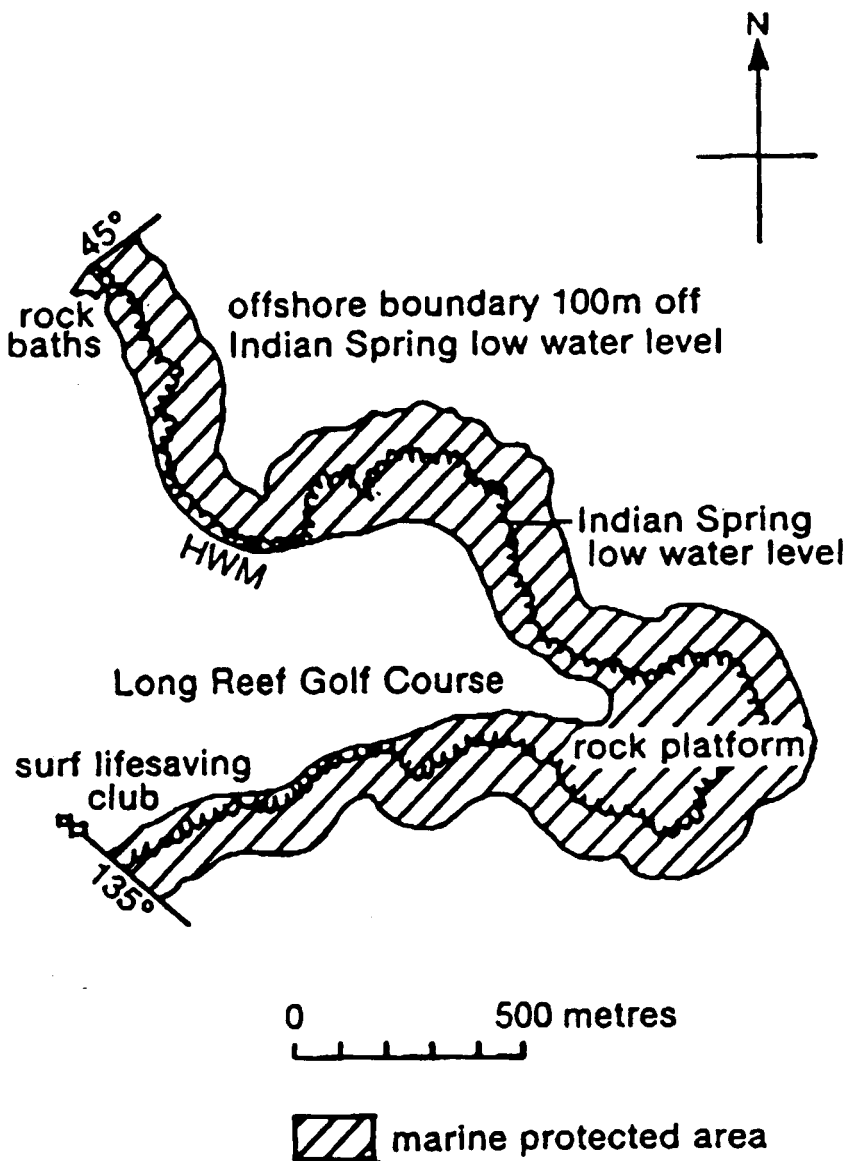
Schedule 1 Long Reef Aquatic Reserve

Schedule 1 Long Reef Aquatic Reserve

(Clause 7)

The Long Reef Aquatic Reserve comprises the area in the general vicinity of Dee Why shown hatched on the following diagram:

Diagram



Fisheries Management (Aquatic Reserves) Regulation 2002

Shiprock Aquatic Reserve

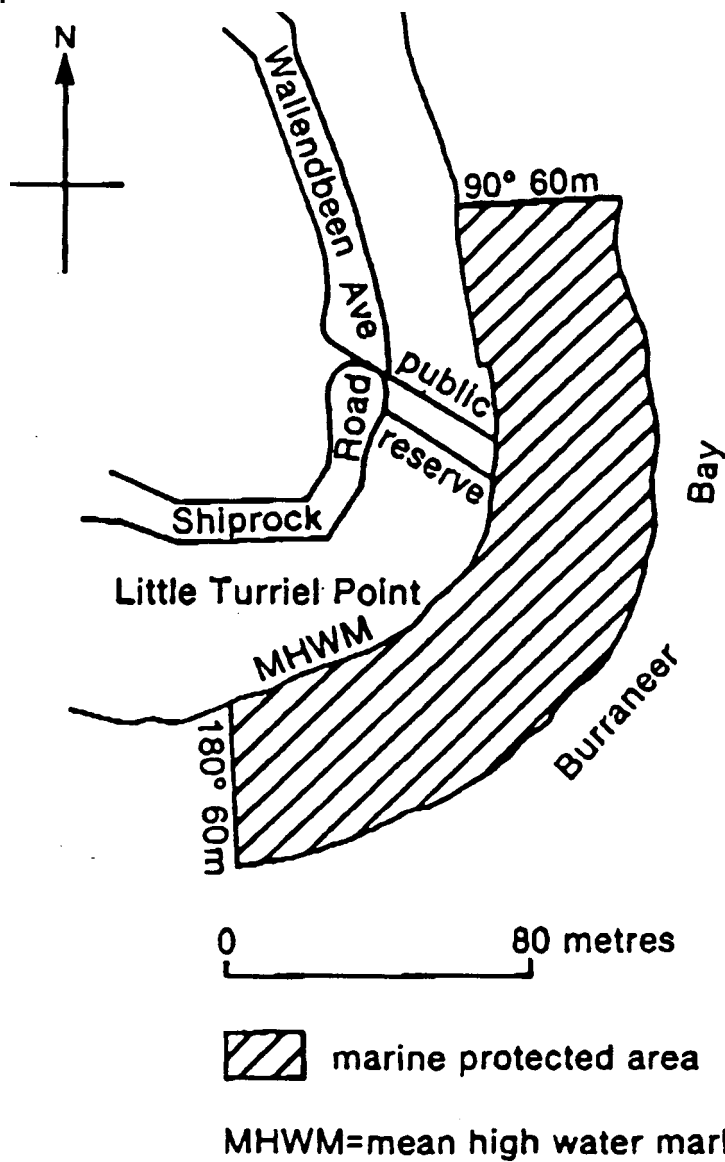
Schedule 2

Schedule 2 Shiprock Aquatic Reserve

(Clause 10)

The Shiprock Aquatic Reserve comprises the area in the general vicinity of Port Hacking shown hatched on the following diagram:

Diagram



Fisheries Management (Aquatic Reserves) Regulation 2002

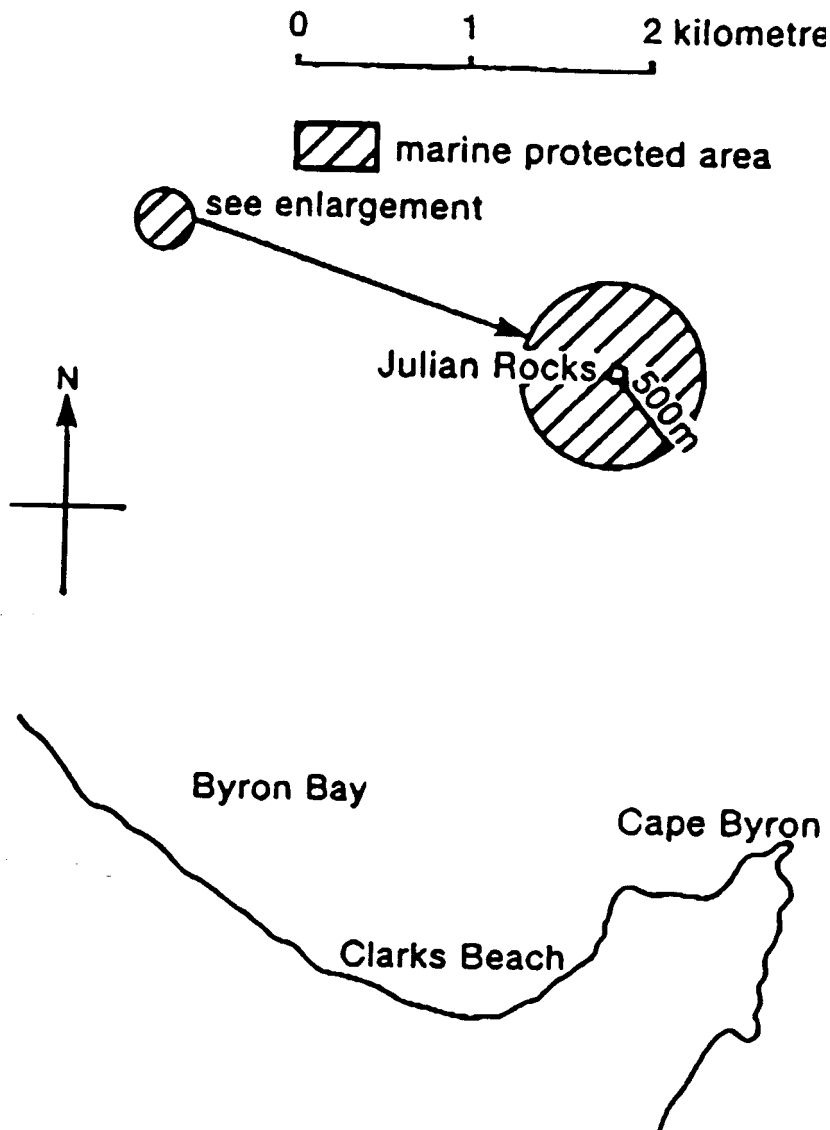
Schedule 3 Julian Rocks Aquatic Reserve

Schedule 3 Julian Rocks Aquatic Reserve

(Clause 13)

The Julian Rocks Aquatic Reserve comprises the area in the general vicinity of Byron Bay shown hatched on the following diagram:

Diagram



Fisheries Management (Aquatic Reserves) Regulation 2002

North Harbour Aquatic Reserve

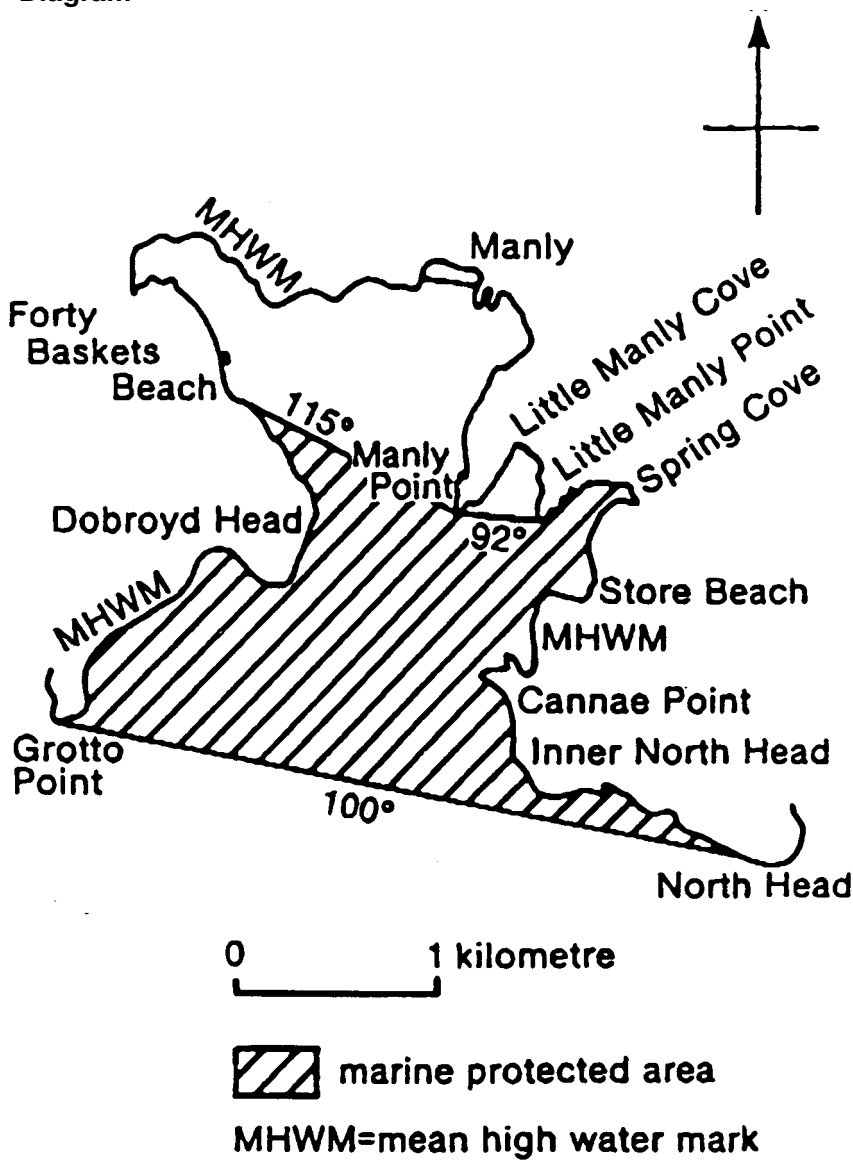
Schedule 4

Schedule 4 North Harbour Aquatic Reserve

(Clause 16)

The North Harbour Aquatic Reserve comprises the area in the general vicinity of Manly shown hatched on the following diagram:

Diagram



Fisheries Management (Aquatic Reserves) Regulation 2002

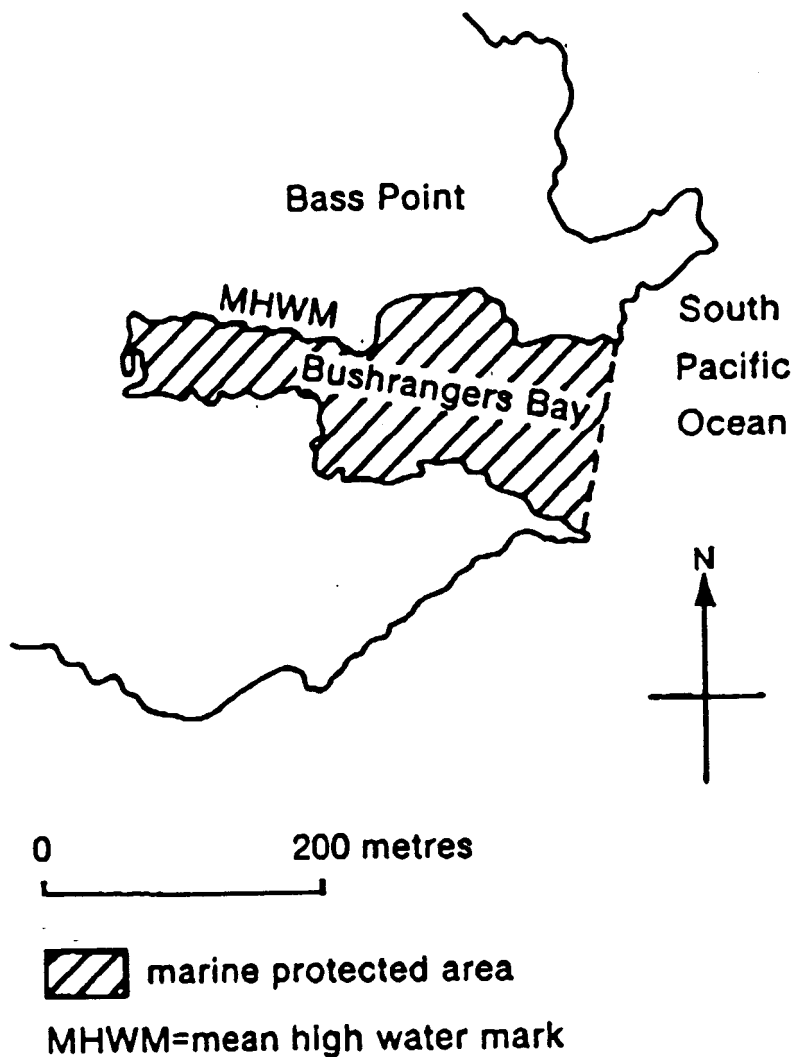
Schedule 5 Bushranger's Bay Aquatic Reserve

Schedule 5 Bushranger's Bay Aquatic Reserve

(Clause 20)

The Bushranger's Bay Aquatic Reserve comprises the area in the general vicinity of Shellharbour shown hatched on the following diagram:

Diagram



Fisheries Management (Aquatic Reserves) Regulation 2002

Fly Point-Halifax Park Aquatic Reserve

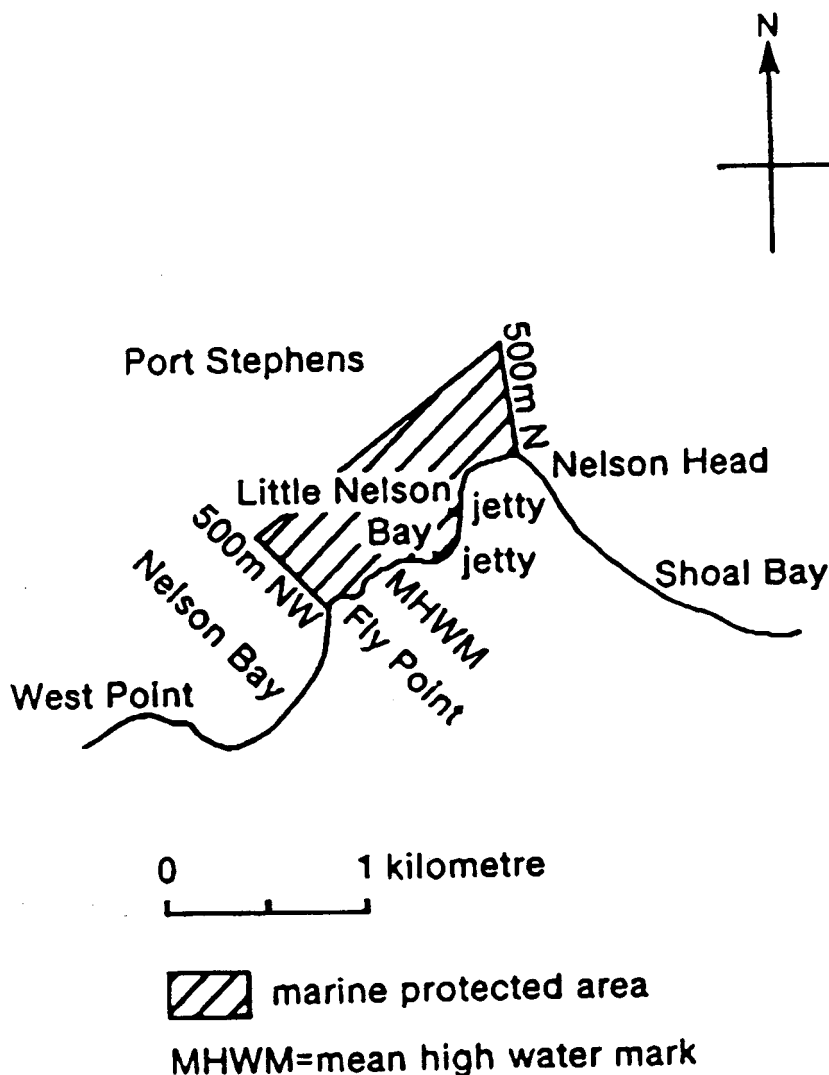
Schedule 6

Schedule 6 Fly Point-Halifax Park Aquatic Reserve

(Clause 23)

The Fly Point-Halifax Park Aquatic Reserve comprises the area in the general vicinity of Port Stephens shown hatched on the following diagram:

Diagram



Fisheries Management (Aquatic Reserves) Regulation 2002

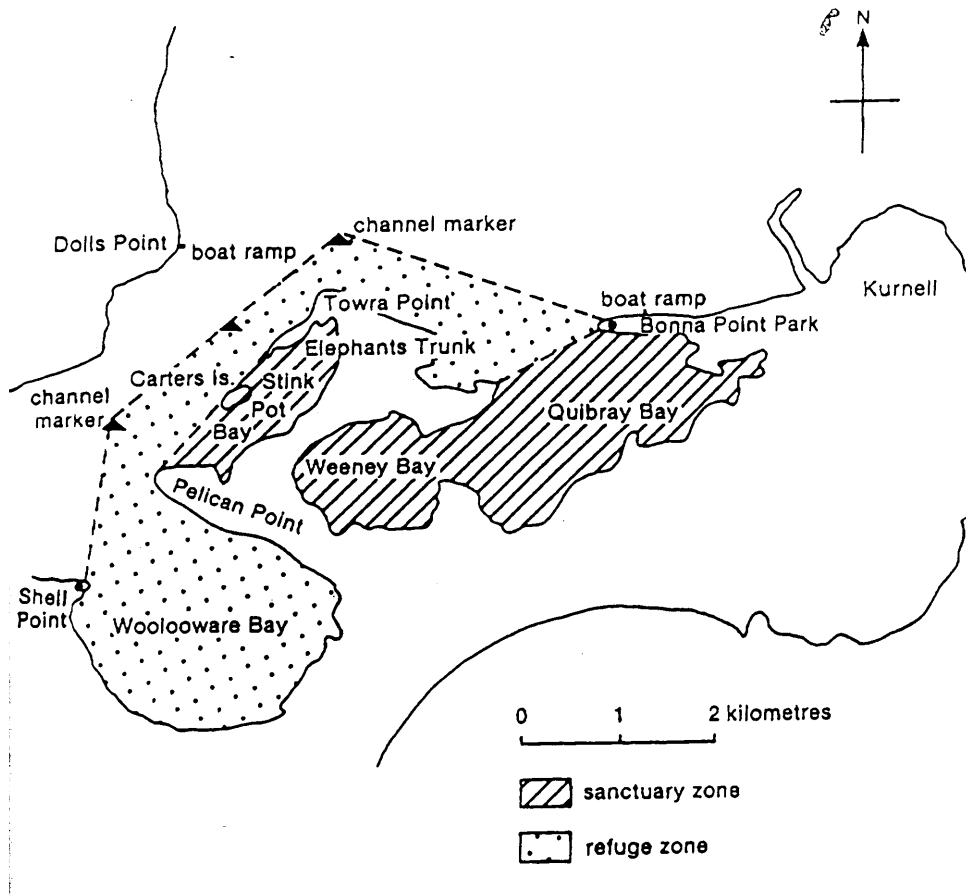
Schedule 7 Towra Point Aquatic Reserve

Schedule 7 Towra Point Aquatic Reserve

(Clause 26)

The Towra Point Aquatic Reserve comprises the area in the general vicinity of Botany Bay described by the following metes and bounds description and indicated by the hatching and dots on the following diagram:

Diagram



Fisheries Management (Aquatic Reserves) Regulation 2002

Schedule 7 Towra Point Aquatic Reserve

Metes and bounds description

Commencing at the northeastern extremity of Shell Point, then generally easterly along the mean high-water line around Woollooware, Stink Pot, Weeney and Quibray Bays to the point of intersection with a line drawn from the survey obelisk situated at Bonna Point to the port-hand channel marker situated approximately 1130 metres north of Towra Point, then by that line to the said port-hand channel marker, then generally southwesterly to the port-hand channel marker situated approximately 750 metres north of Pelican Point, then by a line generally southwesterly to the point of commencement.

Commencing at a post marked "FD" over broad-arrow situated on the northwestern extremity of Pelican Point, then by a line generally easterly following the mean high-water line and across any breached entrances of Stink Pot Bay to a post marked "FD" over broad-arrow situated on the Elephant's Trunk, then by a line generally southwesterly to the northern corner of Oyster Farm Lease 84.40, then to the point of commencement.

Commencing at the point of intersection of the mean high-water mark with a line drawn from the survey obelisk at Bonna Point to the northeastern corner of Oyster Farm Lease 85.195, then generally southwesterly by that line, then continuing to the mean high-water mark, then along the mean high-water line around Weeney and Quibray Bays to the point of commencement.



Fisheries Management (General) Regulation 2002

under the

Fisheries Management Act 1994

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fisheries Management Act 1994*.

The Hon EDWARD OBEID, M.L.C.,
Minister for Fisheries

Explanatory note

The object of this Regulation is to remake, without substantial alteration, the provisions of the *Fisheries Management (General) Regulation 1995*. That Regulation (which makes provision for the management of fisheries in accordance with the *Fisheries Management Act 1994*) is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation is made under the *Fisheries Management Act 1994* and, in particular, under section 40 (Regulations relating to general management of fisheries), section 289 (the general regulation-making power) and the sections specifically referred to in the Regulation.

Fisheries Management (General) Regulation 2002

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	17
2 Commencement	17
3 Definitions	17
4 Notes	19
5 The management plan for a fishery prevails over this Regulation	19
Part 2 Protected fish, prohibited size fish and bag limits	
Division 1 Protected fish	
6 Protected fish	20
7 Fish protected from commercial fishing	21
8 Defence—striped marlin	22
Division 2 Prohibited size fish	
9 Prohibited size fish	22
10 Defence—taking of mullet for bait	27
Division 3 Bag limits	
11 Bag limits—taking of fish	28
12 Bag limits—possession of fish	28
13 General bag limit	29
14 Application of bag limits and possession limits to commercial fishers	29
15 Possession limits do not apply to persons in possession of fish for sale	30
Division 4 Special provisions relating to scallops	
16 Definitions	37
17 Scallops taken by means of a dredge must be placed in approved sack or crate	37
18 Bag limits—scallops taken by means of a dredge	38
Part 3 Fishing gear	
Division 1 Lawful use of fishing gear generally	
19 Fishing gear cannot be used in circumstances where fishing prohibited	39
20 Lawful use of fishing gear in restricted fisheries	39

Fisheries Management (General) Regulation 2002

Contents

	Page
21 Use of nets and traps prohibited in certain waters (Brisbane Waters, Port Hacking etc)	40
Division 2 Registration	
22 Registration of fishing gear	40
23 Applications for registration	41
24 Registration	41
Division 3 Lawful commercial nets	
25 Application of Division	42
26 Hauling net (general purpose)	42
27 Trumpeter whiting net (hauling)	45
28 Garfish net (bullringing)	46
29 Garfish net (hauling)	47
30 Pilchard, anchovy and bait net (hauling)	48
31 Purse seine net	48
32 Prawn net (hauling)	49
33 Prawn net (hauling): Manning River	52
34 Prawn net (hauling): Wallis Lake	53
35 Prawn net (set pocket)	55
36 Prawn running net	61
37 Seine net (prawns)	63
38 Otter trawl net (prawns)	65
39 Otter trawl net (fish)	67
40 Danish seine trawl net (fish)	68
41 Meshing net	68
42 Beach safety meshing net	69
43 Flathead net	70
44 Bait net	72
45 Submersible lift net (bait)	73
Division 4 Lawful recreational nets	
46 Application of Division	74
47 Spanner crab net	74
48 Hoop or lift net	75
49 Hand-hauled prawn net	75
50 Push or scissors net (prawns)	77
51 Dip or scoop net (prawns)	77
52 Hand-hauled yabby net	78
53 Landing net	79

Fisheries Management (General) Regulation 2002

Contents

	Page
Division 5 General provisions relating to lawful use of nets	
54 Relaying of hauling lines prohibited	79
55 Joining of nets	80
56 Illegally reducing mesh size of nets	80
57 Monofilament and certain multi-strand nets prohibited	81
58 Method of dragging or drawing nets	81
Division 6 Lawful traps	
59 Fish trap	81
60 Lobster trap	82
61 Crab trap	84
62 Bait trap	86
63 Yabby trap	87
64 Shrimp trap	87
65 Eel trap	88
Division 7 Miscellaneous	
66 Set lines and hand held lines	89
67 Leaving hand held line unattended	90
68 Drift lines	91
69 Identification of set fishing gear	92
70 Scuba diving	92
71 Spear guns	93
72 Firearms	93
73 Taking of rock lobster	94
74 Taking of yabby, worms, pipis etc	94
75 Taking of shellfish by means of a dredge or similar device	94
76 Jagging or foul hooking of fish	95
77 Taking of Atlantic salmon or trout	95
78 Taking of groper	96
79 Restrictions on the sale of commercial nets	96
Part 4 Priorities in the use of fishing gear	
Division 1 Offences	
80 Offence of fishing contrary to rights of priority	98
81 Commercial fishers must use fishing gear in accordance with this Part	98
Division 2 Rights of priority between commercial and recreational fishers on recognised fishing grounds	
82 Rights of priority between fishers on recognised fishing grounds	98

Fisheries Management (General) Regulation 2002

Contents

	Page
Division 3 Rights of priority between commercial fishers in the use of nets generally	
83 Priority between commercial fishers using nets in inland waters	99
84 Priority between commercial fishers using nets in waters other than inland waters	99
85 Minimum crew number for hauling to sea beaches	100
86 Division does not apply where rights of priority otherwise determined	101
Division 4 Rights of priority between commercial fishers using prawn nets (set pocket)	
87 General	101
88 Preliminary determination by local fisheries officer	102
89 Fishers to give notice of intention to use prawn nets	102
90 Special provisions relating to Myall River	103
91 Notice of priority determination	103
92 Local fisheries officer to make priority determination	104
93 Manner of determining rights of priority—Myall River	104
94 Manner of determining rights of priority—Clarence River	105
95 Manner of determining rights of priority—other waters	106
96 Manner of making priority determination—general	106
97 Notice of result of priority determination	107
98 General conditions of use of prawn net following priority determination	107
99 Prawn nets to be operated only by commercial fisher or crew	108
Division 5 Rights of priority between fishers using prawn running nets	
100 General	109
101 Preliminary determination by local fisheries officer	109
102 Priority between fishers using prawn running nets	110
103 General conditions relating to use of prawn running net following priority determination	110
Division 6 Miscellaneous	
104 This Part does not affect the conditions relating to lawful use of a net (Part 3)	111
105 Exemption from requirement to be personally present	111

Fisheries Management (General) Regulation 2002

Contents

		Page
Part 5	Miscellaneous provisions relating to fisheries management	
	Division 1 Recognised fishing grounds	
106	Identification of recognised fishing grounds	112
	Division 2 Interference with fishing activities and set fishing gear	
107	Interference with fishing activities	112
108	Interference with set fishing gear	113
109	Lawful interference with set fishing gear	113
110	Wilfully disturbing fish	113
111	Interference with commercial fisher using line	113
	Division 3 Use of explosives, electrical devices and other dangerous substances	
112	Dynamite and explosive substances	114
113	Permit to use explosives	114
114	Use of electrical devices prohibited in all waters	115
115	Permit to use electrical devices	115
	Division 4 Measurement of fishing gear	
116	Measuring length and mesh size of nets	115
	Division 5 Recreational fishing fee	
117	Definition	117
118	Exempt bodies of water	117
119	Exempt fishers	117
120	Reductions in fishing fee for fishing in far north	118
121	Issue of replacement receipts	119
122	Additional classes of persons to whom fishing fee exemption certificates may be issued	119
123	Fishing fee exemption certificates: period for which in force	119
124	Fishing fee exemption certificates: fees	119
125	Amendment and cancellation of exemption certificates	120
	Division 6 Acquisition of commercial fishing entitlements	
126	Constitution of compensation review panel	121
	Division 7 Miscellaneous	
127	Prohibited lures and baits	121
128	Taking of octopus from rock platforms	122
129	Shucking of intertidal invertebrates	122

Fisheries Management (General) Regulation 2002

Contents

		Page
130	Shucking of abalone	123
131	Mutilation of fish	123
132	Crayfish, rock lobsters, shovel-nosed lobsters and crabs carrying ova	124
133	Sorting charge for fish	124
Part 6	Commercial share management fisheries	
	Division 1 General	
134	Persons prohibited from holding shares (section 49 (2) of the Act)	125
135	Determination of catch history	126
136	Nomination of commercial fisher by shareholder	126
137	Special endorsements to take fish in share management fishery	126
138	Transfers and other dealings in shares—general	127
139	Forfeiture of shares for failure to pay certain contributions	127
140	Making of appeals to Share Appeal Panel (section 84 of the Act)	128
141	Fee for registration of dealings in shares	128
142	Fee for inspection of Share Register and registered documents	128
Part 7	Licensing and other commercial fisheries management	
	Division 1 Commercial fishing licences	
143	Who may hold commercial fishing licence	130
144	Fee to accompany application for commercial fishing licence	132
145	Grounds for refusal to issue commercial fishing licence to otherwise eligible applicant	132
146	Prescribed conditions of commercial fishing licence	133
147	Renewal of commercial fishing licence	134
148	Grounds for suspension or cancellation of a licence	136
149	Classes of commercial fishing licences	137
150	Annual contribution to cost of research and to other industry costs	138
	Division 2 Boat licences	
151	Fee to accompany application for issue of fishing boat licence	138
152	Grounds for refusal to issue fishing boat licence	139
153	Prescribed conditions of fishing boat licences	140
154	Renewal of fishing boat licence	142
		Page 7

Fisheries Management (General) Regulation 2002

Contents

	Page
155	144
156	145
157	146
158	146
159	147
160	148
Division 3 Provisions relating to crew members	
161	148
162	148
163	148
164	148
165	149
166	149
167	149
Part 8 Restricted fisheries	
Division 1 Sea urchin and turban shell	
168	150
169	150
170	150
171	151
172	152
173	152
174	154
175	154
176	154
177	156
178	156
179	157
180	157
181	157
182	158
Division 2 Ocean prawn trawl restricted fishery	
183	158
184	159
185	159
186	160

Fisheries Management (General) Regulation 2002

Contents

	Page
187 Application for endorsement	162
188 Duration of endorsement	162
189 Application for endorsement for further period	162
190 Cancellation and suspension of endorsements	163
 Division 3 Ocean fish trawl restricted fishery	
191 Definitions	164
192 Ocean fish trawl fishery is a restricted fishery	164
193 Types of endorsement in restricted fishery	164
194 Eligibility for endorsement	165
195 Application for endorsement	167
196 Duration of endorsement	167
197 Application for endorsement for further period	167
198 Cancellation and suspension of endorsements	168
 Division 4 Ocean trap and line restricted fishery	
199 Definitions	169
200 Ocean trap and line fishery is a restricted fishery	169
201 Types of endorsement in restricted fishery	169
202 Eligibility for endorsement	170
203 Application for endorsement	172
204 Duration of endorsement	173
205 Application for endorsement for further period	173
206 Cancellation and suspension of endorsements	174
 Division 5 Estuary general restricted fishery	
207 Definitions	174
208 Estuary general fishery is a restricted fishery	175
209 Types of endorsement in restricted fishery	175
210 Eligibility for endorsement	177
211 Application for endorsement	180
212 Duration of endorsement	180
213 Application for endorsement for further period	181
214 Cancellation and suspension of endorsements	182
 Division 6 Estuary prawn trawl restricted fishery	
215 Definitions	182
216 Estuary prawn trawl fishery is a restricted fishery	182
217 Eligibility for endorsement	182
218 Application for endorsement	183
219 Duration of endorsement	183
220 Application for endorsement for further period	184
221 Cancellation and suspension of endorsements	185

Fisheries Management (General) Regulation 2002

Contents

	Page
Division 7 Scallops in Jervis Bay	
222 Definitions	185
223 Application of Division	185
224 Maximum number of commercial fishing licences that may be endorsed	185
225 Ballot for issue of new endorsements	186
226 Fee for new endorsements	186
227 Duration of endorsement	187
228 Cancellation and suspension of endorsements	187
Division 8 Inland restricted fishery	
229 Definitions	187
230 Inland fishery is a restricted fishery	187
231 Types of endorsement in restricted fishery	187
232 Eligibility for endorsement	188
233 Ballot or tender for issue of further endorsements	189
234 Class D endorsement—special grounds for eligibility	190
235 General restrictions on eligibility	190
236 Endorsement	190
237 Endorsement of licence for further period	191
238 Endorsement fees	192
239 Duration of endorsement	192
240 Cancellation and suspension of endorsements	193
241 Transfer of class A and class B endorsements	193
242 Transfer fee	194
243 Endorsement holders must not take or possess native finfish	194
Division 9 Jellyfish	
244 Definitions	195
245 Application of Division	195
246 Maximum number of commercial fishing licences that may be endorsed	195
247 Total allowable catch for jellyfish	195
248 Endorsing of licences	196
249 Grounds for refusal to endorse licence	196
250 Fee for endorsements	197
251 Duration of endorsement	197
252 Cancellation and suspension of endorsements	197
253 Application for endorsement of licence for a further period	198
254 Quota for jellyfish	198

Fisheries Management (General) Regulation 2002

Contents

	Page
Division 10 Ocean hauling fishery	
255 Definitions	199
256 Ocean hauling fishery is a restricted fishery	199
257 Types of endorsement in restricted fishery	199
258 Application for endorsement	200
259 Eligibility for an endorsement	201
260 Duration of endorsement	204
261 Type of hauling net that may be used (class A endorsement)	204
262 Region in which hauling nets may be used (class A endorsement)	204
263 Class B endorsement holder may only assist class A endorsement holder	205
264 Identity card	205
265 Code of conduct	206
266 Holder of class A, C or D endorsement unable to take fish	206
267 Application for endorsement of licence for further period	206
268 Cancellation and suspension of endorsements	208
Division 11 Special classes of endorsement	
269 Definitions	208
270 Skipper's endorsement	208
271 Conditional skipper's endorsement	209
272 Training endorsement	210
273 Application for special endorsement	210
274 Duration of special endorsement	211
275 Cancellation and suspension of special endorsements	211
Division 12 Entitlements of fishing business owners	
276 Eligibility for an endorsement (owners of fishing businesses)	211
277 Effect of sale or disposal of fishing business on eligibility	213
Division 13 Miscellaneous	
278 Manner of attaching conditions to endorsements	213
279 Cancellation of endorsement with consent of licence holder	213
280 Endorsements do not authorise unlawful use of fishing gear	214
Part 9 Fish receivers and fish records	
Division 1 Fish receivers	
281 Definition	215
282 Registration not required in certain cases	215

Fisheries Management (General) Regulation 2002

Contents

	Page	
283	Registration requirements do not apply in respect of certain fish	215
284	Classes of registered fish receiver	215
285	Fee to accompany application for registration as fish receiver	215
286	Grounds for refusing application for registration	216
287	Renewal of registration	216
288	Cancellation or suspension of registration	217
289	Fish consignments by registered fish receivers to be labelled	218
Division 2 Fish records		
290	Prescribed period for furnishing catch records to Director	218
291	Records of sale and possession of fish—prescribed quantity	218
292	Information to be included in records of sale and possession of fish	218
293	Records and monthly reports by registered fish receivers	219
Part 10 Charter fishing management		
Division 1 Preliminary		
294	Object	221
295	Definitions	221
296	Guided recreational charter fishing—meaning	222
297	Marine and estuarine charter fishing sector—meaning	222
Division 2 Licences		
298	What boats must be licensed?	222
299	Annual licence fee	223
300	Classes of licence	223
301	Eligibility criteria—transferable licence	223
302	Eligibility criteria—non-transferable licence	224
303	Entitlement to claim a history of operations	225
304	Limitation on eligibility	225
305	Transfer of entitlement to history of operations	226
306	Boat replacement	226
307	Refusal of licence	227
308	Renewal of licence	227
309	Cancellation or suspension of licence	228
310	Conditions of licence—authorised activities	229
311	Other conditions of licences	232
312	Records of catch	233

Fisheries Management (General) Regulation 2002

Contents

	Page
Division 3 Review panel	
313 Application for review by third party	233
314 Establishment of panel to review decision	234
315 Conduct of review	234
316 Procedure to be followed by panel	235
317 Action by Minister following review	236
Division 4 Advisory Committee	
318 Advisory Committee	236
319 Chairperson and deputy chairperson of Advisory Committee	237
320 Functions of Advisory Committee	238
321 Deputies of members	239
322 Terms of office	239
323 Allowance for members	239
324 Vacancy in office of member	239
325 Filling of vacancy in office of member	240
326 General procedure for calling and holding meetings	241
327 Transaction of business outside meetings or by telephone	241
328 Quorum	242
329 Decisions	242
Division 5 Election of industry members of Advisory Committee	
330 Regions for which members are to be elected	242
331 Qualifications for election	243
332 General restrictions on election	243
333 Voting entitlements	243
334 Election procedure	243
Division 6 Miscellaneous	
335 Exemption for Lord Howe Island residents	244
336 False or misleading information	244
Part 11 Protection of aquatic habitats	
337 Application for permit under Part 7	245
338 Marine vegetation—regulation of harm (section 205 of the Act)	245
339 Fee for permit to harm marine vegetation (section 205 of the Act)	245
340 Noxious fish and vegetation (section 209 of the Act)	245

Fisheries Management (General) Regulation 2002

Contents

		Page
Part 12 Administration		
Division 1 The Director		
341	Seal of the Director	247
Division 2 Fisheries Resource Conservation and Assessment Council		
342	Definitions	247
343	Government representatives	247
344	Other representatives	248
345	Members and procedure of Council	249
346	Transaction of business outside meetings or by telephone	250
Division 3 Establishment, composition and functions of ministerial advisory councils		
347	Definitions	251
348	Establishment of advisory councils	251
349	Advisory Council on Commercial Fishing	251
350	Advisory Council on Recreational Fishing	252
351	Advisory Council on Fisheries Conservation	252
352	Advisory Council on Aquaculture	253
353	Appointment of nominees	254
Division 4 Provisions relating to members and procedure of advisory councils		
354	Definitions	254
355	Terms of office	254
356	Allowances for members	255
357	Deputies	255
358	Vacancy in office of member	255
359	Removal of member from office by Minister	256
360	Filling of vacancy in office of member	257
361	Chairperson and deputy chairperson of advisory council	257
362	Transaction of business outside meetings or by telephone	258
363	General procedure for calling and holding meetings of advisory council	258
364	Quorum	258
365	Voting	259
366	Disclosure of pecuniary interests	259
367	Functions of members	260

Fisheries Management (General) Regulation 2002

Contents

		Page
Division 5 Composition of Management Advisory Committees and qualifications for election		
368	Definitions	260
369	Composition of MAC	260
370	Qualifications for election to a MAC	266
371	General restrictions on election to a MAC	267
372	Qualifications to vote	268
373	Qualifications of owners of fishing businesses that operate in restricted fisheries	268
Division 6 Procedure for election of industry members of Management Advisory Committees		
374	Definitions	269
375	Notice that election is required	270
376	Notification of election	270
377	Postponement of closing dates	270
378	Nomination of candidates	271
379	Withdrawal of nomination	271
380	Exhibition of roll	271
381	Application for enrolment by person not already enrolled	271
382	Uncontested election—share management fishery	272
383	Uncontested elections—restricted fisheries	272
384	Up-dating of roll	273
385	Printing of ballot-papers	273
386	Distribution of ballot-papers	274
387	Duplicate ballot-papers	274
388	Recording of votes	274
389	Receipt of ballot-papers	274
390	Ascertaining result of ballot	275
391	Scrutineers	275
392	Scrutiny of votes	275
393	Counting of votes	276
394	Notification of result of election	277
395	Decisions of returning officer final	277
396	Offence	277
397	Death of a candidate	277
Division 7 Provisions relating to members and procedure of Management Advisory Committees		
398	Definitions	278
399	Non-elected members	278
400	Non-elected members—inland restricted fishery	279

Fisheries Management (General) Regulation 2002

Contents

	Page
401 Appointment of Nature Conservation Council representatives	279
402 Deputies of members	279
403 Terms of office	280
404 Allowances for members	280
405 Vacancy in office of a member	280
406 Filling of vacancy in office of member	281
407 General procedure for calling and holding meetings of a MAC	281
408 Transaction of business outside meetings or by telephone	282
409 Quorum	282
410 Voting	282
Part 13 Enforcement	
Division 1 Fisheries officers	
411 Class of persons that may be appointed as fisheries officers	283
Division 2 Seizure	
412 Forfeiture offences	283
Division 3 Criminal proceedings	
413 Penalty notices	284
414 Evidence in relation to fishing authorities	284
Division 4 Miscellaneous	
415 Payment by instalments	285
Part 14 Savings and transitional	
416 Offences under 1935 Act	286
417 Savings provision concerning repealed regulation	286
418 Restricted fisheries—continuation of existing restricted fisheries	286
419 Committees, Councils and Panels	287
420 Refund in respect of review request	287
421 Interim licence	287
Schedules	
1 Ocean waters	288
2 Waters in which net and trap fishing are prohibited	290
3 Waters in which use of prawn net (set pocket) is permitted	293
4 Waters in which spearfishing is prohibited	294
5 Penalty notice offences	305

Clause 1	Fisheries Management (General) Regulation 2002
Part 1	Preliminary

Fisheries Management (General) Regulation 2002

under the

Fisheries Management Act 1994

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Fisheries Management (General) Regulation 2002*.

Note. This Regulation replaces the *Fisheries Management (General) Regulation 1995* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Definitions

In this Regulation:

charter fishing boat has the meaning given by section 127A of the Act.

estuarine waters means waters ordinarily subject to tidal influence (other than ocean waters).

estuary general restricted fishery means the restricted fishery declared under Division 5 of Part 8.

estuary prawn trawl restricted fishery means the restricted fishery declared under Division 6 of Part 8.

fish protected from commercial fishing means fish declared by this Regulation to be protected from commercial fishing for the purposes of section 20 of the Act.

fisheries official means a fisheries officer or an officer of NSW Fisheries.

Clause 3	Fisheries Management (General) Regulation 2002
Part 1	Preliminary

fishing business means a business that the Director determines to be a separate and identifiable fishing business (including any licensed fishing boat, fishing gear and catch history that is associated with that business).

hauling includes casting and shooting any net with or without hauling lines.

high water mark means the mean line between approximate high water at spring tide and neap tide.

inland restricted fishery means the restricted fishery declared under Division 8 of Part 8.

inland waters means waters not subject to tidal influence.

local fisheries officer means the fisheries officer for the time being charged with the supervision of the waters in relation to which the expression is used.

natural coast line is defined in Schedule 1.

ocean fish trawl restricted fishery means the restricted fishery declared under Division 3 of Part 8.

ocean hauling restricted fishery means the restricted fishery declared under Division 10 of Part 8.

ocean prawn trawl restricted fishery means the restricted fishery declared under Division 2 of Part 8.

ocean trap and line restricted fishery means the restricted fishery declared under Division 4 of Part 8.

ocean waters is defined in Schedule 1.

prohibited size class of fish means any species of fish referred to in Column 1 of Table 1 or Table 2 in Division 2 of Part 2.

protected fish means fish declared by this Regulation to be protected fish for the purposes of section 19 of the Act.

recognised fishing ground means an area identified (in accordance with Division 1 of Part 5) as a recognised fishing ground on a map deposited at an office of NSW Fisheries.

repealed regulation means the *Fisheries Management (General) Regulation 1995*.

sea urchin and turban shell restricted fishery means the restricted fishery declared under Division 1 of Part 8.

Fisheries Management (General) Regulation 2002

Clause 4

Preliminary

Part 1

set line means any line not held in the hand, or not attached to fishing gear held in the hand, which is used or intended to be used for the purpose of taking fish.

set net means any net set in any waters for the purpose of taking fish and which is left unattended.

setting includes fixing, placing and staking.

the Act means the *Fisheries Management Act 1994*.

the 1935 Act means the *Fisheries Act 1935* (formerly the *Fisheries and Oyster Farms Act 1935*).

4 Notes

Notes included in this Regulation do not form part of this Regulation.

5 The management plan for a fishery prevails over this Regulation

This Regulation is subject to section 62 of the Act.

Note. Section 62 of the Act provides that if a provision of the management plan for a share management fishery is inconsistent with any other regulation under the Act or any fishing closure, the management plan prevails (unless the provision of the regulation or fishing closure is expressed to have effect despite the management plan).

Clause 6 Fisheries Management (General) Regulation 2002

Part 2 Protected fish, prohibited size fish and bag limits

Part 2 Protected fish, prohibited size fish and bag limits

Division 1 Protected fish

6 Protected fish

For the purposes of section 19 of the Act, the species of fish listed in the Table to this clause are protected fish.

Table Protected fish

Part 1 Marine or estuarine species

Common name	Species
Ballina angelfish	<i>Chaetodontoplus ballinae</i>
Black rock cod (or saddle-tail rock cod)	<i>Epinephelus daemeli</i>
Eastern blue devil fish (or Bleekers devil fish)	<i>Paraplesiops bleekeri</i>
Elegant wrasse	<i>Anampses elegans</i>
Estuary cod	<i>Epinephelus coioides</i>
Giant Queensland groper	<i>Epinephelus lanceolatus</i>
Grey nurse shark	<i>Carcharias taurus</i>
Herbsts nurse shark	<i>Odontaspis ferox</i>
Weedy seadragon (or common seadragon)	<i>Phyllopteryx taeniolatus</i>

Part 2 Freshwater species

Common name	Species
Australian grayling	<i>Prototroctes maraena</i>

Fisheries Management (General) Regulation 2002	Clause 7
Protected fish, prohibited size fish and bag limits	Part 2

Common name	Species
Eastern freshwater cod	<i>Maccullochella ikei</i>
Isopod	<i>Crenoicus harrisoni</i>
Trout cod	<i>Maccullochella macquariensis</i>
Macquarie perch	<i>Macquaria australasica</i>

7 Fish protected from commercial fishing

For the purposes of section 20 of the Act, the species of fish listed in the Table to this clause are protected from commercial fishing.

Table Fish protected from commercial fishing

Part 1 Marine or estuarine species

Common name	Species
Groper, blue, brown or red	<i>Achoerodus viridis</i>
Marlin, black	<i>Makaira indica</i>
Marlin, blue	<i>Makaira mazara</i>
Marlin, striped	<i>Tetrapturus audax</i>

Part 2 Freshwater species

Common name	Species
Atlantic salmon	<i>Salmo salar</i>
Australian bass	<i>Macquaria novemaculeata</i>
Catfish, eel-tailed	<i>Tandanus tandanus</i>
Estuary perch	<i>Macquaria colonorum</i>

Clause 8	Fisheries Management (General) Regulation 2002
Part 2	Protected fish, prohibited size fish and bag limits

Common name	Species
Freshwater crayfish	All species of the genera <i>Euastacus</i> and <i>Cherax</i> except for the common yabby <i>Cherax destructor</i>
Golden perch	<i>Maccaulochella peeli peeli</i>
Murray cod	<i>Macquaria ambigua</i>
Silver perch	<i>Bidyanus bidyanus</i>
Trout, brook	<i>Salvelinus fontinalis</i>
Trout, brown	<i>Salmo trutta</i>
Trout, rainbow	<i>Oncorhynchus mykiss</i>

8 Defence—striped marlin

For the purposes of section 21 (1) (d) of the Act, it is a defence to a prosecution for an offence under section 20 (3) of the Act (relating to sale of fish protected from commercial fishing) if:

- (a) the fish is striped marlin, and
- (b) the striped marlin was taken by a person while lawfully taking or attempting to take tuna for sale, by the method of long line (pelagic), minor line or pole fishing, under the authority of a permit issued under a law of the Commonwealth.

Division 2 Prohibited size fish

9 Prohibited size fish

- (1) For the purposes of section 15 (1) of the Act, a fish is a prohibited size fish if:
 - (a) in the case of a fish of a species specified in Column 1 of Table 1—the measurement of the fish is less than the minimum measurement specified opposite that species of fish in Column 2 of that Table, or
 - (b) in the case of a fish of a species specified in Column 1 of Table 2—the measurement of the fish is more than the maximum measurement specified opposite that species of fish in Column 2 of that Table.

Fisheries Management (General) Regulation 2002

Clause 9

Protected fish, prohibited size fish and bag limits

Part 2

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- (2) For the purposes of section 15 (2) of the Act, the method of determining the measurement of any class of fish is as follows:
- (a) except as provided by this subclause—the overall length of the fish is to be measured from the point of the snout to the tip of the tail,
 - (b) in the case of abalone—the diameter of the shell is to be measured along its longest axis,
 - (c) in the case of crab (other than spanner crab)—the length of the crab is to be measured along the body from the notch between the most protruding frontal teeth to the centre of the posterior margin of the carapace,
 - (d) in the case of spanner crab—the length of the spanner crab is to be measured along the body from the base of the orbital notch to the centre of the posterior margin of the carapace,
 - (e) in the case of freshwater spiny crayfish known as Murray or Murrumbidgee Crayfish—the length of the carapace of the crayfish is to be measured along the straight line from the posterior margin of the orbit (eye) socket to the centre of the posterior margin of the carapace,
 - (f) in the case of rock lobster—the length of the carapace of the rock lobster is to be measured along the straight line from the point of union of the second antennae to the centre of the posterior margin of the carapace (ignoring any hairs attached to the carapace),
 - (g) in the case of turban snail—the diameter of the shell is to be measured along its longest axis.
- (3) If a fish is frozen, refrigerated or chilled, the size of the fish is to be determined as so frozen, refrigerated or chilled.

Clause 9	Fisheries Management (General) Regulation 2002
Part 2	Protected fish, prohibited size fish and bag limits

Table 1 Prohibited size fish (minimum measurements)

Part 1 Fish—Marine or estuarine

	Column 1	Column 2
Common name	Species	Minimum measurement in centimetres
Blackfish, rock	<i>Girella elevata</i>	30
Bream, black or southern	<i>Acanthopagrus butcheri</i>	25
Bream, yellowfin	<i>Acanthopagrus australis</i>	25
Flathead, common or dusky	<i>Platycephalus fuscus</i>	36
Flathead, sand	<i>Platycephalus caeruleopunctatus</i>	33
Flathead, tiger	<i>Platycephalus richardsoni</i>	33
Luderick (or blackfish)	<i>Girella tricuspidata</i>	25
Morwong, jackass fish	<i>Nemadactylus macropterus</i>	28
Morwong, red or sea carp	<i>Cheilodactylus fuscus</i>	25
Morwong, rubberlip	<i>Nemadactylus douglasii</i>	28
Mullet, sea or bully	<i>Mugil cephalus</i>	30
Mulloway (or jewfish)	<i>Argyrosomus japonicus</i>	45

Fisheries Management (General) Regulation 2002

Clause 9

Protected fish, prohibited size fish and bag limits

Part 2

	Column 1	Column 2
Common name	Species	Minimum measurement in centimetres
School shark	<i>Galeorhinus galeus</i>	91
Snapper	<i>Pagrus auratus</i>	30
Tailor	<i>Pomatomus saltatrix</i>	30
Tarwhine	<i>Rhabdosargus sarba</i>	20
Teraglin	<i>Atractoscion aequidens</i>	38
Whiting, sand or silver	<i>Sillago ciliata</i>	27
Yellowtail kingfish	<i>Seriola lalandi</i>	60

Part 2 Invertebrates—Marine or estuarine

	Column 1	Column 2
Common name	Species	Minimum measurement in centimetres
Abalone	<i>Haliotis rubra</i>	11.5
Crab, blue swimmer or sand	<i>Portunus pelagicus</i>	6
Crab, mud, black or mangrove	<i>Scylla serrata</i>	8.5
Crab, spanner	<i>Ranina ranina</i>	9.3
Lobster, eastern rock	<i>Jasus verreauxi</i>	10.4
Lobster, southern rock (male)	<i>Jasus edwardsii</i>	11

Clause 9	Fisheries Management (General) Regulation 2002
Part 2	Protected fish, prohibited size fish and bag limits

	Column 1	Column 2
Common name	Species	Minimum measurement in centimetres
Lobster, southern rock (female)	<i>Jasus edwardsii</i>	10.5
Snail, Sydney turban	<i>Turbo torquatus</i>	7.5
Snail, military turban	<i>Turbo militaris</i>	7.5

Part 3 Fish—Freshwater or estuarine

	Column 1	Column 2
Common name	Species	Minimum measurement in centimetres
Catfish, eel-tailed	<i>Tandanus tandanus</i>	30
Cod, Murray	<i>Maccullochella peeli</i>	50
Perch, golden or yellow belly	<i>Macquaria ambigua</i>	30
Perch, silver	<i>Bidyanus bidyanus</i>	25
Salmon, Atlantic	<i>Salmo salar</i>	25
Trout, brook	<i>Salvelinus fontinalis</i>	25
Trout, brown	<i>Salmo trutta</i>	25
Trout, rainbow	<i>Oncorhynchus mykiss</i>	25

Fisheries Management (General) Regulation 2002

Clause 10

Protected fish, prohibited size fish and bag limits

Part 2

Part 4 Invertebrates—Freshwater

	Column 1	Column 2
Common name	Species	Minimum measurement in centimetres
Crayfish, Murray or freshwater spiny	<i>Euastacus armatus</i>	9

Part 5 Fish—General

	Column 1	Column 2
Common name	Species	Minimum measurement in centimetres
Eel, long finned	<i>Anguilla reinhardtii</i>	30
Eel, short finned	<i>Anguilla australis</i>	30

Table 2 Prohibited size fish (maximum measurements)**Part 1 Invertebrates—Marine or estuarine**

	Column 1	Column 2
Common name	Species	Maximum measurement in centimetres
Lobster, eastern rock	<i>Jasus verreauxi</i>	20

10 Defence—taking of mullet for bait

For the purposes of section 21 (d) of the Act, it is a defence to a prosecution for an offence under section 16 (1) of the Act (relating to possession of prohibited size fish) if:

Clause 11 Fisheries Management (General) Regulation 2002

Part 2 Protected fish, prohibited size fish and bag limits

- (a) the prohibited size fish concerned are mullet, and
- (b) the fish do not exceed 15 cm in measurement as determined in accordance with clause 9 (2) (a), and
- (c) the fish have been lawfully taken by a person other than a commercial fisher, and
- (d) the fish are live bait, and
- (e) the person charged with the offence is in possession of no more than 20 of the prohibited size fish.

Division 3 Bag limits

11 Bag limits—taking of fish

- (1) For the purposes of section 17 (1) of the Act, the daily limit of fish (of a species specified in Column 1 of Part 1 or 2 of the Table to this Division) is the quantity specified opposite that species of fish in Column 2 of Part 1 or 2 of that Table.
- (2) For the purposes of section 17 (1) of the Act, the daily limit of fish (of a species specified in Column 1 of Part 3 or 4 of the Table to this Division) taken from waters specified opposite that species of fish in Column 2 of Part 3 or 4 of that Table is the quantity specified opposite that species of fish in Column 3 of Part 3 or 4 of that Table.

12 Bag limits—possession of fish

- (1) For the purposes of section 18 (1) of the Act, the possession limit of fish (of a species specified in Column 1 of Part 1 or 2 of the Table to this Division) is, when the person in possession of that species of fish is in or on or adjacent to any waters or is transporting or storing the fish, the quantity specified opposite that species of fish in Column 2 of Part 1 or 2 of that Table.
- (2) For the purposes of section 18 (1) of the Act, the possession limit of fish (of a species specified in Column 1 of Part 3 or 4 of the Table to this Division) is, when the person in possession of that species of fish is in or on or adjacent to the waters specified opposite that species of fish in Column 2 of Part 3 or 4 of that Table, the quantity specified opposite that species of fish in Column 4 of Part 3 or 4 of that Table.

Fisheries Management (General) Regulation 2002

Clause 13

Protected fish, prohibited size fish and bag limits

Part 2

13 General bag limit

- (1) For any species of marine or estuarine fish (including marine or estuarine invertebrates and tunicates) not included in the Table to this Division:
- (a) the daily limit of fish of that species is 20, and
 - (b) the possession limit of fish of that species (when the person in possession is in or on or adjacent to any waters or is transporting or storing the fish) is 20.

Note. Examples of the species of fish to which this clause applies are squid, cuttlefish and octopus.

- (2) Subclause (1) does not apply to the following species of fish:
- (a) all species of family Clupeidae (such as pilchards, whitebait, blue bait and herring),
 - (b) all species of family Engraulididae (such as anchovies),
 - (c) all *Trachurus* ssp. (such as yellowtail and jack mackerel),
 - (d) slimy mackerel (*Scomber australasicus*),
 - (e) all species of family Hemiramphidae (such as garfish),
 - (f) all species of family Atherinidae (such as hardyhead),
 - (g) all species of family Mictyridae (such as soldier crabs),
 - (h) saltwater nippers (*Callinassa* and *Alpheus* spp.),
 - (i) all species of worms.

Note. Although this clause does not apply to worms, beachworms are the subject of a daily limit and possession limit of 20 under Part 2 of the Table to this Division.

14 Application of bag limits and possession limits to commercial fishers

- (1) A daily limit specified in this Division does not apply in respect of fish taken by a commercial fisher for sale.
- (2) A possession limit specified in this Division does not apply in respect of fish in the possession of a commercial fisher for sale.
- (3) However, those daily limits and possession limits do apply in respect of fish taken by, or in the possession of, a commercial fisher otherwise than for sale.

Clause 15 Fisheries Management (General) Regulation 2002

Part 2 Protected fish, prohibited size fish and bag limits

15 Possession limits do not apply to persons in possession of fish for sale

A possession limit specified in this Division does not apply in respect of fish which is in the possession of a person for sale or which has previously been sold.

Table Bag limits

Part 1 Fish—Marine or estuarine

Common name	Column 1 Species	Column 2 Daily limit and possession limit
Bar cod	<i>Epinephelus ergastularius</i>	5 comprised of any single species or a combination of
Bass grouper	<i>Polyprion americanus</i>	species, with a
Gemfish	<i>Rexea solandri</i>	maximum of 2 gemfish
Hapuka	<i>Polyprion oxygenios</i>	
Trevalla	<i>Hyperoglyphe antartica</i>	
Billfish (all species)	Species of Family Xiphiidae and Family Istiophoridae	2 of each species
Blackfish, rock	<i>Girella elevata</i>	10
Bream, black or southern	<i>Acanthopagrus butcheri</i>	20 comprised wholly of black or southern
Bream, yellowfin	<i>Acanthopagrus australis</i>	bream or wholly of yellowfin bream or partly of each
Flathead, dusky or common	<i>Platycephalus fuscus</i>	10 (with not more than one longer than 70 cm)

Fisheries Management (General) Regulation 2002

Clause 15

Protected fish, prohibited size fish and bag limits

Part 2

	Column 1	Column 2
Common name	Species	Daily limit and possession limit
Flathead, sand or eastern blue spot	<i>Platycephalus caeruleopunctatus</i>	20 comprised wholly of a single flathead species or a combination of species except for dusky or common flathead which are subject to a separate limit
Flathead, tiger	<i>Platycephalus richardsoni</i>	
Flathead, all other	<i>Platycephalus</i> ssp.	
Groper, blue, red or brown	<i>Achoerodus viridis</i>	2
Hairtail	<i>Trichiurus lepturus</i>	10
Kingfish, yellow tail	<i>Seriola lalandi</i>	5
Luderick (or blackfish)	<i>Girella tricuspidata</i>	20
Mackerel, spotted	<i>Scomberomorus munroi</i>	5 comprised wholly of narrow barred or spanish mackerel or wholly of spotted mackerel or partly of each
Mackerel, spanish or narrow barred	<i>Scomberomorus commerson</i>	
Mangrove Jack	<i>Lutjanus argentimaculatus</i>	5
Morwong, banded	<i>Cheilodactylus spectabilis</i>	5
Morwong, red	<i>Cheilodactylus fuscus</i>	5
Mulloway	<i>Argyrosomus japonicus</i>	5 (with not more than 2 longer than 70 cms)
Perch, mores	<i>Lutjanus russelli</i>	5

Clause 15 Fisheries Management (General) Regulation 2002
 Part 2 Protected fish, prohibited size fish and bag limits

	Column 1	Column 2
Common name	Species	Daily limit and possession limit
Perch, pearl	<i>Glaucosoma scapulare</i>	5
Salmon, Australian	<i>Arripis trutta</i>	5
Sharks and rays	All species	5 comprised of any single species or a combination of species, with a maximum of 2 of any species of wobbegong shark
Snapper	<i>Pagrus auratus</i>	10
Surgeon, sawtail	<i>Prionurus microlepidotus</i>	5
Tailor	<i>Pomatomus saltatrix</i>	20
Teraglin	<i>Atractoscion aequidens</i>	5
Trevallies	<i>Pseudocaranx dentex</i> <i>Caranx</i> ssp.	20 comprised wholly of any single species or a combination of species
Tuna, albacore	<i>Thunnus alalunga</i>	7 comprised of any single species or combination of species, of which 2 have a length of 90 cm or more and 5 have a length of less than 90 cm
Tuna, bigeye	<i>Thunnus obesus</i>	
Tuna, longtail	<i>Thunnus tonggol</i>	
Tuna, southern bluefin	<i>Thunnus maccoyii</i>	
Tuna, yellowfin	<i>Thunnus albacares</i>	
Wahoo	<i>Acanthocybium solandri</i>	5

Fisheries Management (General) Regulation 2002

Clause 15

Protected fish, prohibited size fish and bag limits

Part 2

	Column 1	Column 2
Common name	Species	Daily limit and possession limit
Whiting	<i>Sillago</i> ssp.	20 comprised of any single species or a combination of species

Part 2 Invertebrates

	Column 1	Column 2
Common name	Species	Daily limit and possession limit
Abalone	<i>Haliotis rubra</i>	10
Beachworms	Species of Family Onuphidae	20
Cockle Pipi Mussel	<i>Anadara trapezia</i> <i>Donax deltooides</i> <i>Mytilus edulis</i>	50 comprised wholly of cockles or wholly of pipis or wholly of mussels or partly of each
Crab, blue swimmer	<i>Portunus pelagicus</i>	20
Crab, mud, black or mangrove	<i>Scylla serrata</i>	5
Crab, spanner	<i>Ranina ranina</i>	10
Crabs, all species other than blue swimmer, mud, black, mangrove, spanner, or soldier (<i>Mictyris</i> ssp.)	Species of Subclass Brachyura	10 comprised wholly of any single species or a combination of species

Clause 15 Fisheries Management (General) Regulation 2002
 Part 2 Protected fish, prohibited size fish and bag limits

	Column 1	Column 2
Common name	Species	Daily limit and possession limit
Cunjevoi	<i>Pyura</i> ssp.	20 comprised wholly of any single species or a combination of species
Lobster, eastern rock Lobster, southern rock	<i>Jasus verreauxi</i> <i>Jasus edwardsii</i>	2 comprised wholly of any single species or a combination of species
Lobster, painted Lobster, ornate	<i>Panulirus longipes</i> <i>Panulirus ornatus</i>	2 comprised wholly of any single species or a combination of species
Lobster, slipper (or flat)	<i>Scyllarides</i> ssp.	2
Oyster, Sydney rock	<i>Saccostrea commercialis</i>	50 comprised wholly of any single species or a combination of species
Oyster, Pacific Oyster, flat or drift	<i>Crassostrea gigas</i> <i>Ostrea angasi</i>	
Molluscs except squid, octopus and cuttlefish (Class Cephalopoda) and any other mollusc referred to in this Table	Species of Phylum Mollusca	20 comprised wholly of any single species or a combination of species
Prawns	Species of Family Penaeidae and Macrobrachium spp.	10 litres
Scallops	Species of Family Pectinidae	50 (except where Division 4 of this Part applies)

Fisheries Management (General) Regulation 2002

Clause 15

Protected fish, prohibited size fish and bag limits

Part 2

	Column 1	Column 2
Common name	Species	Daily limit and possession limit
Sea urchin	Species of Class Echinoidea	10 comprised wholly of any single species or a combination of species

Part 3 Fish—Freshwater or estuarine

	Column 1	Column 2	Column 3	Column 4
Common name	Species	Waters	Daily limit	Possession limit
Golden perch	<i>Macquaria ambigua</i>	All waters of NSW	5	10
Murray cod	<i>Maccullochella peeli</i>	All waters of NSW	2	4 (only 1 of which can be longer than 100 cm)
Silver perch	<i>Bidyanus bidyanus</i>	Waters from which silver perch may lawfully be taken	5	10

Note. The taking of silver perch from all waters (other than backed up waters of dams and impoundments) is (as at the commencement of this Regulation) prohibited by fishing closure under section 8 of the Act (published in the Gazette of 6 February 1998).

Catfish, eel-tailed	<i>Tandanus tandanus</i>	Backed up waters of dams and impoundments	5	10
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Clause 15 Fisheries Management (General) Regulation 2002

Part 2 Protected fish, prohibited size fish and bag limits

	Column 1	Column 2	Column 3	Column 4
Common name	Species	Waters	Daily limit	Possession limit
		All other waters of NSW	2	4
Australian bass	<i>Macquaria novemaculeata</i>	Backed up waters of dams and impoundments	2 comprised wholly of Australian bass or	4
Estuary perch	<i>Macquaria colonorum</i>		wholly of estuary perch or partly of each	
		All other waters of NSW	2 comprised wholly of Australian bass or estuary perch or partly of each (only 1 of which can be longer than 35 cm)	4 comprised of a combination of Australian bass and estuary perch (only 1 of which can be longer than 35 cm)
Atlantic salmon	<i>Salmo salar</i>	All waters of NSW	10	20 comprised of a combination of species
Trout, brook	<i>Salvelinus fontinalis</i>		comprised of any single species or a combination of species	
Trout, brown	<i>Salmo trutta</i>			
Trout, rainbow	<i>Oncorhynchus mykiss</i>			

Fisheries Management (General) Regulation 2002

Clause 16

Protected fish, prohibited size fish and bag limits

Part 2

Part 4 Invertebrates—Freshwater

	Column 1	Column 2	Column 3	Column 4
Common name	Species	Waters	Daily limit	Possession limit
Freshwater spiny crayfish (including Murray crayfish)	<i>Euastacus</i> spp.	All waters of NSW	10	20

Note. A scientific name for a fish specified in this Table is the scientific name of the species as at the date the name of the fish was inserted in the Table.

Division 4 Special provisions relating to scallops

16 Definitions

In this Division:

approved sack means a sack that does not exceed 1,030 mm in length and 580 mm in width.

approved crate means a plastic crate the internal dimensions of which do not exceed 673 mm in length, 400 mm in width and 276 mm in depth.

17 Scallops taken by means of a dredge must be placed in approved sack or crate

- (1) A commercial fisher who takes scallops by means of a dredge or similar device from a boat must:
 - (a) immediately after taking the scallops, place them in approved sacks or approved crates, and
 - (b) not remove the scallops from the approved sacks or approved crates in which they are placed until they are landed ashore.

Maximum penalty: 50 penalty units.

Clause 18	Fisheries Management (General) Regulation 2002
Part 2	Protected fish, prohibited size fish and bag limits

- (2) A commercial fisher must not place scallops taken by means of a dredge or similar device from a boat in both sacks and crates on the boat.

Maximum penalty: 50 penalty units.

18 Bag limits—scallops taken by means of a dredge

- (1) For the purposes of section 17 (1) of the Act, when scallops are taken by means of a dredge or similar device or by a combination of dredges and similar devices from a boat, the daily limit of scallops is whichever of the following applies:
- (a) if the scallops are placed in sacks—30 approved sacks of scallops,
 - (b) if the scallops are placed in crates—48 approved crates of scallops.
- (2) For the purposes of section 18 (1) of the Act, when a commercial fisher in possession of scallops is in a boat containing a dredge or similar device capable of taking scallops, the possession limit of scallops for that fisher is whichever of the following applies:
- (a) if all scallops on the boat are in approved sacks (whether wholly or partly filled)—30 approved sacks, less the number of approved sacks containing scallops that are on the boat and are not in that person's possession,
 - (b) if all scallops on the boat are in approved crates (whether wholly or partly filled)—48 approved crates, less the number of approved crates containing scallops that are on the boat and are not in that person's possession,
 - (c) in any other case—nil.
- (3) For the purposes of section 18 (1) of the Act, when a person in possession of scallops is not a commercial fisher and is on a boat containing a dredge or similar device capable of taking scallops, the possession limit of scallops for that person is nil.

Fisheries Management (General) Regulation 2002

Clause 19

Fishing gear

Part 3

Part 3 Fishing gear

Division 1 Lawful use of fishing gear generally

Note. Under section 24 of the Act it is an offence for a person to use a net or trap for taking any fish unless its use by the person for taking those fish is declared by the regulations to be a lawful use of the net or trap. Section 25 of the Act also makes it an offence for a person to be in possession of any fishing gear in, on or adjacent to any waters if the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under the Act.

19 Fishing gear cannot be used in circumstances where fishing prohibited

- (1) A provision of this Part that declares the use of a net or other fishing gear to be lawful, or to be lawful in specified circumstances, does not affect any prohibition or conditions imposed by or under the Act with respect to the taking of fish.
- (2) In particular, nothing in this Part is to be construed as authorising the use, in any circumstances, of a net or other fishing gear for any of the following:
 - (a) the taking of fish in waters that are closed to fishing by virtue of a notification in force under section 8 of the Act,
 - (b) the taking of fish that are prohibited size fish or protected fish,
 - (c) the taking for sale of fish protected from commercial fishing.

20 Lawful use of fishing gear in restricted fisheries

- (1) For the purposes of this Part, a person who holds a commercial fishing licence that does not authorise the person to take fish for sale in a restricted fishery or a share management fishery is to be treated, in respect of that fishery, as a person who is not a commercial fisher.
- (2) Accordingly, despite the other provisions of this Part, it is unlawful for such a person to use a net or trap for taking any fish in that restricted fishery or share management fishery if the use of that net or trap for taking those fish would, if the person were not a commercial fisher, be unlawful.
- (3) This subclause applies if a restricted fishery or share management fishery is defined by reference to the use of a particular net or trap. If it is unlawful for a commercial fisher to use such a net or trap to take fish for sale in the fishery, it is unlawful for the fisher to use the net or trap to take fish for bait in the fishery.

Clause 21 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

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- (4) Subclause (3) does not apply to the use of a pilchard, anchovy and bait net (hauling) to take fish for bait in the ocean hauling restricted fishery.

21 Use of nets and traps prohibited in certain waters (Brisbane Waters, Port Hacking etc)

- (1) Despite the other provisions of this Part, it is unlawful for a person to use a net for the purpose of taking fish in any of the waters described in Schedule 2 unless:
- (a) the person is using a net that is a landing net or a dip or scoop net for the purpose of taking fish and the use of that net by the person for taking those fish from those waters is, but for this clause, lawful, or
 - (b) the person is using a net that is a prawn net (set pocket) for the purpose of taking fish from the waters described in Schedule 3 and the use of that net by the person for taking those fish from those waters is, but for this clause, lawful.
- (2) Despite the other provisions of this Part, it is unlawful for a person to use a trap for the purpose of taking fish in any of the waters described in Schedule 2 unless:
- (a) the person is using a trap that is a bait trap for the purpose of taking fish and the use of that trap by the person for taking those fish from those waters is, but for this clause, lawful, or
 - (b) the person is using a trap that is a lobster trap for the purpose of taking fish from the waters of Broken Bay south of a line between Little Box Head and the northern most point of Mt Ettalong and the use of that trap by the person for taking those fish from those waters is, but for this clause, lawful.

Note. Any fishing closure to which clause 4 of Schedule 7 to the Act applied (being a fishing closure which was formerly a prohibition contained in section 19 of the 1935 Act) was revoked by the *Fisheries Management (General) Regulation 1995*.

Division 2 Registration

22 Registration of fishing gear

For the purposes of section 22 of the Act, the following classes of fishing gear are registrable:

- hauling net (general purpose)
- trumpeter whiting net (hauling)
- garfish net (bullringing)

Fisheries Management (General) Regulation 2002

Clause 23

Fishing gear

Part 3

garfish net (hauling)
pilchard, anchovy and bait net (hauling)
purse seine net
prawn net (hauling)
prawn net (set pocket)
prawn running net
seine net (prawns)
otter trawl net (fish)
danish seine trawl net (fish)
meshing net
flathead net
bait net
hand-hauled prawn net
push or scissors net (prawns)

23 Applications for registration

An application for registration of fishing gear is to be made to the Director in a form approved by the Director.

24 Registration

- (1) If an application for the registration of fishing gear is duly made and the fishing gear may lawfully be used, the Director may register the fishing gear.
- (2) Registration of fishing gear is to be certified in such form or manner as the Director approves.
- (3) Registration remains in force for the life of the fishing gear.
- (4) The fee to be paid for the registration of fishing gear is \$22.
- (5) Registration is not transferable.
- (6) The Director may cause to be compiled a register of all fishing gear registered, containing in respect of each fishing gear the registration number, the name and address of the owner, the class of the fishing gear and the dimensions and mesh of the whole or of each part of the fishing gear.

Clause 25 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

Division 3 Lawful commercial nets

25 Application of Division

The nets described in this Division may be lawfully used only by a commercial fisher, except for a beach safety meshing net which may be lawfully used only by an officer of NSW Fisheries or a person acting on behalf of the Director.

Note. Under section 24 of the Act it is an offence for a person to use a net for taking any fish unless its use by the person for taking those fish is declared by the regulations to be a lawful use of the net.

26 Hauling net (general purpose)

- (1) It is lawful to use a hauling net for taking fish in the waters specified in the Table to this clause if the net (including hauling lines) complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
 - (a) the net is used only by the method of hauling,
 - (b) the net has a bunt,
 - (c) in waters (other than ocean waters and sea beaches):
 - (i) the bunt of the net is in the centre of the net, and
 - (ii) the net has 2 wings of equal length,
 - (d) in ocean waters and sea beaches, the bunt of the net:
 - (i) is in the centre of the net and the net has 2 wings of equal length, or
 - (ii) is located between the end of the net first cast or shot and the centre of the net,
 - (e) except as provided by paragraph (f), the length of each hauling line attached to the net does not exceed the total length of the net to which it is attached.
 - (f) the length of each hauling line attached to the net does not exceed 190 metres in length in the waters of that part of the entrance to Wallaga Lake (together with all its inlets and tributaries) extending seawards from the bridge and embankment on the Narooma–Bermagui Road to the Pacific Ocean,
 - (g) in the waters of any coastal lake or lagoon, the net is not landed by any method other than against a stake or back net (the total length of which does not exceed 50 metres with a mesh throughout of not less than 25 mm),

Fisheries Management (General) Regulation 2002

Clause 26

Fishing gear

Part 3

-
- (h) the hauling of the net once commenced (that is, when any part of the net other than the hauling line has been shot or cast) is continued without any interruption or delay until completed,
 - (i) any fish contained in any part of the net are immediately removed on completion of the haul, or on removal of that part of the net from the water, whichever occurs first,
 - (j) the net is not used for taking garfish in waters other than ocean waters,
 - (k) the net is operated by at least 2 commercial fishers.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a hauling net (general purpose).

Table Hauling net (general purpose)

- | | |
|---|---|
| 1 | <ul style="list-style-type: none"> (a) <i>Waters</i>—Tuggerah Lakes; Wallis Lake (excluding Wollomba, Wallingat, Cooloongolok and Wang Wauk Rivers). (b) <i>Description of net</i>—Total length not exceeding 1,000 metres; length of bunt not exceeding 90 metres or one-quarter of the total length of the net (whichever is the lesser) made up as follows: centre piece not exceeding 50 metres nor less than 25 metres in length, of mesh not less than 30 mm nor more than 50 mm; remainder of bunt not exceeding 50 metres in length, of mesh not less than 50 mm; mesh of wings not less than 80 mm. |
| 2 | <ul style="list-style-type: none"> (a) <i>Waters</i>—That part of Wallaga Lake extending upwards from the bridge and embankment on the Narooma–Bermagui Road; the Broadwater of the Clarence River; Lake Innes; Smiths Lake; Myall Lake; Booloombayt Lake; the Broadwater of Myall Lakes; Lake Illawarra. (b) <i>Description of net</i>—Total length not exceeding 725 metres; length of bunt not exceeding 90 metres or one-quarter of the total length of the net (whichever is the lesser) made up as follows: centre piece not exceeding 50 metres nor less than 25 metres in length, of mesh not less than 30 mm nor more than 50 mm; remainder of bunt not exceeding 50 metres in length, of mesh not less than 50 mm; mesh of wings not less than 80 mm. |

Clause 26 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- 3 (a) *Waters*—Terranora and Cobaki Broadwaters (Tweed River); Clarence River; Wollumboola Lake; Coila Lake; Cuttagee Lake; Murrah Lake; Wapengo Lake; Curola Lake; Merimbula Lake; Wallagoot Lake.
- (b) *Description of net*—Total length not exceeding 450 metres; length of bunt not exceeding 90 metres or one-quarter of the total length of the net (whichever is the lesser) made up as follows: centre piece not exceeding 50 metres nor less than 25 metres in length, of mesh not less than 30 mm nor more than 50 mm; remainder of bunt not exceeding 50 metres in length, of mesh of not less than 50 mm; mesh of wings not less than 80 mm.
- 4 (a) *Waters*—Durras Water.
- (b) *Description of net*—Total length not exceeding 375 metres; mesh throughout not less than 80 mm.
- 5 (a) *Waters*—That part of the entrance to Wallaga Lake, together with all its inlets and tributaries extending seawards from the bridge and embankment on the Narooma–Bermagui Road to the Pacific Ocean.
- (b) *Description of net*—Total length not exceeding 375 metres; mesh throughout not less than 80 mm.
- 6 (a) *Waters*—That part of the Wagonga River and its tributaries westward of a line drawn northwest across the entrance from the northernmost extremity of Wagonga Head.
- (b) *Description of net*—Total length not exceeding 375 metres; mesh throughout not less than 80 mm (this net must be used only for the taking of Australian salmon (*Arripis trutta*) or of species of mullet included in the family Mugilidae).
- 7 (a) *Waters*—Ocean waters and sea beaches.
- (b) *Description of net*
- (i) from 1 March to 31 July in each year—Total length not exceeding 400 metres; length of bunt not exceeding one-third of the total length of net; mesh of bunt not less than 50 mm nor more than 65 mm; mesh of wings not less than 65 mm nor more than 86 mm.
- (ii) during any other period—Length of bunt not exceeding one-third of the total length of net; mesh of bunt not less than 50 mm; mesh of wings not less than 80 mm.

Fisheries Management (General) Regulation 2002

Clause 27

Fishing gear

Part 3

-
- 8 (a) *Waters*—All other waters (except inland waters).
(b) *Description of net*—Total length not exceeding 375 metres; length of bunt not exceeding 90 metres or one-quarter of the total length of the net (whichever is the lesser) made up as follows: centre piece not exceeding 50 metres nor less than 25 metres in length, of mesh not less than 30 mm nor more than 50 mm; remainder of bunt not exceeding 50 metres in length, of mesh not less than 50 mm; mesh of wings not less than 80 mm.

27 Trumpeter whiting net (hauling)

- (1) It is lawful to use a hauling net for taking trumpeter whiting in the waters specified in the Table to this clause if the net (including hauling lines) complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only as a sunk net,
 - (b) the net is used only by the method of hauling, that is, by casting and shooting the net and picking up and landing the whole of the net, including both hauling lines, without delay or interruption, or in the following manner:
 - (i) the net and hauling lines attached to both ends of the net must be completely cast or shot from a boat,
 - (ii) the net and hauling lines may be towed to the point of landing if the distance of the tow does not exceed the difference between the length of the hauling lines and 225 metres,
 - (c) any fish contained in a part of the net are immediately removed from the net on completion of the haul, or on removal of that part of the net from the water, whichever occurs first.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a trumpeter whiting net (hauling).

Clause 28	Fisheries Management (General) Regulation 2002
Part 3	Fishing gear

Table Trumpeter whiting net (hauling)

- 1 (a) *Waters*—That part of Port Stephens east of a line drawn from Fame Point to Soldier's Point, but excluding that part of Port Stephens and the Myall River north of a line drawn from the southern extremity of Orungall Point to the southern extremity of Myall Point.
- (b) *Description of net*—Total length not exceeding 275 metres; mesh of wings not less than 50 mm nor more than 65 mm, having a depth of not more than 50 meshes, bunt 50 metres of mesh not less than 30 mm nor more than 40 mm; length of each hauling line not less than 100 metres nor more than 225 metres.

28 Garfish net (bullringing)

- (1) It is lawful to use a net for taking garfish in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only between 1 February and 30 November in any year,
- (b) the net is used only by the method of bullringing (that is, casting the net in a circle, then retrieving the net to the vessel, both of which are to be completed as a continuous operation),
- (c) the length of any hauling line attached to the net does not exceed 25 metres.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a garfish net (bullringing).

Table Garfish net (bullringing)

- 1 (a) *Waters*—Clarence River (excluding inland waters).
- (b) *Description of net*—Total length not exceeding 375 metres; mesh throughout not less than 28 mm nor more than 45 mm.
- 2 (a) *Waters*—Tuggerah Lakes (excluding inland waters).
- (b) *Description of net*—Total length not exceeding 550 metres; mesh throughout not less than 28 mm nor more than 36 mm.

Fisheries Management (General) Regulation 2002

Clause 29

Fishing gear

Part 3

- 3 (a) *Waters*—All other waters (except inland waters).
 (b) *Description of net*—Total length not exceeding 275 metres; mesh throughout not less than 28 mm nor more than 36 mm.

29 Garfish net (hauling)

- (1) It is lawful to use a hauling net for taking garfish in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only by the method of hauling,
 (b) in offshore ocean waters, the net is not landed by any method other than onto the tray of the boat.
- (2) It is also lawful to use a hauling net for taking any other fish (other than a prohibited size class of fish) that are taken by the net when it is being lawfully used for taking garfish.
- (3) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a garfish net (hauling).

Table Garfish net (hauling)

- 1 (a) *Waters*—That part of Port Jackson bounded by a line westerly from Green or Laings Point to Georges Head, by a line northwesterly from the northern extremity of Middle Head to Grotto Point and by a line northeasterly from Dobroyd Point to Manly Point; that part of Broken Bay bounded by a line westerly from Box or Hawk Head to Green Point, by a line from the most eastern extremity of Middle Head to the most northern extremity of West Head and by a line northeasterly from Soldier's Point to Sand Point; that part of Port Stephens east of a line northerly from Corlett Point to Orungall Point (excluding those parts which include Wobbecong Bay, Wobbecong Creek, Pindimar Bay, Corrie Creek, Paddy Marr's Bay and Myall River and its tributaries), generally north and northeast of a line from Orungall Point to a point being the southwestern corner of Oyster Farm No 83-361, and a line from the last mentioned point to Myall Point; that part of Jervis Bay within New South Wales, together with all the bays and beaches of that part, generally westerly from a line drawn between Point Perpendicular and Bowen Island.
- (b) *Description of net*—Mesh of not less than 28 mm nor more than 36 mm.

Clause 30 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- 2 (a) *Waters*—Ocean waters and sea beaches.
 (b) *Description of net*—Mesh of not less than 28 mm nor more than 85 mm.

30 Pilchard, anchovy and bait net (hauling)

- (1) It is lawful to use a hauling net for taking pilchards, anchovies, common or slimy mackerel or other fish (but not including garfish, prawns or a prohibited size class of fish) in the waters specified in the Table to this clause if the net (including hauling lines) complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only by the method of hauling,
 (b) the net, if used in Port Jackson, is not landed in any manner other than on to the tray of a boat.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a pilchard, anchovy and bait net (hauling).

Table Pilchard, anchovy and bait net (hauling)

- 1 (a) *Waters*—Ocean waters and sea beaches.
 (b) *Description of net*—Mesh throughout of not less than 13 mm.
- 2 (a) *Waters*—Port Jackson.
 (b) *Description of net*—Total length not exceeding 250 metres; length of each wing not exceeding 90 metres, mesh throughout not less than 80 mm; length of bunt not exceeding 60 metres, mesh throughout not less than 50 mm nor more than 65 mm; length of bag not exceeding 12 metres, mesh throughout not more than 30 mm; length of cod-end not exceeding 6 metres, mesh throughout not more than 25 mm; length of each hauling line not exceeding 125 metres.

31 Purse seine net

- (1) It is lawful to use a purse seine net for taking fish (other than garfish, kingfish, prawns, tuna or a prohibited size class of fish) in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table.

Fisheries Management (General) Regulation 2002

Clause 32

Fishing gear

Part 3

- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a purse seine net.

Table Purse seine net

- | | | |
|---|-----|---|
| 1 | (a) | <i>Waters</i> —Twofold Bay and Jervis Bay. |
| | (b) | <i>Description of net</i> —Total length not exceeding 275 metres. |
| 2 | (a) | <i>Waters</i> —Ocean waters. |
| | (b) | <i>Description of net</i> —Mesh throughout not more than 150 mm. |

32 Prawn net (hauling)

- (1) It is lawful to use a hauling net for taking prawns in the waters specified in the Table to this clause if the net (including hauling lines) complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only by the method of hauling,
 - (b) the net is not set or staked at any time,
 - (c) the net is landed on the tray of a boat or in sufficient depth of water to enable prohibited size fish that are taken in the net to escape,
 - (d) there is no seine net (prawns) on the boat from which the net is used.
- (2) It is also lawful to use a try net in the waters specified in the Table to this clause to facilitate the taking of prawns by the means of a prawn net (hauling) if the try net complies with the following description:
- The net is attached to a frame not exceeding 0.6 metre in width and 0.5 metre in height, with a total length from the centre of the plane to the extremity of the net not exceeding 2 metres; mesh not less than 30 mm nor more than 36 mm.
- (3) It is also lawful to use a hauling net to take other fish (other than a prohibited size class of fish) which are taken by the net when it is being lawfully used for taking prawns.

Clause 32 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

(4) For the purposes of this Regulation or any other instrument under the Act, a net described:

- (a) in subclause (1) or in the Table to this clause may be referred to as a prawn net (hauling), and
- (b) in subclause (2) may be referred to as a try net (prawns).

Table Prawn net (hauling)

- | | |
|---|--|
| 1 | <ul style="list-style-type: none"> (a) <i>Waters</i>—Tuggerah Lakes (other than that part described in Schedule 2). (b) <i>Description of net</i>—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 140 metres. |
| 2 | <ul style="list-style-type: none"> (a) <i>Waters</i>—Lake Illawarra (other than that part described in Schedule 2). (b) <i>Description of net</i>—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 220 metres. |
| 3 | <ul style="list-style-type: none"> (a) <i>Waters</i>—Shoalhaven River. (b) <i>Description of net</i>—Total length not exceeding 90 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 220 metres. |
| 4 | <ul style="list-style-type: none"> (a) <i>Waters</i>—Myall Lakes, Booloombayte Lakes, the Broadwater (Myall Lakes) and Smith's Lake. (b) <i>Description of net</i>—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 130 metres. |

Fisheries Management (General) Regulation 2002

Clause 32

Fishing gear

Part 3

-
- 5 (a) *Waters*—That part of Wallis Lake included within the following boundaries: commencing at a post marked “FD” situated at the high water mark of Pipers Bay (the post being located by a line bearing 186 degrees from an electricity pole numbered 14808, situated at the eastern end of Pipers Bay Drive Forster), then bounded by a line bearing 217 degrees to a second post marked “FD” situated at the high water mark on the southern side of Big Island, then to a third post marked “FD” situated at the high water mark of Wallis Island, bearing 245 degrees from the second post, then southerly, westerly and northerly along the high water mark of Wallis Island to a jetty located on the western side of Wallis Island, then westerly along the length of the jetty to its end, then to a fourth post marked “FD”, situated at the high water mark on the foreshore of Coomba Park, bearing 246 degrees and 30 minutes from the end of the jetty, then generally southerly, easterly and northerly by the high water mark of Wallis Lake to the point of commencement.
- (b) *Description of net*—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 140 metres.
- 6 (a) *Waters*—Port Jackson (including the Parramatta and Lane Cove Rivers and Middle Harbour).
- (b) *Description of net*—Total length not exceeding 60 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 130 metres.
- 7 (a) *Waters*—Wallagoot Lake and Blackfellows Lake.
- (b) *Description of net*—Total length not exceeding 90 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 190 metres.
- 8 (a) *Waters*—Coila Lake and Wallaga Lake.
- (b) *Description of net*—Total length not exceeding 75 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 130 metres.
- 9 (a) *Waters*—Tweed River.
- (b) *Description of net*—Total length not exceeding 40 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 220 metres.
- 10 (a) *Waters*—Any other waters (except inland waters, the Manning River and the waters described in the Table to clause 34).
- (b) *Description of net*—Total length not exceeding 40 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 130 metres.

Clause 33 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

33 Prawn net (hauling): Manning River

- (1) It is lawful to use a hauling net for taking prawns in the Manning River upstream from Ghinni Ghinni Creek and Berady Creek if the net (including hauling lines) complies with the description set out in subclause (2) and the conditions set out in subclauses (3), (4) and (5) are complied with.
- (2) The net must comply with the following description:
 - (a) the total length of the net must not exceed 40 metres,
 - (b) the mesh throughout must not be less than 30 mm nor more than 36 mm,
 - (c) the net must have no attachments except spreader poles and hauling lines,
 - (d) the hauling line run on the first leg to the net must not be longer than 220 metres,
 - (e) the hauling line running from the net to the motor boat used to assist in shooting the net must not be longer than 90 metres, and not be shorter than 60 metres.
- (3) The net must be used only by the method of hauling, and must not be set or staked at any time.
- (4) The net must be shot and hauled as follows:
 - (a) one end of the hauling line run on the first leg to the net must be:
 - (i) attached to a fixed point on shore, or
 - (ii) anchored ashore, or
 - (iii) attached to an unpowered boat which itself is secured on shore,
 - (b) the line must then be cast from a motor boat, and the net then shot,
 - (c) the second hauling line must then be cast (or laid out) from the motor boat as the boat moves in a circular path so as to return to a landing-up point near the shore end of the first hauling line,
 - (d) the second hauling line must be attached to a point on the motor boat by the line's extremity only (that is, one end must be attached to the net, and the other end secured to the boat to prevent loss of the line overboard),

Fisheries Management (General) Regulation 2002

Clause 34

Fishing gear

Part 3

-
- (e) the second hauling line must not be towed until all of it has been shot away free of tangles, knots or anything else which would effectively shorten it,
 - (f) once the shooting and hauling of the net have commenced, they must continue until the hauling lines have been removed from the water and the net landed in such depth of water, or onto the tray of the boat in such a way, as to enable any prohibited size fish taken in the net to escape,
 - (g) once any prohibited size fish have been allowed to escape, the net must be fully removed from the water.
- (5) The net must be operated in accordance with the determination (if any) by the fisheries officer for the time being charged with the supervision of the Manning River as to the number of commercial fishers to constitute the crew operating the net.
 - (6) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a prawn net (hauling).

34 Prawn net (hauling): Wallis Lake

- (1) It is lawful to use a hauling net for taking prawns in the waters described in the Table to this clause if the net (including hauling lines) complies with the description set out in relation to those waters in that Table and the conditions set out in this clause are complied with.
- (2) The net must be used only by the method of hauling, and must not be set or staked at any time.
- (3) The net must be shot and hauled as follows:
 - (a) the end of the hauling line first shot (or laid out) must be attached to a stationary boat that is secured by an anchor or post during the entire haul operation. There must be no motor in or on the boat. The boat must not contain any rope other than the mooring line and a maximum of 200 metres of hauling rope,
 - (b) the line must then be shot (or laid out) from a motor boat, and the net then shot,
 - (c) the second hauling line must then be shot (or laid out) from the motor boat as the boat moves in a circular path so as to return to the stationary boat from where the first hauling line was shot,

Clause 34 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

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- (d) the second hauling line must be attached to a point on the motor boat by the line's extremity only (that is, one end must be attached to the net, and the other end secured to the boat to prevent loss of the line overboard),
 - (e) the second hauling line must not be towed until all of it has been shot away free of tangles, knots or anything else that would effectively shorten it,
 - (f) once the shooting and hauling of the net have commenced, the operation must continue until the hauling lines have been removed from the water and the net landed in such depth of water, or onto the tray of the boat in such a way, as to enable any prohibited size fish taken in the net to escape,
 - (g) once any prohibited size fish have been allowed to escape, the net must be fully removed from the water.
- (4) The net must be operated in accordance with the determination (if any) by the fisheries officer for the time being charged with the supervision of the waters in which the net is being used as to the number of commercial fishers to constitute the crew operating the net.
 - (5) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a prawn net (hauling).

Table Prawn net (hauling): Wallis Lake

- 1 (a) *Waters*—That part of the Coolongolook and Wallingat Rivers upstream from a line across the river from a post marked FD8 due north of the eastern extremity of Junction Point, then due south to Junction Point, then generally south by the western foreshore of the Wallingat River to a post marked FD9, then extending across the Wallingat River on a bearing of 87 degrees to a jetty situated on the north-western foreshore of Lot 1, DP 589944.
- (b) *Description of net*—Total length not exceeding 40 metres; mesh throughout not less than 30 mm nor more than 36 mm; no attachments except spreader poles and hauling lines; hauling line run on the first leg to the net must not be longer than 200 metres; a marker buoy must be affixed to the hauling line every 50 metres along the line; the hauling line running from the net to the motor boat used to assist in shooting the net must not be longer than 50 metres.

Fisheries Management (General) Regulation 2002

Clause 35

Fishing gear

Part 3

-
- 2 (a) *Waters*—That part of the Wallamba River from a line drawn from the northern foreshore of the entrance of Muddy Creek to the eastern extremity of Hardy's Point upstream to the Pacific Highway Road Bridge at NABIAC.
- (b) *Description of net*—Total length not exceeding 40 metres; mesh throughout not less than 30 mm nor more than 36 mm; no attachments except spreader poles and hauling lines; hauling line run on the first leg to the net must not be longer than 200 metres; a marker buoy must be affixed to the hauling line every 50 metres along the line; the hauling line running from the net to the motor boat used to assist in shooting the net must not be longer than 50 metres.

35 Prawn net (set pocket)

- (1) It is lawful to use a set pocket net for taking prawns in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions (in addition to those in subclause (2), if applicable) are complied with:
- (a) the net is used only by the method of setting,
 - (b) hauling lines are not attached to the net,
 - (c) the net must not be left unattended during the period it is set.
- (2) If the net is used in the waters of the Clarence River, the following additional conditions must be complied with:
- (a) the net must not be used in conjunction with a moored boat with the engine running unless the boat is licensed and is owned by a commercial fisher, or by a member of the crew of a commercial fisher, by whom or by which the net is being used,
 - (b) a person must not use a prawn net except during the following periods:
 - (i) on weekends during the dark (that is, the period commencing 3 days after a full moon and ending 3 days after the next new moon),
 - (ii) from sunset to sunrise on week days between 1 August in any year and 31 May in the next year,
 - (iii) from sunrise to sunset on week days between 1 December in any year and 31 May in the next year,

Clause 35 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- (c) except in the area known as the South Arm Rocks:
 - (i) the inside peg of the net must not be set further than 5 metres from low-water mark, and
 - (ii) all pegs used in connection with the net must be painted white and show at least 1 metre above high-water mark,
 - (d) the net must be kept clear of the water when it is not in use.
- (3) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a prawn net (set pocket).

Fisheries Management (General) Regulation 2002

Clause 35

Fishing gear

Part 3

Table Prawn net (set pocket)

- 1 (a) *Waters*—That part of the Myall River from the junction of the Myall River with the Broadwater downstream to the road bridge between Tea Gardens and Hawk’s Nest.
- (b) *Description of net*—Total length not exceeding 20 metres; mesh throughout not less than 30 mm nor more than 36 mm.
- 2 (a) *Waters*—Those parts of Wallis Lake included within the following boundaries:
- (i) the whole of that part of Wollomba Channel in Wallis Lake within the following boundaries: commencing at the line of high-water mark at the southern point of the entrance to Wollomba River, and bounded then by a straight line southerly to the northern shore of First Island at the southeastern foreshore corner of Oyster Farm No 77–3, by the northern shore of that island easterly to its extremity, and by a straight line southeasterly to the high-water mark of the northern shore of Cockatoo Island (being a point about 180 metres southwesterly from the southeastern foreshore corner of Oyster Farm No 78–44), by the northern shore of that island generally easterly to the eastern foreshore corner of Oyster Farm No 74–138, then by a straight line northeasterly to the northern shore of Grassy Island at the most northerly southeastern foreshore boundary of Oyster Lease No 59–361, by the northern shore of that island easterly to its most eastern point, by a straight line north-northwesterly to the eastern extremity of Long Island, by the southern shore of that island generally westerly to its western extremity, by a straight line southwesterly to the eastern extremity of Sandy Island (such point being the most easterly foreshore corner of Oyster Farm No 74–24), by the southern shore of that island generally westerly to its most western point, and then by a straight line westerly to the point of commencement;

Clause 35	Fisheries Management (General) Regulation 2002
Part 3	Fishing gear

- (ii) the whole of that part of Bulmer's Channel in Wallis Lake within the following boundaries: commencing at the northeastern corner of Oyster Lease No 77-270 at the western end of Godwin Island, and bounded then by a straight line drawn west-northwesterly to the northeastern corner of Oyster Farm No 72-11 on Cockatoo Island, by the southern shore of that island generally westerly to its most western point, by a line southeasterly to the most eastern point of Northern Twin Island, by a line south-southwesterly to the most eastern foreshore corner of Oyster Farm No 76-112, by the southeastern shore of that island generally southwesterly to the most eastern foreshore corner of Oyster Farm No 68-31, by a straight line south-southwesterly to the high-water mark of Wallis Island at the westerly prolongation of the northern boundary of Portion 206, Parish of Forster, by the high-water mark of that island generally northeasterly and southeasterly to the southeastern foreshore corner of Oyster Farm No 71-360, section 1, and then by a line northeasterly to the point of commencement;

Fisheries Management (General) Regulation 2002

Clause 35

Fishing gear

Part 3

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- (iii) the whole of that part of Stockyard Channel in Wallis Lake within the following boundaries: commencing at the northeastern corner of Oyster Lease No 77–270 at the western end of Godwin Island, and bounded then by a straight line drawn southwesterly to the southeastern foreshore corner of Oyster Farm No 71–360, section 1, on Wallis Island, by the high-water mark of that island generally southeasterly and southerly to the easterly prolongation of the southern boundary of Portion 221, Parish of Forster, by a straight line easterly to the most southerly corner of Oyster Farm No 73–253, by a straight line northeasterly to the southeastern foreshore corner of Oyster Farm No 73–216 on the southern end of Hadley Island, by the high-water mark of that island generally northwesterly and northeasterly to its northern extremity, by a line northerly to the northeastern foreshore corner of Oyster Farm No 70–245 on the southern shore of Godwin Island, by the high-water mark of that island generally westerly, northwesterly, southwesterly and northerly to the northeastern corner of Oyster Farm No 67–203, by a straight line westerly to the most western northeastern foreshore corner of Oyster Lease No 81–43, and again by the high-water mark of Godwin Island generally southerly, westerly, northerly, southwesterly and northwesterly to the point of commencement.
- (b) *Description of net*—Total length not exceeding 20 metres; mesh throughout not less than 30 mm nor more than 36 mm.
- 3 (a) *Waters*—The whole of Queen’s Lake Entrance within the following boundaries: commencing at the northeastern corner of Oyster Farm No 81–179, and bounded then by a line northerly to the western bank of Queen’s Lake Entrance, by the western bank generally northwesterly to the western foreshore corner of Oyster Farm No 83–95, by a line southwesterly to the eastern foreshore corner of Oyster Farm No 67–6, by the foreshore generally southwesterly to the eastern foreshore corner of Oyster Farm No 70–198, by a line drawn northeasterly through the most westerly point of an island at the western entrance to Queen’s Lake Entrance, to the northern bank of Queen’s Lake Entrance, then easterly and southerly, following the eastern bank of Queen’s Lake Entrance generally southeasterly to a point east of the northeastern corner of Oyster Farm No 81–179, and then by a line to the point of commencement.
- (b) *Description of net*—Total length not exceeding 20 metres; mesh throughout not less than 30 mm nor more than 36 mm.

Clause 35 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- 4 (a) *Waters*—That part of Watson Taylor Lake within the following boundaries: commencing at the northern point of Benson Inlet, then north along the eastern shore of Watson Taylor Lake to the northwestern corner of Portion 150, Parish of Camden Haven, County of Macquarie, then westerly to the northeast corner of Portion 70, Parish of Camden Haven, County of Macquarie, then southwest along the shore of Camden Haven Inlet and Moore's Island to the southwest tip of Moore's Island, then southwest to the northern corner of Grassy Island to the island's most southerly point, and then to the point of commencement.
- (b) *Description of net*—Total length not exceeding 20 metres; mesh throughout not less than 30 mm nor more than 36 mm.
- 5 (a) *Waters*—Those parts of Tuggerah Lakes and Lake Illawarra (and ocean waters adjoining) described in Schedule 3.
- (b) *Description of net*—Total length not exceeding 5 metres; mesh throughout not less than 30 mm nor more than 36 mm.

Note. Clause 21 of, and Schedule 2 to, this Regulation have the effect of closing certain waters (including parts of Tuggerah Lakes and Lake Illawarra and ocean waters adjoining Lake Illawarra) to net and trap fishing. However, clause 21 (1) (b) and Schedule 3 provide an exemption to that closure (in respect of prawn nets (set pockets) only) in relation to the parts of those waters specified in Schedule 3.

- 6 (a) *Waters*—That part of Cathie Creek within the following boundaries: the whole of that part of Cathie Creek north of a line bearing 110 degrees across the creek from a post (marked F[^]D) on the western bank of the creek to a Ti-tree (marked F[^]D) on the eastern bank of the creek, situated about 500 metres upstream from the Pacific Ocean.
- (b) *Description of net*—Total length not exceeding 10 metres; length of pocket, from cod-end to cork line, not exceeding 10 metres; mesh throughout not less than 30 mm nor more than 36 mm.

Fisheries Management (General) Regulation 2002

Clause 36

Fishing gear

Part 3

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- 7 (a) *Waters*—That part of Sussex Inlet within the following boundaries: the whole of the waters of that part of Sussex Haven and the adjacent waters of the Pacific Ocean within the following boundaries: commencing at the southeastern corner of Reserve 75,429 for Public Recreation notified in the Gazette on 14 November 1952, and bounded then by a line drawn easterly to the point of junction of the eastern shore of Sussex Haven with the shore of the Pacific Ocean, by a line parallel to the western shore of the entrance to Sussex Haven to a point east of the southernmost extremity of that entrance, by a line westerly, and then by that shore northwesterly to the point of commencement.
- (b) *Description of net*—Total length not exceeding 5 metres; mesh throughout not less than 30 mm nor more than 36 mm.
- 8 (a) *Waters*—The whole of the main arm of the Clarence River seawards of the Ulmarra Ferry Crossing (excluding all creeks, tributaries, effluents and secondary or back channels of that river, that part of the left or northern bank between Brown's or Goodwood Island Wharf and the new (or eastern) opening in the Iluka Boat Harbour training wall and that part of the river which lies seawards of a line drawn from the north-westernmost corner of Portion 64, Parish of Taloumbi, to the north-westernmost corner of Freeburn Island and generally south of Freeburn Island and the main training wall that extends seawards from the easterly extremity of Freeburn Island).
- (b) *Description of net*—Total length not exceeding 20 metres; mesh throughout not less than 30 mm nor more than 36 mm.
- 9 (a) *Waters*—Inlet cooling water canal to Munmorah Power Station.
- (b) *Description of net*—Total length not exceeding 20 metres nor less than 18 metres; mesh throughout not less than 25 mm nor more than 30 mm.
- 10 (a) *Waters*—Smiths Lake.
- (b) *Description of net*—Total length not exceeding 63 metres; length of pocket, bunt or bag not exceeding 9 metres; mesh throughout not less than 30 mm nor more than 36 mm; wings of net to be set at such an angle that the distance between the ends of the net does not exceed 45 metres.

36 Prawn running net

- (1) It is lawful to use a running net for taking prawns in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:

Clause 36 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

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- (a) if the net is not staked, the net is used only by the method of casting or shooting the net and picking up and landing the whole of the net into a boat in the manner known as “running the net” within 1 hour of the commencement of the casting or shooting,
- (b) in the case of a net that is being used for taking prawns in the waters of Lake Illawarra:
- (i) the net must be operated by at least 2 commercial fishers, and
 - (ii) the net must not be operated by, or with the assistance of, any commercial fisher who is also operating, or assisting in the operation of, any other such net, and
 - (iii) the net must not be staked (that is, the net must be used only by the method referred to in paragraph (a)),
- (c) in the case of a staked net:
- (i) the net is not set earlier than 1 hour before sunset, and
 - (ii) the net is not set within 10 metres of the high water mark, and
 - (iii) the net is not staked by means of a star or 3 sided stake, and
 - (iv) no stakes are left in the water in the period between sunrise and 1 hour before sunset.
- (2) It is also lawful to use a running net to take other fish (other than a prohibited size class of fish) which are taken by the net when it is being lawfully used for taking prawns.
- (3) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a prawn running net.

Table Prawn running net

- 1 (a) *Waters*—Wallaga Lake, Durras Water, Cuttagee Lake, Middle Lake, Lake Wollumboola, Swan Lake, Coila Lake, Corunna Lake, Tilba Lake, Lake Birroul or Brou Lake, including all their respective bays, inlets and creeks.
- (b) *Description of net*—Total length not exceeding 75 metres; mesh throughout not less than 25 mm nor more than 36 mm.

Fisheries Management (General) Regulation 2002

Clause 37

Fishing gear

Part 3

-
- 2 (a) *Waters*—Tuggerah Lakes and Lake Illawarra, including all their respective bays, inlets and creeks (but excluding those parts of Tuggerah Lakes and Lake Illawarra described in Schedule 2).
- (b) *Description of net*—Total length not exceeding 140 metres; mesh throughout not less than 25 mm nor more than 36 mm.

37 Seine net (prawns)

- (1) It is lawful to use a seine net for taking prawns in the waters specified in the Table to this clause if the net (including hauling lines) complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is cast or shot in the following manner:
 - (i) a hauling line (to the end of which is attached a float or basket with a marker buoy affixed) is cast or shot from a boat,
 - (ii) that hauling line, the net and a second hauling line is then cast or shot from the boat as it moves in a circular direction resulting in the boat returning to the marker buoy,
 - (b) the net is hauled back on to a boat in such a way that both hauling lines are hauled to the same spot on the boat so as to avoid any trawling action,
 - (c) the hauling in of the net, once commenced, is to continue uninterrupted until all portions of the net, including the hauling lines, have been removed from the water,
 - (d) there is no prawn net (hauling) on the boat from which the net is used.
- (2) It is also lawful to use a try net in the waters specified in the Table to this clause to facilitate the taking of prawns by the means of a seine net (prawns) if the try net complies with the following description:
- The net is attached to a frame not exceeding 0.6 metre in width and 0.5 metre in height, with a total length from the centre of the frame to the extremity of the net not exceeding 2 metres; mesh not less than 30 mm nor more than 36 mm.
- (3) For the purposes of this Regulation or any other instrument under the Act, a net described:

Clause 37 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

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- (a) in subclause (1) or in the Table to this clause may be referred to as a seine net (prawns), and
- (b) in subclause (2) may be referred to as a try net (prawns).

Table Seine net (prawns)

- | | |
|---|---|
| 1 | <p>(a) <i>Waters</i>—The whole of Lake Illawarra, including its bays, inlets and creeks (but excluding that part described in Schedule 2).</p> <p>(b) <i>Description of net</i>—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 220 metres.</p> |
| 2 | <p>(a) <i>Waters</i>—The whole of Tuggerah Lakes, including its bays, inlets and creeks (but excluding that part described in Schedule 2).</p> <p>(b) <i>Description of net</i>—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 140 metres.</p> |
| 3 | <p>(a) <i>Waters</i>—The whole of Queen’s Lake and Watson Taylors Lake, including all their respective bays, inlets and creeks.</p> <p>(b) <i>Description of net</i>—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 140 metres.</p> |

Fisheries Management (General) Regulation 2002

Clause 38

Fishing gear

Part 3

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- 4 (a) *Waters*—That part of Wallis Lake and Coolongolook and Wallingat Rivers covering an area south and east of the following boundaries: commencing at the southeastern corner of Portion 71, Parish of Forster, then by a line southwesterly to the most southeastern point of Wallis Island, then along the western foreshore of Wallis Island to a point directly east of the most easterly point of Regatta Island, then west to that point (Fisheries Division BM 18), then by the eastern foreshore of Regatta Island to the most northeasterly point of that island, then north to the most easterly point of Bandicoot Island (Fisheries Division BM 23), then west along Bandicoot Island to the most northwestern point on that island, then north by a line drawn to the northern bank of Wallis Lake (Fisheries Division BM 24), then west along the northern bank of Wallis Lake to the entrance of the Coolongolook River, then west along the northern foreshore of the Coolongolook River, excluding the whole of the waters of Minimbah and Duck Gully Creeks, to a point marked by a white post due north of the eastern extremity of Junction Point, then due south from that post to the eastern extremity of Junction Point, then extending across the Wallingat River on a bearing of 175 degrees to the northern foreshore corner of the jetty situated on the northwestern foreshore of Portion 66, Parish of Wallingat (and excluding all other waters of the Wallingat River).
- (b) *Description of net*—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 140 metres.
- 5 (a) *Waters*—The whole of the Macleay River extending from the Jerseyville Bridge upstream to the Kempsey Railway Bridge.
- (b) *Description of net*—Total length not exceeding 140 metres; mesh throughout not less than 30 mm nor more than 36 mm; length of each hauling line not exceeding 140 metres.

38 Otter trawl net (prawns)

- (1) It is lawful to use an otter trawl net for taking prawns in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only by the method of trawling,
- (b) not more than 2 nets are used at any one time in the Hawkesbury River downstream from a line drawn between Juno Point and Eleanor Bluff, Clarence River, Port Jackson, Jervis Bay or Coffs Harbour,

Clause 38 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- (c) not more than 1 net is used at any one time in the Hunter River or in the Hawkesbury River upstream from a line drawn between Juno Point and Eleanor Bluff to the ferry crossing at Lower Portland,
 - (d) no string, rope, wire, cord, netting or other material is fixed to any meshes that are within 25 meshes of the draw or closing string of the cod-end of the net.
- (2) Despite subclause (1) (d), an otter trawl net may have attached to it any of the following:
- (a) a draw or closing string at the end of the cod-end,
 - (b) a frill of netting material, if the frill is not attached more than 5 meshes from the last row of meshes of the cod-end,
 - (c) a chafing piece, in accordance with clause 56 (2).
- (3) It is also lawful to use an otter trawl net to take other fish which are taken by the net when it is being lawfully used for taking prawns if:
- (a) the fish are not a prohibited size class of fish and are not of a species the taking of which is prohibited, or
 - (b) the fish are a prohibited size class of fish (other than abalone or crustaceans), are not of a prohibited size and are taken in waters north of a line drawn due east from the lighthouse situated at Smoky Cape (excluding inland waters, the Clarence River and Lake Woollooweyah), or
 - (c) the fish are a prohibited size class of fish (being crustaceans other than rock lobster) and are not of a prohibited size.
- (4) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as an otter trawl net (prawns).

Fisheries Management (General) Regulation 2002

Clause 39

Fishing gear

Part 3

Table Otter trawl net (prawns)

- 1 (a) *Waters*—Port Jackson, Hawkesbury River, Hunter River and all ocean waters.
- (b) *Description of net*—Total length not exceeding 11 metres (except in respect of a net used in ocean waters, in which case the total length of the net is not to exceed 33 metres or, if a maximum length for otter trawl nets (prawns) is specified in the boat licence for the boat from which the net is used, the length so specified); mesh of cod-end (or portion of the net capable of being used as a cod-end) not less than 40 mm nor more than 50 mm; mesh of net (other than cod-end or the portion of the net capable of being used as a cod-end) not less than 40 mm nor more than 60 mm; length of sweep attached to net (being the distance between the point of attachment to the otter boards and the net) not exceeding 5 metres or the distance from the trawl gallows to the stern of the boat (whichever is the greater); sweep to be secured to the net and the otter board so that it cannot exceed 5 metres in length or the distance from the trawl gallows to the stern of the boat (whichever is the greater).
- 2 (a) *Waters*—Clarence River and Lake Woollooweyah.
- (b) *Description of net*—Total length of net (when towed as single gear) not exceeding 11 metres, total length of either net (when towed as twin gear) not exceeding 7.5 metres; mesh of cod-end (or portion of the net capable of being used as a cod-end) not less than 40 mm nor more than 50 mm; mesh of net (other than cod-end or the portion of the net capable of being used as a cod-end) not less than 40 mm nor more than 60 mm; length of sweep attached to net (being the distance between the point of attachment to the otter boards and the net) not exceeding 5 metres or the distance from the trawl gallows to the stern of the boat (whichever is the greater); sweep to be secured to the net and the otter board so that it cannot exceed 5 metres in length or the distance from the trawl gallows to the stern of the boat (whichever is the greater).

39 Otter trawl net (fish)

- (1) It is lawful to use an otter trawl net for taking fish (other than prawns and rock lobsters) in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following condition is complied with:

The net is used only by the method of trawling.

Clause 40	Fisheries Management (General) Regulation 2002
Part 3	Fishing gear

- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as an otter trawl net (fish).

Table Otter trawl net (fish)

- 1 (a) *Waters*—Ocean waters (other than waters north of a line drawn due east from the lighthouse at Smoky Cape).
- (b) *Description of net*—Mesh not less than 90 mm throughout; mesh of cod-end (or portion of net capable of being used as a cod end) not less than 90 mm.

40 Danish seine trawl net (fish)

- (1) It is lawful to use a danish seine trawl net for taking fish (other than prawns and rock lobsters) in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following condition is complied with:

The net is used only by the method of danish seining.

- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a danish seine trawl net (fish).

Table Danish seine trawl net (fish)

- 1 (a) *Waters*—Ocean waters.
- (b) *Description of net*—Mesh not less than 83 mm throughout; mesh of cod-end (or portion of net capable of being used as a cod-end) not less than 83 mm.

41 Meshing net

- (1) It is lawful to use a meshing net for taking fish in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the net is used:

- (a) by the method of splashing (that is, shooting the net, immediately splashing and retrieving it as a continuous operation) at any time, or

Fisheries Management (General) Regulation 2002

Clause 42

Fishing gear

Part 3

-
- (b) as a set net, but only:
- (i) between February and November (inclusive) in any year, and
 - (ii) between sunset and sunrise, and
 - (iii) for no more than 3 hours at a time.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a meshing net.

Table Meshing net

- | | |
|---|--|
| 1 | <ol style="list-style-type: none"> (a) <i>Waters</i>—The tributaries of the Clarence River known as Lake Woollooweyah and the Broadwater. (b) <i>Description of net</i>—Total length not exceeding 1,450 metres; mesh throughout not less than 80 mm. |
| 2 | <ol style="list-style-type: none"> (a) <i>Waters</i>—Port Jackson (including the Parramatta and Lane Cove Rivers) above a line drawn between Little Sirius Point and Point Piper; Middle Harbour above The Spit. (b) <i>Description of net</i>—Total length not exceeding 225 metres; mesh throughout not less than 80 mm. |
| 3 | <ol style="list-style-type: none"> (a) <i>Waters</i>—Durras Water and that part of Wallaga Lake, together with all its inlets and tributaries extending seawards from the bridge and embankment on the Narooma–Bermagui Road to the Pacific Ocean. (b) <i>Description of net</i>—Total length not exceeding 375 metres; mesh throughout not less than 80 mm. |
| 4 | <ol style="list-style-type: none"> (a) <i>Waters</i>—All other waters (except inland waters and ocean waters). (b) <i>Description of net</i>—Total length not exceeding 725 metres; mesh throughout not less than 80 mm. |

42 Beach safety meshing net

- (1) It is lawful for an officer of NSW Fisheries or a person acting on behalf of the Director to use a beach safety meshing net for the purposes of shark meshing activities.
- (2) The meshing net may only be used as a sunk net. No part of the net (other than that used for the purposes of tagging) may be on the surface.

Clause 43 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- (3) The meshing net must comply with the following specifications:
- (a) **Floatline**
150 metres of not less than 8 mm diameter, synthetic rope with a breaking strain of not less than 900 kg.
 - (b) **Leadline**
150 metres of not less than 8 mm diameter, synthetic rope with a breaking strain of not less than 900 kg.
 - (c) **Floats**
Gill net floats used must be of not less than 10 cm diameter and not less than 5 cm thickness, or a float of equivalent buoyancy approved by the Director and spaced at not more than 5 metre centres.
 - (d) **Netting twine**
The twine must be continuous synthetic filament with a breaking strain of not less than 60 kg.
 - (e) **Mesh size**
The mesh size must be not less than 50 cm and not more than 60 cm. To measure the mesh size the net is to be soaked in water for a period of not less than 5 minutes, then stretched out and the distance between the inside edges of the knots measured using a steel rule certified in accordance with the *Trade Measurement Act 1989*.
 - (f) **Meshes depth**
The number of meshes for each mesh size must be as follows:
 - (i) 60 cm mesh—not less than 12 meshes deep,
 - (ii) 55 cm mesh—not less than 13 meshes deep,
 - (iii) 50 cm mesh—not less than 14 meshes deep,so that the height is approximately 6 metres when set.
- (4) Nets must be tagged at the surface with a minimum of 25 cm bubbles and clearly marked “Beach Safety Meshing Net”.

43 Flathead net

- (1) It is lawful to use a flathead net for taking flathead in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only by the method of meshing,

Fisheries Management (General) Regulation 2002

Clause 43

Fishing gear

Part 3

-
- (b) the net is not used, set or left in Lake Illawarra for any period from 1 September to 31 May in any year or for a period exceeding 6 hours between sunrise and sunset from 1 June to 31 August in any year,
- (c) the net is not used, set or left in any other waters:
- (i) from 1 December to 31 January in any year, or
 - (ii) between sunrise and sunset from 1 February to 31 March and from 1 October to 30 November in any year, or
 - (iii) for a period exceeding 6 hours between sunrise and sunset from 1 April to 30 September in any year,
- (d) any cork or float forming part of the net must not exceed 40 mm in length or 25 mm in width and must not be nearer than 3.5 metres to any other cork or float when measured along the cork line of the net,
- (e) the net is not used, set or left in such a manner as causes:
- (i) the lead line to be raised from the bottom of the waters, or
 - (ii) the corks, floats, cork line or float line to be raised above the lead line for a distance greater than 0.5 metre, or
 - (iii) the corks, floats, cork line or float line not to be completely submerged.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a flathead net.

Clause 44	Fisheries Management (General) Regulation 2002
Part 3	Fishing gear

Table Flathead net

- 1 (a) *Waters*—Tuggerah Lakes, Lake Illawarra, and those parts of Wallis Lake included within the following boundaries: the whole of the tidal waters of that part of Wallis Lake, its creeks, tributaries and rivers, including the Wang Wauk, Wallingat and Coolongolok Rivers, south of lines drawn from Fisheries Division Mark 21 to the westernmost southwestern foreshore corner of Oyster Farm No 56.144, from the foreshore or western end of the airport wharf on the northeastern corner of Wallis Island to Fisheries Division Mark 4 and from Fisheries Division Mark 4 to the eastern entrance to Tony's Creek on Hadley Island.
- (b) *Description of net*—Total length not exceeding 725 metres; depth of net not exceeding 25 meshes; mesh throughout not less than 70 mm nor more than 80 mm.
- 2 (a) *Waters*—Smith's Lake.
- (b) *Description of net*—Total length not exceeding 375 metres; depth of net not exceeding 25 meshes; mesh throughout not less than 70 mm nor more than 80 mm.

44 Bait net

- (1) It is lawful to use a bait net for taking fish (other than garfish, prawns or a prohibited size class of fish) in the waters specified in the Table to this clause if the net (including hauling lines) complies with the description as set out in relation to those waters in that Table and the following condition is complied with:

The net is used only between sunrise and sunset on any day.

- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a bait net.

Table Bait net

- 1 (a) *Waters*—That part of the Macleay River within a line drawn from the northeastern extremities of the western and eastern training walls upwards to the Jerseyville Road Bridge, excluding Spencer's Creek and Delaney's Creek.
- (b) *Description of net*—Total length of net not exceeding 25 metres; mesh throughout not less than 13 mm nor more than 25 mm; length of each hauling line not exceeding 20 metres.

Fisheries Management (General) Regulation 2002

Clause 45

Fishing gear

Part 3

- 2 (a) *Waters*—Twofold Bay west of a line drawn from Worange Point to Red Point.
- (b) *Description of net*—Total length of net not exceeding 60 metres; length of bunt not exceeding 20 metres; length of wings not exceeding 20 metres; mesh of bunt not exceeding 13 mm; mesh of wings not exceeding 28 mm; length of each hauling line not exceeding 90 metres.

45 Submersible lift net (bait)

- (1) It is lawful to use a submersible lift net for taking slimy mackerel, yellowtail and pilchards in the waters specified in the Table to this clause if the net is used only for taking those fish for use as bait in the taking of tuna and the net complies with the description as set out in relation to those waters in that Table.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a submersible lift net (bait).

Table Submersible lift net (bait)

- 1 (a) *Waters*—Twofold Bay other than that part of Twofold Bay west of a line drawn between Snug Cove Breakwater and the eastern extremity of Cattle Bay.
- (b) *Description of net*—Total length not exceeding 15 metres, 15 metres in width, mesh throughout not less than 13 mm nor more than 25 mm.
- 2 (a) *Waters*—Ocean waters except any natural or artificial harbour and except the waters contained in the following boundaries:
- (i) those waters in a radius of 300 metres from the highest point of Park Beach Bombora (submerged) located about 904 metres generally north from the most northerly point of Muttonbird Island and about 760 metres generally east of the most easterly point of Little Muttonbird Island (latitudinal and longitudinal position highest point Bombora 153°9'08", 30°17'82");
- (ii) those waters from Mean High Water Mark to 200 metres seawards from Mean Low Water Mark around Cook Island;
- (iii) those waters within 200 metres of Merimbula fishing platform and Tathra Wharf.
- (b) *Description of net*—Total length not exceeding 15 metres, 15 metres in width, mesh throughout not less than 13 mm nor more than 25 mm.

Clause 46 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- 3 (a) *Waters*—Jervis Bay.
(b) *Description of net*—Total length not exceeding 15 metres, 15 metres in width, mesh throughout not less than 13 mm nor more than 25 mm.

Division 4 Lawful recreational nets

46 Application of Division

The nets described in this Division may be lawfully used by any person (whether or not a commercial fisher).

Note. Under section 24 of the Act it is an offence for a person to use a net for taking any fish unless its use by the person for taking those fish is declared by the regulations to be a lawful use of the net.

47 Spanner crab net

- (1) It is lawful to use a net for taking spanner crabs in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) in the case of a single commercial fisher, not more than 20 spanner crab nets are used at any one time,
 - (b) in the case of a crew comprising a commercial fisher and 1 or more commercial fishers or crew members, not more than 30 spanner crab nets are used at any one time,
 - (c) in the case of any person other than a commercial fisher or a member of a crew referred to in paragraph (b):
 - (i) not more than 1 spanner crab net is used by the person at any one time, and
 - (ii) the net is used only as a hand implement and only by the method of lowering the net into the water and then drawing the net vertically to the surface.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a spanner crab net.

Fisheries Management (General) Regulation 2002

Clause 48

Fishing gear

Part 3

Table Spanner crab net

- 1 (a) *Waters*—Ocean waters north of Korogoro Point (Hat Head).
 (b) *Description of net*—Net attached to a rigid rectangular frame not exceeding 1.6 metres in length and 1 metre in width; net not capable of extending more than 0.1 metre beneath the frame when the frame is suspended in a horizontal position.

48 Hoop or lift net

- (1) It is lawful to use a hoop or lift net for taking fish (including crabs and freshwater spiny crayfish, but excluding rock lobster in tidal waters or a prohibited size class of fish) in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only as a hand implement and only by the method of lowering the net into the water and then drawing the net vertically to the surface,
 (b) not more than 10 nets are used by a commercial fisher at any one time,
 (c) not more than 5 nets are used by any person (other than a commercial fisher) at any one time.
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a hoop or lift net.

Table Hoop or lift net

- 1 (a) *Waters*—Any waters (other than ocean waters).
 (b) *Description of net*—Net attached to not more than 2 hoops, rings or frames not exceeding 1.25 metres in their greatest diameter (or at their greatest diagonal); hoops, rings or frames not attached to each other by means of any rigid frame; total length from the centre of the plane of the hoop, ring or frame to the extremity of the net, or between the 2 hoops, rings or frames, not exceeding 1 metre; mesh not less than 13 mm.

49 Hand-hauled prawn net

- (1) It is lawful to use a hand-hauled net for taking prawns in the waters specified in the Table to this clause if the net complies with the

Clause 49	Fisheries Management (General) Regulation 2002
Part 3	Fishing gear

description as set out in relation to those waters in that Table and the following conditions are complied with:

- (a) the net is not staked or set, or joined or placed together with any other net,
 - (b) the net is continuously and manually propelled and not used as a stationary net,
 - (c) the net is not attached to a hauling line.
- (2) It is also lawful to use a hand-hauled net to take other fish (other than a prohibited size class of fish) that are taken by the net when it is being lawfully used for taking prawns.
- (3) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a hand-hauled prawn net.

Fisheries Management (General) Regulation 2002

Clause 50

Fishing gear

Part 3

Table Hand-hauled prawn net

- 1 (a) *Waters*—Any waters (other than inland waters).
 (b) *Description of net*—Total length not exceeding 6 metres; mesh throughout not less than 30 mm nor more than 36 mm.

50 Push or scissors net (prawns)

- (1) It is lawful to use a push or scissors net for taking prawns in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the net is used only as a hand implement and is not staked or set, or joined or placed together with any other net,
 - (b) the net is continuously propelled and not used as a stationary net,
 - (c) the net is operated only by 1 person without assistance from any other person,
 - (d) only 1 net is used by a person at any one time.
- (2) It is also lawful to use a push or scissors net to take other fish (other than a prohibited size class of fish) that are taken by the net when it is being lawfully used for taking prawns.
- (3) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a push or scissors net (prawns).

Table Push or scissors net (prawns)

- 1 (a) *Waters*—Any waters (other than inland waters).
 (b) *Description of net*—Net attached to a scissors-type frame; length of lead or bottom line between the lower extremities of the poles not exceeding 2.75 metres; mesh not less than 30 mm nor more than 36 mm.

51 Dip or scoop net (prawns)

- (1) It is lawful to use a dip or scoop net for taking prawns in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:

Clause 52 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

-
- (a) the net is used as a hand implement only and not staked or set, or joined or placed together with any other net,
 - (b) only 1 net is used by a person at any one time.
- (2) It is also lawful to use a dip or scoop net to take other fish that are taken by the net when it is being lawfully used for taking prawns.
 - (3) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a dip or scoop net (prawns).

Table Dip or scoop net (prawns)

- 1 (a) *Waters*—Any waters (other than inland waters).
- (b) *Description of net*—Net attached to a frame, hoop or ring not exceeding 0.6 metre in its greatest diameter, with a handle of not more than 1.2 metres in length, with a total length from the centre of the plane of the frame, hoop or ring to the extremity of the net not exceeding 1.25 metres; mesh not less than 20 mm.

52 Hand-hauled yabby net

- (1) It is lawful to use a hand-hauled net for taking freshwater crayfish (of the species commonly known as the yabby) in the waters specified in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
 - (a) the net is used as a hand implement only and not staked or set, or joined or placed together with any other net,
 - (b) the net is continuously and manually propelled and not used as a stationary net,
 - (c) the net is operated by 1 person only (with the assistance of no more than 1 other person).
- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a hand-hauled yabby net.

Fisheries Management (General) Regulation 2002

Clause 53

Fishing gear

Part 3

Table Hand-hauled yabby net

- 1 (a) *Waters*—Inland waters, being ground tanks, bore drains or lagoons.
 (b) *Description of net*—Not exceeding 6 metres; mesh throughout not more than 40 mm; used with or without hauling lines or poles.

53 Landing net

- (1) It is lawful to use a landing net for taking fish (other than prawns) in the waters set out in the Table to this clause if the net complies with the description as set out in relation to those waters in that Table and the following condition is complied with:

The net is used only as an ancillary aid to a hand-line or rod.

- (2) For the purposes of this Regulation or any other instrument under the Act, a net described in this clause may be referred to as a landing net.

Table Landing net

- 1 (a) *Waters*—Any waters.
 (b) *Description of net*—Net consisting of a hoop or ring not exceeding 0.6 metre in its greatest diameter and which is attached to netting having mesh not less than 25 mm.

Division 5 General provisions relating to lawful use of nets

54 Relaying of hauling lines prohibited

- (1) For the purposes of this Part, it is unlawful for a person, in the hauling of any net in any waters:
- (a) to relay the hauling lines, or either of them, from the point at which the casting of the net was commenced and finished, or
- (b) to adopt any means for extending the depth or length of a haul so as to embrace in the haul any area not included in the haul when the net and both hauling lines were first cast.
- (2) Subclause (1) applies whether or not the net is cast from the shore, a sand bar, a boat or from any device or thing or from any place.

Clause 55 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

55 Joining of nets

- (1) For the purposes of this Part, it is unlawful for a person to use in any waters 2 or more nets joined together for the purpose of taking fish.
- (2) Subclause (1) does not apply if the nets:
 - (a) are of a class specified in the Table to this clause, and
 - (b) when joined (in the waters specified in that Table) do not exceed the permitted number or length as set out in relation to those waters in that Table.
- (3) If lawfully joined, meshing nets used in the Clarence River must be operated from no fewer than 2 boats, by no fewer than 2 commercial fishers and only by the method known as bullringing (that is, casting the net in a circle, then immediately splashing the water in the vicinity, then immediately picking up the net, the whole to be completed as a continuous operation).
- (4) For the purposes of this Part, it is unlawful for a person to use in any waters 2 or more nets for the purpose of taking fish, being nets that are joined or placed together side by side (either on the cork line or otherwise) in such a manner that the effective mesh or meshes of those combined nets are reduced to a size less than the minimum mesh or meshes described as lawful under this Part.

Table Meshing net

- | | |
|---|--|
| 1 | (a) <i>Waters</i> —Clarence River. |
| | (b) <i>Permitted number and length of nets</i> —Not more than 2 meshing nets may be joined and the total length of the joined nets must not exceed 1,450 metres. |

56 Illegally reducing mesh size of nets

- (1) For the purposes of this Part, it is unlawful for a person to use a net:
 - (a) in which any meshes are wholly or partly covered, or
 - (b) in which any string, rope, wire, cord, netting or other material is fixed to any meshes, or
 - (c) in which any meshes (or any bars) are twisted,
 in any manner so as to reduce the effective mesh size of the meshes to less than that specified under this Part as lawful.
- (2) Despite this clause, a person may attach a chafing piece to the cod-end of an otter trawl net (prawns) if:

Fisheries Management (General) Regulation 2002

Clause 57

Fishing gear

Part 3

-
- (a) the width of the chafing piece does not exceed half the effective operating diameter of the cod-end, and
 - (b) the chafing piece is hung along the cod-end and is not attached in any manner to the cod-end other than at the top, and
 - (c) the mesh of the chafing piece is not less than 80 mm.

57 Monofilament and certain multi-strand nets prohibited

For the purposes of this Part, it is unlawful for a person to use a net any mesh of which is constructed of synthetic material that comprises less than 7 strands.

58 Method of dragging or drawing nets

For the purposes of this Part, it is unlawful for any person to drag or draw ashore any net containing fish in such a way or to such a distance from the water as to prevent prohibited size fish from escaping through the meshes or by the wings of the net into the water, or to allow such prohibited size fish to remain on the shore.

Division 6 Lawful traps

Note. Under section 24 of the Act it is an offence for a person to use a trap for taking any fish unless its use by the person for taking those fish is declared by the regulations to be a lawful use of the trap.

59 Fish trap

- (1) It is lawful for a commercial fisher to use a trap for taking fish (other than rock lobsters) in the waters specified in the Table to this clause if the trap complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
 - (a) the fish trap is not set or used unless its position is indicated by a buoy which:
 - (i) is moored so as to be positioned above the trap, and
 - (ii) has a diameter above the water of not less than 150 mm, and
 - (iii) has a weight of not less than 500 gm suspended not less than 5 metres under the float so that no rope is floating on the surface of the water, and

Clause 60 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

-
- (iv) displays “LFB” followed by the licence number of the boat used to set the trap and “F” at the end of that number, in clearly visible letters and figures which are not less than 50 mm in height and are of a colour which contrasts with that of the buoy,
 - (b) the trap is not set or used in such a manner as to impede the free passage of fish on either or any side of the trap or in such a manner that any 2 traps are closer than 5 metres apart,
 - (c) the commercial fisher does not set or use in any waters (other than ocean waters and sea beaches) more than 10 fish traps at any one time,
 - (d) the trap is not set or used unless it is secured or weighted so that the trap rests on the seabed.
- (2) For the purposes of this Regulation or any other instrument under the Act, a trap referred to in this clause may be referred to as a fish trap.

Table Fish trap

- | | |
|---|---|
| 1 | <ul style="list-style-type: none"> (a) <i>Waters</i>—Any waters (other than inland waters or ocean waters). (b) <i>Description of trap</i>—Not exceeding 2 metres in length, 1.5 metres in width and 1 metre in depth; consisting of mesh (having a measurement from one plain wire to the opposite plain wire of not less than 50 mm); having an entrance funnel or funnels other than in the top; having at least 1 panel in a side or top of not less than 30 cm long by 30 cm wide consisting of galvanised wire. |
| 2 | <ul style="list-style-type: none"> (a) <i>Waters</i>—Ocean waters. (b) <i>Description of trap</i>—Not exceeding 2 metres in length, 2 metres in width and 2 metres in depth; consisting of mesh (having a measurement from one plain wire to the opposite plain wire of not less than 50 mm). |

60 Lobster trap

- (1) It is lawful for a person to use a trap for taking lobster in the waters specified in the Table to this clause if the trap complies with the description set out in relation to those waters in that Table and the conditions referred to in subclause (2) are complied with.

Fisheries Management (General) Regulation 2002

Clause 60

Fishing gear

Part 3

-
- (2) The following conditions must be complied with:
- (a) the lobster trap is not set or used unless its position is indicated by a buoy which:
 - (i) is moored so as to be positioned above the trap, and
 - (ii) has a diameter above the water of not less than 100 mm, and
 - (iii) has a weight of not less than 50 gm suspended not less than 1.5 metres under the float so that no rope is floating on the surface of the water, and
 - (iv) displays “L” followed by the name of the person who set the trap, in clearly visible letters which are not less than 50 mm in height and are of a colour which contrasts with that of the buoy,
 - (b) a person does not set or use more than 1 lobster trap at any one time.
- (3) This clause does not apply to or in respect of a commercial fisher who is taking rock lobster (that is, fish of the species *Jasus verreauxi*, *Jasus edwardsii*, *Panulirus longipes* and *Panulirus ornatus*) for sale.
- Note.** The specifications for lobster traps used by commercial fishers are set out in the Lobster Share Management Plan (see *Fisheries Management (Lobster Share Management Plan) Regulation 2000*).
- (4) For the purposes of this Regulation or any other instrument under the Act, a trap referred to in this clause may be referred to as a lobster trap.

Table Lobster trap

- | | |
|---|---|
| 1 | <ol style="list-style-type: none"> (a) <i>Waters</i>—Any waters (other than inland waters and any waters more than 10 metres deep (contour)). (b) <i>Description of trap</i>—Consists of a rectangular base or floor not exceeding 1.2 metres by 1.2 metres (or a circular base not exceeding 1.2 metres in diameter); has 1, 2 or 3 rectangular unobstructed escape gaps (constructed of rigid material) fitted in the trap with at least 1 escape gap being not less than 57 mm by 500 mm, 2 escape gaps each being not less than 57 mm by 250 mm or 3 escape gaps each being not less than 57 mm by 200 mm and so that no part of any escape gap is more than 12 cm above the floor of the trap. |
|---|---|

Clause 61 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

61 Crab trap

- (1) It is lawful to use a trap for taking crabs in the waters specified in the Table to this clause if the trap complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the crab trap is not set or used unless its position is indicated by a buoy which:
 - (i) is moored so as to be positioned above the trap, and
 - (ii) has a diameter above the water of not less than 100 mm, and
 - (iii) has a weight of not less than 50 gm suspended not less than 1 metre under the float so that no rope is floating on the surface of the water, and
 - (iv) in the case of a trap used by a commercial fisher—displays “LFB” followed by the licence number of the boat used to set the trap and “C” at the end of that number, in clearly visible letters and figures which are not less than 50 mm in height and are of a colour which contrasts with that of the buoy, and
 - (v) in the case of any other trap—displays the words “CRAB TRAP” followed by the name of the person who set the trap, in clearly visible letters which are not less than 50 mm in height and are of a colour which contrasts with that of the buoy,
 - (b) the trap is not set or used in such a manner as to impede the free passage of fish on either or any side of the trap or in such a manner that any 2 traps are closer than 3 metres apart,
 - (c) a commercial fisher does not set or use in any waters (other than the waters of Wallis Lake and Port Stephens Broadwater specified in the Table to this clause) more than 10 crab traps at any one time,
 - (d) a commercial fisher does not set or use in the waters of Wallis Lake and Port Stephens Broadwater specified in the Table to this clause more than 20 crab traps at any one time,
 - (e) a person (other than a commercial fisher) does not set or use more than 1 crab trap at any one time,
 - (f) the crab trap is not made of entanglement material.

Fisheries Management (General) Regulation 2002

Clause 61

Fishing gear

Part 3

- (2) For the purposes of this Regulation or any other instrument under the Act, a trap described in this clause may be referred to as a crab trap.

Table Crab trap

- 1 (a) *Waters*—That part of Wallis Lake included within the following boundaries: commencing at a post marked “FD” situated at the high water mark of Pipers Bay (located by a line bearing 186 degrees from an electricity pole numbered 14808 situated at the eastern end of Pipers Bay Drive Forster) then bounded by a line bearing 217 degrees to a second post marked “FD” situated at the high water mark on the southern side of Big Island, then to a third post marked “FD” situated at the high water mark of Wallis Island, bearing 245 degrees from the second post, then southerly, westerly and northerly along the high water mark of Wallis Island to a jetty located on the western side of Wallis Island, then westerly along the length of the jetty to its end, then to a fourth post marked “FD”, situated at the high water mark on the foreshore of Coomba Park, bearing 246 degrees and 30 minutes from the end of the jetty, then generally southerly, easterly and northerly by the high water mark of Wallis Lake to the point of commencement.
- (b) *Description of trap*—Not exceeding 1.2 metres in length, 1 metre in width and 0.5 metre in depth (or has a diameter not exceeding 1.6 metres at the top or bottom); consisting of mesh not less than 50 mm; having not more than 4 entrance funnels none of which are on the top of the trap (excluding any access doors for removing crabs from the trap or baiting the trap).

Clause 62 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

-
- 2 (a) *Waters*—That part of Port Stephens Broadwater commencing at Nelson Head then along the high water mark to Mud Point then by a line drawn south west intersecting the northern extremity of Bull Island to the high water mark at Lemon Tree Passage then along the high water mark to Tanilba Point then by a line drawn in a north westerly direction to Cockleshell Point then along the high water mark to Carcair Point then by a line drawn to the eastern most point of Wirrung Island then to Tahlee Point then along the high water mark to Baromee Point then by a line drawn in an easterly direction to Fame Point then by a line drawn in an easterly direction to Oringall Point then in an easterly direction to the southern most point of Corrie Island then in an easterly direction to Barnes Rocks then by a line drawn in a south easterly direction to the point of commencement.
- (b) *Description of trap*—Not exceeding 1.2 metres in length, 1 metre in width and 0.5 metre in depth (or has a diameter not exceeding 1.6 metres at the top or bottom); consisting of mesh not less than 50 mm; having not more than 4 entrance funnels none of which are on the top of the trap (excluding any access doors for removing crabs from the trap or baiting the trap).
- 3 (a) *Waters*—Any other waters (except inland and ocean waters).
- (b) *Description of trap*—Not exceeding 1.2 metres in length, 1 metre in width and 0.5 metre in depth (or has a diameter not exceeding 1.6 metres at the top or bottom); consisting of mesh not less than 50 mm; having not more than 4 entrance funnels none of which are on the top of the trap (excluding any access doors for removing crabs from the trap or baiting the trap).

62 Bait trap

- (1) It is lawful to use a trap for the taking of bait in any waters (other than inland waters) if the trap complies with the description as set out in the Table to this clause and a person (other than a commercial fisher) does not set or use more than 1 bait trap at any one time.
- (2) For the purpose of this Regulation or any other instrument under the Act, a trap referred to in this clause may be referred to as a bait trap.

Table Bait trap

Description of trap—Not exceeding 450 mm in length and 350 mm in diameter with any entrance funnel not exceeding 60 mm in diameter.

Fisheries Management (General) Regulation 2002

Clause 63

Fishing gear

Part 3

63 Yabby trap

- (1) It is lawful to use a trap for taking freshwater crayfish (of the species commonly known as the yabby) in the waters specified in the Table to this clause if the trap complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) a commercial fisher does not:
 - (i) set or use more than 50 yabby traps at any one time in Lake Victoria, Talpee Lake, Yanga Lake, Lake Benanee, Dry Lake, Lake Cargelligo, Lake Cowal, Lake Poon Boon, Lake Genoe, Lake Cawndilla, Lake Menindee, Lake Panamaroo, and all waters west of the Darling River, or
 - (ii) set or use more than 25 yabby traps at any one time in any other inland waters,
 - (b) a person (other than a commercial fisher) does not set or use more than 5 yabby traps at any one time,
 - (c) the position of a yabby trap is indicated by a buoy or stake above water level to which is attached the name of the person using the trap.
- (2) For the purposes of this Regulation or any other instrument under the Act, a trap referred to in this clause may be referred to as a yabby trap.

Table Yabby trap

- | | |
|---|--|
| 1 | (a) <i>Waters</i> —Inland waters. |
| | (b) <i>Description of trap</i> —Not exceeding 1 metre in length, 0.6 metre in width and 0.3 metre in depth; constructed of netting or mesh not less than 13 mm; has entrance funnels which are not more than 90 mm in width at the narrowest point measured on any axis. |

64 Shrimp trap

- (1) It is lawful to use a trap for taking freshwater shrimp in the waters specified in the Table to this clause if the trap complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) A person does not set or use more than 1 shrimp trap at any one time.

Clause 65 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

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- (b) The shrimp trap must have attached to it a tag of not less than 80 mm by 45 mm with the name of the person using the trap marked on it.
- (2) For the purposes of this Regulation or any other instrument under the Act, a trap referred to in this clause may be referred to as a shrimp trap.

Table Shrimp trap

- 1 (a) *Waters*—Inland waters.
- (b) *Description of trap*—Not exceeding 0.6 metre in length, 0.5 metre in width and 0.5 metre in depth; constructed of netting or mesh not greater than 13 mm; has entrance funnels which are not more than 35 mm in width at the narrowest point measured on any axis.

65 Eel trap

- (1) It is lawful for a commercial fisher to use a trap for taking eels in the waters specified in the Table to this clause if the trap complies with the description as set out in relation to those waters in that Table and the following conditions are complied with:
- (a) the eel trap is not set or used unless its position is indicated by a buoy which:
- (i) is moored so as to be positioned above the trap, and
 - (ii) has a diameter above the water of not less than 100 mm, and
 - (iii) has a weight of not less than 50 gm suspended not less than 1 metre under the float so that no rope is floating on the surface of the water, and
 - (iv) displays “LFB” followed by the licence number of the boat used to set the trap and “E” at the end of that number, in clearly visible letters and figures which are not less than 50 mm in height and are of a colour which contrasts with that of the buoy,
- (b) the commercial fisher does not set or use more than 10 eel traps at any one time.
- (2) For the purposes of this Regulation or any other instrument under the Act, a trap referred to in this clause may be referred to as an eel trap.

Fisheries Management (General) Regulation 2002

Clause 66

Fishing gear

Part 3

Table Eel trap

- 1 (a) *Waters*—Any waters (other than inland waters, ocean waters or sea beaches).
- (b) *Description of trap*—Not exceeding 2 metres in length, 0.5 metre in width and 0.5 metre in depth or not exceeding 1 metre in length, 1 metre in width and 0.5 metre in depth; consists of mesh not less than 20 mm diagonal nor more than 40 mm diagonal; has an entrance funnel not exceeding 100 mm.

Division 7 Miscellaneous**66 Set lines and hand held lines**

- (1) A person (other than a commercial fisher) must not for the purpose of taking or attempting to take fish in any waters (other than inland waters):
- set, use or lift more than 4 hand held lines, or
 - set, use or lift any hand held line with more than 3 hooks or 3 gangs of hooks attached or with more than 3 treble hooks attached to a lure, or
 - set, use or lift any hand held line with a gang of hooks which comprises more than 5 hooks attached.

Maximum penalty: 100 penalty units.

- (2) Subclause (1) (b) does not apply to a person who, for the purpose of taking or attempting to take fish in any ocean waters or estuarine waters, sets, uses or lifts not more than 1 hand held line with not more than 6 hooks attached, if:
- a lure is fixed to each hook, and
 - the line, when being used for the purpose of taking or attempting to take fish, is not left unattended and is used only by the method of jigging.
- (3) A commercial fisher must not for the purpose of taking or attempting to take fish in any ocean waters or estuarine waters:
- set, use or lift more than 10 set lines, or
 - set, use or lift any set line with more than 6 hooks attached.

Maximum penalty: 100 penalty units.

Clause 67 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

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- (4) Subclause (3) does not apply to ocean waters more than 3 nautical miles from coastal baselines.
- (5) Subclause (3) (b) does not apply to a commercial fisher who, for the purpose of taking shark only, in ocean waters south of a line drawn due east from the northern point of the entrance to the Moruya River, sets, uses or lifts a line with more than 6 hooks attached to it if each such hook is not smaller than 9/0.
- (6) A person must not for the purpose of taking fish (other than Atlantic salmon or trout) set, use or lift in any inland waters a set line or hand held line except as permitted by the following:
- (a) in the case of waters flowing generally in a westerly direction in or away from the Great Dividing Range—up to 4 set lines each with no more than 1 hook attached and 1 hand held line with no more than 2 hooks attached or 3 treble hooks attached to a lure are permitted,
 - (b) in the case of waters flowing generally in an easterly direction in or away from the Great Dividing Range—up to 2 hand held lines each with no more than 2 hooks attached or 3 treble hooks attached to a lure are permitted but no set lines are permitted,
 - (c) in the case of the backed up waters of any dam or impoundment—up to 2 hand held lines each with no more than 2 hooks attached or 3 treble hooks attached to a lure are permitted but no set lines are permitted.

Maximum penalty: 100 penalty units.

- (7) In this clause:

gang of hooks means a group of hooks, each of which is attached to, and in direct contact with, at least 1 other of those hooks.

hand held line means a rod and line or handline.

Note. Section 25 of the Act also makes it an offence for a person to be in possession of any fishing gear in, on or adjacent to any waters if the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under the Act.

67 Leaving hand held line unattended

- (1) A person who is taking or attempting to take fish from any inland waters using a hand held line must not leave that line unattended unless that person remains within 10 metres of the hand held line

Fisheries Management (General) Regulation 2002

Clause 68

Fishing gear

Part 3

while it is unattended and the hand held line is within that person's line of sight.

Maximum penalty: 50 penalty units.

- (2) In this clause, *hand held line* means a rod and line or handline.

68 Drift lines

- (1) A commercial fisher must not, for the purpose of taking fish in any waters (other than inland waters), set, use or lift a drift line to which is attached:

- (a) more than 1 hook unless each hook is part of a gang of hooks, or
- (b) more than 1 gang of hooks, or
- (c) a gang of hooks which comprises more than 5 hooks, or
- (d) another drift line.

Maximum penalty: 100 penalty units.

- (2) A commercial fisher must not, for the purpose of taking fish in any waters (other than inland waters), set, use or lift more than 30 drift lines.

Maximum penalty: 100 penalty units.

- (3) A commercial fisher must not, for the purpose of taking fish in any inland waters, set, use or lift a drift line.

Maximum penalty: 100 penalty units.

- (4) A person (other than a commercial fisher) must not, for the purpose of taking fish in any waters, set, use or lift a drift line.

Maximum penalty: 100 penalty units.

- (5) In this clause:

drift line means a line which is attached to a float, buoy or similar device, not being a float, buoy or device which is:

- (a) held in the hand or attached to fishing gear held in the hand, or
- (b) secured in any other manner which prevents it from drifting or floating freely.

Clause 69 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

gang of hooks means a group of hooks, each of which is attached to, and in direct contact with, at least 1 other of those hooks.

Note. Section 25 of the Act also makes it an offence for a person to be in possession of any fishing gear in, on or adjacent to any waters if the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under the Act.

69 Identification of set fishing gear

- (1) A person must not, in or on any waters, place or set any net or other fishing gear, or use or lift any set net or other set fishing gear, unless the net or gear is identified in accordance with subclause (2) or (3).

Maximum penalty: 50 penalty units.

- (2) The net or gear must be identified by having securely attached to a part of the net or gear which is at or above water level a tag with dimensions of at least 80 mm by 25 mm on which are legibly and durably displayed in capital letters the person's name and:

- (a) if the person is the holder of a commercial fishing licence or a boat licence under Division 2 of Part 4 of the Act:
- (i) the number indicated on the fishing licence as the number of the licence, or
 - (ii) the number indicated on the fishing licence as the file number of the licence, or
 - (iii) the letters "LFB" followed by the number indicated on the boat licence as the number of the licence, or
- (b) in any other case—the person's residential address or boat registration number.

- (3) The net or gear must be identified by having securely attached to a part of the net or gear which is ordinarily at or above water level such an identification tag as may be supplied by the Director from time to time.

- (4) This clause does not apply to any net or other fishing gear which is required by this Regulation to be identified in another manner.

70 Scuba diving

- (1) A person must not, while using any apparatus capable of supplying air to facilitate breathing underwater, take or attempt to take fish by any method.

Maximum penalty: 100 penalty units.

Fisheries Management (General) Regulation 2002

Clause 71

Fishing gear

Part 3

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- (2) Subclause (1) does not apply to a person who takes or attempts to take:
- (a) for the purpose of sale—abalone, sea urchin or turban snail in compliance with the requirements of the Act and this Regulation and (in the case of abalone) the *Fisheries Management (Abalone Share Management Plan) Regulation 2000*, or
 - (b) any fish while using a snorkel, or
 - (c) scallops, or
 - (d) sea urchin.

71 Spear guns

- (1) A person must not:
- (a) use a spear gun in inland waters for the purpose of taking fish, or
 - (b) use a spear gun for the purpose of taking fish in any of the waters described in Schedule 4, or
 - (c) use a spear gun aided by lights in any waters for the purpose of taking fish.

Maximum penalty: 50 penalty units.

- (2) A person must not take or attempt to take any fish in any waters by means of a spear gun which is fitted with an explosive device.

Maximum penalty: 100 penalty units.

- (3) In this clause, *spear gun* includes a spear, bow and arrow or other similar device.

Note. Section 25 of the Act also makes it an offence for a person to be in possession of any fishing gear in, on or adjacent to any waters if the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under the Act.

72 Firearms

- (1) A person must not take or attempt to take any fish in any waters by means of a firearm.

Maximum penalty: 50 penalty units.

- (2) It is not an offence under this clause for a commercial fisher to use a firearm to kill or attempt to kill shark or other fish lawfully taken by means of fishing gear (other than a firearm).

Clause 73 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

- (3) In this clause, *firearm* does not include a spear gun (within the meaning of clause 71).

73 Taking of rock lobster

- (1) A person must not take or attempt to take rock lobster by any method other than by hand picking (whether or not while wearing a glove).

Maximum penalty: 25 penalty units.

- (2) Subclause (1) does not apply to a person who uses a trap for taking or attempting to take rock lobster if the use of the trap by that person for that purpose is, but for this clause, lawful.

74 Taking of yabby, worms, pipis etc

- (1) A person must not take or attempt to take any yabby (pink nippers), squirt worms, blood worms, beachworms, pipis or any other intertidal invertebrate from a rock platform by any method other than by use of a single blade knife with a blade longer than it is wide, or from any other place by any method other than by use of:

- (a) a pump or similar device having a barrel or cylinder with a diameter of not more than 85 mm, or
- (b) a tube or cylinder (whether or not fitted with a cap at one end) with a length of not more than 250 mm and a diameter of not more than 85 mm, or
- (c) a single blade knife with a blade longer than it is wide, or
- (d) a spade or fork (except in a seagrass bed, mangrove or saltmarsh area or for the taking of pipis), or
- (e) pliers.

Maximum penalty: 25 penalty units.

- (2) Subclause (1) does not prevent a person from taking or attempting to take any fish by the method of hand picking (whether or not while wearing a glove).

75 Taking of shellfish by means of a dredge or similar device

- (1) A person, other than a commercial fisher, must not take or attempt to take shellfish by means of a dredge or similar device.

Maximum penalty: 100 penalty units.

Fisheries Management (General) Regulation 2002

Clause 76

Fishing gear

Part 3

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- (2) A commercial fisher must not take or attempt to take shellfish by means of a dredge or similar device from any waters (other than ocean waters) unless the person is authorised to do so by an aquaculture permit or by a permit under section 37 (Defence—special permits for research or other authorised purposes) of the Act.

Maximum penalty: 100 penalty units.

- (3) A commercial fisher must not take or attempt to take shellfish by means of a dredge if the overall width of the dredge (or the overall width of any combined dredges joined together) exceeds 3.5 metres.

Maximum penalty: 100 penalty units.

- (4) A commercial fisher must not take or attempt to take shellfish by means of more than 1 dredge or similar device, or more than one combination of dredges or similar devices, from a boat at any one time.

Maximum penalty: 100 penalty units.

76 Jagging or foul hooking of fish

- (1) In this clause, *jagging* means the use of any device or instrument that is intended to hook fish otherwise than through the mouth.

- (2) A person must not take or attempt to take fish by the method of jagging.

Maximum penalty: 25 penalty units.

- (3) Nothing in this clause prevents the use of a gaff as an auxiliary to the taking of fish (other than trout) after the fish has been hooked.

77 Taking of Atlantic salmon or trout

- (1) A person must not take or attempt to take Atlantic salmon or trout from any waters (other than the backed up waters of a dam or an impoundment) by any method other than by the use of a single rod and line with not more than 2 hooks attached or with not more than 3 treble hooks, or 3 double hooks, attached to a lure.

Maximum penalty: 50 penalty units.

- (2) A person must not take or attempt to take Atlantic salmon or trout from the backed up waters of a dam or an impoundment by any method other than by the use of not more than 2 rods and lines, each

Clause 78 Fisheries Management (General) Regulation 2002

Part 3 Fishing gear

with not more than 2 hooks attached or with not more than 3 treble hooks, or 3 double hooks, attached to a lure.

Maximum penalty: 50 penalty units.

- (3) A person must not use a light for the purpose of taking Atlantic salmon or trout.

Maximum penalty: 50 penalty units.

- (4) It is not an offence under this clause for a person to use a landing net as an auxiliary to the taking of Atlantic salmon or trout after the salmon or trout has been hooked.

78 Taking of groper

A person must not take or attempt to take in any waters blue, brown or red groper by any method other than by the use of a rod and line or a handline.

Maximum penalty: 100 penalty units.

79 Restrictions on the sale of commercial nets

- (1) A person must not sell a commercial net to another person unless the person is satisfied that the other person:

- (a) is the holder of a commercial fishing licence, or
- (b) is the holder of a permit under this clause.

Maximum penalty: 100 penalty units.

- (2) A person who sells a commercial net to another person must make a record of the sale containing the following information:

- (a) the date of the sale, and
- (b) a description of the net sold, together with the registration number (if any), and
- (c) the licence or permit number of the person to whom the net was sold.

Maximum penalty: 100 penalty units.

- (3) A person who sells a commercial net to another person must retain the record referred to in subclause (2) for 5 years after the net was sold and must, during that 5 year period, produce the record when requested to do so by a fisheries officer.

Maximum penalty: 100 penalty units.

Fisheries Management (General) Regulation 2002

Clause 79

Fishing gear

Part 3

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- (4) The Director may, on application, issue a permit to a person authorising the person to buy commercial nets.
 - (5) A person who is engaged in the business of selling commercial nets to commercial fishers is entitled to a permit under this clause.
 - (6) For the purpose of this clause:
 - (a) a net is a commercial net unless it is a net which may be lawfully used by a person who is not a commercial fisher in all waters or in any particular waters, and
 - (b) a reference to a person is a reference to a person within New South Wales.

Clause 80 Fisheries Management (General) Regulation 2002

Part 4 Priorities in the use of fishing gear

Part 4 Priorities in the use of fishing gear

Division 1 Offences

80 Offence of fishing contrary to rights of priority

A person must not attempt to take fish contrary to the rights of priority determined by this Part after being directed not to do so:

- (a) by a fisheries officer, or
- (b) by another fisher (who is using or intending to use a net or other fishing gear in accordance with this Part).

Maximum penalty: 50 penalty units.

81 Commercial fishers must use fishing gear in accordance with this Part

A commercial fisher must not use a net or other fishing gear in a manner that is contrary to the provisions of this Part.

Maximum penalty: 50 penalty units.

Division 2 Rights of priority between commercial and recreational fishers on recognised fishing grounds

82 Rights of priority between fishers on recognised fishing grounds

- (1) A fisher using a net or other fishing gear on a particular part of a recognised fishing ground has priority over any other fisher who intends to take fish on that part of the same recognised fishing ground and arrives at that part of the ground at a later time.
- (2) If the fisher who arrives at a later time is a commercial fisher exercising an entitlement to use a net at a particular part of a recognised fishing ground and at a particular time in accordance with a determination of rights of priority under this Part, that fisher has priority over the fisher who arrived first (despite subclause (1)).
- (3) This clause does not apply if the fishers are commercial fishers and the rights of priority between them are otherwise determined in accordance with this Part.

Fisheries Management (General) Regulation 2002

Clause 83

Priorities in the use of fishing gear

Part 4

Division 3 Rights of priority between commercial fishers in the use of nets generally

83 Priority between commercial fishers using nets in inland waters

The rights of priority in the setting of nets in inland waters between commercial fishers working on the same recognised fishing ground are determined as follows:

- (a) the first turn belongs to the commercial fisher who, with lawful nets, first arrives at the point on the bank from which it is intended that those nets are to be set,
- (b) the next turn is to belong to the commercial fisher who next so arrives, and so on,
- (c) during a commercial fisher's turn, the fisher is to have the exclusive right of setting nets in so much of the inland waters as equals in metres measured from the point referred to in paragraph (a), the product of the number of nets the fisher is using or intends to use and 100, subject to the following:
 - (i) the point from which that measurement is made must be not less than 100 metres from any net set by and belonging to any other commercial fisher,
 - (ii) the maximum length of the inland waters measured as aforesaid to which any fisher is entitled in accordance with this clause is to be 1,600 metres,
 - (iii) no fisher is to be entitled to set any net within 100 metres of any net set by any other commercial fisher in accordance with this clause,
- (d) a turn must not exceed 24 hours at the expiration of which the nets must, if another commercial fisher is awaiting that fisher's turn with lawful nets ready to set, be removed from the water on to the bank,
- (e) no commercial fisher is to have a second turn until all the other commercial fishers on the fishing ground with lawful nets have had their first turn.

84 Priority between commercial fishers using nets in waters other than inland waters

- (1) The rights of priority in the hauling of nets in all waters (other than inland waters) between commercial fishers working on the same recognised fishing ground are determined as follows:

Clause 85 Fisheries Management (General) Regulation 2002

Part 4 Priorities in the use of fishing gear

- (a) the first turn belongs to the crew which first arrives at a recognised fishing ground with a licensed boat and with a registered lawful net laid ready for use,
 - (b) the next turn belongs to the crew which next arrives with such a boat and net, and so on,
 - (c) a turn concludes when a crew has shot its net, but in no case extends over a longer period than 24 hours as against any other crew ready and waiting to haul,
 - (d) during its turn a crew has exclusive rights to so much of a recognised fishing ground as equals in length, measured along the foreshore from the point where the boat belonging to that crew is or was positioned or lying, the total length of the net in use or intended to be used, in the direction in which the net is shot or laid ready for shooting,
 - (e) a crew is not entitled to a second turn until all other crews on the fishing ground have had their first turn,
 - (f) the crew of a boat waiting for a turn automatically forfeits its turn if any member of that crew acts as a member of the crew of a boat making a haul,
 - (g) 2 or more turns may be taken simultaneously if the waters being fished admit of double-banking, provided that no net is shot around an inner net within 7.5 metres of the cork line of that inner net without the consent of the crew operating that inner net.
- (2) In this clause, *crew* means such number of commercial fishers as are required to operate effectively the net in use or intended to be used from the boat from which it is being or will be used.
 - (3) The local fisheries officer is to determine the number referred to in subclause (2) and that determination is final and conclusive.

85 Minimum crew number for hauling to sea beaches

- (1) The rights of priority in the hauling of nets to or from a sea beach between commercial fishers working the same recognised fishing ground is to be determined in accordance with clause 84, subject to the modifications in this clause.
- (2) A crew that has the minimum crew number (or more) has priority over any crew consisting of less than the minimum crew number (regardless of which crew arrived first at the recognised fishing ground).

Fisheries Management (General) Regulation 2002

Clause 86

Priorities in the use of fishing gear

Part 4

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- (3) A crew that has less than the minimum crew number is not entitled to a turn while another crew that has the minimum crew number (or more) is ready and waiting to haul (whether or not that other crew has already had a turn).
- (4) The minimum crew number is:
- (a) 4 ocean haul fishers (at least one of whom is a skipper), or
 - (b) in respect of particular waters, such greater number of ocean haul fishers as is determined by the local fisheries officer as being required to effectively operate the net in use or intended to be used.
- (5) If all crews ready and waiting to haul have less than the minimum crew number, the rights of priority between them is to be determined in accordance with clause 84.
- (6) In this clause:

ocean haul fisher means a commercial fisher who is authorised (by endorsement on his or her commercial fishing licence) to take fish for sale in the ocean hauling restricted fishery.

skipper means an ocean haul fisher who holds a commercial fishing licence with a class A endorsement in respect of the ocean hauling restricted fishery (as referred to in clause 257).

86 Division does not apply where rights of priority otherwise determined

This Division does not apply to the use of a net in accordance with a right of priority determined under Division 4 or 5 of this Part.

Division 4 Rights of priority between commercial fishers using prawn nets (set pocket)

87 General

- (1) This Division applies to the use of prawn nets (set pocket) in the Myall River, the Clarence River and any other waters in which they may lawfully be used.
- (2) In this Division:

crew means a crew consisting only of commercial fishers.

fishing period means the period commencing on one full moon and ending on the next full moon.

Clause 88	Fisheries Management (General) Regulation 2002
Part 4	Priorities in the use of fishing gear

position means a position at which prawn nets may be set.

prawn net means a prawn net (set pocket).

priority determination means a determination under this Division of the rights of priority (in the use of prawn nets) between commercial fishers working in waters to which this Division applies.

- (3) In relation to a determination by lot under this Division, a reference to a slip or ball bearing the name of a commercial fisher or crew includes a reference to a slip or ball which otherwise identifies a commercial fisher or crew.

88 Preliminary determination by local fisheries officer

- (1) A local fisheries officer for waters to which this Division applies is to determine from time to time in respect of each fishing period:
- the number of prawn nets which may be used in the waters which the fisheries officer supervises, and
 - the positions at which those nets may be set, and
 - whether, in those waters, or at a particular position, a prawn net is to be operated by 1 commercial fisher or by a crew consisting of a specified number of commercial fishers, and
 - the setting times for the prawn nets.
- (2) A determination by a local fisheries officer under this clause is final and conclusive.
- (3) The local fisheries officer must, at least 24 hours before 4 pm on the day before the day of the full moon on which the fishing period commences, post in a conspicuous place a notice of the local fisheries officer's determination under this clause.
- (4) In relation to the Clarence River, the local fisheries officer is not required to give notice of the determination as referred to in subclause (3) but must announce the determination immediately before a determination by lot (as referred to in clause 94) is made.

89 Fishers to give notice of intention to use prawn nets

- (1) Any commercial fisher or crew intending to use a prawn net during a fishing period must, not later than 4 pm on the day before the full moon on which the fishing period commences, give written notice of that intention to the local fisheries officer for the waters in which it is intended to use the net.

Fisheries Management (General) Regulation 2002

Clause 90

Priorities in the use of fishing gear

Part 4

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- (2) The notice must:
 - (a) contain the name of the commercial fisher, or of all the crew members, intending to use a prawn net, and
 - (b) nominate one or more licensed fishing boats to be used in connection with the net (which must be owned by the commercial fisher, the crew or a member of the crew).
 - (3) If it is intended to use the net in the Myall River, the notice must also nominate a position at which the commercial fisher or crew intends to set the net. Only one position may be nominated.

90 Special provisions relating to Myall River

- (1) This clause applies only to the Myall River.
- (2) The local fisheries officer must, at or around 8 am on the day of each full moon, post in a conspicuous place a notice setting out particulars of each commercial fisher who, or crew which, has notified an intention to set a prawn net during the fishing period and of the position nominated.
- (3) Any such commercial fisher or crew may, between 9 am and 10 am on the same day, apply in writing to the local fisheries officer to alter the notice previously given by the fisher or crew by nominating a different position at which the fisher's or crew's net is to be set.
- (4) A commercial fisher or crew may make only one application under subclause (3) in each fishing period.

91 Notice of priority determination

- (1) The local fisheries officer must, before 8 am on the day of the full moon on which a fishing period commences, post in a conspicuous place a notice stating the place at which a priority determination is to be made.
- (2) The priority determination is to be conducted by the local fisheries officer at the place specified in the notice as soon as practicable after 10 am on the same day.

Clause 92 Fisheries Management (General) Regulation 2002

Part 4 Priorities in the use of fishing gear

- (3) A commercial fisher or crew is not entitled to be admitted to the priority determination unless the local fisheries officer is satisfied:
 - (a) that the commercial fisher who, or every member of the crew which, gave notice under clause 89 is personally present at the priority determination, and
 - (b) that the commercial fisher or crew, or a member of that crew, is the owner of the licensed fishing boat or boats nominated in that notice and of a registered prawn net.
- (4) Subclause (3) (a) does not apply to a person who has been granted an exemption by the Director from the requirement to be personally present which is in force at the time of the priority determination.

92 Local fisheries officer to make priority determination

- (1) A priority determination for waters to which this Division applies is to be made by a local fisheries officer in the manner set out in clauses 93 to 95 (as appropriate).
- (2) The determination of the fisheries officer is final and conclusive.
- (3) The priority determination is to be conducted at the place specified in the notice given by the local fisheries officer under clause 89 as soon as practicable after 10 am on the day of the full moon on which the relevant fishing period commences.

93 Manner of determining rights of priority—Myall River

- (1) The rights of priority (in the use of prawn nets) between commercial fishers working in the Myall River is to be determined in each fishing period in accordance with this clause.
- (2) If, in the notices referred to in clause 89, a position has been nominated by only one commercial fisher or crew, that fisher or crew is entitled to use a prawn net at that position on any night during the relevant fishing period.
- (3) In respect of each position which has been nominated by more than 1 fisher or crew, the local fisheries officer is to conduct a determination by lot for the position as follows:
 - (a) by placing in a receptacle slips or balls bearing the names of the commercial fishers who, and crews which, are entitled to be admitted to the determination and who nominated the position,

Fisheries Management (General) Regulation 2002

Clause 94

Priorities in the use of fishing gear

Part 4

-
- (b) by thoroughly mixing the slips or balls and drawing them from the receptacle one by one in respect of each night on which a net may be used in the fishing period.
 - (4) The commercial fisher who, or crew which, is named on the slip or ball so drawn is the commercial fisher or crew entitled to use a prawn net at the position on the night in respect of which the draw was made.
 - (5) If there are more nights during the fishing period than there are commercial fishers who, or crews which, have nominated that position, the order in which those fishers or crews may set a net at that position on the nights that have not already been allocated in the period is to be the same order as determined under this clause.

94 Manner of determining rights of priority—Clarence River

- (1) The rights of priority (in the use of prawn nets) between commercial fishers working in the Clarence River is to be determined in each fishing period in accordance with this clause.
- (2) The local fisheries officer is to conduct a determination by lot as follows:
 - (a) by placing in a receptacle slips or balls bearing the names of the commercial fishers who, and crews which, are entitled to be admitted to the determination,
 - (b) by thoroughly mixing the slips or balls and drawing them one by one from the receptacle,
 - (c) by allowing each commercial fisher or crew whose name appears on each successive slip or ball to choose a position in the order in which the slips or balls are drawn.
- (3) A commercial fisher who is allowed to choose a position may join with some other commercial fisher (being a fisher whose name is in the draw but has not been drawn) to form a crew, in which case:
 - (a) the crew so formed may then choose a position (but only if the member of the crew who owns the boat nominated in the notice to the local fisheries officer (referred to in clause 89) is the fisher whose name was drawn), and
 - (b) each member of the crew so formed must then be excluded from the draw.
- (4) The commercial fisher or crew who is allowed to choose a position is the fisher or crew entitled to use a prawn net at the position chosen on each night during the fishing period.

Clause 95 Fisheries Management (General) Regulation 2002

Part 4 Priorities in the use of fishing gear

- (5) The priority determination is complete when all available positions have been chosen.

95 Manner of determining rights of priority—other waters

- (1) The rights of priority (in the use of prawn nets) between commercial fishers working in waters (other than the Myall River or the Clarence River) is to be determined in each fishing period in accordance with this clause.
- (2) The local fisheries officer is to conduct a determination by lot as follows:
- (a) by placing in a receptacle slips or balls bearing the names of the commercial fishers who, and crews which, are entitled to be admitted to the determination,
 - (b) by thoroughly mixing the balls or slips and drawing from the receptacle one by one, in respect of each night on which nets may be set, a number of slips or balls corresponding with the number of nets which may be set on that night,
 - (c) by allowing each commercial fisher or crew whose name appears on each successive slip or ball to choose a position in the order in which the slips or balls are drawn.
- (3) The fisher or crew who is allowed to choose a position is the fisher or crew entitled to use a prawn net at that position on the night in respect of which the draw was made.
- (4) The slips or balls naming the fishers or crews who have already drawn a position on any night must not be returned to the receptacle until every fisher or crew entitled to be admitted to the determination by lot has been allotted a position.
- (5) If, after all slips or balls have been drawn from the receptacle, any positions on any nights have not been allotted, all slips or balls must be returned to the receptacle. The determination is to continue either by allotment of the remaining positions in the manner set out in this clause or (at the discretion of the local fisheries officer) on a rotation basis after each fisher or crew has been allotted a position.

96 Manner of making priority determination—general

- (1) For the purposes of the priority determination, a commercial fisher is not entitled:
- (a) to choose more than one position, or

Fisheries Management (General) Regulation 2002

Clause 97

Priorities in the use of fishing gear

Part 4

-
- (b) to choose a position at which prawn nets may only be set by a crew, or
 - (c) to choose a position which has already been chosen.
- (2) For the purposes of the priority determination, a crew is not entitled:
- (a) to choose more than one position, or
 - (b) to choose a position at which prawn nets may only be set by a commercial fisher, or
 - (c) to choose a position which has already been chosen.
- (3) For the purposes of any priority determination, no person may be regarded as being:
- (a) both a commercial fisher and a member of a crew, or
 - (b) a member of more than one crew.

97 Notice of result of priority determination

- (1) As soon as practicable after making a priority determination under this Division, the local fisheries officer must post in a conspicuous place at the place at which the determination was made a notice of the result of the priority determination.
- (2) The notice must specify in respect of each night during the fishing period on which prawn nets may be used:
 - (a) the positions at which prawn nets may be set, and
 - (b) the commercial fishers and crews who may set prawn nets at those positions.

98 General conditions of use of prawn net following priority determination

- (1) A person must not use a prawn net at any position or on any night unless that person is entitled to use the net at that position and on that night under this Division.
- (2) In the case of a commercial fisher or any crew entitled (pursuant to a priority determination) to use a prawn net on any night the following conditions apply:
 - (a) if the fisher or crew has not arrived to set the net on the relevant night by the time of sunset or by the time the tide has commenced to ebb (whichever is determined by the local fisheries officer as the appropriate time) the turn of that fisher

Clause 99	Fisheries Management (General) Regulation 2002
Part 4	Priorities in the use of fishing gear

or crew is forfeited (that is, the fisher or crew is not entitled to set the net on that night),

- (b) the turn of the fisher or crew endures for the duration of the outgoing tide, or from sunset to sunrise, or as determined by the local fisheries officer,
 - (c) the fisher or crew must use on that night only one of the licensed fishing boats which were nominated for the purpose in the notice to the local fisheries officer under clause 89.
- (3) If a fisher or crew contravenes subclause (2) (c), the turn of the fisher or crew is forfeited for that night (that is, the fisher or crew is not entitled to use a prawn net on that night). Nothing in this clause excuses a fisher for any liability under clause 81 for a contravention of this Part.

Note. Clause 81 makes it an offence to use a net or other fishing gear in a manner that is contrary to the provisions of this Part.

99 Prawn nets to be operated only by commercial fisher or crew

- (1) If a commercial fisher is entitled (pursuant to a priority determination) to use a prawn net on any night, that fisher must set the net and must operate the net, and no other person must be allowed in the boat with the fisher.
- (2) However, if a local fisheries officer is satisfied that weather conditions on any night make it dangerous for one person to manage a boat and tend a net in or on any waters, the fisheries officer may allow a commercial fisher to obtain the assistance of another commercial fisher for the sole purpose of managing the boat. That other commercial fisher must not be permitted to set or assist in setting, or operate or assist in operating, the net.
- (3) If a crew is entitled (pursuant to a priority determination) to use a prawn net on any night, that crew must set the net and must operate the net, and no other person must be allowed in the boat with the crew and no substitution of crew members is to be permitted.
- (4) If a commercial fisher or crew contravenes this clause, the local fisheries officer is to declare the turn of the fisher or crew to be forfeited for a period of 24 hours and the fisher or crew is not entitled to use a prawn net during that period.
- (5) This clause does not prevent a commercial fisher or crew entitled to use a prawn net in the Clarence River from receiving assistance in setting the net or in the operation of the net from another commercial fisher or crew if:

Fisheries Management (General) Regulation 2002

Clause 100

Priorities in the use of fishing gear

Part 4

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- (a) the commercial fisher or crew providing the assistance is entitled to use a prawn net pursuant to that priority determination, and
 - (b) the commercial fisher or crew providing the assistance does not use a prawn net in another position on the same night.

Division 5 Rights of priority between fishers using prawn running nets

100 General

- (1) This Division applies to the use of prawn running nets in the following waters:
 - (a) Coila Lake,
 - (b) Brou Lake,
 - (c) Corunna Lake,
 - (d) Tilba Lake,
 - (e) Durras Water,
 - (f) Cuttagee Lake,
 - (g) Middle Lake,
 - (h) Wallaga Lake.

- (2) In this Division:

appropriate fishing gear means a licensed fishing boat and a registered prawn running net which may be lawfully used to take prawns in waters to which this Division applies.

crew means a crew consisting of one or more commercial fishers, being the number of fishers required to operate a prawn running net.

determination date means 1 October in any year.

fishing period means the period commencing at 6 pm on the determination date and ending at sunrise on the next determination date.

net site means a position in waters to which this Division applies at which prawn running nets may be set.

101 Preliminary determination by local fisheries officer

- (1) A local fisheries officer for waters to which this Division applies is to determine from time to time in respect of each fishing period:

Clause 102 Fisheries Management (General) Regulation 2002

Part 4 Priorities in the use of fishing gear

- (a) the number of prawn running nets which may be set in the waters which the fisheries officer supervises, and
 - (b) the positions at which those nets may be set, and
 - (c) the number of commercial fishers (which may be one or more) required to operate a prawn running net in those waters.
- (2) The determination by the local fisheries officer is final and conclusive.
 - (3) The local fisheries officer must post in a conspicuous place a notice of the local fisheries officer's determination under this clause.

102 Priority between fishers using prawn running nets

- (1) The rights of priority (in the setting of prawn running nets) between fishers working on waters to which this Division applies are to be determined as follows:
 - (a) the crew which is the first crew to arrive at a net site (with the appropriate fishing gear) on or after 6 pm on the determination date is the crew entitled to set a prawn running net at that site for the remainder of the fishing period,
 - (b) if two or more crews arrive simultaneously and before any other crew at a net site (with the appropriate fishing gear) on or after 6 pm on the determination date, the local fisheries officer is to determine which crew is entitled to set a prawn running net at that site for the remainder of the fishing period and that determination is final and conclusive.
- (2) For the purposes of subclause (1), a crew is taken to have arrived at a net site only when all the members of the crew are personally present at the site.

103 General conditions relating to use of prawn running net following priority determination

- (1) A person must not set a prawn running net at a net site unless that person is entitled to set the net at that site under this Division.
- (2) If all members of the crew entitled to set a prawn running net at a net site are not personally in attendance at that site (with the appropriate fishing gear) by 7 pm (daylight saving time) or 6 pm (Eastern Standard Time) on any night, any other crew with all members personally in attendance at the site (and having the appropriate fishing gear) is entitled to set a prawn running net at the site on that night.

Fisheries Management (General) Regulation 2002

Clause 104

Priorities in the use of fishing gear

Part 4

Division 6 Miscellaneous

104 This Part does not affect the conditions relating to lawful use of a net (Part 3)

Nothing in this Part affects the conditions relating to the lawful use of a net or other fishing gear in any waters contained in Part 3.

105 Exemption from requirement to be personally present

- (1) The Director may exempt a commercial fisher from being personally present in any circumstances the Director considers appropriate and, in particular, on any occasion where the fisher's presence is required by this Part, during a period required for travel to or from or attendance at:
 - (a) a meeting of a Management Advisory Committee in the capacity of member of that Committee, or
 - (b) a conference or deputation with the Director or the Director's nominee on business of such a Committee, or
 - (c) a meeting of officers of the NSW Fishing Industry Training Committee Limited in the capacity of officer of that corporation.
- (2) A commercial fisher who, personally or as a member of a crew, is entitled to use a net on any night pursuant to this Part and who has been granted an exemption under this clause which is in force on that night, may nominate to the local fisheries officer the name of another commercial fisher to act as the first-mentioned fisher's representative on that night. That nominated commercial fisher is, for the purposes of this Part, to be taken to be the first-mentioned fisher.
- (3) A commercial fisher representing another commercial fisher in accordance with subclause (2) does not in any way prejudice the first-mentioned fisher's own entitlements under this Part.

Clause 106 Fisheries Management (General) Regulation 2002

Part 5 Miscellaneous provisions relating to fisheries management

Part 5 Miscellaneous provisions relating to fisheries management

Division 1 Recognised fishing grounds

106 Identification of recognised fishing grounds

- (1) The Minister may, from time to time, prepare or cause to be prepared maps identifying areas as recognised fishing grounds.
- (2) Any such map may identify any area which, in the opinion of the Minister, is an area of the sea or other public water land used historically for net fishing and which is used regularly or intermittently for net fishing by commercial fishers.
- (3) Any such map is to be deposited at the head office of NSW Fisheries and at an office of NSW Fisheries located in the region of the recognised fishing ground.
- (4) The Minister may alter or replace any such map from time to time.
- (5) For the purposes of section 39 (4) of the Act, a recognised fishing ground (within the meaning of that section) is an area identified (in accordance with this clause) as a recognised fishing ground on a map deposited at an office of NSW Fisheries.

Division 2 Interference with fishing activities and set fishing gear

107 Interference with fishing activities

A person must not drive, ride or use a boat, surfboard, water ski, aquaplane or similar equipment:

- (a) in any waters on a recognised fishing ground in such a manner and in such proximity to the ground as is likely to cause the dispersal of schooling fish, or fish travelling in a school or shoal, or
- (b) in any waters in a manner that unreasonably interferes with the operations of a commercial fisher lawfully fishing in those waters or waiting to carry on lawful fishing in those waters,

after being directed to cease doing so by a fisheries officer.

Maximum penalty: 50 penalty units.

Fisheries Management (General) Regulation 2002

Clause 108

Miscellaneous provisions relating to fisheries management

Part 5

108 Interference with set fishing gear

- (1) A person must not, without reasonable excuse, interfere with any set fishing gear.

Maximum penalty: 50 penalty units.

- (2) This clause does not apply to a fisheries officer, the person who owns the fishing gear or any other person acting in accordance with this Regulation.

109 Lawful interference with set fishing gear

- (1) Any commercial fisher may, for the purpose of using a net on any recognised fishing ground, remove any unattended fishing gear which has been so set as to obstruct the use of the fisher's net.

- (2) A fisher who so removes set fishing gear is not, if he or she exercises reasonable care in the removal, liable for any damage to the fishing gear occasioned by such removal.

- (3) This clause does not allow a commercial fisher to remove a net that has been lawfully set in the waters concerned.

110 Wilfully disturbing fish

A person must not, without reasonable excuse, wilfully disturb fish in the vicinity of a commercial fisher using a net or other fishing gear on a recognised fishing ground.

Maximum penalty: 50 penalty units.

111 Interference with commercial fisher using line

- (1) A commercial fisher who is lawfully using a line (other than a drift line) in any waters for the purpose of taking fish may require any person intending to fish in those waters (in such close proximity to the fisher as gives the fisher reasonable cause to apprehend that fish in the fisher's vicinity will be frightened or that the fisher's line will be fouled) to move to another position on those waters (not more than 50 metres distant) that the fisher indicates.

- (2) A person must not, without reasonable excuse, refuse or neglect to comply with such a requirement.

Maximum penalty: 25 penalty units.

Clause 112 Fisheries Management (General) Regulation 2002

Part 5 Miscellaneous provisions relating to fisheries management

- (3) In this clause, *drift line* means a line which is attached to a float, buoy or similar device, not being a float, buoy or device which is:
- (a) held in the hand or attached to fishing gear held in the hand, or
 - (b) secured in any other manner which prevents it from drifting or floating freely.

Division 3 Use of explosives, electrical devices and other dangerous substances

112 Dynamite and explosive substances

- (1) A person must not use dynamite or any other explosive substance to take or destroy fish in any waters.
Maximum penalty: 100 penalty units.
- (2) A person must not explode any dynamite or other explosive substance in any waters.
Maximum penalty: 100 penalty units.
- (3) It is a defence to a prosecution for an offence under subclause (2) if the person charged proves that the acts constituting the alleged offence were done:
- (a) in pursuance of a permit issued by the Director, and
 - (b) in accordance with the conditions of the permit.

113 Permit to use explosives

- (1) An application for a permit to use dynamite or any other explosive substance in any waters is to be made in writing to the Director in the form approved by the Director.
- (2) A permit may extend to:
- (a) explosives generally or to a particular explosive specified in the permit, or
 - (b) waters generally or to the particular waters specified in the permit.
- (3) A permit remains in force, unless sooner cancelled or suspended by the Director, until the expiration of the period specified in the permit.
- (4) A permit is subject to such conditions as are attached to the permit by the Director.

Fisheries Management (General) Regulation 2002

Clause 114

Miscellaneous provisions relating to fisheries management

Part 5

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- (5) The fee for a permit under this clause, or for the renewal of such a permit, is \$107.

114 Use of electrical devices prohibited in all waters

- (1) A person must not use an electrical device for the purpose of taking fish in any waters.
Maximum penalty: 100 penalty units.
- (2) It is a defence to a prosecution for an offence under subclause (1) if the person charged proves that the acts constituting the alleged offence were done:
- (a) in pursuance of a permit issued by the Director, and
 - (b) in accordance with the conditions of the permit.

115 Permit to use electrical devices

- (1) An application for a permit to use an electrical device in any waters is to be made in writing to the Director in the form approved by the Director.
- (2) A permit may extend to:
- (a) electrical devices generally or to a particular device specified in the permit, or
 - (b) waters generally or to the particular waters specified in the permit.
- (3) A permit remains in force, unless sooner cancelled or suspended by the Director, until the expiration of the period specified in the permit.
- (4) A permit is subject to such conditions as are attached to the permit by the Director.
- (5) The fee for a permit under this clause, or for the renewal of such a permit, is \$107.

Division 4 Measurement of fishing gear

116 Measuring length and mesh size of nets

- (1) For the purposes of testing or determining its length, a net must be measured along the cork line or head line of the net from the first hanging to the last hanging.

Clause 116 Fisheries Management (General) Regulation 2002

Part 5 Miscellaneous provisions relating to fisheries management

- (2) For the purposes of testing or determining the mesh size of a net that is described in Part 3 as being lawful (other than a net specified in the Table to this clause or a beach safety meshing net referred to in clause 42) the device described in subclause (3) must be used in the manner set out in subclause (4).
- (3) The device (which must be verified in such manner as the Director may determine) must comply with the following description:
 - (a) it consists of a fixed member (in the form of a metal cylinder) in which is fitted a sliding member weighing 225 grams,
 - (b) both members have attached a fixed knife edge,
 - (c) when in use, the device is suspended from, or held by, the metal clip at the top of the fixed member,
 - (d) a scale and a point is marked on both members.
- (4) The device must be used in the following manner:
 - (a) the net (the mesh size of which is to be measured) must be soaked in water for a period of not less than 5 minutes, after which both knife edges must be inserted in a mesh of the net, so that the mesh is supported by the knife edge of the fixed member at a knot while the knife edge of the sliding member is supported by the mesh at the knot diagonally opposite,
 - (b) the mesh being measured, when suspended as above, must hang in a plane parallel to the body of the device,
 - (c) the size of the mesh must then, without any unnecessary delay, be determined as the distance between the inside edges of the knots, as read from the scale on the sliding member, at a point indicated by a mark on the fixed member.
- (5) For the purposes of testing or determining the mesh size of a net specified in the Table to this clause, the device described in subclause (3) must be used in the manner set out in subclause (4) except that:
 - (a) the weight specified in relation to that net in that Table must be attached to the sliding member, and
 - (b) the net (the mesh size of which is to be measured) must be soaked in water for a period of not less than 10 minutes.
- (6) In testing or determining the mesh size of a knotless net (being a net in which the mesh is formed by the fusion or interweaving of two or more threads of the netting material) the same method must apply, except that the knife edges of the members must be inserted in a

Fisheries Management (General) Regulation 2002

Clause 117

Miscellaneous provisions relating to fisheries management

Part 5

mesh at diagonally opposite corners and the measurements taken from the inside of those corners.

- (7) The mesh size specified in respect of a lawful net in Part 3 is taken to be the mesh size, when determined in the manner and by the use of the measuring device, described in this clause.

Table

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| 1 | <p>(a) <i>Nets</i>—Hauling net (general purpose), otter trawl net (prawns), drum net, prawn net (hauling), prawn net (set pocket), garfish net (hauling), prawn running net, seine net (prawns), hand-hauled prawn net.</p> <p>(b) <i>Weight attached</i>—1,585 grams.</p> |
| 2 | <p>(a) <i>Nets</i>—Otter trawl net (fish), danish seine trawl net (fish).</p> <p>(b) <i>Weight attached</i>—2,945 grams.</p> |

Division 5 Recreational fishing fee

117 Definition

In this Division:

fishing fee means a fishing fee payable under Division 4A of Part 2 of the Act.

118 Exempt bodies of water

- (1) Any body of water comprising the backed up waters of a dam or impoundment located on private land is exempt for the purposes of section 34C (2) (g) of the Act if the surface area of the body of water (at full capacity) does not exceed 2 hectares.
- (2) For the purposes of this clause, a body of water is located on private land if the land on which it is located is not public water land.

119 Exempt fishers

- (1) For the purposes of section 34C (2) (h) of the Act, the following recreational fishers are exempt from paying a fishing fee:
- (a) a fisher who holds a current pensioner concession card,
- (b) a fisher who is of or over the age of 18 years of age and is only assisting a fisher under 18 years of age to take fish by means of a single dip or scoop net (prawns),

Clause 120 Fisheries Management (General) Regulation 2002

Part 5 Miscellaneous provisions relating to fisheries management

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- (c) a fisher who is engaged in bait gathering, shore-based fishing or other activities ancillary to guided recreational charter fishing (within the meaning of clause 296), if:
- (i) a fishing fee exemption certificate under section 34I (3) (b) of the Act is already held in respect of the charter fishing boat, and
 - (ii) the fisher is in the immediate vicinity of the charter fishing boat.
- (2) It is a condition of an exemption referred to in subclause (1) (a) that, if required to do so by a fisheries officer, a person who claims such an exemption must produce his or her current pensioner concession card for the fisheries officer's inspection.
- (3) In this clause, *pensioner concession card* means a card known as a "pensioner concession card" and issued by Centrelink or the Commonwealth Department of Veterans' Affairs, or any other card approved by the Minister as being equivalent to that card.

120 Reductions in fishing fee for fishing in far north

For the purposes of section 34F of the Act, the amount of the fishing fee payable by a recreational fisher for fishing:

- (a) in the tidal waters of the Tweed River, upstream of a line joining the eastern extremities of the Tweed River Breakwaters to:
 - (i) Bray Park Weir on the Tweed River, and
 - (ii) Boat Harbour Bridge, Numinbah Road, on the Rous River, and
 - (iii) Scenic Drive Road Bridge on Duroby Creek, and
 - (iv) Scenic Drive Road Bridge on Bilambil Creek, and
 - (v) Robinson Road Bridge on Cobaki Creek, or
- (b) from the Tweed River Breakwaters, or
- (c) from the rocks and beach north of the Tweed River Breakwaters to the Queensland border, or
- (d) from the rocks and beach south of the Tweed River Breakwaters to the lighthouse at Fingal Head,

is reduced by 50 per cent of the fee otherwise payable.

Fisheries Management (General) Regulation 2002

Clause 121

Miscellaneous provisions relating to fisheries management

Part 5

121 Issue of replacement receipts

On payment of a fee of \$5, the Director may issue a replacement receipt for an official receipt issued under section 34G of the Act if satisfied that the original receipt is lost, damaged or destroyed.

122 Additional classes of persons to whom fishing fee exemption certificates may be issued

- (1) For the purposes of section 34I (3) (c) of the Act, the following persons are prescribed as classes of persons to whom fishing fee exemption certificates may be issued:
 - (a) an owner or lessee of private land on which there is a body of water comprising the backed up waters of a dam or impoundment, but only in relation to recreational fishing activities undertaken in those waters,
 - (b) a Local Aboriginal Land Council, but only in relation to traditional cultural fishing undertaken in tidal waters within its Local Aboriginal Land Council area or in State waters immediately east of that area:
 - (i) by Aboriginal persons whose names are included in the roll kept under the *Aboriginal Land Rights Act 1983* in respect of that Council, or
 - (ii) by Aboriginal persons who are in the company of an Aboriginal person referred to in subparagraph (i).
- (2) For the purposes of this clause, a body of water is located on private land if the land on which it is located is not public water land.

123 Fishing fee exemption certificates: period for which in force

- (1) Subject to this clause, a fishing fee exemption certificate under section 34I of the Act has effect for one year.
- (2) The Minister may issue an exemption certificate for a period determined by the Minister that is longer or shorter than one year.

124 Fishing fee exemption certificates: fees

- (1) For the purposes of section 34I (4) of the Act:
 - (a) the fee for a one year exemption certificate under section 34I (3) (a) of the Act that operates to exempt up to 4 persons at a time carrying out recreational fishing activities under supervision or guidance is \$100, and

Clause 125 Fisheries Management (General) Regulation 2002

Part 5 Miscellaneous provisions relating to fisheries management

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- (b) the fee for a one year exemption certificate under section 34I (3) (a) of the Act that operates to exempt up to 80 persons at a time carrying out recreational fishing activities under supervision or guidance on or from private land as part of a commercial tourism business operation is \$2,000, and
 - (c) the fee for a one year exemption certificate under section 34I (3) (b) of the Act that operates to exempt:
 - (i) up to 4 passengers at a time carrying out recreational fishing activities on a boat is \$100, or
 - (ii) between 5 and 9 passengers at a time carrying out recreational fishing activities on a boat is \$100, plus \$25 for the fifth and each additional passenger to be exempted, or
 - (iii) 10 or more passengers at a time carrying out recreational fishing activities on a boat is \$250.

Note. No fee is payable for an exemption certificate issued to a person referred to in clause 122.

- (2) Any fee for an exemption certificate under section 34I (3) (a) or (b) of the Act is reduced by 50 per cent if the activities to which the certificate relates take place only in waters referred to in clause 120.
- (3) If the Minister issues an exemption certificate under section 34I (3) (a) or (b) of the Act for a period that is longer or shorter than one year, the fee for the certificate is to be varied in proportion to the amount by which the period for which the certificate is issued differs from one year.
- (4) The fee for an exemption certificate must be paid before the certificate is issued.
- (5) An exemption certificate is to be in the form approved by the Minister and may be issued subject to such conditions as the Minister considers appropriate.

125 Amendment and cancellation of exemption certificates

- (1) The Minister may amend or cancel a fishing fee exemption certificate at any time by notice in writing to the holder of the certificate.
- (2) Without limiting subclause (1), the Minister may amend or cancel a fishing fee exemption certificate on the application of the holder of the certificate.

Fisheries Management (General) Regulation 2002

Clause 126

Miscellaneous provisions relating to fisheries management

Part 5

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- (3) The following fees are payable in respect of an amendment of an exemption certificate under subclause (2):
- (a) an application fee of \$10,
 - (b) a supplementary fee equivalent to the amount (if any) by which the fee payable for an exemption certificate in the form of the amended certificate exceeds the sum of all fees that had been paid for the certificate before the application was made.

Division 6 Acquisition of commercial fishing entitlements

126 Constitution of compensation review panel

- (1) For the purposes of section 34O (2) of the Act, a panel is to consist of 3 members appointed by the Minister, of whom:
- (a) one is to be a person who, in the opinion of the Minister, has expertise in valuation and is otherwise appropriately qualified to conduct the review (not being a person who is engaged in the administration of the Act or in commercial fishing), and
 - (b) one is to be a person who, in the opinion of the Minister, has extensive practical experience in the commercial fishing industry (not being a person who is engaged in the administration of the Act or a person who has a financial interest in the fishery to which the review relates), and
 - (c) one is to be an officer of NSW Fisheries.
- (2) The member referred to in subclause (1) (a) is to be the chairperson of the panel.
- (3) A decision supported by the majority of the members of a panel is the decision of the panel.
- (4) Subject to subclause (3), the procedure of the panel is to be determined by the Minister.

Division 7 Miscellaneous

127 Prohibited lures and baits

- (1) A person must not take or attempt to take any fish from inland waters with a lure or bait that is:
- (a) a live fin fish, or
 - (b) any fish or any part of a fish not native to the waters of New South Wales (other than dead carp), or

Clause 128 Fisheries Management (General) Regulation 2002

Part 5 Miscellaneous provisions relating to fisheries management

- (c) trout or salmon roe or any product containing trout or salmon roe.

Maximum penalty: 50 penalty units.

- (2) A person must not take or attempt to take salmon or trout with any lure or bait other than:
- (a) natural flies or insects, or their larvae, or
 - (b) worms, shrimps, yabbies or mussels, or
 - (c) artificial lures or baits, or
 - (d) plant matter.

Maximum penalty: 50 penalty units.

- (3) A person fishing in inland waters must, on the demand of a fisheries officer, produce to that officer the lure or bait being used by that person.

Maximum penalty: 50 penalty units.

128 Taking of octopus from rock platforms

- (1) A person must not take or attempt to take any octopus from any rock platform in ocean waters or the waters of Port Jackson.

Maximum penalty: 25 penalty units.

- (2) For the purposes of this clause, *Port Jackson* includes the Parramatta and Lane Cove Rivers and Middle Harbour and the waters of Port Jackson up to a line drawn between the easternmost point of Outer North Head and the easternmost point of South Head.

129 Shucking of intertidal invertebrates

- (1) A person must not shuck any intertidal invertebrate (other than abalone, rock lobster or turban snail) in or on or adjacent to any waters except for immediate bait use.

Maximum penalty: 25 penalty units.

- (2) A person must not shuck rock lobster or turban snail in or on or adjacent to any waters.

Maximum penalty: 25 penalty units.

Fisheries Management (General) Regulation 2002

Clause 130

Miscellaneous provisions relating to fisheries management

Part 5

130 Shucking of abalone

- (1) A commercial fisher who is authorised to take fish for sale in the abalone share management fishery must not shuck abalone at any place other than:
 - (a) a place approved for the purpose by the Director, or
 - (b) premises registered under the regulations made under the *Export Control Act 1982* of the Commonwealth for the preparation of abalone for export.
- (2) A person (other than a commercial fisher referred to in subclause (1)) must not shuck abalone in or on or adjacent to any waters.

Maximum penalty: 50 penalty units.

131 Mutilation of fish

- (1) A person must not mutilate any fish of a class specified in clause 9 (Prohibited size fish) in or on or adjacent to any waters in any manner other than by gutting or by removing the gills or scales.
Maximum penalty: 50 penalty units.
- (2) A person (other than a commercial fisher) does not commit an offence under subclause (1) if the person establishes that the person:
 - (a) mutilated the fish in the course of preparing the fish for immediate consumption, or
 - (b) mutilated the fish in the course of preparing the fish for immediate use as bait, or
 - (c) mutilated the fish at a place that is a fish cleaning facility or other place specifically provided or ordinarily used for the cleaning of fish, being a place that is not in or on any waters, or
 - (d) mutilated the fish in accordance with a permit issued by the Director.
- (3) A person must not deliver or consign for sale any fish of a class specified in clause 9 (Prohibited size fish) that has been mutilated in any manner other than by gutting or by removing the gills or scales.
Maximum penalty: 50 penalty units.
- (4) This clause does not apply to the delivery or consignment for sale of fish propagated, hatched or reared by the holder of an aquaculture permit under the authority of that permit or of any other fish that have already been lawfully sold.

Clause 132 Fisheries Management (General) Regulation 2002

Part 5 Miscellaneous provisions relating to fisheries management

132 Crayfish, rock lobsters, shovel-nosed lobsters and crabs carrying ova

- (1) A person must not take or sell or have in his or her possession a crayfish, a shovel-nosed lobster, a rock lobster or a crab, carrying ova externally.

Maximum penalty: 50 penalty units.

- (2) A person must not have in his or her possession a crayfish, a shovel-nosed lobster, a rock lobster or a crab, from which spawn or ova have been deliberately removed.

Maximum penalty: 50 penalty units.

- (3) In this clause, *shovel-nosed lobster* includes all species of bugs.

133 Sorting charge for fish

If, in the opinion of a fisheries officer, it is necessary to sort the whole or any part of a consignment of fish for sale for purposes of inspection because of the inclusion of fish which are prohibited size fish, protected fish or fish which it is unlawful to sell by or under the Act, a charge for sorting of \$10.40 per crate is payable by the owner of the fish to the Minister.

Fisheries Management (General) Regulation 2002

Clause 134

Commercial share management fisheries

Part 6

Part 6 Commercial share management fisheries

134 Persons prohibited from holding shares (section 49 (2) of the Act)

- (1) A foreign person or a foreign-owned body is prohibited from holding shares in a share management fishery.
- (2) A subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a foreign person or of a foreign-owned body is prohibited from holding shares in a share management fishery.
- (3) A person is prohibited from holding shares in a share management fishery if the Minister is satisfied that the person is holding the shares on behalf of, or for the benefit of, a person who is prohibited by this clause from holding shares in a share management fishery.
- (4) Shares in a share management fishery may not be issued by the Minister to a person who is prohibited by this clause from holding shares or be recorded in the Share Register.
- (5) The Minister is to cancel any shares held by a person prohibited by this clause from holding shares. However, the Minister may allow the person to dispose of the shares in accordance with Part 3 of the Act.
- (6) In this clause:

foreign person means a person other than:

- (a) an individual ordinarily resident in Australia (within the meaning of the *Foreign Acquisitions and Takeovers Act 1975* of the Commonwealth), or
- (b) a company or an exempt body (within the meaning of the *Corporations Act 2001* of the Commonwealth).

foreign-owned body means a body corporate that has a substantial foreign ownership.

- (7) For the purposes of this clause, a body corporate has a substantial foreign ownership if the Minister is satisfied that more than 20% of its total paid-up share capital is held by foreign persons or (if it does not have a share capital) that foreign persons are in a position to control more than 20% of the voting power in the body.

Clause 135 Fisheries Management (General) Regulation 2002

Part 6 Commercial share management fisheries

- (8) For the purposes of this clause, the Minister may have regard to any relevant provisions of the *Corporations Act 2001* of the Commonwealth for the purposes of determining whether a person has an interest in shares or voting power in a body corporate.

135 Determination of catch history

- (1) For the purposes of section 51 (4) of the Act, the following documents are prescribed:
- (a) a verified record of a commercial fishers' co-operative,
 - (b) a verified record relating to the income tax liability of a commercial fisher,
 - (c) a verified record of any fish processing company (whether a wholesaler or retailer).
- (2) In this clause, a reference to a verified record is a reference to an original record, or a copy of a record, audited by a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth) or that forms part of a record audited by a registered company auditor.

Note. This clause prescribes the documents which the Minister may have regard to in determining the catch history of a person (in addition to the records, kept by the Director, of fish taken by the person).

136 Nomination of commercial fisher by shareholder

- (1) A nomination under section 69 of the Act (a nomination by a shareholder of a commercial fisher to take fish on behalf of the shareholder in a share management fishery) is to be accompanied by a fee of \$321.
- (2) Until the commencement of the management plan for a fishery, only one commercial fisher may be nominated to take fish on behalf of the shareholder at any one time.
- (3) This clause ceases to have effect in respect of a share management fishery on the commencement of the management plan for the fishery.

137 Special endorsements to take fish in share management fishery

For the purposes of section 70 (5) of the Act, the fee payable for an endorsement to which section 70 applies (being an endorsement which authorises the taking of fish for sale in a share management fishery even though the commercial fisher is not entitled under Part 3 of the Act to have his or her licence endorsed) is \$107.

Fisheries Management (General) Regulation 2002

Clause 138

Commercial share management fisheries

Part 6

138 Transfers and other dealings in shares—general

- (1) For the purposes of section 71 (5) of the Act, before the commencement of the management plan for a fishery, section 71 of the Act applies to allow the transfer, assignment or transmittance of the shares of a person (*the shareholder*) in the fishery only if:
 - (a) all the shares of the shareholder in all fisheries are transferred, assigned or transmitted to one person (*the transferee*), and
 - (b) the transferee acquires the whole of the shareholder's fishing business (that is, licensed fishing boats, associated fishing gear and associated catch history) that the Director determines to be associated with the taking of fish in those fisheries and to be a separate and identifiable business.
- (2) A reference in this clause to a shareholder's catch history includes, in the case of a shareholder who is not a natural person, the catch history associated with the commercial fishing operations of that shareholder.
- (3) Nothing in this clause authorises the mortgaging of shares in a share management fishery before the commencement of the management plan for the fishery.

Note. Under section 54 (3) of the Act, a holder of shares in a limited access fishery is not entitled to have his or her licence endorsed to take fish in the limited access fishery (or to nominate another person to do so) if all the shares held by the person were acquired by dealings after the initial issue of shares in the fishery.

139 Forfeiture of shares for failure to pay certain contributions

- (1) For the purposes of section 75 (4) (b) of the Act, the Minister may order that the shares (or any of the shares) of a shareholder in a share management fishery be forfeited if the shareholder has failed to pay a community contribution or other amount due under Part 3 of the Act. However, the Minister is to order the forfeiture only of the number of shares that will be required, in the opinion of the Minister, to recover the amount due.
- (2) The Minister is not to order forfeiture of shares unless the Minister is satisfied that all reasonable steps have been taken to recover the amount due or the shareholder's whereabouts are unknown.
- (3) Following the sale of the forfeited shares, any part of the purchase price remaining after deduction of the amount of the community contribution or other amount due and the expenses reasonably incurred in connection with the sale is to be paid to the shareholder.

Clause 140 Fisheries Management (General) Regulation 2002

Part 6 Commercial share management fisheries

140 Making of appeals to Share Appeal Panel (section 84 of the Act)

- (1) An appeal to the Share Appeal Panel must be lodged within 60 days after the person making the appeal is notified of the result of his or her application for shares.
- (2) An appeal is to be made in a form approved by the Director and is to be accompanied by a lodgement fee of \$22 and a deposit of \$100.
- (3) The Director is to notify the person making the appeal of the receipt of his or her appeal.
- (4) On the determination of an appeal, the deposit in respect of the appeal is to be refunded only if the Share Appeal Panel directs that the deposit be refunded. The Share Appeal Panel may direct that the appeal deposit (or any part of that deposit) be refunded if the Panel is of the opinion that it is appropriate in the circumstances of the case because the appeal was wholly or mainly upheld.

141 Fee for registration of dealings in shares

- (1) For the purposes of section 91 (3) (d) of the Act:
 - (a) the prescribed fee in respect of an application for registration of a transaction that purports to have the effect of transferring, assigning or transmitting a share is \$161, and
 - (b) the prescribed fee in respect of an application for registration of a transaction that purports to have the effect of mortgaging or otherwise creating an interest in a share (other than a transaction referred to in paragraph (a)) is \$321.
- (2) This clause ceases to have effect in respect of a share management fishery on the commencement of the management plan for the fishery.

142 Fee for inspection of Share Register and registered documents

- (1) For the purposes of section 97 (1) of the Act:
 - (a) the prescribed fee for inspection of the Share Register is:
 - (i) in the case of an inspection that is conducted with the assistance of an officer of NSW Fisheries, \$10 for each entry inspected, and
 - (ii) in any other case, nil, and
 - (b) the prescribed fee for inspection of copies of the documents retained by the Director under section 91 of the Act is \$54 in relation to each document that is inspected.

Fisheries Management (General) Regulation 2002

Clause 142

Commercial share management fisheries

Part 6

- (2) In the case of an inspection of more than one entry in the Register or more than one document retained under section 91 of the Act, the Director may, having regard to the time taken by officers of NSW Fisheries to assist in the inspection, reduce the fee payable under this clause.

Clause 143 Fisheries Management (General) Regulation 2002

Part 7 Licensing and other commercial fisheries management

Part 7 Licensing and other commercial fisheries management

Division 1 Commercial fishing licences

143 Who may hold commercial fishing licence

- (1) For the purposes of section 103 (2) (c) of the Act, the following individuals are authorised to hold a commercial fishing licence:
 - (a) an individual who holds shares in a share management fishery on a provisional basis (under section 48 of the Act),
 - (b) an individual who satisfies the Minister that he or she (either alone or together with other individuals) owns the whole of a recognised fishing operation or that he or she is the nominated fisher of a person who owns the whole of a recognised fishing operation,
 - (c) an individual who satisfies the Minister that if a licence is not issued to the person an available fisheries resource would not be utilised and that the manner in which the individual proposes to utilise the fisheries resource will not threaten its sustainability and will not result in an inequitable allocation of the resource,
 - (d) an individual who satisfies the Minister that he or she requires the licence for the purpose of training a person who has purchased his or her fishing business,
 - (e) an individual who satisfies the Minister that he or she requires the licence for the purpose of training to become a commercial fisher,
 - (f) an individual who is authorised under any law of the Commonwealth to take fish for sale in the fishery known as the “Commonwealth tuna long line fishery” and who satisfies the Minister that he or she requires a commercial fishing licence in order to be able to use fishing gear lawfully to take bait,
 - (g) an individual who satisfies the Minister that he or she is eligible for a skipper’s endorsement or a conditional skipper’s endorsement in the ocean prawn trawl restricted fishery, but only if the licence for the fishing boat on which the individual is employed as a skipper has an endorsement from the Director of a kind known as “P1” or “P2”,

Fisheries Management (General) Regulation 2002

Clause 143

Licensing and other commercial fisheries management

Part 7

-
- (h) an individual who satisfies the Minister that he or she is eligible for an endorsement in the inland restricted fishery,
 - (i) an individual who satisfies the Minister that he or she is eligible for an endorsement in the sea urchin and turban shell restricted fishery,
 - (j) in the case of a Class 4 licence, an individual who is a resident of Lord Howe Island,
 - (k) in the case of a Class 5 licence, an individual who satisfies the Minister that he or she (either alone or together with other individuals) owns a fishing business and that:
 - (i) because of that fishing business, the individual would be entitled, if he or she held a Class 1, 2 or 3 commercial fishing licence, to an endorsement in a restricted fishery or a share management fishery, or would be likely to be entitled to such an endorsement, and
 - (ii) the individual requires the licence in order to be eligible to be elected as a member of a Management Advisory Committee and to vote in an election of members of a Management Advisory Committee.
- (2) If more than one individual owns a fishing business referred to in subclause (1) (k), only one of them may be issued with a Class 5 commercial fishing licence in respect of the business.
- (3) For the purposes of this clause, a **recognised fishing operation** is a fishing business that falls into any of the following categories:
- (a) the catch history associated with the business (as determined by the Director in accordance with this clause) exceeds 5 tonnes, or \$10,000 in value, in at least 2 years out of the years 1986 to 1990 (inclusive) and 1 year out of the years 1991 to 1993 (inclusive),
 - (b) at least one of the licensed fishing boats that form part of the business may lawfully be used to take fish in any one of the following fisheries:
 - (i) the ocean prawn trawl restricted fishery, but only if the licence for the fishing boat authorises the use of the boat for prawn trawling in offshore waters (within the meaning of clause 183) and has an endorsement from the Director of a kind known as “P1” or “P2”,
 - (ii) the fishery known as the “estuary prawn trawl fishery”,

Clause 144	Fisheries Management (General) Regulation 2002
Part 7	Licensing and other commercial fisheries management

-
- (iii) the fishery known as the “Commonwealth tuna long line fishery”,
 - (iv) the fishery known as the “south east trawl fishery” (but only if the quota for the taking of fish in that fishery has been imposed on the person).
- (4) For the purposes of this clause, *nominated fisher* means an individual nominated under clause 276 to take fish for sale in a restricted fishery.
- (5) The catch history associated with a fishing business is the historical takings of fish for sale by or in connection with a fishing business. The catch history is to be determined by the Director in such manner as the Director considers appropriate, having regard to the records, kept by the Director, of fish taken for sale by any person involved in the business, or of fish taken for sale by use of a licensed fishing boat operated by the business, or to a combination of both. If a fishing business is sold by a person, the catch history associated with that business is transferable only in accordance with guidelines issued by the Director from time to time.

144 Fee to accompany application for commercial fishing licence

For the purposes of section 104 (2) of the Act, the prescribed fee in respect of an application for a commercial fishing licence is:

- (a) in the case of an application for a Class 1, Class 2 or Class 3 licence—\$428, or
- (b) in the case of an application for a Class 4 or Class 5 licence—\$107.

145 Grounds for refusal to issue commercial fishing licence to otherwise eligible applicant

- (1) For the purposes of section 104 (3) of the Act, the Minister is authorised to refuse to issue a commercial fishing licence to an eligible applicant if:
- (a) the applicant has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (b) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or

Fisheries Management (General) Regulation 2002

Clause 146

Licensing and other commercial fisheries management

Part 7

-
- (c) the applicant has been convicted of an offence relating to an assault on a fisheries official, or
 - (d) the applicant has not paid any fee or contribution due and payable in connection with the issue of his or her licence, or
 - (e) the Minister is satisfied that the applicant has not demonstrated that he or she has the capacity or qualifications necessary to enable the individual to successfully engage in commercial fishing operations.
- (2) Subclause (1) (e) does not apply to an applicant who is eligible for a commercial fishing licence by virtue of clause 143 (1) (j) or (k).

146 Prescribed conditions of commercial fishing licence

- (1) For the purposes of section 104 (4) (a) of the Act the following conditions are prescribed:
- (a) any fish taken for sale or landed in New South Wales by a member of the unlicensed crew pursuant to the licence, while working under the supervision of the holder of the licence, must be sold by the holder of the licence,
 - (b) the holder of the licence must not engage any person as a member of the unlicensed crew unless the holder is satisfied that the person has the necessary skills, experience or capacity to participate successfully in fishing operations authorised by the licence,
 - (c) the holder of the licence must not use any unlicensed crew member on a boat being used by the licensee to take fish, unless the boat is being used as follows:
 - (i) to take fish from ocean waters (but not from the shore) by use of a trap, line, purse seine net or spanner crab net, or
 - (ii) to take prawns from estuary waters (but not from the shore) by use of a seine net (prawns), or
 - (iii) to take fish from any waters by use of an otter trawl net (fish), otter trawl net (prawns) or danish seine trawl net (fish), or
 - (iv) to take abalone in the abalone share management fishery in accordance with paragraph (d), or
 - (v) to take yabbies or carp in the inland restricted fishery in accordance with paragraph (e),

Clause 147 Fisheries Management (General) Regulation 2002

Part 7 Licensing and other commercial fisheries management

- (d) the holder of the licence, being a licence that is endorsed under the Act for the taking of abalone in the abalone share management fishery, must not use any unlicensed crew member on a boat being used by the licence holder for the taking of abalone from the fishery, unless the crew member is assisting the licence holder in the operation of the boat or other fishing equipment and is not taking abalone from the fishery on the licence holder's behalf,
 - (e) the holder of the licence must not use any unlicensed crew member on a boat being used by the licence holder to take yabbies or carp in the inland restricted fishery unless:
 - (i) if the boat is being used to take yabbies, the licence holder is using no more than one unlicensed crew member to assist in that purpose and the licence holder is authorised to take yabbies in the inland restricted fishery pursuant to a class A endorsement in the fishery, or
 - (ii) if the boat is being used to take carp, the licence holder is authorised to take carp in the inland restricted fishery pursuant to a class A, class B or class D endorsement in the fishery.
- (2) In this clause, a reference to an unlicensed crew member is a reference to a crew member who is not the holder of a commercial fishing licence.

Note. Additional licence conditions apply to endorsement holders in restricted fisheries (see Part 8) or share management fisheries (under the management plans for those fisheries).

147 Renewal of commercial fishing licence

- (1) The holder of a commercial fishing licence may apply in writing to the Minister for the renewal of his or her licence.
- (2) The application is to be accompanied by a fee of:
 - (a) in the case of an application for a Class 1, 2 or 3 licence—\$214, or
 - (b) in the case of an application for a Class 4 or Class 5 licence—\$107.

Fisheries Management (General) Regulation 2002

Clause 147

Licensing and other commercial fisheries management

Part 7

-
- (3) The Minister may refuse to renew the licence if:
- (a) the applicant has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (b) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) the applicant has been convicted of an offence relating to an assault on a fisheries official, or
 - (d) the applicant has, in the opinion of the Minister, contravened a condition of his or her licence or of an endorsement on that licence or of a permit issued to him or her under the Act, or
 - (e) the applicant has sold his or her licensed fishing boat or boats and the Minister is of the opinion that the applicant is not able to maintain a viable fishing operation because he or she has an insufficient number of licensed boats or catch history (as referred to in section 51 of the Act), or
 - (f) the application for renewal of the licence is received by the Minister more than 60 days after the date the licence would have expired (but for subclause (6)), or
 - (g) the applicant is not authorised, by or under section 103 (2) of the Act, to hold a commercial fishing licence, or
 - (h) the applicant has not paid any fee or contribution due and payable in connection with the renewal of his or her licence.
- (4) The Minister may renew a licence for a period of 1 year or such other period as is specified in the licence.
- (5) If an application is duly made for renewal of a commercial fishing licence and is received by the Minister before the expiration of the period in which it remains in force, and the licence is not renewed before the expiration of that period, the licence:
- (a) is taken to continue in force until the licence is renewed or the application for renewal is refused, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.

Clause 148	Fisheries Management (General) Regulation 2002
Part 7	Licensing and other commercial fisheries management

- (6) If an application for renewal of a commercial fishing licence is not received by the Minister before the expiration of the period in which it remains in force, the licence:
- (a) is taken to continue in force for 30 days after the date the licence would have expired (but for this subclause), or until the licence is renewed or the application for renewal is refused, whichever happens first, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.
- (7) If an application for renewal of a commercial fishing licence (other than a Class 4 or Class 5 licence) is received by the Minister more than 30 days after the date the licence would have expired (but for subclause (6)), an additional application fee of \$107 is payable.
- (8) An application for renewal of a commercial fishing licence (other than a Class 4 or Class 5 licence) received by the Minister more than 60 days after the date the licence would have expired (but for subclause (6)) may be treated as an application for the issue of a commercial fishing licence, but in such a case the total fee payable in respect of the application is the fee prescribed in respect of an application for the licence concerned under clause 144.

148 Grounds for suspension or cancellation of a licence

For the purposes of section 104 (4) (e) of the Act, the Minister may cancel or suspend a commercial fishing licence if:

- (a) the holder of the licence has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
- (b) the holder of the licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (c) the holder of the licence has been convicted of an offence relating to an assault on a fisheries official, or
- (d) the holder of the licence has, in the opinion of the Minister, contravened a condition of the licence or of an endorsement on that licence or of a permit issued to him or her under the Act, or
- (e) the holder of the licence has sold or disposed of the holder's licensed fishing boat or boats, or transferred the holder's right

Fisheries Management (General) Regulation 2002

Clause 149

Licensing and other commercial fisheries management

Part 7

to a fishing boat licence or licences, and the Minister is of the opinion that the holder is not able to maintain a viable fishing operation because the holder has an insufficient number of licensed boats or catch history (as referred to in section 51 of the Act), or

- (f) the holder of the licence made a statement in connection with the holder's application for the issue or renewal of the licence that was, in the opinion of the Minister, false or misleading in a material particular, or
- (g) the holder of the licence is not authorised, by or under section 103 (2) of the Act, to hold a commercial fishing licence.

149 Classes of commercial fishing licences

For the purposes of section 104 (5) of the Act, the following classes of licences are prescribed:

(a) **Class 1**

A Class 1 commercial fishing licence is a licence that was in force on the commencement of the Act (being a licence issued to an individual eligible for a licence under section 103 (2) (b) of the Act).

Note. The *Fisheries Management Act 1994 (the 1994 Act)* commenced on 16 January 1995. Clause 7 of Schedule 7 (Savings, transitional and other provisions) to the 1994 Act provides that a fishing licence issued to an individual under section 24C of the *Fisheries and Oyster Farms Act 1935* and in force immediately before the repeal of that section by the 1994 Act is taken to be a commercial fishing licence issued to that individual under the 1994 Act.

(b) **Class 2**

A Class 2 commercial fishing licence is a licence issued to an individual eligible for a licence under section 103 (2) (a) of the Act (relating to share management fisheries).

(c) **Class 3**

A Class 3 commercial fishing licence is a licence issued to an individual eligible for a licence by virtue of clause 143 (1) (a), (b), (c), (d), (e), (f), (g), (h) or (i).

(d) **Class 4**

A Class 4 commercial fishing licence may be issued to an individual eligible for a licence by virtue of clause 143 (1) (j).

Clause 150	Fisheries Management (General) Regulation 2002
Part 7	Licensing and other commercial fisheries management

(e) **Class 5**

A Class 5 commercial fishing licence is a licence issued to an individual eligible for a licence by virtue of clause 143 (1) (k).

150 Annual contribution to cost of research and to other industry costs

- (1) For the purposes of section 106 of the Act an annual contribution of \$332 is payable by the holder of a Class 1, Class 2, Class 3 or Class 5 commercial fishing licence for each year or part of a year in respect of which the commercial fishing licence is issued or renewed.
- (2) The contribution must be paid on or before the issue or renewal of the commercial fishing licence.
- (3) The contribution payable under this clause in relation to a commercial fishing licence is additional to any other contribution, fee or charge that is payable under the Act in relation to the licence.

Division 2 Boat licences

151 Fee to accompany application for issue of fishing boat licence

- (1) For the purposes of section 108 (2) of the Act, the prescribed fee in respect of an application for a fishing boat licence is:
 - (a) if the application relates to a boat that is 3 metres or less in length—\$150, or
 - (b) if the application relates to a boat that is more than 3 metres in length—\$150 plus \$22 for each metre or part of a metre by which the length of the boat exceeds 3 metres.
- (2) An application for the issue of a fishing boat licence that is for a boat that replaces a boat for which a fishing boat licence is in abeyance under clause 157 must be accompanied by an additional fee referred to in subclause (3) for each year or part of a year for which the licence has been in abeyance.
- (3) The additional fee (with a pro rata adjustment in the fee for any period of less than one year) for an application referred to in subclause (2) is to be determined as follows:
 - (a) if the application relates to a boat that is 3 metres or less in length—the fee is \$43,
 - (b) if the application relates to a boat that is more than 3 metres in length—the fee is \$43 plus \$22 for each metre or part of a metre by which the length of the boat exceeds 3 metres.

Fisheries Management (General) Regulation 2002

Clause 152

Licensing and other commercial fisheries management

Part 7

- (4) If an application is made for the issue of a fishing boat licence:
- (a) for a boat that was previously licensed and for which the licence has expired, or
 - (b) for a boat that replaces a boat that was previously licensed and for which the licence has expired,

the application is to be dealt with as if the expired licence has been in abeyance under clause 157 since the date the expired licence would have expired but for clause 154 (6). Accordingly, the additional fee referred to in subclause (3) is payable.

152 Grounds for refusal to issue fishing boat licence

For the purposes of section 108 (3) of the Act, the Minister is authorised to refuse to issue a fishing boat licence if:

- (a) the boat was not licensed under the Act at the commencement of the Act (unless paragraph (b) applies), or
- (b) the boat replaces another boat (*the original boat*) that is licensed under the Act or for which the licence is in abeyance under clause 157:
 - (i) the Minister is of the opinion that the boat concerned is not of sufficiently similar dimensions or characteristics to the original boat, or
 - (ii) the licence for the original boat has been in abeyance for a period of more than 2 years, or
- (c) the application for the fishing boat licence is an application for renewal of an expired fishing boat licence that is treated as an application for issue of a fishing boat licence in accordance with clause 154 (8) and that is received by the Minister more than 2 years after the date the licence would (but for clause 154 (6)) have expired, or
- (d) in the case of a boat licensed under the Act at 16 January 1995 (the date of the commencement of the Act), the boat was sold or disposed of after that date or the right to a fishing boat licence for the boat was transferred after that date (unless the transfer of the right to a licence for the boat to the applicant has been approved by the Director under clause 158), or
- (e) the Minister is authorised to refuse to issue a licence in respect of the boat under a management plan for share management fishery, or

Clause 153 Fisheries Management (General) Regulation 2002

Part 7 Licensing and other commercial fisheries management

- (f) the owner of the boat has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand and the Minister is satisfied that the boat was used by that owner for or in connection with the commission of the offence, or
- (g) the owner of the boat has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (h) the owner of the boat has been convicted of an offence relating to an assault on a fisheries official, or
- (i) the applicant has not paid any fee due and payable in connection with his or her fishing boat licence.

153 Prescribed conditions of fishing boat licences

- (1) For the purposes of section 108 (4) (a) of the Act, the following conditions are prescribed:
 - (a) that the boat in respect of which the licence was issued or renewed is not used for or in connection with the taking of fish for sale or the landing of fish in New South Wales for sale in New South Wales by any person other than the holder of the licence or the holder's employees or agents,
 - (b) that the holder of the licence displays on the outside of both sides of the bow of the licensed boat and on the outside of the top of the wheelhouse of the boat in clearly visible letters and figures (in a colour which contrasts with that of the background) the letters "LFB" and the licence number allotted to that boat by the boat licence and that those letters and figures are:
 - (i) in the case of a boat that is more than 7.5 metres long—
not less than 300 mm in height and 150 mm in width, or
 - (ii) in any other case—not less than 150 mm in height,
 - (c) that the holder of the licence displays on the outside of both sides of any dinghy or vessel which is not separately licensed under the Act and which is carried on the boat in respect of which the licence was issued, the letter "D" and the licence number of that licensed boat (such letter and number not to be less than 50 mm in height),

Fisheries Management (General) Regulation 2002

Clause 153

Licensing and other commercial fisheries management

Part 7

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- (d) that the holder of the licence does not use, or permit to be used, unlicensed crew members on the licensed fishing boat, unless the boat is being used as follows:
- (i) to take fish from ocean waters (but not from the shore) by use of a trap, line, purse seine net, lampara net or spanner crab net, or
 - (ii) to take prawns from estuary waters (but not from the shore) by use of a seine net (prawns), or
 - (iii) to take fish from any waters by use of an otter trawl net (fish), otter trawl net (prawns) or danish seine trawl net (fish), or
 - (iv) to take abalone in the abalone share management fishery in accordance with clause 146 (1) (d), or
 - (v) to take yabbies or carp in the inland restricted fishery in accordance with clause 146 (1) (e),
- (e) in the case of a licence that authorises the use of the boat for prawn trawling in the Clarence River or Lake Woollooweyah:
- (i) the length, depth and breadth of the boat, and the power rating of its engine, are not increased by more than 10% in any ten-year period, and
 - (ii) if the boat is replaced at any time, the length, depth and breadth of the boat (*the current boat*), and the power rating of its engine, are not more than 10% greater than that of any other boat used by the licensee for prawn trawling in the Clarence River or Lake Woollooweyah within the last 10 years and which the current boat replaces, and
 - (iii) the engine of the boat is not replaced without the written consent of the Director, and
 - (iv) a by-catch reduction device, of a kind approved by the Director, is used when the boat is used for prawn trawling in the Clarence River or Lake Woollooweyah, and
 - (v) prawns caught are graded immediately after each such prawn trawl, and the sorted section of the catch is returned to the water as soon as practicable,
- (f) in the case of a licence that authorises the use of the boat for prawn trawling in offshore waters, the engine of the boat is not replaced without the written consent of the Minister.

Clause 154	Fisheries Management (General) Regulation 2002
Part 7	Licensing and other commercial fisheries management

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- (2) For the purposes of subclause (1) (e):
- (a) boat dimensions are as specified in a survey certificate for the boat, and
 - (b) the power rating of the engine of a boat is to be determined in accordance with the Manufacturers Continuous Rating method under heavy duty fishing conditions.

- (3) In this clause:

offshore waters means ocean waters that are more than 3 nautical miles from the natural coast line and north of a line drawn due east from Barrenjoey Headland.

unlicensed crew member means a member of the crew of a licensed fishing boat who is not the holder of a commercial fishing licence.

154 Renewal of fishing boat licence

- (1) The holder of a fishing boat licence may apply in writing to the Minister for the renewal of his or her licence.
- (2) The application is to be accompanied by a fee determined as follows:
 - (a) if the application relates to a boat that is 3 metres or less in length—the fee is \$43,
 - (b) if the application relates to a boat that is more than 3 metres in length—the fee is \$43 plus \$22 for each metre or part of a metre by which the length of the boat exceeds 3 metres.
- (3) The Minister may refuse to renew the licence if:
 - (a) the holder of the licence has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand and the Minister is satisfied that the boat was used by that holder for or in connection with the commission of the offence, or
 - (b) the holder of the licence has, in the opinion of the Minister, contravened a condition of the licence, or
 - (c) the holder of the licence has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the holder of the licence has been convicted of an offence relating to an assault on a fisheries official, or

Fisheries Management (General) Regulation 2002

Clause 154

Licensing and other commercial fisheries management

Part 7

-
- (e) the application for renewal of the licence is received by the Minister more than 60 days after the date the licence would have expired (but for subclause (6)), or
 - (f) the holder of the licence has not paid any fee due and payable in connection with the renewal of his or her licence, or
 - (g) the licence has been in abeyance under clause 157 for a period of more than 2 years.
- (4) The Minister may renew a licence for a period of 1 year or such other period as is specified in the licence.
- (5) If an application is duly made for renewal of a fishing boat licence and is received by the Minister before the expiration of the period in which it remains in force, and the licence is not renewed before the expiration of that period, the licence:
- (a) is taken to continue in force until the licence is renewed or the application for renewal is refused, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.
- (6) If an application for renewal of a fishing boat licence is not received by the Minister before the expiration of the period in which it remains in force, the licence:
- (a) is taken to continue in force for 30 days after the date the licence would have expired (but for this subclause), or until the licence is renewed or the application for renewal is refused, whichever happens first, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.
- (7) If an application for renewal of a fishing boat licence is received by the Minister more than 30 days after the date the licence would have expired (but for subclause (6)), an additional application fee of \$107 is payable.
- (8) An application for renewal of a fishing boat licence received by the Minister more than 60 days after the date the licence would have expired (but for subclause (6)) may be treated as an application for the issue of a fishing boat licence but in such a case the total fee payable in respect of the application is the fee prescribed in respect of an application for the issue of the licence concerned, together with any additional fee payable under clause 151.

Clause 155	Fisheries Management (General) Regulation 2002
Part 7	Licensing and other commercial fisheries management

- (9) An application for the renewal of a fishing boat licence that has been in abeyance under clause 157 must be accompanied by an additional fee referred to in subclause (10) for each year or part of a year for which the licence has been in abeyance.
- (10) The additional fee is to be determined (with a pro rata adjustment in the fee for any period of less than one year) as follows:
 - (a) if the application relates to a boat that is 3 metres or less in length—the fee is \$43,
 - (b) if the application relates to a boat that is more than 3 metres in length—the fee is \$43 plus \$22 for each metre or part of a metre by which the length of the boat exceeds 3 metres.

155 Additional licence fee for boats authorised to prawn trawl in ocean prawn trawl restricted fishery

- (1) This clause applies to fishing boat licences authorising the use of the boat to take prawns in the ocean prawn trawl restricted fishery.
- (2) An application for the issue or renewal of a fishing boat licence to which this clause applies is to be accompanied by a unitage fee (calculated by multiplying the total unitage of the boat by \$1.61) for each year or part of a year in respect of which the licence is issued or renewed.
- (3) The unitage fee is in addition to any fee required under clause 151 or 154.
- (4) The *total unitage* of a boat is the sum of the following:
 - (a) the total units of the hull of the boat, determined in accordance with the Uniform Shipping Code for ship measurement (as at 1 January 1986),
 - (b) the total units of the engine of the boat (as installed at 1 January 1986), determined in accordance with the Manufacturers Continuous Rating method.
- (5) If an application relates to a boat that was not licensed at 1 January 1986 the total unitage is to be determined in accordance with subclause (4) as at the date of the application.
- (6) If an application is for:
 - (a) the issue of a licence that relates to a boat that replaces another boat the licence for which is in abeyance under clause 157, or
 - (b) the renewal of a licence that relates to a boat the licence for which is in abeyance under clause 157,

Fisheries Management (General) Regulation 2002

Clause 156

Licensing and other commercial fisheries management

Part 7

the application must be accompanied by an additional fee (calculated by multiplying the total unitage of the relevant boat by \$1.61) for each year or part of a year in which the licence has been in abeyance under clause 157, with a pro rata adjustment in the fee for any period of less than one year.

156 Grounds for suspension or cancellation of a fishing boat licence

For the purposes of section 108 (4) (d) of the Act, the Minister may cancel or suspend a fishing boat licence if:

- (a) the holder of the licence made a statement in connection with the holder's application for the issue or renewal of the licence that was, in the opinion of the Minister, false or misleading in a material particular, or
- (b) the holder of the licence has, in the opinion of the Minister, contravened a condition of the licence, or
- (c) the holder of the licence has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand and the Minister is satisfied that the boat was used by that holder for or in connection with the commission of the offence, or
- (d) the holder of the licence has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (e) the holder of the licence has been convicted of an offence relating to an assault on a fisheries official, or
- (f) the holder of the licence has transferred his or her right to the licence in accordance with clause 158, or
- (g) the boat has been lost at sea or disposed of by the holder of the licence.

157 Licence may be placed in abeyance during period boat cannot be used

- (1) The Minister may suspend a fishing boat licence by placing the licence in abeyance for a period specified by the Minister, from time to time, if the Minister is of the opinion that the holder of the licence is unable to use the licensed boat for a particular period (for example, because the boat has been disposed of or lost at sea).

Clause 158 Fisheries Management (General) Regulation 2002

Part 7 Licensing and other commercial fisheries management

- (2) The holder of a fishing boat licence for a boat (*the original boat*) that is in abeyance under this clause may apply in writing:
- (a) for the issue of a fishing boat licence for a boat that replaces the original boat, or
 - (b) for the renewal of the licence for the original boat.

158 Transfer of right to a fishing boat licence

- (1) The Director may approve the transfer of the right to a fishing boat licence in accordance with this clause.
- (2) An application for approval of the transfer of the right to a fishing boat licence may be made in writing to the Director jointly by the holder of the fishing boat licence and a person intending to acquire the right to that licence.
- (3) The application is to be accompanied by a fee of \$268.
- (4) The Director may approve the transfer, or may refuse to approve the transfer, of the right to a fishing boat licence to the person.
- (5) The Director may refuse to approve the transfer on any of the grounds on which the Minister could refuse to approve the issue of a fishing boat licence to the person.
- (6) If the transfer is approved, the transferee may apply for, and is to be issued with, a fishing boat licence (whether for the boat previously licensed to the transferor or for another boat that replaces the boat licensed to the transferor).
- (7) Nothing in this clause affects the power of the Minister to refuse to issue a licence as authorised by clause 152 (including on the ground that the boat concerned is not of sufficiently similar dimensions or characteristics to the licensed boat of the transferor).
- (8) This clause applies to a licence whether or not it is suspended or in abeyance under clause 157.

159 Boats taken to be licensed under the Act

- (1) For the purposes of section 107 (2) of the Act, a boat is taken to be licensed under the Act if the boat is registered by the Director in accordance with subclause (2).
- (2) The Director may, on receiving an application in writing by the owner of a boat, register the boat under this clause if the Director is satisfied that the boat:

Fisheries Management (General) Regulation 2002

Clause 159

Licensing and other commercial fisheries management

Part 7

-
- (a) is licensed or otherwise authorised to be used for the purpose of taking fish under a law of the Commonwealth or of another State or a Territory, and
- (b) operates from or to a New South Wales port.
- (3) An application for registration of a boat under this clause is to be accompanied by a fee of \$107 and is to contain a description of the boat (including identification numbers and distinguishing characteristics) and such other information as the Director requires.
- (4) The owner of a boat must not make an application for registration under this clause knowing that the application is false or misleading in a material particular.
Maximum penalty: 25 penalty units.
- (5) If a change occurs in a material particular of the information provided to the Director in or in connection with an application for registration under this clause, the owner of the boat must forthwith give the Director written particulars of that change.
Maximum penalty: 25 penalty units.
- (6) When particulars of the change are given, those particulars are then to be considered part of the original application, and subclause (5) applies in relation to any further change in the information provided.
- (7) Registration under this clause is to be certified by the Director in such form as the Director approves.
- (8) Registration is for a period of one year or such other period as is specified in the registration and is subject to such conditions as are attached to the registration by the Director or specified by the Director from time to time by notice in writing served on the owner of the registered boat.

Clause 160	Fisheries Management (General) Regulation 2002
Part 7	Licensing and other commercial fisheries management

- (9) The Director may revoke the registration of a boat under this clause, or refuse to renew the registration, if the Director is of the opinion that the owner of the boat has contravened a condition of registration.

160 Only licensed boats may be marked “LFB”

A person must not display the letters “LFB” on a boat in any waters if the boat is not licensed under the Act.

Maximum penalty: 50 penalty units.

Division 3 Provisions relating to crew members

161 Fee to accompany application for registration

For the purposes of section 110 (7) of the Act, the prescribed fee is \$107.

162 Eligibility for registration as a crew member

A person who has been convicted of any of the following offences is not eligible to be registered as a crew member under section 110 of the Act, unless the Director is of the opinion that, despite the conviction, the person is a fit and proper person to be registered:

- (a) an offence under the Act or regulations made under the Act or an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand,
- (b) an offence relating to the theft of fish, fishing gear or a boat,
- (c) an offence relating to an assault on a fisheries official.

163 Period of registration

Registration of a crew member remains in force for a period of 1 year or such other period as is notified by the Director when the crew member is registered.

164 Application for authority to use unregistered crew members

- (1) The holder of a commercial fishing licence or fishing boat licence may apply in writing to the Director for an authorisation under section 110 (5) of the Act (which allows a commercial fishing licence or the licence for a boat to authorise the use of persons who are not registered as crew members on a boat).

Fisheries Management (General) Regulation 2002

Clause 165

Licensing and other commercial fisheries management

Part 7

-
- (2) The application is to be accompanied by a fee of \$54 in respect of each unregistered crew member to be authorised.

165 Records to be kept about crew members

- (1) The holder of a fishing boat licence must make, or cause to be made, in respect of a person who is a crew member on the boat, a record containing the following information:
- (a) if the person is a registered crew member, the registration number of the crew member or, if the person is not registered, the name and address of the person,
 - (b) the dates or periods during which the person is engaged as a crew member on the boat.

Maximum penalty: 25 penalty units.

- (2) The holder of a fishing boat licence:
- (a) must keep, or cause to be kept, the record referred to in subclause (1) on the licensed boat concerned for a period of 5 years after the crew member concerned ceases to be engaged by the holder of the fishing boat licence, and
 - (b) must, during that 5-year period, produce the record when requested to do so by a fisheries officer.

Maximum penalty: 25 penalty units.

166 Records to be kept by registered crew members

- (1) The Director may, by notice in writing served on a registered crew member, require the crew member to make and keep such records as the Director requires (in such manner and form as is specified by the Director) in connection with his or her registration.
- (2) A registered crew member who fails to comply with such a requirement is guilty of an offence.

Maximum penalty: 25 penalty units.

167 False and misleading information in records

A person must not make, or cause to be made, an entry in a record kept for the purposes of this Division knowing that the entry is false or misleading in a material particular.

Maximum penalty: 25 penalty units.

Clause 168 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

Part 8 Restricted fisheries

Division 1 Sea urchin and turban shell

168 Definitions

In this Division:

endorsement means an endorsement on a commercial fishing licence that authorises the holder of the licence to take sea urchin or turban shell (or both) for sale.

endorsement holder means the holder of a commercial fishing licence that has an endorsement.

entitlement holder means a person who is eligible for an endorsement in the fishery as provided for by clause 171 or 172, but does not include any person who is eligible for an endorsement only because the person is the nominated fisher of another person.

nominated fisher means a person duly nominated by a person to take sea urchin or turban shell (or both) for sale on behalf of the person.

quota means the maximum quantity of sea urchin and turban shell that may be taken for sale by or on behalf of an entitlement holder during any period, as determined by the Director pursuant to clause 180.

restricted fishery means the restricted fishery declared under this Division.

169 Sea urchin and turban shell are a restricted fishery

For the purposes of section 111 of the Act, sea urchin and turban shell are declared to be a restricted fishery.

170 Types of endorsement in restricted fishery

The following classes of endorsement are available in the restricted fishery:

(a) **Sea urchin endorsement**

This endorsement authorises the holder to take sea urchin for sale.

Fisheries Management (General) Regulation 2002

Clause 171

Restricted fisheries

Part 8

(b) **Turban shell endorsement**

This endorsement authorises the holder to take turban shell for sale.

171 Eligibility for endorsements

(1) Eligibility for an endorsement in the restricted fishery is as follows:

(a) A person who held shares in the abalone share management fishery on 5 March 1999 is eligible for both a sea urchin endorsement and a turban shell endorsement.

(b) The owner of a restricted fishery fishing business who acquired the business after 5 March 1999 is eligible for an endorsement of the type determined by the Minister to be relevant to the operation of that fishing business (that is, a sea urchin endorsement, a turban shell endorsement or both), but only if the Minister is satisfied that the person has acquired the fishing business:

(i) in accordance with guidelines relating to the transfer of fishing businesses issued from time to time by the Director, or

(ii) in connection with a transfer of shares in the abalone share management fishery that is allowed by the management plan for that fishery.

Note. Abalone, sea urchin and turban shell were initially a restricted fishery. The fishery was later split into the abalone fishery (which became a share management fishery) and the sea urchin and turban shell fishery (which continues to be a restricted fishery).

(2) Only one person is eligible for an endorsement in respect of each shareholding or fishing business. That is, if a shareholding or a fishing business is owned by more than one person, only one of them (being a person designated by the owners or, in the absence of such a designation, by the Director) is eligible for an endorsement.

(3) If a person referred to in subclause (1) sells or otherwise disposes of any part of a restricted fishery fishing business, the person ceases to be eligible for an endorsement of the type or types determined by the Minister to be relevant to the operation of that fishing business.

(4) In this clause:

restricted fishery fishing business means a fishing business that is determined by the Director to be associated with the taking of sea urchin or turban shell (or both) for sale, being a fishing business

Clause 172 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

that, at 5 March 1999, was owned by a shareholder in the abalone share management fishery.

transfer of shares, includes an assignment or transmittance of shares, but excludes a mortgage.

Note. 5 March 1999 is the date of the commencement of a regulation that replaced obsolete provisions of the *Fisheries Management (General) Regulation 1995* relating to abalone, sea urchin and turban shell restricted fisheries. The provisions concerned were obsolete because abalone had ceased to be a restricted fishery.

172 Public tender for issue of further endorsements

- (1) The Minister may, at any time after considering the status of stock levels in the restricted fishery, call for public tenders for the issue of further endorsements in the restricted fishery.
- (2) Notice of the public tender is to be published in the Gazette.
- (3) The conditions of the public tender are to be determined by the Minister and published in the Gazette notice.
- (4) A person is eligible for an endorsement in the restricted fishery if the person is a successful tenderer.

173 Nominated fishers

- (1) An entitlement holder may nominate a person (being a natural person) to take sea urchin or turban shell (or both) for sale on behalf of the entitlement holder.
- (2) The nomination:
 - (a) is to be made in a form approved by the Director, and
 - (b) is to include the written consent of the nominee to the nomination, and
 - (c) is to be accompanied by a fee of \$321.
- (3) No more than one person may be nominated by the entitlement holder to take sea urchin or turban shell (or both) on behalf of the entitlement holder at any one time. If the entitlement holder is eligible for both a sea urchin and a turban shell endorsement, one person must be nominated to take both sea urchin and turban shell on the entitlement holder's behalf.
- (4) A nomination has no effect unless it is approved by the Director. The Director may impose conditions on the grant of such an approval.

Fisheries Management (General) Regulation 2002

Clause 173

Restricted fisheries

Part 8

-
- (5) The Director may refuse to approve a nomination if:
- (a) the nominated fisher has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the nominated fisher has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage of fishing gear or a boat, or
 - (c) the nominated fisher has, in the opinion of the Minister, contravened a condition of his or her commercial fishing licence or of an endorsement on that licence, or
 - (d) the nominated fisher is already an endorsement holder, or
 - (e) any fee due and payable in connection with the endorsement has not been paid, or
 - (f) the entitlement holder's endorsement or commercial fishing licence is suspended or has been cancelled.
- (6) If the Director approves the nomination, the nominated fisher is eligible for an endorsement (of the same type or types as the entitlement holder).
- (7) Any endorsement held by the entitlement holder is revoked when the nomination takes effect.
- (8) A nomination is to have effect for a period of not less than 4 weeks, unless otherwise approved by the Director.
- (9) An entitlement holder may, subject to subclause (8), revoke the entitlement holder's nomination of a nominated fisher by notice in writing served on the Director. The nominated fisher then ceases to be eligible for an endorsement under this clause.
- (10) The suspension of an entitlement holder's endorsement ceases, and the endorsement is revived, on:
- (a) the expiry of the nomination,
 - (b) the revocation of the nomination,
- whichever occurs first.
- (11) Division 12 of this Part does not apply in respect of the restricted fishery.

Note. Division 12 provides for similar matters to those provided for by this clause, namely, the entitlement of owners of fishing businesses in certain circumstances to nominate fishers to take fish on their behalf.

Clause 174 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

174 Endorsement of commercial fishing licences

- (1) The Minister may endorse the commercial fishing licence of a person if the person satisfies the eligibility requirements for an endorsement.
- (2) The Minister may refuse to endorse the commercial fishing licence of a person who is otherwise eligible if:
 - (a) the person or, if the person is a nominated fisher, the entitlement holder who nominated the person has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the person or, if the person is a nominated fisher, the entitlement holder who nominated the person has, in the opinion of the Minister, contravened a condition of his or her commercial fishing licence or of any endorsement on that licence, or
 - (c) the person or, if the person is a nominated fisher, the entitlement holder who nominated the person has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the person (being an entitlement holder in the fishery) has duly nominated a person to take sea urchin or turban shell (or both) on his or her behalf, or
 - (e) any fee due and payable in connection with the endorsement has not been paid.
- (3) An application for an endorsement is to be made to the Minister in a form approved by the Director.

175 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

176 Application for endorsement for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (a *current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.

Fisheries Management (General) Regulation 2002

Clause 176

Restricted fisheries

Part 8

-
- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse such an application only if:
- (a) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has, in the opinion of the Minister, contravened a condition of an endorsement or a commercial fishing licence, or
 - (c) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder ceases to be eligible for an endorsement, or
 - (e) the endorsement holder (being an entitlement holder in the fishery) has duly nominated a person to take sea urchin or turban shell (or both) on his or her behalf, or
 - (f) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (g) any fee due and payable in connection with the endorsement has not been paid.
- (5) If an application is duly made for the endorsement of a commercial fishing licence for a further period before the expiration of the current endorsement, and the application is not granted or refused before the expiration of the current endorsement:
- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and

Clause 177 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

177 Endorsement fee

- (1) The fee payable for an endorsement in the restricted fishery is as follows:
 - (a) in the case of a sea urchin endorsement—\$428,
 - (b) in the case of a turban shell endorsement—\$214.
- (2) The fee is payable in respect of each period, or further period, of 12 months in respect of which the endorsement is given.
- (3) If the endorsement is given for a period of less than 12 months, the fee payable is an appropriate proportion of the fee referred to in subclause (1) (that is, the proportion that the period for which the licence is endorsed bears to the period of 12 months).

178 Suspension and cancellation of endorsements

The Minister may suspend or cancel an endorsement if:

- (a) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has, in the opinion of the Minister, contravened a condition of an endorsement or a commercial fishing licence, or
- (c) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the endorsement holder or, if the endorsement holder is a nominated fisher, the entitlement holder who nominated the endorsement holder ceases to be eligible for an endorsement, or
- (e) any fee payable in connection with the endorsement has not been paid.

Fisheries Management (General) Regulation 2002

Clause 179

Restricted fisheries

Part 8

179 Total allowable catch

- (1) The Minister may, from time to time by notice published in the Gazette, determine a total allowable catch for the restricted fishery in any period.
- (2) This clause does not prevent the Minister from requiring the TAC Committee to determine the total allowable catch for the restricted fishery under section 28 (3) of the Act.

180 Quotas for sea urchin and turban shell

- (1) If there is a total allowable catch for any period, the Director is to determine the maximum quantity of sea urchin and turban shell that may be taken for sale by or on behalf of each entitlement holder during that period.
- (2) The Director is to make that determination by allocating the total allowable catch for the period equally between entitlement holders.
- (3) The Director is to give written notice of the quota determination in respect of an entitlement holder to the entitlement holder and, if the entitlement holder has a nominated fisher, to the nominated fisher.
- (4) For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed for the taking of sea urchin or turban shell (or both) in the restricted fishery that the endorsement holder (whether or not an entitlement holder) does not cause the quota of a entitlement holder to be exceeded.

181 Transfer of quota

- (1) A quota for a period (or any part of it) is transferable within that period, but only with the approval of the Director.
- (2) An application for the Director's approval:
 - (a) is to be made to the Director, in a form approved by the Director, and
 - (b) is to specify the amount of quota to be transferred, and
 - (c) is to be accompanied by a fee of \$161.
- (3) The Director may transfer the quota or refuse to transfer the quota.
- (4) Without limiting subclause (3), the Director may refuse to transfer the quota (or any part of the quota) of an entitlement holder whose endorsement is suspended or cancelled.

Clause 182 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

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- (5) A transfer of quota takes effect when the Director gives notice in writing of his or her approval of the transfer to the entitlement holders whose quotas are affected.
 - (6) The Director must also give notice in writing of the approval to any nominated fishers of the entitlement holders.
 - (7) The conditions of a commercial fishing licence that is endorsed are taken to be amended in accordance with a transfer of quota approved under this clause, with effect on and from the date notice of the approved transfer is served on the licensee.

182 Special licence conditions for licence holders who nominate fishers

For the purposes of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that the licensee, if he or she has duly nominated another commercial fisher to take sea urchin or turban shell (or both) on his or her behalf:

- (a) must not assist, encourage or permit that commercial fisher to contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence or of an endorsement on that licence in connection with the taking of such sea urchin or turban shell, and
- (b) must take all reasonable steps to ensure that the other commercial fisher does not contravene the Act, the regulations under the Act or the conditions of that other fisher's commercial fishing licence or of an endorsement on that licence in connection with the taking of sea urchin or turban shell.

Division 2 Ocean prawn trawl restricted fishery

183 Definitions

In this Division:

deepwater prawns means prawns of the families Solenoceridae and Aristaeidae.

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

inshore waters means ocean waters that are not more than 3 nautical miles from the natural coast line.

Fisheries Management (General) Regulation 2002

Clause 184

Restricted fisheries

Part 8

nominated fisher means a person nominated in accordance with clause 276 to take fish for sale in the restricted fishery.

ocean prawn trawl fishery means the fishery described in clause 7 of Schedule 1 to the Act.

offshore waters means ocean waters that are more than 3 nautical miles from the natural coast line and north of a line drawn due east from Barrenjoey Headland.

restricted fishery means the restricted fishery declared under this Division.

184 Ocean prawn trawl fishery is a restricted fishery

For the purposes of section 111 of the Act, the ocean prawn trawl fishery is declared to be a restricted fishery.

185 Types of endorsement in restricted fishery

- (1) The following classes of endorsement are available in the restricted fishery:
 - (a) **Inshore endorsement**

This endorsement authorises the holder to use an otter trawl net (prawns) to take fish (other than deepwater prawns) for sale from inshore waters, Coffs Harbour and Jervis Bay.
 - (b) **Offshore endorsement**

This endorsement authorises the holder to use an otter trawl net (prawns) to take fish (other than deepwater prawns) for sale from offshore waters, or from such offshore waters as may be specified in the endorsement by the Minister.
 - (c) **Deepwater endorsement**

This endorsement authorises the holder to use an otter trawl net (prawns) to take deepwater prawns for sale from offshore waters.
- (2) For the purpose of section 112 (2) of the Act, it is a condition of an endorsement that the holder of the endorsed licence does not take fish for sale in the restricted fishery except as authorised by the class or classes of endorsement on his or her commercial fishing licence.

Note. Additional classes of endorsement are provided for by Division 11 of this Part.

Clause 186 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

186 Eligibility for endorsement

(1) Inshore endorsement

A person is eligible for an inshore endorsement if the Minister is satisfied that:

- (a) the person owns a licensed fishing boat and:
 - (i) the boat was the subject of an ocean-going survey certificate issued by the Waterways Authority (or its predecessor, the Maritime Services Board) for at least one of the years from 1986 to 1990, or
 - (ii) the fishing boat licence for the boat has an endorsement from the Director authorising prawn trawling in waters closed to prawn trawling under the fishing closure notification known as “OP1”, and
- (b) the fishing boat licence is not subject to a “not to prawn trawl” condition, and
- (c) on the basis of ocean waters catch returns submitted to the Director by the person:
 - (i) the person has taken not less than 100 kilograms per year of school or king prawns (or a combination of the two) from ocean waters in at least 3 of the years from 1986 to 1990, or
 - (ii) the person has taken a total of not less than 1,000 kilograms of school or king prawns (or a combination of the two) from ocean waters in the years from 1986 to 1990.

(2) Offshore endorsement

A person is eligible for an offshore endorsement if the Minister is satisfied that the person owns a licensed fishing boat, or is the holder of a licence for a fishing boat that is in abeyance (under clause 157), and the fishing boat licence for the boat has an endorsement from the Director authorising prawn trawling in waters closed to prawn trawling under the fishing closure notification known as “OP1”.

(3) Deepwater endorsement

A person is eligible for a deepwater endorsement if the Minister is satisfied that:

- (a) the person owns a licensed fishing boat and:
 - (i) the boat was the subject of an ocean-going survey certificate issued by the Waterways Authority (or its

Fisheries Management (General) Regulation 2002

Clause 186

Restricted fisheries

Part 8

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- predecessor, the Maritime Services Board) in one of the years from 1986 to 1990, or
- (ii) the fishing boat licence for the boat has an endorsement from the Director authorising prawn trawling in waters closed to prawn trawling under the fishing closure notification known as “OP1”, and
- (b) the fishing boat licence is not subject to a “not to prawn trawl” condition or the boat can lawfully be used for the purpose of taking deepwater prawns for sale by the method of trawling, and
 - (c) on the basis of ocean waters catch returns submitted to the Director by the person:
 - (i) the person has taken a total of not less than 1,000 kilograms of royal red or scarlet prawns (or a combination of the two) for sale from ocean waters in the years 1986 to 1993 (in the case of a person whose fishing boat licence has an endorsement from the Director authorising prawn trawling in waters closed to prawn trawling under the fishing closure notification known as “OP1”), or
 - (ii) the person has taken a total of not less than 1,000 kilograms of royal red or scarlet prawns (or a combination of the two) for sale from ocean waters in the years from 1986 to 1990 (in any other case).
- (4) If the Minister is satisfied that the catch history associated with a fishing business satisfies any of the eligibility criteria set out in this clause, the owner of the fishing business is taken to have satisfied those criteria, even if the owner did not personally take the fish for sale or submit the catch returns to the Director. In such a case, however, any person who actually took the fish for sale or submitted the returns (for example, while working as an employee of the fishing business) does not, by having done so, satisfy the criteria.
 - (5) In determining a person’s eligibility for an endorsement, the Minister may have regard to records kept by the Director (including records of net registration, licence records and records of fish taken by a commercial fisher).
 - (6) The catch history associated with a fishing business is to be determined in accordance with clause 143 (5).

Clause 187 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

(7) In this clause:

“not to prawn trawl” condition means a condition of a fishing boat licence that prohibits the use of the boat for the purpose of taking prawns for sale from ocean waters by the method of trawling.

ocean waters catch return means a return under section 42 of the 1935 Act that relates to takings of fish in ocean waters.

187 Application for endorsement

- (1) An application for an endorsement is to be in a form approved by the Director.
- (2) The application is to be accompanied by a fee of \$30.
- (3) The Minister may endorse the commercial fishing licence of a person who satisfies the eligibility requirements for the endorsement or who is the nominated fisher of a person who satisfies the eligibility requirements for an endorsement.
- (4) The Minister may refuse to endorse the commercial fishing licence of a person if:
 - (a) the person has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the person has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) the person has not paid any fee due and payable in connection with the endorsement.

188 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

189 Application for endorsement for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (a *current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.

Fisheries Management (General) Regulation 2002

Clause 190

Restricted fisheries

Part 8

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- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse an application only if:
- (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement, or
 - (c) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the applicant, or if the applicant is a nominated fisher, the owner of the fishing business who nominated the fisher, has ceased to be entitled to the endorsement (see clause 277), or
 - (e) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (f) the applicant has not paid any fee due and payable in connection with the endorsement.
- (5) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:
- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

190 Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (c) the holder of the endorsed licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or

Clause 191 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (d) the holder of the endorsed licence, or if the holder of the endorsed licence is a nominated fisher, the owner of the fishing business who nominated the holder of the endorsed licence, ceases to be entitled to the endorsement (see clause 277).

Division 3 Ocean fish trawl restricted fishery

191 Definitions

In this Division:

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

nominated fisher means a person nominated in accordance with clause 276 to take fish for sale in the restricted fishery.

ocean fish trawl fishery means the fishery described in clause 8 of Schedule 1 to the Act.

restricted fishery means the restricted fishery declared under this Division.

192 Ocean fish trawl fishery is a restricted fishery

For the purposes of section 111 of the Act, the ocean fish trawl fishery is declared to be a restricted fishery.

193 Types of endorsement in restricted fishery

- (1) The following classes of endorsement are available in the restricted fishery:

(a) **Northern zone endorsement**

This endorsement authorises the holder to use an otter trawl net (fish) to take fish (other than prawns) for sale from ocean waters that are north of a line drawn due east from Barrenjoey Headland (other than the waters in which use of an otter trawl net (fish) is prohibited under clause 39).

(b) **Southern zone endorsement**

This endorsement authorises the holder to use an otter trawl net (fish) to take fish (other than prawns) for sale from ocean waters that are not more than 3 nautical miles from the natural

Fisheries Management (General) Regulation 2002

Clause 194

Restricted fisheries

Part 8

coast line and are south of a line drawn due east from Barrenjoey Headland.

- (2) For the purpose of section 112 (2) of the Act, it is a condition of an endorsement that the holder of the endorsed licence does not take fish for sale in the restricted fishery except as authorised by the class or classes of endorsement on his or her commercial fishing licence.

Note. Additional classes of endorsement are provided for by Division 11 of this Part.

194 Eligibility for endorsement

(1) Northern zone endorsement

A person is eligible for a northern zone endorsement if the Minister is satisfied that the person owns an otter trawl net (fish) that was registered in the name of the person at any time before 1 January 1993 and that:

- (a) the person submitted to the Director at least 15 ocean waters catch returns in the years from 1986 to 1990 that indicate that the person took fish from an area designated on the return as zone 1, 2, 3, 4, 5 or 6 by the method of fish trawl, or
- (b) the person submitted to the Director at least 3 ocean waters catch returns in the years from 1986 to 1990, and at least 5 ocean waters catch returns in the years from 1991 to 1993, that indicate that the person took fish from an area designated on the return as zone 1, 2, 3, 4, 5 or 6 by the method of fish trawl and that the person took not less than 20 tonnes of fish trawl species in those zones in at least 3 of the years from 1986 to 1993 by the method of fish trawl.

(2) Southern zone endorsement

A person is eligible for a southern zone endorsement if the Minister is satisfied that the person owns a licensed fishing boat and that:

- (a) the person holds a permit for the boat known as a “Commonwealth South East Fishery fish trawl permit”, or
- (b) the person submitted to the Director at least 6 ocean waters catch returns in any one of the years from 1986 to 1990 that indicate that the person took fish from an area designated on the return as zone 6, 7, 8, 9 or 10 by the method of fish trawl and that the applicant took not less than 25 tonnes of fish trawl species in those zones in any one of the years from 1986 to 1990 by the method of fish trawl.

Clause 194 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

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- (3) In determining a person's eligibility for an endorsement, the person's catch history in zone 6 may not be counted twice. The person is to nominate whether takings of fish in zone 6 are to be used in determining the person's eligibility for a northern zone endorsement or a southern zone endorsement. In the absence of such a nomination, the Director may determine which class of endorsement those takings are to be counted toward.
- (4) If the Minister is satisfied that:
- (a) the catch history associated with a fishing business satisfies any of the eligibility criteria set out in this clause, or
 - (b) a fishing business includes a registered otter trawl net (fish) that was registered in the name of a person prior to 1 January 1993, as referred to in the eligibility criteria set out in subclause (1),

the owner of the fishing business is taken to have satisfied those criteria, even if the owner did not personally take the fish for sale, submit the catch returns or have an otter trawl net (fish) registered in his or her name. In such a case, however, the person who actually took the fish for sale or submitted the returns (for example, while working as an employee of the fishing business) does not, by having done so, satisfy the criteria.

- (5) In determining a person's eligibility for an endorsement, the Minister may have regard to the records kept by the Director (including records of net registration, licence records and records of fish taken by a commercial fisher).
- (6) The catch history associated with a fishing business is to be determined in accordance with clause 143 (5).
- (7) In this clause:

fish trawl species means redfish, ling, mirror dory, john dory, ocean perch, tiger flathead, gemfish, ribbonfish, silver trevally, squid, cuttlefish, red gurnard, latchet, sand flathead, leatherjacket, southern calamari, snapper, tarwhine, yellowfin bream, mulloay, rubberlip morwong, balmain bug, boarfish, moonfish, angel shark, gummy shark, school shark, hammerhead shark, endeavour dogfish, roughskin shark or saw shark.

ocean waters catch return means a return under section 42 of the 1935 Act that relates to takings of fish in ocean waters.

Fisheries Management (General) Regulation 2002

Clause 195

Restricted fisheries

Part 8

195 Application for endorsement

- (1) An application for an endorsement is to be in a form approved by the Director.
- (2) The application is to be accompanied by a fee of \$30.
- (3) The Minister may endorse the commercial fishing licence of a person who satisfies the eligibility requirements for the endorsement or who is the nominated fisher of a person who satisfies the eligibility requirements for an endorsement.
- (4) The Minister may refuse to endorse the commercial fishing licence of a person if:
 - (a) the person has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the person has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) the person has not paid any fee due and payable in connection with the endorsement.

196 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

197 Application for endorsement for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (a *current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.
- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse an application only if:
 - (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement, or

Clause 198 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (c) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the applicant, or if the applicant is a nominated fisher, the owner of the fishing business who nominated the fisher, has ceased to be entitled to the endorsement (see clause 277), or
 - (e) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (f) the applicant has not paid any fee due and payable in connection with the endorsement.
- (5) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:
- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

198 Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (c) the holder of the endorsed licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the holder of the endorsed licence, or if the holder of the endorsed licence is a nominated fisher, the owner of the fishing business who nominated the fisher, ceases to be entitled to the endorsement (see clause 277).

Fisheries Management (General) Regulation 2002

Clause 199

Restricted fisheries

Part 8

Division 4 Ocean trap and line restricted fishery

199 Definitions

In this Division:

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

nominated fisher means a person nominated in accordance with clause 276 to take fish for sale in the restricted fishery.

ocean trap and line fishery means the fishery described in clause 10 of Schedule 1 to the Act.

restricted fishery means the restricted fishery declared under this Division.

200 Ocean trap and line fishery is a restricted fishery

For the purposes of section 111 of the Act, the ocean trap and line fishery is declared to be a restricted fishery.

201 Types of endorsement in restricted fishery

(1) The following classes of endorsement are available in the restricted fishery:

(a) **Demersal fish trap endorsement**

This endorsement authorises the holder to use a fish trap to take fish for sale from ocean waters.

(b) **Line fishing (western zone) endorsement**

This endorsement authorises the holder to use a line to take fish for sale from ocean waters that are less than 183 metres in depth. The endorsement does not authorise the holder to take school or gummy shark from waters that are south of a line drawn due east from the northern point of the entrance to Moruya River.

(c) **Line fishing (eastern zone) endorsement**

This endorsement authorises the holder to use a line to take fish for sale from ocean waters that are not less than 183 metres in depth. The endorsement does not authorise the holder to take school or gummy shark from waters that are

Clause 202 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

south of a line drawn due east from the northern point of the entrance to Moruya River.

(d) **School and gummy shark endorsement**

This endorsement authorises the holder to take school and gummy shark for sale from waters that are south of a line drawn due east from the northern point of the entrance to Moruya River.

(e) **Spanner crab (northern zone) endorsement**

This endorsement authorises the holder to use a spanner crab net to take spanner crab for sale from ocean waters that are north of a line drawn due east from the southern breakwall at Yamba.

(f) **Spanner crab (southern zone) endorsement**

This endorsement authorises the holder to use a spanner crab net to take spanner crab for sale from ocean waters that are south of a line drawn due east from the southern breakwall at Yamba.

- (2) For the purpose of section 112 (2) of the Act, it is a condition of an endorsement that the holder of the endorsed licence does not take fish for sale in the restricted fishery except as authorised by the class or classes of endorsement on his or her commercial fishing licence.

Note. Additional classes of endorsement are provided for by Division 11 of this Part.

202 Eligibility for endorsement

(1) **Demersal fish trap endorsement**

A person is eligible for a demersal fish trap endorsement if the Minister is satisfied that the person submitted to the Director at least 6 ocean waters catch returns in the years 1986 to 1990, and 4 ocean waters catch returns in the years 1991 to 1993, that indicate that fish were taken using a fish trap of a kind known as a bottom or demersal fish trap.

(2) **Line fishing (western zone) endorsement**

A person is eligible for a line fishing (western zone) endorsement if the Minister is satisfied that the person submitted to the Director at least 6 ocean waters catch returns in the years 1986 to 1990, and 4 ocean waters catch returns in the years 1991 to 1993, that indicate that fish were taken by the method of line fishing.

Fisheries Management (General) Regulation 2002

Clause 202

Restricted fisheries

Part 8

(3) **Line fishing (eastern zone) endorsement**

A person is eligible for a line fishing (eastern zone) endorsement if the Minister is satisfied that:

- (a) the person owns a fishing boat and the fishing boat licence for the boat has an endorsement from the Director known as an “OG1” authorisation (relating to use of the boat in offshore waters), and
- (b) the person submitted to the Director at least 4 ocean waters catch returns in the years 1986 to 1990, and 2 ocean waters catch returns in the years 1991 to 1993, each of which indicate that at least 2 of the following species of fish were taken by line methods:
 - (i) blue-eye trevalla,
 - (ii) hapuku,
 - (iii) ling,
 - (iv) bass groper,
 - (v) gemfish.

(4) **School and gummy shark endorsement**

A person is eligible for a school and gummy shark endorsement if the Minister is satisfied that, on the basis of ocean waters catch returns submitted to the Director by the person, the person took a total of not less than 200 kilograms of school or gummy shark (or a combination of the two) in the years 1986 to 1990 and not less than 100 kilograms of school or gummy shark (or a combination of the two) in the years 1991 to 1993.

(5) **Spanner crab (northern zone) endorsement**

A person is eligible for a spanner crab (northern zone) endorsement if the Minister is satisfied that:

- (a) on the basis of ocean waters catch returns submitted to the Director by the person, the person took a total of not less than 1,200 kilograms of spanner crab in the years 1986 to 1990 from an area designated on the return as zone 1 or 2 using a spanner crab net, or
- (b) as at 28 February 1997 (the date of the commencement of the fishery) the person held a permit issued under the Act that authorised the holder to take spanner crab for sale from ocean waters north of a line drawn due east from the southern breakwall at Yamba.

Clause 203 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

(6) **Spanner crab (southern zone) endorsement**

A person is eligible for a spanner crab (southern zone) endorsement if the Minister is satisfied that:

- (a) the person submitted to the Director at least 3 ocean waters catch returns in the years 1986 to 1993 that indicate that spanner crab were taken from an area designated on the return as zone 2 or 3 using a spanner crab net, and
 - (b) as at 28 February 1997 (the date of the commencement of the fishery) the person held a permit issued under the Act that authorised the holder to take spanner crab for sale from ocean waters south of a line drawn due east from the southern breakwall at Yamba.
- (7) A person is not eligible for both a spanner crab (northern zone) endorsement and a spanner crab (southern zone) endorsement.
- (8) If the Minister is satisfied that the catch history associated with a fishing business satisfies any of the eligibility criteria set out in this clause, the owner of the fishing business is taken to have satisfied those criteria, even if the owner did not personally take the fish for sale or submit any catch returns to the Director. In such a case, however, the person who actually took the fish for sale and submitted the returns (for example, while working as an employee of the fishing business) does not, by having done so, satisfy the criteria.
- (9) In determining a person's eligibility for an endorsement, the Minister may have regard to the records kept by the Director (including licence records and records of fish taken by a commercial fisher).
- (10) The catch history associated with a fishing business is to be determined in accordance with clause 143 (5).
- (11) In this clause:
- ocean waters catch return* means a return under section 42 of the 1935 Act that relates to takings of fish in ocean waters.

203 Application for endorsement

- (1) An application for an endorsement is to be in a form approved by the Director.
- (2) The application is to be accompanied by a fee of \$31.

Fisheries Management (General) Regulation 2002

Clause 204

Restricted fisheries

Part 8

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- (3) The Minister may endorse the commercial fishing licence of a person who satisfies the eligibility requirements for an endorsement or who is the nominated fisher of a person who satisfies the eligibility requirements for an endorsement.
 - (4) The Minister may refuse to endorse the commercial fishing licence of a person if the person:
 - (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) has not paid any fee due and payable in connection with the endorsement.

204 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

205 Application for endorsement for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (a *current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.
- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse an application only if:
 - (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement, or
 - (c) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the applicant, or if the applicant is a nominated fisher, the owner of the fishing business who nominated the fisher, has ceased to be entitled to the endorsement (see clause 277), or

Clause 206 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

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- (e) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (f) the applicant has not paid any fee due and payable in connection with the endorsement.
- (5) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:
- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

206 Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (c) the holder of the endorsed licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the holder of the endorsed licence, or if the holder of the endorsed licence is a nominated fisher, the owner of the fishing business who nominated the holder of the endorsed licence, ceases to be entitled to the endorsement (see clause 277).

Division 5 Estuary general restricted fishery

207 Definitions

In this Division:

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

Fisheries Management (General) Regulation 2002

Clause 208

Restricted fisheries

Part 8

estuary general fishery means the fishery described in clause 11 of Schedule 1 to the Act.

hand picking, of fish, means any method of taking fish by hand (whether or not while wearing a glove) including taking fish by hand while diving or while using an instrument referred to in clause 74.

nominated fisher means a person nominated in accordance with clause 276 to take fish for sale in the restricted fishery.

restricted fishery means the restricted fishery declared under this Division.

208 Estuary general fishery is a restricted fishery

For the purposes of section 111 of the Act, the estuary general fishery is declared to be a restricted fishery.

209 Types of endorsement in restricted fishery

(1) The following classes of endorsement are available in the restricted fishery:

(a) **Hand lining and hauling crew endorsement**

This endorsement authorises the holder to take fish for sale from estuarine waters using a hand line or by assisting another commercial fisher who holds a category one or category two hauling endorsement and is acting as authorised by that endorsement.

(b) **Meshing endorsement**

This endorsement authorises the holder to take fish for sale from estuarine waters using any of the following nets:

- (i) meshing net,
- (ii) flathead net.

(c) **Prawning endorsement**

This endorsement authorises the holder to take prawns for sale from estuarine waters using any of the following nets:

- (i) prawn net (hauling),
- (ii) prawn net (set pocket),
- (iii) prawn running net,
- (iv) seine net (prawns),
- (v) hand-hauled prawn net,

Clause 209 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (vi) push or scissors net (prawns),
 - (vii) dip or scoop net (prawns).
 - (d) **Trapping endorsement**

This endorsement authorises the holder to take fish (other than eels and mud crabs) for sale from estuarine waters using any of the following nets and traps:

 - (i) fish trap,
 - (ii) hoop or lift net.
 - (e) **Eel trapping endorsement**

This endorsement authorises the holder to use an eel trap to take eels for sale from estuarine waters.
 - (f) **Mud crab trapping endorsement**

This endorsement authorises the holder to use a crab trap to take mud crabs for sale from estuarine waters.
 - (g) **Hand gathering endorsement**

This endorsement authorises the holder to take beachworm, pipi, cockle, yabby and mussel for sale from estuarine waters and ocean beaches by the method of hand picking.
 - (h) **Category one hauling endorsement**

This endorsement authorises the holder to take fish for sale from estuarine waters using any of the following nets:

 - (i) hauling net (general purpose),
 - (ii) trumpeter whiting net (hauling),
 - (iii) pilchard, anchovy and bait net (hauling),
 - (iv) garfish net (hauling),
 - (v) garfish net (bullringing),
 - (vi) bait net.
 - (i) **Category two hauling endorsement**

This endorsement authorises the holder to take fish for sale from estuarine waters using any of the following nets:

 - (i) garfish net (hauling),
 - (ii) garfish net (bullringing),
 - (iii) bait net.
- (2) An endorsement may specify a particular region or regions, determined by the Minister, in which the endorsement holder is authorised to take fish for sale by his or her endorsement.

Fisheries Management (General) Regulation 2002

Clause 210

Restricted fisheries

Part 8

- (3) For the purpose of section 112 (2) of the Act, it is a condition of an endorsement that the holder of the endorsed licence does not take fish for sale in the restricted fishery except as authorised by the class or classes of endorsement on his or her commercial fishing licence.
- Note.** Additional classes of endorsement are provided for by Division 11 of this Part.

210 Eligibility for endorsement

(1) General requirements

The general requirements for an endorsement are that the person:

- (a) owns a licensed fishing boat that is suitable for use in the restricted fishery, and
- (b) has submitted to the Director at least 12 estuary waters catch returns in any 4 years (not necessarily consecutive) from 1986 to 1993, and at least one of those returns relates to a month prior to January 1991.

(2) Hand lining and hauling crew endorsement

A person is eligible for a hand lining and hauling crew endorsement if the Minister is satisfied that:

- (a) the person fulfils the general requirements for an endorsement, and
- (b) the person holds a commercial fishing licence that is not subject to a condition known as a “beachworm only” condition.

(3) Meshing endorsement

A person is eligible for a meshing endorsement if the Minister is satisfied that:

- (a) the person fulfils the general requirements for an endorsement, and
- (b) the person submitted to the Director at least 8 estuary waters catch returns in the years 1986 to 1993 that indicate that fish were taken from estuarine waters using a meshing net or a flathead net and at least one of those returns relates to a month prior to January 1991.

(4) Prawning endorsement

A person is eligible for a prawning endorsement if the Minister is satisfied that:

Clause 210 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (a) the person fulfils the general requirements for an endorsement, and
- (b) the person submitted to the Director at least 8 estuary waters catch returns in the years 1986 to 1993 that indicate that prawns were taken by methods other than prawn trawling and at least one of those returns relates to a month prior to January 1991.

(5) Trapping endorsement

A person is eligible for a trapping endorsement if the Minister is satisfied that:

- (a) the person fulfils the general requirements for an endorsement, and
- (b) the person submitted to the Director at least 8 estuary waters catch returns in the years 1986 to 1993 that indicate that fish (other than eels and mud crabs) were taken using a fish trap or a hoop or lift net and at least one of those returns is for a month prior to January 1991.

(6) Eel trapping endorsement

A person is eligible for an eel trapping endorsement if the Minister is satisfied that:

- (a) the person fulfils the general requirements for an endorsement, and
- (b) the person submitted to the Director at least 5 estuary waters catch returns in the years 1986 to 1993 that indicate that eels were taken using an eel trap.

(7) Mud crab trapping endorsement

A person is eligible for a mud crab trapping endorsement if the Minister is satisfied that:

- (a) the person fulfils the general requirements for an endorsement, and
- (b) the person submitted to the Director a total of at least 8 estuary waters catch returns in the years 1986 to 1993 that indicate that mud crab were taken by the method of trapping and at least one of those returns relates to a month prior to January 1991.

Fisheries Management (General) Regulation 2002

Clause 210

Restricted fisheries

Part 8

(8) **Hand gathering endorsement**

A person is eligible for a hand gathering endorsement if the Minister is satisfied that:

- (a) the person holds a commercial fishing licence that is subject to a condition known as a “beachworm only” condition, or
- (b) the person fulfils the general requirements for an endorsement and submitted to the Director at least 8 ocean waters or estuary waters catch returns in the years 1986 to 1993 that indicate a catch of beachworm, pipi, cockle, yabby or mussel and at least one of those returns relates to a month prior to January 1991.

Any ocean waters or estuary waters catch return that records cockle as catch and prawn trawling as the only catch method is not to be counted toward the criteria set out in paragraph (b).

(9) **Category one hauling endorsement**

A person is eligible for a category one hauling endorsement if the Minister is satisfied that:

- (a) the person fulfils the general requirements for an endorsement, and
- (b) at least 10 estuary waters catch returns have been submitted to the Director in the person’s name or listing the person as a crew member in the years 1986 to 1990 that indicate that fish were taken by the method of hauling.

(10) **Category two hauling endorsement**

A person is eligible for a category two hauling endorsement if the Minister is satisfied that:

- (a) the person fulfils the general requirements for an endorsement, and
- (b) the person submitted to the Director at least 8 estuary waters catch returns in the years 1986 to 1993 that indicate that fish were taken by the method of hauling and at least one of those returns relates to a month prior to January 1991.

- (11) If the Minister is satisfied that the catch history associated with a fishing business satisfies any of the eligibility criteria set out in this clause, the owner of the fishing business is taken to have satisfied those criteria, even if the owner did not personally take the fish for sale or submit any catch returns to the Director. In such a case, however, the person who actually took the fish for sale or submitted

Clause 211 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

the returns (for example, while working as an employee of the fishing business) does not, by having done so, satisfy the criteria.

(12) In determining a person's eligibility for an endorsement, the Minister may have regard to the records kept by the Director (including records of net registration, licence records and records of fish taken by a commercial fisher).

(13) The catch history associated with a fishing business is to be determined in accordance with clause 143 (5).

(14) In this clause:

estuary waters catch return means a return under section 42 of the 1935 Act that relates to takings of fish in estuarine waters.

ocean waters catch return means a return under section 42 of the 1935 Act that relates to takings of fish in ocean waters.

211 Application for endorsement

- (1) An application for an endorsement is to be in a form approved by the Director.
- (2) The application is to be accompanied by a fee of \$30.
- (3) The Minister may endorse the commercial fishing licence of a person who satisfies the eligibility requirements for an endorsement or who is the nominated fisher of a person who satisfies the eligibility requirements for an endorsement.
- (4) The Minister may refuse to endorse the commercial fishing licence of a person if the person:
 - (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) has not paid any fee due and payable in connection with the endorsement.

212 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

Fisheries Management (General) Regulation 2002

Clause 213

Restricted fisheries

Part 8

213 Application for endorsement for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (a *current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.
- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse an application only if:
 - (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement, or
 - (c) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the applicant, or if the applicant is a nominated fisher, the owner of the fishing business who nominated the fisher, has ceased to be entitled to the endorsement (see clause 277), or
 - (e) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (f) the applicant has not paid any fee due and payable in connection with the endorsement.
- (5) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:
 - (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

Clause 214 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

214 Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (c) the holder of the endorsed licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the holder of the endorsed licence, or if the holder of the endorsed licence is a nominated fisher, the owner of the fishing business who nominated the holder of the endorsed licence, ceases to be entitled to the endorsement (see clause 277).

Division 6 Estuary prawn trawl restricted fishery

215 Definitions

In this Division:

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

estuary prawn trawl fishery means the fishery described in clause 12 of Schedule 1 to the Act.

nominated fisher means a person nominated in accordance with clause 276 to take fish for sale in the restricted fishery.

restricted fishery means the restricted fishery declared under this Division.

216 Estuary prawn trawl fishery is a restricted fishery

For the purposes of section 111 of the Act, the estuary prawn trawl fishery is declared to be a restricted fishery.

217 Eligibility for endorsement

- (1) A person is eligible for an endorsement if the Minister is satisfied that the person owns a licensed fishing boat, or is the holder of a

Fisheries Management (General) Regulation 2002

Clause 218

Restricted fisheries

Part 8

licence for a fishing boat that is in abeyance (under clause 157), and the licence for the boat had, at 31 December 1996, any of the following endorsements from the Director:

- (a) an endorsement known as “S2 Port Jackson Prawn Trawl”,
 - (b) an endorsement known as “S3 Hawkesbury River Prawn Trawl”,
 - (c) an endorsement known as “S4 Hunter River Prawn Trawl”,
 - (d) an endorsement known as “S5 Clarence River Prawn Trawl”,
 - (e) an endorsement known as “S6 Lake Woollooweyah Prawn Trawl”.
- (2) In determining a person’s eligibility for an endorsement, the Minister may have regard to the records kept by the Director (including licence records).

218 Application for endorsement

- (1) An application for an endorsement is to be in a form approved by the Director.
- (2) The application is to be accompanied by a fee of \$30.
- (3) The Minister may endorse the commercial fishing licence of a person who satisfies the eligibility requirements for an endorsement or who is the nominated fisher of a person who satisfies the eligibility requirements for the endorsement.
- (4) The Minister may refuse to endorse the commercial fishing licence of a person if the person:
 - (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) has not paid any fee due and payable in connection with the endorsement.

219 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

Clause 220 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

220 Application for endorsement for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (a *current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.
- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse an application only if:
 - (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement, or
 - (c) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the applicant, or if the applicant is a nominated fisher, the owner of the fishing business who nominated the fisher, has ceased to be entitled to the endorsement (see clause 277), or
 - (e) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (f) the applicant has not paid any fee due and payable in connection with the endorsement.
- (5) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:
 - (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

Fisheries Management (General) Regulation 2002

Clause 221

Restricted fisheries

Part 8

221 Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (c) the holder of the endorsed licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the holder of the endorsed licence, or if the holder of the endorsed licence is a nominated fisher, the owner of the fishing business who nominated the holder of the endorsed licence, ceases to be entitled to the endorsement (see clause 277).

Division 7 Scallops in Jervis Bay

222 Definitions

In this Division:

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take scallops for sale in the restricted fishery.

restricted fishery means the restricted fishery (if any) declared under this Division.

scallop means scallop (*Pecten fumatus*).

223 Application of Division

This Division has effect during any period scallops in Jervis Bay are a restricted fishery.

224 Maximum number of commercial fishing licences that may be endorsed

The maximum number of commercial fishing licences that may be endorsed in respect of the restricted fishery is 6.

Clause 225 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

225 Ballot for issue of new endorsements

- (1) If at any time the Minister is satisfied that more commercial fishing licences may be endorsed, having regard to the maximum number of commercial fishing licences that may be endorsed in respect of the restricted fishery, the Minister may, by public notice, invite applications to participate in a ballot to be conducted for the number of endorsements available.
- (2) A ballot conducted under subclause (1) is subject to such conditions as may be determined by the Minister.
- (3) If the number of applications received by the Minister does not exceed the number of endorsements available, the Minister may, subject to clause 224, endorse the licences of all applicants.
- (4) If the number of applications received by the Minister exceeds the number of endorsements available, the Minister is to conduct a ballot, in such manner as the Minister considers appropriate, to determine the order of allocation of endorsements. All names entered in the ballot are to be drawn and the order of their drawing recorded.
- (5) The Minister may, subject to clause 224, endorse the commercial fishing licences of the applicants in the order in which their names were drawn in the ballot until the number of endorsements available is exhausted.

226 Fee for new endorsements

- (1) The Minister is not to endorse a licence unless:
 - (a) the applicant has paid a fee for the endorsement of \$5,351 or such lesser amount as the Minister determines and the Director notifies in writing to all applicants to whom endorsements are to be given, or
 - (b) the Director has approved the payment of that fee by instalments and the applicant has paid the first instalment specified by the Director.
- (2) If the fee, or first instalment, for an endorsement is not paid by a successful applicant in accordance with this clause, the Minister may endorse the commercial fishing licence of another applicant in accordance with clause 225.

Fisheries Management (General) Regulation 2002

Clause 227

Restricted fisheries

Part 8

227 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

228 Cancellation and suspension of endorsements

The Minister may suspend or cancel an endorsement if the holder of the commercial fishing licence to which the endorsement is attached has, in the opinion of the Minister, contravened a condition of the endorsement.

Division 8 Inland restricted fishery

229 Definitions

In this Division:

carp means all species of carp, including goldfish, and any other species of finfish not indigenous to inland waters of New South Wales, such as redfin perch (*Perca fluviatilis*).

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

inland fishery means the fishery described in clause 230 (2).

restricted fishery means the restricted fishery declared under this Division.

yabby means a fish of the species *Cherax destructor*.

230 Inland fishery is a restricted fishery

- (1) For the purposes of section 111 of the Act, the inland fishery is declared to be a restricted fishery.
- (2) The inland fishery comprises the following:
 - (a) the taking of yabbies for sale from inland waters,
 - (b) the taking of carp for sale from inland waters.

231 Types of endorsement in restricted fishery

The following classes of endorsement are available in the restricted fishery:

Clause 232 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

(a) **Class A: Yabby and carp endorsement (transferable)**

This endorsement authorises the holder to take yabbies and carp for sale from inland waters and is transferable in accordance with clause 241.

(b) **Class B: Carp endorsement (transferable)**

This endorsement authorises the holder to take carp for sale from inland waters and is transferable in accordance with clause 241.

(c) **Class D: Carp endorsement (non-transferable)**

This endorsement authorises the holder to take carp for sale from inland waters as specified in the endorsement. This endorsement is not transferable.

232 Eligibility for endorsement

(1) **Class A endorsement**

A person is eligible for a class A endorsement if:

- (a) the Minister is satisfied that, immediately before the commencement of the restricted fishery, the person held a commercial fishing licence that authorised the person to take fish for sale from inland waters and the licence was unrestricted, and
- (b) the Minister is satisfied that the person's gross average annual income derived from commercial fishing activities is more than \$20,000 (calculated on the basis of the records held by the Director for the period from 1 January 1993 to 30 June 1997).

(2) **Class B endorsement**

A person is eligible for a class B endorsement if the Minister is satisfied that the person is eligible for assistance under the scheme known as the Carp Production Incentive Scheme, conducted by NSW Fisheries, or is a member of a group that is eligible for assistance under that scheme.

(3) **Class D endorsement**

A person is eligible for a class D endorsement if the Minister is satisfied that, immediately before the commencement of the restricted fishery, the person held a commercial fishing licence or permit that authorised the person to take carp for sale from inland waters.

Fisheries Management (General) Regulation 2002

Clause 233

Restricted fisheries

Part 8

(4) **Persons who surrender their commercial fishing licences not eligible**

A person is not eligible for an endorsement under this clause if the person enters into an agreement (whether before or after the commencement of the restricted fishery) to surrender his or her commercial fishing licence to the Director.

(5) A person is not eligible for endorsement under this clause unless the person had duly applied, by 31 July 2001, for endorsement under clause 200D of the repealed regulation. However, failure to apply by that date does not prevent the person from becoming eligible for an endorsement under clause 233 or 234 or by means of a transfer of endorsement that is permitted by this Division.

Note. Subclauses (1)–(4) and (6) contain the substance of clause 200D of the *Fisheries Management (General) Regulation 1995*, except that clause 200D also provided for Class C endorsements (in relation to yabbies and carp) and Class E endorsements (in relation to native finfish). All Class E endorsements were cancelled on 1 September 2001.

A person who was eligible under clause 200D for an endorsement lost that eligibility if he or she had not duly applied for endorsement by 31 July 2001.

(6) In this clause:

unrestricted, in relation to a commercial fishing licence, means that the conditions of the licence do not prevent the person from taking any particular species of fish or require the person to take fish only while under supervision.

Note. The restricted fishery commenced on 26 February 1999.

233 Ballot or tender for issue of further endorsements

- (1) The Minister may, at any time after considering the status of stock levels in the restricted fishery:
 - (a) conduct a ballot for the issue of further class A or class B endorsements in the restricted fishery (or both), or
 - (b) call for public tenders for the issue of further class A or class B endorsements in the restricted fishery (or both).
- (2) Notice of the ballot or public tender is to be published in the Gazette.
- (3) The conditions of the ballot or public tender are to be determined by the Minister and published in the Gazette notice.
- (4) A person is eligible for an endorsement in the restricted fishery if the person is successful in such a ballot or is a successful tenderer.

Clause 234 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

234 Class D endorsement—special grounds for eligibility

A person is eligible for a class D endorsement if:

- (a) the person prepares and submits a business strategy that sets out the carp fishing operations proposed to be undertaken by the person, and
- (b) the Director is satisfied that:
 - (i) the person has experience with commercial fishing equipment, and
 - (ii) the person is able to take carp in commercial quantities, and
 - (iii) the person has an adequate strategy to minimise the accidental taking of species of fish other than carp, and
 - (iv) the carp fishing operations proposed to be undertaken by the person are commercially viable and environmentally sustainable, and
 - (v) the person satisfies the requirements of any licensing guidelines issued by the Director from time to time.

235 General restrictions on eligibility

- (1) Despite anything to the contrary in this Division, a person is not eligible for, and may not hold:
 - (a) both a class A and a class B endorsement, or
 - (b) both a transferable endorsement (ie a class A or class B endorsement) and a non-transferable endorsement (ie a class D endorsement).
- (2) A person is not eligible for an endorsement unless the person is a natural person.

Note. Section 103 (1) of the Act prevents corporations from holding commercial fishing licences.
- (3) Division 12 of this Part does not apply in respect of the restricted fishery.

236 Endorsement

- (1) The Minister may endorse the commercial fishing licence of a person only if the person satisfies the eligibility requirements for an endorsement.
- (2) The Minister may refuse to endorse the commercial fishing licence of a person who is otherwise eligible if the person:

Fisheries Management (General) Regulation 2002

Clause 237

Restricted fisheries

Part 8

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- (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (b) has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) has not paid any fee due and payable in connection with the endorsement.

237 Endorsement of licence for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (*a current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director.
- (3) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (4) The Minister may refuse an application only if:
 - (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement or a condition of his or her commercial fishing licence, or
 - (c) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (e) the applicant has not paid any fee due and payable in connection with the endorsement, or

Clause 238 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (f) in the case of an application relating to a class B endorsement, the applicant has, in the opinion of the Minister:
 - (i) failed to comply with any agreement relating to the taking of carp that the holder made with the Director or with NSW Fisheries, or
 - (ii) not attempted to take carp for a period of 12 months, or
 - (g) in the case of an application relating to a class D endorsement, the applicant has, in the opinion of the Minister, not attempted to take carp for a period of 12 months, or
 - (h) the applicant is no longer eligible for the endorsement.
- (5) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:
- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

238 Endorsement fees

- (1) The following fees are payable for an endorsement in the restricted fishery:
 - (a) in the case of a class A endorsement—\$2,140,
 - (b) in the case of a class B endorsement—\$268,
 - (c) in the case of a class D endorsement—\$267.
- (2) The fee is payable in respect of each period, or further period, of 12 months in respect of which the endorsement is given.
- (3) If the endorsement is given for a period of less than 12 months, the fee payable is an appropriate proportion of the fee referred to in subclause (1) (that is, the proportion that the period for which the licence is endorsed bears to the period of 12 months).
- (4) The fee is to be paid before the endorsement is given.

239 Duration of endorsement

An endorsement takes effect from the date it is given and remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

Fisheries Management (General) Regulation 2002

Clause 240

Restricted fisheries

Part 8

240 Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the endorsement holder has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
- (b) the endorsement holder has, in the opinion of the Minister, contravened a condition of the endorsement or of his or her commercial fishing licence, or
- (c) the endorsement holder has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) in the case of a class B endorsement, the endorsement holder has, in the opinion of the Minister:
 - (i) failed to comply with any agreement relating to the taking of carp that the holder made with the Director or with NSW Fisheries, or
 - (ii) not attempted to take carp for a period of 12 months, or
- (e) in the case of a class D endorsement, the endorsement holder has, in the opinion of the Minister, not attempted to take carp for a period of 12 months, or
- (f) the endorsement holder ceases to be eligible for the endorsement.

241 Transfer of class A and class B endorsements

- (1) The holder of a commercial fishing licence with a class A or class B endorsement may transfer that endorsement to another person (being a natural person), but only with the approval of the Director.
- (2) An application for the Director's approval is to be made to the Director in a form approved by the Director.
- (3) The Director may refuse to approve the transfer if:
 - (a) the person to whom the endorsement is to be transferred has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or

Clause 242 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

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- (b) the person to whom the endorsement is to be transferred has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) the person to whom the endorsement is to be transferred already holds a class A or class B endorsement in the restricted fishery, or
 - (d) the person to whom the endorsement is to be transferred already holds a non-transferable endorsement in the restricted fishery, unless the person agrees to the cancellation of all non-transferable endorsements held by the person, or
 - (e) the transfer does not comply with any guidelines relating to the transfer of endorsements that are from time to time approved by the Director.
- (4) If the transfer of an endorsement is approved, the person transferring the endorsement ceases to be eligible for the endorsement and the person to whom the endorsement is transferred becomes eligible for the endorsement.
 - (5) If the person to whom the endorsement is to be transferred already holds a non-transferable endorsement, the person ceases to be eligible for the non-transferable endorsement.
 - (6) An endorsement that is suspended or cancelled is not transferable under this clause.
 - (7) In this clause:
non-transferable endorsement means a class D endorsement.

242 Transfer fee

- (1) The fee payable for an approval of a transfer of an endorsement is \$2,675.
- (2) The fee is to be paid before the transfer is approved.

243 Endorsement holders must not take or possess native finfish

For the purpose of section 104 (4) (a) of the Act, it is a condition of a commercial fishing licence that is endorsed under this Division that the holder of the endorsed licence does not:

- (a) take native finfish for sale, or

Fisheries Management (General) Regulation 2002

Clause 244

Restricted fisheries

Part 8

(b) have native finfish in his or her possession for sale.

Note. Contravention of a condition of a commercial fishing licence is an offence under section 104 (7) of the Act and attracts a maximum penalty of 100 penalty units. Contravention of a licence condition is also grounds for cancellation or suspension of an endorsement.

Section 105 of the Act provides that the fact that a person holds a commercial fishing licence is evidence that fish taken by the person or in the person's possession were fish taken or in possession for sale.

Division 9 Jellyfish

244 Definitions

In this Division:

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take jellyfish for sale in the restricted fishery.

jellyfish means jellyfish (*Catostylus mosaicus*).

quota means the maximum quantity of jellyfish that may be taken for sale by the holder of an endorsed licence during the period in which jellyfish are a restricted fishery.

restricted fishery means the restricted fishery (if any) declared under this Division.

total allowable catch means the maximum quantity of jellyfish that may be taken from the restricted fishery during the period in which jellyfish are a restricted fishery.

245 Application of Division

This Division has effect during any period that jellyfish are a restricted fishery.

246 Maximum number of commercial fishing licences that may be endorsed

The maximum number of commercial fishing licences that may be endorsed in respect of the restricted fishery is 100.

247 Total allowable catch for jellyfish

The maximum quantity of jellyfish that may be taken from the restricted fishery during the period in which jellyfish are a restricted fishery is 750 tonnes, unless the Minister requires the TAC

Clause 248 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

Committee to determine the total allowable catch of jellyfish and the TAC Committee determine a different maximum quantity.

248 Endorsing of licences

- (1) The Minister may, by public notice, invite commercial fishers to apply for endorsements to their licences, having regard to the maximum number of commercial fishing licences that may be endorsed in respect of the restricted fishery.
- (2) The notice is to specify a period (*the application period*), commencing after the day the notice is published, in which the Minister will receive applications for endorsements.
- (3) An application for an endorsement is to be in writing.
- (4) If the number of applications received by the Minister in the application period does not exceed the number of endorsements available, the Minister may endorse the commercial fishing licences of all the applicants.
- (5) If the number of applications received by the Minister in the application period exceeds the number of endorsements available, the Minister may endorse the licences of the applicants in the order in which their applications were received by the Minister until the number of endorsements available is exhausted.
- (6) Despite subclause (5), the Minister may endorse the licence of any applicant who has, under a previous endorsement, a catch history in relation to jellyfish in preference to endorsing the licence of an applicant who does not have such a catch history.
- (7) If at any time after the endorsing of commercial fishing licences in accordance with this clause the Minister is satisfied that more endorsements are available (having regard to the maximum number of licences that may be endorsed under this Division), the Minister may endorse the commercial fishing licences of any remaining applicants in the order referred to in subclauses (5) and (6) or, if all applications for endorsement have been exhausted, by inviting further applications in accordance with this clause.

249 Grounds for refusal to endorse licence

The Minister may only refuse to endorse the commercial fishing licence of an applicant who is otherwise entitled to an endorsement under clause 248 if:

Fisheries Management (General) Regulation 2002

Clause 250

Restricted fisheries

Part 8

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- (a) the applicant does not hold a current commercial fishing licence, or
 - (b) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (c) the applicant has been convicted of an offence relating to commercial fishing operations under the laws of the Commonwealth or of another State or Territory.

250 Fee for endorsements

- (1) The Minister is not to endorse a commercial fishing licence under clause 248 unless the applicant has paid a fee of \$214 for the endorsement.
- (2) If the fee for an endorsement is not paid by a successful applicant within the time required by the Minister, the Minister may endorse the commercial fishing licence of another applicant in accordance with that clause.

251 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

252 Cancellation and suspension of endorsements

The Minister may suspend or cancel an endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence has been convicted of an offence relating to commercial fishing operations under the laws of the Commonwealth or of another State or Territory, or
- (c) the holder of the endorsed licence has, in the opinion of the Minister, taken the whole of his or her quota, or
- (d) the holder of the endorsed licence has, in the opinion of the Minister, contravened a condition of the endorsement.

253 Application for endorsement of licence for a further period

- (1) The holder of an endorsed licence (a *current endorsement*) may apply in writing to the Minister for an endorsement for a further period.

Clause 254 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (2) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (3) The Minister may only refuse the application if:
 - (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the applicant has been convicted of an offence relating to commercial fishing operations under the laws of the Commonwealth or of another State or Territory, or
 - (c) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement, or
 - (d) the application for endorsement of the licence for a further period is received by the Minister after the expiration of the current endorsement.
- (4) If application is duly made for endorsement of a licence for a further period and the licence is not endorsed for a further period before the expiration of the current endorsement:
 - (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

254 Quota for jellyfish

- (1) For the purposes of section 112 (2) of the Act, it is a condition of an endorsement that the holder of the endorsed licence does not take more than 15 tonnes of jellyfish for sale from the restricted fishery during the period in which jellyfish is a restricted fishery.
- (2) The holder of an endorsed licence may apply in writing to the Director (jointly with the holder of another endorsed licence) for approval of the transfer of the quota or a specified part of the quota.
- (3) The Director may approve, or refuse to approve, such a transfer.
- (4) If the transfer is approved the conditions of each endorsed licence concerned are taken to be amended in accordance with the transfer, with effect from the date notice of the approval of the transfer is served on the holder of the endorsed licence concerned.

Fisheries Management (General) Regulation 2002

Clause 255

Restricted fisheries

Part 8

Division 10 Ocean hauling fishery

255 Definitions

In this Division:

endorsed licence means an endorsed commercial fishing licence.

endorsement means an endorsement on a commercial fishing licence authorising the holder of the licence to take fish for sale in the restricted fishery.

hauling net means any one or more of the following types of nets:

- (a) hauling net (general purpose),
- (b) garfish net (hauling),
- (c) garfish net (bullringing),
- (d) pilchard, anchovy and bait net (hauling).

nominated fisher means a person nominated in accordance with clause 276 to take fish for sale in the restricted fishery.

ocean hauling fishery means the fishery described in clause 9 of Schedule 1 to the Act.

restricted fishery means the restricted fishery declared under this Division.

waters of the restricted fishery means the waters referred to in clause 9 (1) of Schedule 1 to the Act.

256 Ocean hauling fishery is a restricted fishery

For the purposes of section 111 of the Act, the ocean hauling fishery is declared to be a restricted fishery.

257 Types of endorsement in restricted fishery

- (1) The following classes of endorsement are available in the restricted fishery:

Clause 258 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

(a) **Class A endorsement**

This endorsement authorises the holder to take fish for sale using one or more types of hauling net specified in the endorsement in a particular region of the restricted fishery. The holder may also use a hauling net while assisting another person who holds a licence with a class A endorsement that authorises the other person to use the net concerned in that region of the fishery.

(b) **Class B endorsement**

This endorsement authorises the holder to take fish for sale using a hauling net in a particular region of the restricted fishery but only if the holder is assisting another person who holds a licence with a class A endorsement that authorises the other person to use the net concerned in that region of the fishery.

(c) **Class C endorsement**

This endorsement authorises the holder to take fish for sale by use of a purse seine net from ocean waters within 3 nautical miles of the natural coast line and the waters of Jervis Bay.

(d) **Class D endorsement**

This endorsement authorises the holder to take fish for sale (being fish of a species specified in the endorsement) by the use of a purse seine net from ocean waters that lie north of latitude 32° south within 3 miles of the natural coast line.

- (2) For the purpose of section 112 (2) of the Act, it is a condition of an endorsement that the holder of the endorsed licence does not take fish for sale in the restricted fishery except as authorised by the class or classes of endorsement on his or her commercial fishing licence.

Note. Additional classes of endorsement are provided for by Division 11 of this Part.

258 Application for endorsement

- (1) An application for endorsement is to be in a form approved by the Director.
- (2) The application is to be accompanied by 2 identical passport sized photographs of the applicant and the appropriate application fee.
- (3) The application fee is:
 - (a) in the case of an application for a class A endorsement—\$268, or

Fisheries Management (General) Regulation 2002

Clause 259

Restricted fisheries

Part 8

-
- (b) in the case of an application for a class B endorsement—\$54, or
 - (c) in the case of an application for a class C endorsement—\$32 if the applicant is the holder of a class A endorsement or \$268 in any other case, or
 - (d) in the case of an application for a class D endorsement—\$32 if the applicant is the holder of a class A endorsement or \$268 in any other case.
- (4) The Minister may endorse the commercial fishing licence of a person who satisfies the eligibility requirements for the endorsement or who is the nominated fisher of a person who satisfies the eligibility requirements for the endorsement.
- (5) The Minister may refuse to endorse the commercial fishing licence of a person if the person:
- (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) has not paid any fee due and payable in connection with the endorsement.

259 Eligibility for an endorsement

- (1) A person is eligible for a class A endorsement if:
- (a) the person submitted at least one return under section 42 of the 1935 Act during a relevant year and, according to that return, the person caught mullet, bream, salmon, blackfish, pilchard or garfish using a hauling net and at the time had a fishing boat that was licensed to the person, and
 - (b) the Minister is satisfied that the person had a hauling net of the type in respect of which an endorsement is sought, that was registered in the name of the person, before 31 December 1990 and that the person currently has such a registered hauling net, and
 - (c) the Minister is satisfied that the person currently has a suitable boat for use in the ocean hauling fishery that is licensed to the person.

Clause 259 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (2) A person is eligible for a class B endorsement if the person demonstrates to the satisfaction of the Minister that the person has participated in the ocean hauling fishery at any time after 1 January 1986.
- (3) A person is eligible for a class C endorsement if the Minister is satisfied that:
- (a) the person owns a licensed fishing boat, and
 - (b) the person owns a purse seine net that was registered in the name of the person before 1 January 1991 and the net was used to take fish for sale in at least one of the years from 1991 to 1994, and
 - (c) the person has taken for sale at least 10 tonnes of pilchard, anchovy, whitebait, mackerel, yellowtail or Australian salmon, or at least 10 tonnes of any combination of those fish, in the years 1986 to 1990 (inclusive) using a purse seine net, and
 - (d) the person submitted at least 3 catch returns to the Director in the years from 1991 to 1994 that record purse seining as a catch method.
- (4) A person is also eligible for a class C endorsement if the Minister is satisfied that:
- (a) the person owns a fishing business that is a recognised fishing operation (within the meaning of clause 143), and
 - (b) the fishing business includes a purse seine net that was registered before 1 January 1991, and that was used to take fish for sale in at least one of the years from 1991 to 1994, and
 - (c) the catch history associated with the fishing business of the person (determined in accordance with clause 143) satisfies the criteria set out in subclause (3) (c) and (d).
- (5) A person is eligible for a class D endorsement if the Minister is satisfied that:
- (a) the person owns a licensed fishing boat, and
 - (b) the person owns a purse seine net:
 - (i) that was registered in the person's name before 1 January 1991, and
 - (ii) that was used, in at least one of the years from 1991 to 1994 (inclusive), to take fish for sale, and

Fisheries Management (General) Regulation 2002

Clause 259

Restricted fisheries

Part 8

-
- (c) the person has, in the years from 1986 to 1993 (inclusive), using a purse seine net, taken for sale:
- (i) at least 10 tonnes of pilchard, anchovy, whitebait, mackerel, yellowtail or Australian salmon, or
 - (ii) at least 10 tonnes of any combination of those fish, from ocean waters that lie north of latitude 32° south within 3 miles of the natural coast line, and
- (d) the person submitted at least 3 catch returns to the Director in the years from 1991 to 1994 (inclusive) that record purse seining as a catch method, and
- (e) the person has, in the years from 1986 to 1990 (inclusive), using a purse seine net, taken for sale at least 2.5 tonnes of each species of fish for which the endorsement is sought from ocean waters that lie north of latitude 32° south within 3 miles of the natural coast line.
- (6) A person is also eligible for a class D endorsement if the Minister is satisfied that:
- (a) the person owns a fishing business that is a recognised fishing operation (within the meaning of clause 143), and
 - (b) the fishing business includes a purse seine net:
 - (i) that was registered in the person's name before 1 January 1991, and
 - (ii) that was used, in at least one of the years from 1991 to 1994 (inclusive), to take fish for sale, and
 - (c) the catch history associated with the fishing business of the person (determined in accordance with clause 143) satisfies the criteria set out in subclause (4) (c), (d) and (e).
- (7) In determining a person's eligibility for an endorsement, the Minister may have regard to the following:
- (a) the records kept by the Director (including records of net registration, licence records and records of fish taken by a commercial fisher),
 - (b) a verified record of a commercial fishers' co-operative,
 - (c) a verified record relating to the income tax liability of a commercial fisher,
 - (d) a verified record of any fish processing company (whether a wholesaler or a retailer).

Clause 260 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (8) The Minister may, for the purpose of determining a person's eligibility for an endorsement, require a net to be presented for inspection by officers of NSW Fisheries.
- (9) In this clause:
- (a) a reference to a relevant year is a reference to 1986, 1987, 1988, 1989 or 1990, and
 - (b) a reference to a verified record is a reference to an original record, or a copy of a record, audited by a registered company auditor (within the meaning of the *Corporations Act 2001* of the Commonwealth) or that forms part of a record audited by a registered company auditor.

260 Duration of endorsement

An endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

261 Type of hauling net that may be used (class A endorsement)

- (1) It is a condition of a class A endorsement that the holder of the endorsed licence does not take fish for sale by use of a hauling net from the waters of the restricted fishery unless the holder is authorised to use that type of hauling net by his or her endorsement.
- (2) The holder of the endorsed licence does not contravene this condition if the fisher is using the hauling net concerned while assisting, and in the presence of, another person who holds a commercial fishing licence with a class A endorsement that authorises that other person to use the hauling net.
- (3) In this clause, *hauling net* includes any net used by the method of hauling.

262 Region in which hauling nets may be used (class A endorsement)

- (1) It is a condition of a class A endorsement that the holder of the endorsed licence does not take fish for sale by use of a hauling net from the waters of the restricted fishery except in a region of the fishery specified by the Minister in the endorsement.
- (2) The Minister is to specify the region which, in the opinion of the Minister, was the fisher's primary area of activity in the ocean hauling fishery in the years 1986 to 1990 inclusive (*the relevant years*). However, a different region may be specified if the Minister

Fisheries Management (General) Regulation 2002

Clause 263

Restricted fisheries

Part 8

considers it appropriate in the circumstances, for example, because the fisher has changed his or her place of residence.

- (3) The region specified is to be an electoral region (unless subclause (4) or (5) applies).
- (4) The region need not be an electoral region if the Minister is satisfied that the fisher's commercial fishing operations in the ocean hauling fishery in the relevant years were primarily conducted by ocean hauling to a boat and that, for the purpose of those operations, the fisher used any of the following types of hauling net:
 - (a) garfish net (hauling),
 - (b) garfish net (bullringing),
 - (c) pilchard, anchovy and bait net (hauling).
- (5) In addition, in special circumstances the Minister may specify a region that comprises parts of two or more electoral regions (for example, because the fisher concerned is resident in an area that is close to the boundary between two electoral regions).
- (6) In this clause:

electoral region means a region of the ocean hauling restricted fishery (as defined in the notes to the Table to clause 369).

ocean hauling to a boat means the use of a hauling net on or from a boat to take fish by landing them on the boat.

263 Class B endorsement holder may only assist class A endorsement holder

It is a condition of a class B endorsement that the holder of the endorsed licence does not take fish for sale by use of a hauling net from the waters of the restricted fishery except:

- (a) in a region of the fishery specified by the Minister in the endorsement, and
- (b) while assisting, and in the presence of, a person who holds a commercial fishing licence with a class A endorsement that authorises that other person to use the hauling net concerned in that region of the fishery.

Clause 264 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

264 Identity card

It is a condition of an endorsement that the holder of the endorsed licence does not take fish for sale in the restricted fishery except while in possession of an identity card issued to the holder by the Director.

265 Code of conduct

It is a condition of an endorsement that the holder of the endorsed licence comply with the mandatory requirements of any code of conduct issued by the Director to the holder of the endorsed licence.

266 Holder of class A, C or D endorsement unable to take fish

- (1) The holder of a commercial fishing licence with a class A, class C or class D endorsement may apply in writing to the local fisheries officer for approval for another commercial fisher (who is authorised to take fish for sale in the same region of the restricted fishery as the applicant) to take the benefit of the authority conferred by the class A, class C or class D endorsement for a specified period.
- (2) The local fisheries officer may, in writing, approve the application if the fisheries officer is satisfied that the applicant is, or is likely to be, unable to take fish for sale in the restricted fishery during the specified period.
- (3) If the local fisheries officer approves the application, the person nominated by the applicant to take the benefit of the class A, class C or class D endorsement is taken to hold an endorsement of the kind held by the applicant during the period specified in the approval. During that period, the person nominated does not contravene the condition of his or her own endorsement referred to in clause 257, 261 or 263 (as appropriate) if the person is acting as authorised by the class A, class C or class D endorsement.

Note. Clause 268 (b) makes contravention of the conditions of an endorsement by a person who is authorised to take the benefit of the endorsement grounds for cancellation or suspension of the endorsement.

267 Application for endorsement of licence for further period

- (1) The holder of a commercial fishing licence that has an endorsement that is in force (a *current endorsement*) may apply to the Minister for an endorsement for a further period.
- (2) The application is to be in a form approved by the Director and is to be accompanied by the appropriate application fee.

Fisheries Management (General) Regulation 2002

Clause 267

Restricted fisheries

Part 8

-
- (3) The appropriate application fee is:
- (a) in the case of an application for a class A endorsement for a further period—\$268, or
 - (b) in the case of an application for a class B endorsement for a further period—\$54, or
 - (c) in the case of an application for a class C endorsement for a further period—\$32 if the applicant is the holder of a class A endorsement or \$268 in any other case, or
 - (d) in the case of an application for a class D endorsement for a further period—\$32 if the applicant is the holder of a class A endorsement or \$268 in any other case.
- (4) The Minister may endorse the applicant's commercial fishing licence for such further period as the Minister determines or refuse the application.
- (5) The Minister may refuse such an application only if:
- (a) the applicant has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) the applicant has, in the opinion of the Minister, contravened a condition of the endorsement, or
 - (c) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the applicant, or if the applicant is a nominated fisher, the owner of the fishing business who nominated the fisher, has ceased to be entitled to the endorsement (see clause 277), or
 - (e) the application for endorsement for a further period is received by the Minister after the expiration of the current endorsement, or
 - (f) the applicant has not paid any fee due and payable in connection with the endorsement.
- (6) If application is duly made for the endorsement of a commercial fishing licence for a further period and the licence is not so endorsed before the expiration of the current endorsement:
- (a) the current endorsement continues in force until the licence is endorsed for a further period or the application is refused, and
 - (b) the licence may be endorsed for a further period despite the fact that, but for this subclause, the endorsement would have expired.

Clause 268 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

268 Cancellation and suspension of endorsements

The Minister may cancel or suspend an endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence, or a person authorised (under clause 266) to take the benefit of the authority conferred by the holder's endorsement, has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (c) the holder of the endorsed licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the holder of the endorsed licence, or if the holder of the endorsed licence is a nominated fisher, the owner of the fishing business who nominated the holder of the endorsed licence, ceases to be entitled to an endorsement (see clause 277).

Division 11 Special classes of endorsement

269 Definitions

In this Division:

endorsement means an endorsement on a commercial fishing licence that authorises a person to take fish for sale in a restricted fishery.

special endorsement means an endorsement provided for by this Division.

270 Skipper's endorsement

- (1) A skipper's endorsement is available in the following fisheries:
 - (a) ocean prawn trawl restricted fishery,
 - (b) ocean fish trawl restricted fishery,
 - (c) ocean trap and line restricted fishery,
 - (d) estuary prawn trawl restricted fishery,
 - (e) ocean hauling restricted fishery (but only in that part of the fishery that relates to the use of a purse seine net to take fish for sale).

Fisheries Management (General) Regulation 2002

Clause 271

Restricted fisheries

Part 8

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- (2) This class of endorsement authorises a person to take fish for sale in a specified restricted fishery while acting as the skipper of a boat that is owned by another person. The endorsement may specify a particular method by which the fisher is authorised to take fish for sale and may contain other limitations.
- (3) A person is eligible for a skipper's endorsement if the Minister is satisfied that:
- (a) the person held a commercial fishing licence in 1996 that did not restrict the fishing activities of the person to any particular fishing boat or boats, and
 - (b) on the basis of the records, kept by the Director, of fish taken by the person, or other evidence provided by the person, the person was employed as a skipper in the fishery concerned in 1996 and took fish for sale using the catch method authorised by the endorsement sought, and
 - (c) the person is employed as a skipper on a fishing boat that belongs to another person and the other person is eligible for an endorsement in the fishery (other than an endorsement provided for by this Division).
- (4) A person is also eligible for a skipper's endorsement if the Minister is satisfied that:
- (a) the person is a commercial fisher, and
 - (b) the person is a part owner of a fishing business and was a part owner of that fishing business in 1996, and
 - (c) because of that fishing business, the person is eligible for an endorsement but is not entitled to the endorsement because of clause 276 (which sets a limit of one endorsement per fishing business).

271 Conditional skipper's endorsement

- (1) A conditional skipper's endorsement is available in the ocean prawn trawl restricted fishery.
- (2) This class of endorsement authorises a person to take fish for sale in the ocean prawn trawl restricted fishery, in the same manner as an offshore endorsement in the fishery, while acting as the skipper of an offshore prawn trawl boat that is owned by another person.
- (3) A person is eligible for a conditional skipper's endorsement if the Minister is satisfied that:

Clause 272 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (a) the person is employed as a skipper on an offshore prawn trawl boat, and
- (b) the owner of the offshore prawn trawl boat agrees to give up any entitlement the owner has to any endorsement in the estuary general restricted fishery or the ocean hauling restricted fishery.

(4) In this clause:

offshore prawn trawl boat means a fishing boat that is the subject of a fishing boat licence that has an endorsement of a kind known as “P1” or “P2” in the fishery known as the “offshore prawn trawl fishery”.

272 Training endorsement

- (1) A training endorsement is available in all restricted fisheries, except the inland restricted fishery.
- (2) This class of endorsement authorises a person to take fish for sale in a restricted fishery, or a specified restricted fishery:
 - (a) in the course of training another person to become a commercial fisher, or
 - (b) in the course of being trained to become a commercial fisher.
- (3) The endorsement may specify a particular method in which the fisher is authorised to take fish for sale and contain other limitations.
- (4) A commercial fisher is eligible for such an endorsement if the Minister is satisfied that the person:
 - (a) is authorised to hold a commercial fishing licence under clause 143 (1) (d), or
 - (b) is authorised to hold a commercial fishing licence under clause 143 (1) (e), or
 - (c) holds a commercial fishing licence that was issued for training purposes.

273 Application for special endorsement

- (1) An application for a special endorsement is to be in a form approved by the Director.
- (2) The application is to be accompanied by a fee of \$32.

Fisheries Management (General) Regulation 2002

Clause 274

Restricted fisheries

Part 8

- (3) The Minister may endorse the commercial fishing licence of a person who satisfies the eligibility requirements for the endorsement.
- (4) The Minister may refuse to endorse the commercial fishing licence of a person if the person:
 - (a) has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
 - (b) has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) has not paid any fee due and payable in connection with the endorsement.

274 Duration of special endorsement

A special endorsement remains in force for the period specified in the endorsement, except to the extent that its duration is affected by suspension, or unless it is cancelled.

275 Cancellation and suspension of special endorsements

The Minister may cancel or suspend a special endorsement if:

- (a) the holder of the endorsed licence has been convicted of an offence against the Act, this Regulation or any other regulation made under the Act, or
- (b) the holder of the endorsed licence has, in the opinion of the Minister, contravened a condition of the endorsement, or
- (c) the holder of the endorsed licence has been convicted of an offence relating to the theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the holder of the endorsed licence ceases to be eligible for the endorsement.

Division 12 Entitlements of fishing business owners

Note. This Division does not apply in respect of the inland restricted fishery.

276 Eligibility for an endorsement (owners of fishing businesses)

- (1) If the owner of a fishing business is eligible for an endorsement in a restricted fishery, the owner may:
 - (a) if the owner is a natural person, apply to have his or her commercial fishing licence endorsed, or

Clause 276 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

- (b) whether or not the owner is a natural person, nominate an individual to take fish for sale on behalf of the business.
- (2) Only one individual is entitled to an endorsement in respect of a fishing business. Accordingly, only one individual may be nominated under this clause to take fish for sale on behalf of the fishing business at any one time.
- (3) If a fishing business is owned by more than one person, they may nominate one of them to take fish for sale on behalf of the business or may nominate another individual to take fish for sale on behalf of the business.
- (4) Despite subclause (3), if a fishing business is owned by a partnership, each partner may be entitled to an endorsement, but only an endorsement in the estuary general restricted fishery.
- (5) A nomination must be in a form approved by the Director and may be revoked at any time by the owner of the fishing business by notice in writing to the Director.
- (6) A nomination has no effect unless it is approved by the Director. The Director may impose conditions on the granting of such approvals. For example, the Director may impose a limit on the number of nominations that may be made in respect of a fishing business under this clause.
- (7) The Director is to refuse to approve any nomination made in respect of a fishing business that is owned or partly owned by a person who holds a skipper's endorsement under clause 270 in respect of a fishing business that is owned by another person.
- (8) If a nomination is approved, the Minister is to cancel or suspend any other endorsement held in respect of the fishing business.
- (9) If a nomination is revoked, the Minister is to cancel the endorsement of the nominated fisher. This does not limit the powers of the Minister to refuse to endorse a commercial fishing licence, or suspend or cancel an endorsement, under the provisions of this Part.
- (10) In this clause:
- endorsement* means an endorsement on a commercial fishing licence that authorises a commercial fisher to take fish for sale in a restricted fishery but does not include the classes of endorsement provided for by Division 11 (Special classes of endorsement) of this Part.

Fisheries Management (General) Regulation 2002

Clause 277

Restricted fisheries

Part 8

owner, of a fishing business, means the person or persons who own the fishing business.

Note. Clause 143 provides that if the fishing business is a recognised fishing operation, the individual nominated under this clause by the owner of the business is authorised to hold a commercial fishing licence. Accordingly, if the business is a recognised fishing operation, the individual nominated under this clause need not be a commercial fisher at the time of nomination.

Division 11 allows special endorsements to be obtained by individuals. The limit of one endorsement per fishing business does not apply in respect of those endorsements.

277 Effect of sale or disposal of fishing business on eligibility

- (1) A person ceases to be entitled to an endorsement in a restricted fishery if any part of the fishing business that made the person eligible for the endorsement is sold or disposed of. For example, if a person sells the licensed fishing boat that made the person eligible for an endorsement, the person ceases to be entitled to such an endorsement.
- (2) A person who acquires any part of the fishing business of another person does not by virtue of the acquisition become eligible for an endorsement in a restricted fishery, except in accordance with guidelines relating to the transfer of fishing businesses issued from time to time by the Director.

Division 13 Miscellaneous

278 Manner of attaching conditions to endorsements

- (1) For the purposes of section 112 (2) of the Act, the Minister may attach conditions to endorsements by notice in writing served on the holder of the endorsed commercial fishing licence.
- (2) Such a condition has effect in respect of the holder of the endorsed licence on and from the date the notice is served on the holder.

279 Cancellation of endorsement with consent of licence holder

The Minister may, with the consent of the holder of a commercial fishing licence, cancel any endorsement on that licence that authorises the holder to take fish for sale in a restricted fishery.

Clause 280 Fisheries Management (General) Regulation 2002

Part 8 Restricted fisheries

280 Endorsements do not authorise unlawful use of fishing gear

An endorsement on a commercial fishing licence that authorises the holder of the licence to take fish for sale, or to assist in taking fish for sale, in a restricted fishery using a net, trap or other fishing gear is subject to Part 3. That is, the endorsement does not authorise the use of a net, trap or other fishing gear contrary to that Part.

Fisheries Management (General) Regulation 2002

Clause 281

Fish receivers and fish records

Part 9

Part 9 Fish receivers and fish records

Division 1 Fish receivers

281 Definition

In this Division:

registration means registration as a fish receiver under Division 4 of Part 4 of the Act.

282 Registration not required in certain cases

- (1) For the purposes of section 117 (2) (e) of the Act, a person is not required to be registered in respect of fish received from a registered fish receiver.
- (2) For the purposes of section 117 (2) (e) of the Act, a person is not required to be registered in respect of fish taken in the inland restricted fishery by the holder of an endorsed licence (within the meaning of Division 8 of Part 8 of this Regulation).

283 Registration requirements do not apply in respect of certain fish

For the purposes of section 117 (2) (e) of the Act, a person is not required to be registered in respect of oysters received for resale or other commercial use.

284 Classes of registered fish receiver

For the purposes of section 118 (4) of the Act, the following classes of registered fish receiver are prescribed:

- (a) **Class A Registered Fish Receivers**—being registered fish receivers who are commercial fishers and whose registration as a fish receiver is subject to a condition that the receiver must not receive fish for resale or other commercial use from any other commercial fisher,
- (b) **Class B Registered Fish Receivers**—being all other registered fish receivers.

285 Fee to accompany application for registration as fish receiver

For the purposes of section 118 (2) of the Act, the prescribed fee in respect of an application for registration as a fish receiver is:

- (a) in the case of an application for registration as a Class A Registered Fish Receiver—\$803, or

Clause 286 Fisheries Management (General) Regulation 2002

Part 9 Fish receivers and fish records

- (b) in the case of an application for registration as a Class B Registered Fish Receiver—\$2,675.

286 Grounds for refusing application for registration

For the purposes of section 118 (3) of the Act, the Minister is authorised to refuse an application for registration as a fish receiver if:

- (a) the applicant has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
- (b) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat, or
- (c) the applicant has not paid any fee due and payable in connection with registration as a fish receiver, or
- (d) the Minister is not satisfied that the applicant has any necessary development consent required by the *Environmental Planning and Assessment Act 1979* to receive fish for resale or other commercial use on the applicant's premises, or
- (e) the Minister is not satisfied that the applicant has the capacity to meet the requirements of the *Food Act 1989* and the regulations made under that Act or a food safety scheme relating to fish that has been prescribed by regulations under the *Food Production (Safety) Act 1998*.

287 Renewal of registration

- (1) A registered fish receiver may apply in writing to the Minister for renewal of his or her registration.
- (2) The Minister may refuse to renew the registration if:
 - (a) the Minister receives the application after the expiration of the period in which the fish receiver's current certificate of registration remains in force, or
 - (b) the Minister is satisfied the fish receiver has contravened a condition of his or her registration, or

Fisheries Management (General) Regulation 2002

Clause 288

Fish receivers and fish records

Part 9

-
- (c) the fish receiver has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
 - (d) the fish receiver has been convicted of an offence relating to the theft of fish, fishing gear or a boat, or
 - (e) the fish receiver has not paid any fee due and payable in connection with registration as a fish receiver, or
 - (f) the Minister is not satisfied that the fish receiver has any necessary development consent required by the *Environmental Planning and Assessment Act 1979* to receive fish for resale or other commercial use on the applicant's premises, or
 - (g) the Minister is not satisfied that the fish receiver has the capacity to meet the requirements of the *Food Act 1989* and the regulations made under that Act or a food safety scheme relating to fish that has been prescribed by regulations under the *Food Production (Safety) Act 1998*).

288 Cancellation or suspension of registration

The Minister may cancel or suspend the registration of a fish receiver if:

- (a) the Minister is satisfied that the fish receiver has contravened a condition of his or her registration, or
- (b) the fish receiver has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
- (c) the fish receiver has been convicted of an offence relating to the theft of fish, fishing gear or a boat, or
- (d) the Minister is satisfied that the fish receiver does not have any necessary development consent required by the *Environmental Planning and Assessment Act 1979* to receive fish for resale or other commercial use on the applicant's premises, or
- (e) the Minister is satisfied that the fish receiver does not have the capacity to meet the requirements of the *Food Act 1989* and the regulations made under that Act or a food safety scheme

Clause 289 Fisheries Management (General) Regulation 2002

Part 9 Fish receivers and fish records

relating to fish that has been prescribed by regulations under the *Food Production (Safety) Act 1998*).

289 Fish consignments by registered fish receivers to be labelled

For the purposes of section 118 (5) (a) of the Act, it is a prescribed condition of registration that a registered fish receiver must not receive fish in a container or consign fish in a container for sale unless the container is labelled in a manner approved by the Director.

Division 2 Fish records

290 Prescribed period for furnishing catch records to Director

For the purposes of section 122 of the Act, the prescribed period (being the period in which commercial fishers must send a copy of a record of catch to the Director) is:

- (a) in the case of a record relating to abalone taken by a commercial fisher—24 hours after the abalone is landed in New South Wales, or
- (b) in any other case—28 days after the end of the month to which the record relates.

291 Records of sale and possession of fish—prescribed quantity

For the purposes of section 123 of the Act, the prescribed quantity of fish is the following:

- (a) in respect of abalone—2 kg meat weight or 200 grams dried meat weight,
- (b) in respect of crustaceans—3 kg,
- (c) in respect of fin fish—10 kg whole weight and 5 kg fillet weight,
- (d) in respect of beachworms—20 worms or parts of worms,
- (e) in any other case—5 kg.

292 Information to be included in records of sale and possession of fish

- (1) For the purposes of section 123 (1) of the Act, a prescribed record concerning the sale of fish must include the following information:
 - (a) the marketing name and weight of each species of fish sold,
 - (b) the date of the sale,

Fisheries Management (General) Regulation 2002

Clause 292

Fish receivers and fish records

Part 9

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- (c) the full name and address of the seller,
 - (d) the full name and address of the purchaser,
 - (e) the full name, address and signature of the person completing the record,
 - (f) the price per kilogram, price per packet or price per unit of each species of fish sold,
 - (g) the total sales value of each species of fish sold,
 - (h) in respect of each sale, a unique identifying number allocated to the sale for the purposes of the record, being a number that is one of a sequence of unique identifying numbers where each subsequent sale is allocated the next number in the sequence.
- (2) For the purposes of section 123 (2) and (3) of the Act, a prescribed record concerning the possession of fish must include the following information:
- (a) the marketing name and weight of each species of fish purchased or otherwise acquired,
 - (b) the date when the fish were purchased or otherwise acquired,
 - (c) the full name and address of the person who purchased or otherwise acquired the fish,
 - (d) the full name and address of the person from whom the fish were purchased or, if not purchased, details of how the fish were acquired,
 - (e) the full name, address and signature of the person completing the record,
 - (f) the price per kilogram, price per packet or price per unit of each species of fish purchased or otherwise acquired,
 - (g) the total value of each species of fish purchased or otherwise acquired,
 - (h) in respect of each purchase or acquisition, a unique identifying number allocated to the sale or acquisition for the purposes of the record, being a number that is one of a sequence of unique identifying numbers where each subsequent purchase or acquisition is allocated the next number in the sequence.

Clause 293 Fisheries Management (General) Regulation 2002

Part 9 Fish receivers and fish records

293 Records and monthly reports by registered fish receivers

- (1) For the purposes of section 119 (2) of the Act, a registered fish receiver must keep records that include the following information:
 - (a) the marketing name and weight of each species of fish received for resale or other commercial use by the receiver,
 - (b) the date of receipt,
 - (c) the full name and address of the person from whom the fish was received,
 - (d) the price paid by the receiver per kilogram, price per packet or price per unit of each species of fish received,
 - (e) the total purchase value of each species of fish received.
- (2) A registered fish receiver must prepare and send to the Director within 28 days after the end of each named month a report for that month containing the following information:
 - (a) the full name and address of the receiver or the receiver's registration number (if applicable),
 - (b) the month (and year) to which the report relates,
 - (c) the marketing name and weight of each species of fish received for resale or other commercial use by the receiver during the month to which the report relates and the name of the person from whom the fish was received,
 - (d) the quantities of fish of each species that are held in stock by the receiver as at the end of the month to which the report relates.

Fisheries Management (General) Regulation 2002

Clause 294

Charter fishing management

Part 10

Part 10 Charter fishing management

Division 1 Preliminary

294 Object

The object of this Part is to provide for the regulation and management of guided recreational charter fishing in the marine and estuarine charter fishing sector.

295 Definitions

(1) In this Part:

Advisory Committee means the Marine and Estuarine Recreational Charter Management Advisory Committee established under this Part.

appointed member of the Advisory Committee means a member of the Advisory Committee appointed by the Minister.

carrying capacity of a boat means the number of crew and passengers that may be carried on the boat in accordance with the certificate of survey for the boat.

certificate of survey of a boat means the certificate of survey issued by or in accordance with the requirements of the Waterways Authority or another relevant authority approved by the Director.

coastal waters means ocean waters that are west of the 183 metre isobath.

deep sea bottom fishing means any recreational fishing activity that involves taking or attempting to take fish in ocean waters, being fish of a species listed in Part 1 of the Table.

estuarine fishing means any recreational fishing activity that involves taking or attempting to take fish from estuarine waters, being fish of a species listed in Part 3 or 4 of the Table.

gamefishing means any recreational fishing activity that involves taking or attempting to take fish in ocean waters, being fish of a species listed in Part 2 or 3 of the Table.

guided recreational charter fishing—see clause 296.

industry member of the Advisory Committee means a member of the Advisory Committee who is elected by licence holders.

licence means a charter fishing boat licence.

Clause 296	Fisheries Management (General) Regulation 2002
Part 10	Charter fishing management

marine and estuarine charter fishing sector—see clause 297.

nearshore bottom fishing and sportfishing means any recreational fishing activity that involves taking or attempting to take fish in ocean waters, being fish of a species listed in Part 3 or 4 of the Table.

non-industry member of the Advisory Committee means an appointed member of the Advisory Committee, other than an industry member.

Table means the table to clause 310.

- (2) A reference in this Part to an activity that involves the taking of fish includes an activity that involves taking, and later releasing, fish.

296 Guided recreational charter fishing—meaning

In this Part, *guided recreational charter fishing* means the use of a boat as a charter fishing boat under an arrangement where a person is provided, for payment or other consideration, to operate the charter fishing boat or to guide or instruct the persons using the boat in fishing operations.

297 Marine and estuarine charter fishing sector—meaning

In this Part, the *marine and estuarine charter fishing sector* means that part of the charter fishing boat industry in which charter fishing boats are used for the purpose of any of the following recreational fishing activities:

- (a) estuarine fishing,
- (b) nearshore bottom fishing and sportfishing,
- (c) gamefishing,
- (d) deep sea bottom fishing.

Division 2 Licences

298 What boats must be licensed?

For the purposes of section 127B of the Act, it is declared that a charter fishing boat is required to be licensed under Part 4A of the Act if it is used for any guided recreational charter fishing that involves:

- (a) estuarine fishing, or
- (b) nearshore bottom fishing and sportfishing, or
- (c) gamefishing, or

Fisheries Management (General) Regulation 2002

Clause 299

Charter fishing management

Part 10

(d) deep sea bottom fishing.

Note. There is an exemption for boats used by Lord Howe Island residents in waters around Lord Howe Island. See Division 6.

299 Annual licence fee

- (1) The fee for the issue or renewal of a licence is \$401, plus \$80 for each authorised activity specified on the licence, for each year or part of a year for which the licence is issued or renewed.
- (2) In this clause, *authorised activity* means a recreational fishing activity authorised by the Minister as referred to in clause 310.

Note. Section 127C of the Act provides that an application for a licence may be made by the owner of a boat or a person authorised by the owner (eg a lessee). An application for a licence is to be in a form approved by the Minister.

300 Classes of licence

There are two classes of licence, as follows:

- (a) transferable,
- (b) non-transferable.

301 Eligibility criteria—transferable licence

- (1) A person is eligible for a transferable licence in respect of a boat owned or otherwise under the control of the person if the person satisfies the Minister that:
 - (a) the person is entitled to claim a history of operations in respect of a boat that:
 - (i) was actively used for guided recreational charter fishing activities in the marine and estuarine charter fishing sector before 22 October 1997, and
 - (ii) was actively used for those activities for at least 100 days during any period of 24 consecutive months between 22 October 1995 and 4 August 1999, and
 - (iii) was used in accordance with the requirements of the certificate of survey for the boat at all times during the period in which it was used for those activities, and
 - (b) the certificate of survey for the boat referred to in paragraph (a) was, at all times during the period in which it was used for those activities, consistent with the type of licence applied for by the person.

Note. 22 October 1997 is the date on which the Minister announced a ministerial warning against further investment in the New South Wales

Clause 302 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

recreational charter fishing boat industry, because of moves to cap the number of operators in the industry at the level then present (see second reading speech for the *Fisheries Management Amendment Bill 1997*, which inserted Part 4A in the Act, Hansard of 22 October 1997, page 1208).

- (2) If any one of the eligibility criteria is not satisfied, the person is not eligible for a transferable licence.
- (3) A person can be eligible only for the same number of licences as boats in respect of which the person is entitled to claim a history of operations. That is, if the person is entitled to claim a history of operations in respect of one boat, the person can be eligible for a licence in respect of one boat only.

302 Eligibility criteria—non-transferable licence

- (1) A person is eligible for a non-transferable licence in respect of a boat owned or otherwise under the control of the person if the person satisfies the Minister that:
 - (a) the person is entitled to claim a history of operations in respect of a boat that:
 - (i) was actively used for guided recreational charter fishing activities in the marine and estuarine charter fishing sector before 22 October 1997, and
 - (ii) was actively used for those activities for at least 50 days during any period of 24 consecutive months between 22 October 1995 and 4 August 1999, and
 - (iii) was used in accordance with the requirements of the certificate of survey for the boat at all times during the period in which it was used for those activities, and
 - (b) the certificate of survey for the boat referred to in paragraph (a) was, at all times during the period in which it was used for those activities, consistent with the type of licence applied for by the applicant.
- (2) If any one of the eligibility criteria is not satisfied, the applicant is not eligible for a non-transferable licence.
- (3) A person can be eligible only for the same number of licences as boats in respect of which the person is entitled to claim a history of operations. That is, if the person is entitled to claim a history of operations in respect of one boat only, the person can be eligible for a licence in respect of one boat only.

Fisheries Management (General) Regulation 2002

Clause 303

Charter fishing management

Part 10

303 Entitlement to claim a history of operations

- (1) For the purposes of this Part, a person is entitled to claim a history of operations in respect of a boat if:
 - (a) the boat was used by the person for guided recreational charter fishing activities in the marine and estuarine charter fishing sector during the periods relevant for the purposes of the eligibility criteria for a licence, and the person has not transferred his or her entitlement to that history of operations pursuant to a transfer made:
 - (i) before 7 July 2000, in accordance with the policies of NSW Fisheries with respect to such transfers, or
 - (ii) on or after 7 July 2000, in accordance with clause 305, or
 - (b) the person has acquired a history of operations of a kind referred to in paragraph (a) in respect of a boat from another person pursuant to a transfer made:
 - (i) before 7 July 2000, in accordance with the policies of NSW Fisheries with respect to such transfers, or
 - (ii) on or after 7 July 2000, in accordance with clause 305.
- (2) Only one person is entitled to claim a history of operations with respect to one boat.
- (3) If more than one person claims a history of operations of a kind referred to in subclause (1) (a) in respect of a boat, the person who is entitled to make that claim is the person who, in the opinion of the Minister, was principally responsible for the use of the boat for guided recreational charter fishing activities in the marine and estuarine sector during the periods relevant for the purpose of determining eligibility for a licence.

304 Limitation on eligibility

- (1) Despite clauses 301 and 302, a person who:
 - (a) was eligible, under Part 9A of the repealed regulation before its repeal, for a licence in respect of a history of operations, and
 - (b) did not apply for such a licence by 30 April 2001,is not eligible to apply for a licence under this Part.

Clause 305 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

- (2) This clause does not apply in any case where the Minister is satisfied that there were good reasons why the licence was not applied for by 30 April 2001.

305 Transfer of entitlement to history of operations

- (1) A person who holds a transferable licence may transfer the person's entitlement to a history of operations in respect of a boat, being the history of operations relied on by the person to satisfy the eligibility criteria for the licence.
- (2) Such a transfer may be made only with the approval of the Minister.
- (3) An application for the Minister's approval is to be in an approved form and accompanied by a fee of \$268.
- (4) If the Minister approves the transfer:
- (a) the person who acquires the entitlement is entitled to claim the history of operations in respect of the boat, for the purposes of the eligibility criteria for a licence, and
 - (b) the person who transfers the entitlement ceases to be entitled to claim the history of operations in respect of the boat, for the purposes of the eligibility criteria for a licence.
- (5) A transfer of a history of operations need not be accompanied by a transfer of the boat concerned. However, a person who transfers a history of operations without transferring the boat ceases to be eligible for a licence in respect of the boat (because the person ceases to be entitled to claim the history of operations).

306 Boat replacement

- (1) A person who holds a transferable or a non-transferable licence in respect of a licenced charter fishing boat may replace the boat if:
- (a) the replacement is approved by the Minister, and
 - (b) the application for the Minister's approval is accompanied by a fee of \$268.
- (2) If the Minister approves the replacement, the person's entitlement to a history of operations, in respect of the boat being replaced, is transferred to the replacement boat.
- (3) Nothing in this clause permits a person who holds a non-transferable licence to transfer that licence to another person.

Fisheries Management (General) Regulation 2002

Clause 307

Charter fishing management

Part 10

307 Refusal of licence

The Minister is authorised to refuse an application for a licence for a boat if:

- (a) the Minister is not satisfied that the applicant is eligible to be issued with the licence, or the class of licence applied for, in respect of the boat, or
- (b) the applicant has been convicted of an offence under the Act, the regulations made under the Act, or an offence relating to commercial or recreational fishing under a law of the Commonwealth or of another State or a Territory or of New Zealand, or
- (c) the applicant has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the applicant has been convicted of an offence relating to an assault on a fisheries official, or
- (e) the applicant has not paid any fee due and payable in connection with the licence.

308 Renewal of licence

- (1) An application for renewal of a licence is to be made in a form approved by the Minister.
- (2) The Minister is authorised to refuse to renew a licence if:
 - (a) the holder of the licence is not eligible for the licence, or
 - (b) the holder of the licence has been convicted of an offence under the Act, the regulations made under the Act, or an offence relating to commercial or recreational fishing under a law of the Commonwealth or of another State or a Territory or of New Zealand, or
 - (c) the holder of the licence has been convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (d) the holder of the licence has been convicted of an offence relating to an assault on a fisheries official, or
 - (e) the Minister is satisfied that the holder of the licence has contravened a condition of the licence, or
 - (f) the holder of the licence has not paid any fee due and payable in connection with the licence.

Clause 309 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

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- (3) If an application is duly made for renewal of a licence and is received by the Minister before the expiration of the period in which it remains in force, and the licence is not renewed before the expiration of that period, the licence:
- (a) is taken to continue to be in force until the licence is renewed or the application for renewal is refused, whichever happens first, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.
- (4) If an application for renewal of a licence is not received by the Minister before the expiration of the period in which it remains in force, the licence:
- (a) is taken to continue to be in force for 30 days after the date the licence would have expired (but for this subclause), or until the licence is renewed or the application for renewal is refused, whichever happens first, and
 - (b) may be renewed despite the fact that, but for this subclause, the licence would have expired.
- (5) If an application for renewal of a licence is received by the Minister more than 30 days after the date the licence would have expired (but for subclause (4)), an additional licence fee of \$107 is payable.
- (6) If an application for renewal of a licence is received by the Minister more than 90 days after the date the licence would have expired (but for subclause (4)), the Minister may refuse to renew the licence.

309 Cancellation or suspension of licence

The Minister may cancel or suspend a licence if:

- (a) the holder of the licence ceases to be eligible for the licence, or
- (b) the holder of the licence is convicted of an offence under the Act, the regulations made under the Act, or an offence relating to commercial or recreational fishing under a law of the Commonwealth or of another State or a Territory or of New Zealand, or
- (c) the holder of the licence is convicted of an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
- (d) the holder of the licence is convicted of an offence relating to an assault on a fisheries official, or

Fisheries Management (General) Regulation 2002

Clause 310

Charter fishing management

Part 10

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- (e) the Minister is satisfied that the holder of the licence has contravened a condition of the licence, or
 - (f) the holder of the licence fails to pay any fee due and payable in connection with the licence, or
 - (g) the boat is lost at sea or disposed of by the holder of the licence, or
 - (h) the Minister is satisfied that the ownership or shareholding of a non-transferable licence has changed.

310 Conditions of licence—authorised activities

- (1) The Minister may, by means of an endorsement on a licence for a boat, authorise the use of the boat for guided recreational charter fishing that involves one or more of the following recreational fishing activities (as indicated by the endorsement):
 - (a) estuarine fishing,
 - (b) nearshore bottom fishing and sportfishing,
 - (c) gamefishing,
 - (d) deep sea bottom fishing.
- (2) It is a condition of a licence for a boat that the boat, while being used for any activity for which it is required to be licensed under this Part, is not used for any of the recreational fishing activities referred to in subclause (1) unless the licence authorises the use of the boat for that activity.
- (3) The Minister may refuse to authorise the use of a boat for a recreational fishing activity if the Minister is not satisfied that the certificate of survey for the boat relied on by the licence holder to satisfy the eligibility criteria for the licence (that is, the boat referred to in clause 301 or 302) was, at all times during the periods relevant for the purposes of determining eligibility for a licence, consistent with that type of activity.
- (4) Despite subclause (2):
 - (a) if a licence authorises the use of a boat for gamefishing, the taking of one fish of a species listed in Part 1 or Part 4 of the Table to this clause for each person who is on the boat, is permitted, and
 - (b) if a licence authorises the use of a boat for nearshore bottom fishing and sportfishing, the taking of one fish of a species

Clause 310	Fisheries Management (General) Regulation 2002
Part 10	Charter fishing management

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- listed in Part 1 or Part 2 of the Table, for each person who is on the boat, is permitted, and
- (c) if a licence authorises the use of a boat for estuarine fishing, the taking of one fish of a species listed in Part 1 or Part 2 of the Table, for each person who is on the boat, is permitted.
- (5) This clause:
- (a) does not affect the application of any bag limits or possession limits in force under section 17 or 18 of the Act, and
- (b) does not authorise the use of a boat to take any protected fish.

Table—Fish species

Part 1

Common name	Scientific name
Hapuka	<i>Polyprion oxygeneios</i>
Bass groper	<i>Polyprion americanus</i>
Blue-eye trevalla	<i>Hyperoglyphe antarctica</i>
Bar cod	<i>Epinephelus ergastularius</i>
Gemfish	<i>Rexea solandri</i>

Part 2

Common name	Scientific name
Billfishes	<i>Istiophoridae</i> spp.
Sailfish	<i>Istiophorus platypterus</i>
Black marlin	<i>Makaira indica</i>
Blue marlin	<i>Makaira mazara</i>
Striped marlin	<i>Tetrapturus audax</i>
Shortbill spearfish	<i>Tetrapturus angustirostris</i>

Fisheries Management (General) Regulation 2002

Clause 310

Charter fishing management

Part 10

Common name	Scientific name
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Broadbill swordfish	<i>Xiphias gladius</i>
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Sharks

Shortfin mako	<i>Isurus oxyrinchus</i>
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Tiger shark	<i>Galeocerdo cuvier</i>
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Hammerhead shark	<i>Sphyrna</i> spp.
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Thresher shark	<i>Alopias</i> spp.
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Porbeagle shark	<i>Lamna nasus</i>
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Tunas	<i>Thunnus</i> spp.
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Albacore	<i>Thunnus alalunga</i>
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Yellowfin tuna	<i>Thunnus albacares</i>
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Southern bluefin tuna	<i>Thunnus maccoyii</i>
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Longtail tuna	<i>Thunnus tonggol</i>
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Bigeye tuna	<i>Thunnus obesus</i>
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Part 3

Common name	Scientific name
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Yellowtail, jack mackerel, trevally, rainbow runner, kingfish, samson fish, amberjack	Family Carangidae
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Mackerel, wahoo, bonito, skipjack tuna, mackerel tuna	Family Scombridae (excluding <i>Thunnus</i> spp.)
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Cobia	<i>Rachycentron canadum</i>
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Clause 311	Fisheries Management (General) Regulation 2002
Part 10	Charter fishing management

Common name	Scientific name
Tailor	<i>Pomatomus saltatrix</i>
Dolphinfish	<i>Coryphaena hippurus</i>
Australian salmon	<i>Arripis trutta</i>
Whaler shark, blue shark	Family Carcharhinidae (excluding <i>Galeocerdo cuvier</i>)
Barracuda, snook, striped seapike	Family Sphyrnaeidae

Part 4

All species of fish other than those listed in Parts 1, 2 and 3.

311 Other conditions of licences

- (1) It is a condition of a licence for a charter fishing boat that any fish taken while the boat is used for any activity for which it is required to be licensed under this Part, and that are retained, have their right side pectoral fin removed, just above the fin base, before being removed from the boat.
- (2) Despite subclause (1), the removal of the right side pectoral fin may be delayed until immediately after weigh-in if the fish is to be weighed:
 - (a) for the purpose of claiming a record, or
 - (b) in accordance with the rules of a fishing tournament in connection with which the fish has been caught.
- (3) Subclause (1) applies to the following species of fish only, namely, yellowfin tuna, southern bluefin tuna, all species of marlin, yellowtail kingfish and snapper.
- (4) It is a condition of a licence for a charter fishing boat that the boat displays the letters "CFB" adjacent to, and in the same size and colour of lettering as, the permit number for the boat wherever appearing on the outside of the hull.
- (5) It is a condition of a licence for a charter fishing boat that the number of persons permitted to fish from the boat at any one time does not exceed the carrying capacity (as at 4 August 1999) of the

Fisheries Management (General) Regulation 2002

Clause 312

Charter fishing management

Part 10

boat relied on by the licence holder to satisfy the eligibility criteria for the licence under clause 301 or 302, as the case requires.

Note. The Act also provides that it is a condition of a licence that the boat, while being used for recreational fishing activities for which it is required to be licensed:

- (a) is not also used to take fish for sale, and
- (b) is not equipped with fishing gear for use to take fish for sale (except as authorised by the licence).

312 Records of catch

- (1) The master of a charter fishing boat must make a record of fish taken by persons on the boat when used for guided recreational charter fishing.

Note. It is an offence to contravene the requirements set out in this clause (see section 127E of the Act).

- (2) A record is to be made in relation to each trip that is made by the boat, being a trip during which the boat was used for any activity for which it is required to be licensed.
- (3) A record is to be made in a form or forms approved by the Minister and provided to licence holders by NSW Fisheries.
- (4) A copy of the record is to be sent to the Director within 7 days after the end of the calendar month in which the trip to which the record relates was made.

Division 3 Review panel

Note. This Part provides for the review of decisions relating to the issue of a licence by a panel established by the Minister. A decision relating to a licence is also appellable to the Administrative Decisions Tribunal under the Act.

313 Application for review by third party

- (1) Any person may request a review of a decision of the Minister to issue a licence to another person.
- (2) The review request must:
 - (a) be made in a form approved by the Minister, and,
 - (b) be lodged with the Director within 30 days after notice of the Minister's decision to issue the licence is published in the Gazette, and
 - (c) be accompanied by a fee of \$100.
- (3) The Minister may direct that the required fee (or part of the fee) for a review request be refunded if the Minister is of the opinion that it

Clause 314	Fisheries Management (General) Regulation 2002
Part 10	Charter fishing management

is appropriate in the circumstances of the case, for instance, because the review confirms submissions made by the person requesting the review.

- (4) This clause does not apply to:
- (a) a licence for which an application is made following the transfer under clause 305 of a person's entitlement to a history of operations in respect of a boat, or
 - (b) a licence that has been renewed under clause 308.

Note. Until 30 June 2001 a person who was refused a licence because the Minister was not satisfied that the person was eligible for the licence could request a review of that decision under this Division. The review request had to be made within 60 days after notice of the refusal was given to the person.

314 Establishment of panel to review decision

- (1) If a review request is duly made under this Division, the Minister is to establish a panel to conduct the review.
- (2) The panel is to consist of 3 members, as follows:
 - (a) one person who, in the opinion of the Minister, has no pecuniary interest in the charter fishing boat industry and who is not engaged in the administration of the Act,
 - (b) one person who, in the opinion of the Minister, has experience in the charter fishing boat industry and who is not engaged in the administration of the Act,
 - (c) an officer of NSW Fisheries.
- (3) The member of the panel referred to in subclause (2) (a) is to be chairperson of the panel.
- (4) Despite subclause (1), the Minister may reject a review request without establishing a panel to conduct the review if:
 - (a) the matter has already been the subject of a review by a panel under this Division, or
 - (b) the Minister is of the opinion that the review request is frivolous or vexatious.

315 Conduct of review

- (1) The panel is to review the decision that is the subject of the review request and provide the Minister with a written report on the matter within the time specified by the Minister or any extension of that time granted by the Minister.

Fisheries Management (General) Regulation 2002

Clause 316

Charter fishing management

Part 10

-
- (2) A panel that conducts a review of a decision of the Minister to refuse to issue a licence to a person may recommend that the person be issued with a licence, but only if the panel is satisfied that:
- (a) the person is eligible for the licence, or
 - (b) the person:
 - (i) would have satisfied the eligibility criteria but for circumstances beyond the control of the person, (for example illness or delays in the repair of a boat), and
 - (ii) was actively engaged in guided recreational charter fishing activities in the marine and estuarine charter fishing sector before 22 October 1997, or
 - (c) the person had, before 22 October 1997, clearly demonstrated his or her financial investment or commitment in a boat for use in connection with marine and estuarine charter fishing in New South Wales and:
 - (i) the boat has been actively used for guided recreational charter fishing activities in the marine and estuarine charter fishing sector for at least 50 days during any period of 24 consecutive months between 22 October 1995 and 4 August 1999, or
 - (ii) there are valid reasons why the person failed to satisfy the eligibility criteria in subparagraph (i) and it is fair and reasonable in the circumstances to grant the person a licence.
- (3) Regardless of the nature of licence originally applied for, a panel may recommend the issue of either a transferable or a non-transferable licence.
- (4) A panel that conducts a review of a decision of the Minister to issue a licence to a person may recommend that the licence be cancelled, but only if the panel is satisfied that:
- (a) the person is not eligible for the licence, or
 - (b) there are other grounds for the cancellation of the licence.

316 Procedure to be followed by panel

- (1) A decision of the panel is a decision supported by the majority of its members.
- (2) The procedure of the panel is to be determined by the panel, subject to this clause and to any guidelines approved by the Minister.

Clause 317 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

317 Action by Minister following review

- (1) On receipt of a report by a panel, the Minister may:
 - (a) in the case of a review of a decision to refuse to issue a licence, confirm the refusal or set that decision aside and substitute a new decision in accordance with the recommendations of the panel, or
 - (b) in the case of a review of a decision to issue a licence, confirm the issue of the licence or cancel the licence in accordance with the recommendations of the panel, or
 - (c) in any case, refer the matter back to the panel (together with comments or recommendations) for further consideration.
- (2) The Minister may, following a review, determine that a person is eligible for a licence even though the person does not satisfy the eligibility criteria for the licence only if the panel recommends that the person be issued with a licence. If the Minister makes such a determination, the person is taken, for the purposes of the provisions of this Part that deal with eligibility for a licence, to be eligible for the licence.
- (3) A person who applies for a review under this Division is to be notified of the outcome of the application as soon as practicable after it is known.
- (4) If the Minister decides to issue a licence for a boat following a review under this clause, the Minister is to cause notice of the decision to be published in the Gazette and in a newspaper circulating in the area in which the boat is used, or is to be used, as a charter fishing boat.

Division 4 Advisory Committee

318 Advisory Committee

- (1) The Minister may establish an advisory committee for the charter fishing industry, to be known as the Marine and Estuarine Recreational Charter Management Advisory Committee.
- (2) The Advisory Committee is to be composed of the following members:
 - (a) 8 industry members, being persons who are elected by licence holders in accordance with Division 5 of this Part and appointed by the Minister,

Fisheries Management (General) Regulation 2002

Clause 319

Charter fishing management

Part 10

-
- (b) one person appointed by the Minister on the nomination of the Nature Conservation Council,
 - (c) other persons selected and appointed by the Minister,
 - (d) the Director or a nominee of the Director.
- (3) Of the members referred to in subclause (2) (c):
- (a) one is to be a person who, in the opinion of the Minister, has expertise in commercial fishing, and
 - (b) one is to be a person who, in the opinion of the Minister, has expertise in Aboriginal culture, and
 - (c) one is to be a person who, in the opinion of the Minister, has expertise in recreational fishing.
- (4) Subclause (3) does not prevent the Minister from selecting and appointing additional persons as members of the Advisory Committee.
- (5) The Minister may, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Advisory Committee.
- (6) For the purpose of subclause (2) (b), the Minister is to request the Nature Conservation Council to nominate 2 candidates for appointment to the Advisory Committee.
- (7) The Minister may decline to accept the nomination of any candidate. In such a case the Minister:
- (a) is to advise the Nature Conservation Council of that decision and of the reason for that decision, and
 - (b) if the Minister considers it appropriate, is to give the Nature Conservation Council an opportunity to nominate another candidate.
- (8) If the Nature Conservation Council fails to nominate a candidate within 60 days after being requested to do so by the Minister, or fails to nominate within that period a candidate whose nomination is accepted by the Minister, the Minister may appoint any person whom the Minister considers suitable to represent the interests of the Council as a member of the Advisory Committee, instead of a person nominated by the Council.

319 Chairperson and deputy chairperson of Advisory Committee

- (1) The Minister is to appoint the chairperson of the Advisory Committee.

Clause 320 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

- (2) The chairperson is to be a person who:
 - (a) in the opinion of the Minister, is neither engaged in the administration of the Act nor engaged in charter fishing, and
 - (b) is not a member of the Advisory Committee.
- (3) The Minister may appoint a deputy chairperson for the Advisory Committee. The appointee may be a member of the Advisory Committee.
- (4) Both the chairperson and the deputy chairperson (if any) are entitled to attend and (in accordance with this clause) chair meetings of the Advisory Committee.
- (5) A meeting of the Advisory Committee is to be chaired:
 - (a) by the chairperson of the Advisory Committee, or
 - (b) in the absence of the chairperson:
 - (i) by the deputy chairperson of the Advisory Committee, or
 - (ii) in the absence of the deputy chairperson (or if no deputy chairperson has been appointed)—by the person appointed by the Minister to chair the meeting in such circumstances (who may be a member of the Advisory Committee), or
 - (iii) in the absence of the person appointed under subparagraph (ii)—by a member of the Advisory Committee elected by the members present to chair the meeting.
- (6) The person chairing a meeting of the Advisory Committee is entitled to vote at the meeting only if the person is a member of the Committee.

320 Functions of Advisory Committee

The functions of the Advisory Committee are as follows:

- (a) to assist with the development of and monitor the implementation of a fishery management strategy for the marine and estuarine charter fishing sector,
- (b) to advise the Minister on whether the objectives of the strategy are being attained,
- (c) to make recommendations to the Minister concerning the strategy, including to recommend any changes to the strategy

Fisheries Management (General) Regulation 2002

Clause 321

Charter fishing management

Part 10

or to this Part that it considers necessary or desirable for the purpose of attaining the objectives of the strategy,

- (d) such other functions as may be conferred on the Advisory Committee by the Minister.

321 Deputies of members

- (1) An appointed member may, from time to time, appoint a person to be the deputy of the member, and may at any time revoke any appointment.
- (2) Such an appointment may only be made with the approval of the Minister. The Minister may revoke such approval at any time.
- (3) In the absence of a member, the member's deputy:
 - (a) may, if available, act in the place of the member, and
 - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (4) A person, while acting in the place of a member, is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

322 Terms of office

Subject to this Part:

- (a) an industry member holds office for a term of 3 years but is eligible (if otherwise qualified) for re-election and re-appointment, and
- (b) a non-industry member holds office for the term specified in his or her appointment (not exceeding 3 years) but is eligible (if otherwise qualified) for re-appointment.

323 Allowance for members

An appointed member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the member.

324 Vacancy in office of member

- (1) The office of an appointed member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-elected or re-appointed, or

Clause 325 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

- (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the Advisory Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person.
- (2) The Minister may remove an industry member from office if the member:
- (a) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (b) is convicted of an offence under the Act, this Regulation or any other regulation made under the Act or an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) ceases to be qualified to be elected to the Committee.
- (3) The Minister may remove a non-industry member from office at any time.

325 Filling of vacancy in office of member

- (1) If the office of an industry member becomes vacant because the term of office of the member has ended, an election is to be held in accordance with Division 5 of this Part for the purpose of appointing a new member.
- (2) If a vacancy occurs in the office of an industry member otherwise than because the term of office of the member has ended, the Minister may appoint a person to fill the office for the remainder of that term, being a person who would be qualified to be elected to the

Fisheries Management (General) Regulation 2002

Clause 326

Charter fishing management

Part 10

office and who the Minister decides, after consultation with the relevant industry sector, is appropriate for that office.

- (3) Any person so appointed is taken to be an industry member for the purposes of this Part.

326 General procedure for calling and holding meetings

- (1) The procedure for the calling and holding of meetings of the Advisory Committee is to be determined by the Minister, subject to clause 327.
- (2) The Minister is to call at least 2 meetings of the Advisory Committee each calendar year, unless otherwise determined by the Advisory Committee.

327 Transaction of business outside meetings or by telephone

- (1) The Advisory Committee may, with the written approval of the Director, transact any of its business by the circulation of papers among all the members of the Advisory Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Advisory Committee.
- (2) The Advisory Committee may, with the written approval of the Director, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
- (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),
- each member of the Advisory Committee has the same voting rights as the member has at an ordinary meeting of the Advisory Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Advisory Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Clause 328 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

328 Quorum

The quorum for a meeting of the Advisory Committee consists of the majority of its industry members for the time being.

329 Decisions

A decision supported by a majority of members at a meeting of the Advisory Committee at which a quorum is present is the decision of the Advisory Committee.

Division 5 Election of industry members of Advisory Committee

330 Regions for which members are to be elected

- (1) The 8 industry members of the Advisory Committee are to be elected to represent the different regions of the industry as follows:
 - (a) 1 member for the Far North Coast region (the part of the State between 28°10'S and 29°40'S),
 - (b) 1 member for the Mid North Coast and Central Coast region (the part of the State between 29°40'S and 32°26'S),
 - (c) 1 member for the Central Coast region (the part of the State between 32°26'S and 33°35'S),
 - (d) 2 members for the Sydney region (the part of the State between 33°35'S and 34°05'S),
 - (e) 1 member for the Illawarra region (the part of the State between 34°05'S and 34°50'S),
 - (f) 1 member for the Mid South Coast region (the part of the State between 34°50'S and 36°10'S),
 - (g) 1 member for the Far South Coast region (the part of the State between 36°10'S and 37°30'S).
- (2) A map setting out the boundaries for the regions described in subclause (1) is to be made available for inspection in offices of NSW Fisheries.

Fisheries Management (General) Regulation 2002

Clause 331

Charter fishing management

Part 10

331 Qualifications for election

In order to qualify for election as an industry member of the Advisory Committee, a person must:

- (a) hold a licence for a charter fishing boat, or be a person nominated by the holder of a licence for a charter fishing boat, and
- (b) reside in the region which the person seeks to be elected to represent.

332 General restrictions on election

- (1) A person is not qualified to be elected as an industry member of the Advisory Committee if the person:
 - (a) is already a member of the Advisory Committee (unless the person is seeking re-election to the Advisory Committee) or of a Management Advisory Committee appointed under section 230 of the Act, or
 - (b) is already a candidate for election to any such other Management Advisory Committee.
- (2) Officers and employees of NSW Fisheries are not qualified to be elected as an industry member.

333 Voting entitlements

- (1) In order to be qualified to vote in an election for an industry member of the Advisory Committee, a person must be:
 - (a) the holder of a charter fishing boat licence for a boat, and
 - (b) reside in the region which the industry member is to be elected to represent.
- (2) A person who is qualified to vote in an election is entitled to one vote only, regardless of the number of charter fishing boats for which the person holds a licence.

334 Election procedure

- (1) Division 5 of Part 12, with any necessary modifications, applies to an election of industry members of the Advisory Committee in the same way as it applies to an election of a Management Advisory Committee for a restricted fishery.
- (2) In the application of those provisions, clauses 382 and 383 are to be excluded, and subclause (3) is to be applied instead.

Clause 335 Fisheries Management (General) Regulation 2002

Part 10 Charter fishing management

- (3) If by the close of nominations in an election, the number of candidates duly nominated for election to represent a region does not exceed the number of industry members to be elected to represent that region, the returning officer is to declare those candidates elected. If more than that number are nominated, a ballot must be held.

Division 6 Miscellaneous

335 Exemption for Lord Howe Island residents

- (1) A licence is not required in respect of a boat if:
- (a) the boat is owned or under the control of a person who is a resident of Lord Howe Island, and
 - (b) the boat is used for guided recreational charter fishing principally in the Lord Howe Island area.
- (2) For the purpose of determining whether a person is eligible for a licence in respect of a boat, any activities for which the boat was used during a period in which the boat was used for guided recreational charter fishing activities principally in the Lord Howe Island area are to be disregarded. That is, the activities for which the boat was used during that period cannot be relied on to satisfy the eligibility criteria.
- (3) In this clause:

Lord Howe Island area means the waters within 3 nautical miles of the high water mark on Lord Howe Island.

336 False or misleading information

A person must not furnish information, knowing it to be false or misleading in a material particular, in or in connection with:

- (a) any application for a licence, or
- (b) any catch record referred to in clause 312.

Maximum penalty: 100 penalty units.

Fisheries Management (General) Regulation 2002

Clause 337

Protection of aquatic habitats

Part 11

Part 11 Protection of aquatic habitats

337 Application for permit under Part 7

An application for a permit under Part 7 of the Act is to be in a form approved by the Director.

338 Marine vegetation—regulation of harm (section 205 of the Act)

- (1) Attached marine and estuarine macroalgae (except for sea lettuce (*Ulva* spp.) and blackfish weed (*Enteromorpha* spp.) when taken for use as bait) are declared to be marine vegetation to which section 205 of the Act applies.
- (2) In this clause:

marine and estuarine macroalgae means those species of non-microscopic plants commonly known as seaweeds that belong to the plant classification divisions of Rhodophyta, Phaeophyta and Chlorophyta, and that are endemic to New South Wales marine and estuarine waters.

339 Fee for permit to harm marine vegetation (section 205 of the Act)

An application for a permit under Part 7 of the Act that authorises a person to harm any marine vegetation to which section 205 of the Act applies is to be accompanied by a fee of \$107 but if, in the opinion of the Director, an inspection of the area affected is not required, a fee of \$54 only is required.

340 Noxious fish and vegetation (section 209 of the Act)

- (1) For the purposes of section 209 (1) (a) of the Act, the following fish are declared to be noxious fish:
 - (a) **Class 1 (General noxious fish)**
 - (i) Tilapia (*Oreochromis mossambicus*, *Tilapia zillii*, *Tilapia mariae*),
 - (ii) black striped mussel (all species of the genus *Mytilopsis*).
 - (b) **Class 2 (Noxious fish in specific waters)**

Pacific oyster (*Crassostrea gigas*) but only in estuarine waters and ocean waters (other than the waters of Port Stephens).

Clause 340 Fisheries Management (General) Regulation 2002

Part 11 Protection of aquatic habitats

- (2) For the purposes of section 209 (1) (b) of the Act, the following marine vegetation is declared to be noxious marine vegetation:

Class 3 (Noxious marine vegetation in specific waters)

Caulerpa taxifolia in all coastal waters other than those coastal waters adjacent to Lord Howe Island and Balls Pyramid.

Fisheries Management (General) Regulation 2002

Clause 341

Administration

Part 12

Part 12 Administration

Division 1 The Director

341 Seal of the Director

- (1) The Director is to have a seal.
- (2) The seal may be used for official purposes, including to certify the issue of a document (such as a share in a share management fishery) under the Act.

Division 2 Fisheries Resource Conservation and Assessment Council

342 Definitions

In this Division:

Council means the Fisheries Resource Conservation and Assessment Council established by the Act.

member means a member of the Council.

343 Government representatives

- (1) The government representatives on the Council are to be officers or employees of the government agencies referred to in the first column of the Table to this clause, appointed by the Minister for Fisheries on the nomination of the Minister referred to in the second column of the table, next to the agency concerned.
- (2) If a Minister referred to in the Table declines or fails to nominate a person for appointment to the Council, the Minister for Fisheries is not required to appoint an officer or employee of the agency concerned as a member of the Council.

Clause 344	Fisheries Management (General) Regulation 2002
Part 12	Administration

Table Government representatives

National Parks and Wildlife Service	Minister for the Environment
Department of Planning	Minister for Planning
Department of Land and Water Conservation	Minister for Land and Water Conservation
NSW Fisheries	Minister for Fisheries

344 Other representatives

- (1) The Minister may request nominations for appointment of members of the Council from any organisation, group or body that the Minister considers to have a sufficient interest in the area that the member concerned is required to represent.
- (2) The Minister must request the organisations, groups or bodies referred to in the first column of the Table to this clause nominate one or more persons for appointment as representatives of a kind referred to in the second column, next to the organisation or body concerned.

Table Nomination of representatives

Advisory Council on Recreational Fishing	Recreational fishing representatives
Advisory Council on Commercial Fishing	Commercial fishing representatives
Nature Conservation Council Advisory Council on Fisheries Conservation	Conservation and environmental representatives
Advisory Council on Aquaculture	Aquaculture industry representatives
New South Wales Aboriginal Land Council	Indigenous representatives

Fisheries Management (General) Regulation 2002

Clause 345

Administration

Part 12

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- (3) The Minister is to request nominations for appointment by notice in writing given to the organisation, group or body being requested to make the nomination.
 - (4) The Minister may also request nominations for appointment by causing a notice, inviting nominations for appointment, to be published in a newspaper.
 - (5) After requesting nominations, the Minister is to allow at least 30 days for receipt of those nominations, before appointing a person to fill the position concerned.
 - (6) Except as required by section 228A (7) (a) and (b) of the Act, the Minister is not required to appoint a person who is nominated for appointment as a member of the Council.
 - (7) This clause applies in respect of all members of the Council, other than the chairperson of the Council and the government representatives.

345 Members and procedure of Council

- (1) Schedule 2 to the Act (clause 9 excepted) applies to the Council and to the members of the Council in the same way as it applies to the Total Allowable Catch Setting and Review Committee and the members of that Committee, subject to this clause and clause 344.
- (2) If the office of a member becomes vacant, the Minister is not required to appoint a person to fill the vacancy, except as required by section 228A of the Act.
- (3) The Minister may, if the Minister considers it appropriate, appoint a person to fill such a vacancy on an interim basis, during the period required to request, receive and consider nominations for appointment to the position.
- (4) A person appointed on an interim basis may be, but is not required to be, a person previously nominated for appointment to the position.
- (5) If the vacancy is in the position referred to in section 228A (7) (a) and (b) of the Act, the position must be filled by a person nominated, or previously nominated, by a group or body referred to in those provisions.
- (6) A quorum for a meeting of the Council is not affected by the requirements of section 228A (11) and (12) of the Act.

Clause 346 Fisheries Management (General) Regulation 2002

Part 12 Administration

346 Transaction of business outside meetings or by telephone

- (1) The Council may, with the written approval of the Director, transact any of its business by the circulation of papers among all the members of the Council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Council.
- (2) The Council may, with the written approval of the Director, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

Division 3 Establishment, composition and functions of ministerial advisory councils

347 Definitions

In this Division:

advisory council means an advisory council established under section 229 of the Act.

member means a member of an advisory council.

348 Establishment of advisory councils

For the purposes of section 229 of the Act, the following advisory councils are to be established:

- (a) an Advisory Council on Commercial Fishing,
- (b) an Advisory Council on Recreational Fishing,

Fisheries Management (General) Regulation 2002

Clause 349

Administration

Part 12

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- (c) an Advisory Council on Fisheries Conservation,
 - (d) an Advisory Council on Aquaculture.

349 Advisory Council on Commercial Fishing

- (1) The Advisory Council on Commercial Fishing is to be composed of the following members:
 - (a) 9 persons appointed to represent the following fisheries (that is, one member for each fishery), on the nomination of the Management Advisory Committee for the fishery:
 - (i) abalone share management fishery,
 - (ii) lobster share management fishery,
 - (iii) ocean prawn trawl restricted fishery,
 - (iv) ocean fish trawl restricted fishery,
 - (v) ocean trap and line restricted fishery,
 - (vi) estuary general restricted fishery,
 - (vii) estuary prawn trawl restricted fishery,
 - (viii) ocean hauling restricted fishery,
 - (ix) inland restricted fishery,
 - (b) one person appointed on the nomination of the Nature Conservation Council,
 - (c) the Director or a nominee of the Director,
 - (d) such other persons as the Minister considers appropriate.
- (2) The persons nominated for appointment by a Management Advisory Committee must be industry members (within the meaning of clause 368 (1)) of the Committee.

350 Advisory Council on Recreational Fishing

- (1) The Advisory Council on Recreational Fishing is to be composed of the following members:
 - (a) persons who, in the opinion of the Minister, have expertise in one or more of the following areas:
 - (i) estuary fishing,
 - (ii) offshore fishing,
 - (iii) freshwater fishing,
 - (iv) underwater fishing,
 - (v) sale of fishing tackle,

Clause 351 Fisheries Management (General) Regulation 2002

Part 12 Administration

- (vi) the media (reporting on fishing),
 - (vii) charter boat fishing,
 - (viii) Aboriginal culture,
 - (b) one person appointed on the nomination of the Nature Conservation Council,
 - (c) the Director or a nominee of the Director,
 - (d) such other persons as the Minister considers appropriate.
- (2) The Minister may, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Advisory Council on Recreational Fishing.

351 Advisory Council on Fisheries Conservation

- (1) The Advisory Council on Fisheries Conservation is to be composed of the following members:
- (a) 8 persons who, in the opinion of the Minister, have expertise in one or more of the following areas:
 - (i) fish habitat protection and rehabilitation,
 - (ii) biodiversity conservation,
 - (iii) marine protected areas,
 - (iv) threatened species conservation,
 - (v) aquatic vertebrates or invertebrates,
 - (vi) marine vegetation,
 - (vii) marine or freshwater ecology,
 - (viii) commercial fisheries,
 - (ix) recreational fisheries,
 - (x) aquaculture,
 - (b) one person appointed on the nomination of the Nature Conservation Council,
 - (c) the Director or a nominee of the Director,
 - (d) such other persons as the Minister considers appropriate.
- (2) The Minister may, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Advisory Council on Fisheries Conservation.

Fisheries Management (General) Regulation 2002

Clause 352

Administration

Part 12

352 Advisory Council on Aquaculture

- (1) The Advisory Council on Aquaculture is to be composed of the following members:
 - (a) industry members, being persons who, in the opinion of the Minister, have expertise in one or more sectors of the aquaculture industry, such as the following:
 - (i) silver perch and other native freshwater fish,
 - (ii) freshwater crayfish,
 - (iii) marine finfish,
 - (iv) prawns,
 - (v) shellfish,
 - (vi) salmonids (trout and salmon),
 - (vii) ornamentals (aquarium fish species),
 - (b) the Director or a nominee of the Director,
 - (c) one or more officers from other government departments, if the Minister considers it appropriate,
 - (d) one person who, in the opinion of the Minister, has expertise in recreational fishing,
 - (e) one person appointed on the nomination of the Nature Conservation Council,
 - (f) such other persons as the Minister considers appropriate.
- (2) The Minister may, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Advisory Council on Aquaculture.

353 Appointment of nominees

- (1) If a member of an advisory council is to be appointed on the nomination of a Management Advisory Committee or the Nature Conservation Council, the Minister is to request the body concerned to nominate two candidates for appointment to the advisory council.
- (2) The Minister may decline to accept the nomination of any candidate. In such a case the Minister:
 - (a) is to advise the body concerned of that decision and of the reason for the decision, and
 - (b) if the Minister considers it appropriate, is to give the body concerned an opportunity to nominate another candidate.

Clause 354	Fisheries Management (General) Regulation 2002
Part 12	Administration

- (3) If a Management Advisory Committee or the Nature Conservation Council fails to nominate a candidate for appointment to the advisory council within 60 days after being requested to do so by the Minister, or fails to nominate within that period a candidate whose nomination is accepted by the Minister, the Minister may appoint any person whom the Minister considers suitable to represent the interests of the body concerned as a member of the advisory council, instead of a person nominated by that body.

Division 4 Provisions relating to members and procedure of advisory councils

354 Definitions

In this Division:

advisory council means an advisory council established under section 229 of the Act.

MAC means a Management Advisory Committee.

MAC nominee means a member of an advisory council appointed on the nomination of a MAC.

member means a member of an advisory council.

355 Terms of office

- (1) Subject to this Division, a member holds office for the term specified in his or her instrument of appointment (not exceeding 3 years) but is eligible (if otherwise qualified) for re-appointment.
- (2) A person who, on the commencement of this clause, is a member of an advisory council or a MAC retains that person's membership of that council or MAC (subject to this Division) for the balance of the term for which the person was appointed.
- (3) Subclause (2) does not apply to a person who was taken to be a member of an advisory council or a MAC by virtue of the fact that the person was appointed to be the deputy of a member of the advisory council or MAC.

356 Allowances for members

- (1) A member is entitled to be paid such allowances as the Minister from time to time determines, in accordance with any relevant Government policies or guidelines, in respect of the member.

Fisheries Management (General) Regulation 2002

Clause 357

Administration

Part 12

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- (2) Any allowance payable to a member of an advisory council on the commencement of this clause is taken to be an allowance determined under this clause.

357 Deputies

- (1) A member may, from time to time, appoint a person to be the deputy of the member, and may at any time revoke any such appointment.
- (2) Such an appointment may be made only with the approval of the Minister. The Minister may revoke such approval at any time.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person:
 - (a) has all the functions of the member and is taken to be a member, and
 - (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

358 Vacancy in office of member

The office of a member of an advisory council becomes vacant if:

- (a) the member dies, or
- (b) the member completes a term of office and is not re-appointed, or
- (c) the member resigns the office by instrument in writing addressed to the Minister, or
- (d) the member is removed from office by the Minister under clause 359, or
- (e) the member is absent from 3 consecutive meetings of the advisory council of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or Director or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister or Director for having been absent from those meetings, or
- (f) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or

Clause 359 Fisheries Management (General) Regulation 2002

Part 12 Administration

- (g) the member becomes a mentally incapacitated person, or
- (h) in the case of a member of the advisory council who is a MAC nominee, the member ceases to be a member of the MAC, or
- (i) in the case of a member of the advisory council appointed on the nomination of the Nature Conservation Council, the Nature Conservation Council withdraws its nomination, or
- (j) in the case of a member who is appointed because he or she is the Director or a nominee of the Director, the member ceases to be the Director or the Director withdraws his or her nomination of the member, or
- (k) in the case of a member who is appointed because he or she is an officer of a government department, the member ceases to be an officer of that department.

359 Removal of member from office by Minister

- (1) The Minister may remove a member from office in accordance with this clause.
- (2) The Minister is to consult the advisory council of which the person is a member before removing him or her from office.
- (3) The Minister may remove the member from office:
 - (a) after the period of 30 days has elapsed since the Minister first gave notice to the advisory council concerned of the proposal to remove the member from office, or
 - (b) if the removal of the member is agreed to by the advisory council concerned, at any time.

360 Filling of vacancy in office of member

- (1) If the office of a member of an advisory council becomes vacant, the Minister is to appoint a person to fill the vacancy.
- (2) The Minister may appoint a person to fill a vacancy by calling for expressions of interest in the position or by appointing a person who was previously nominated for the position.

361 Chairperson and deputy chairperson of advisory council

- (1) The Minister is to appoint the chairperson of each advisory council.

Fisheries Management (General) Regulation 2002

Clause 362

Administration

Part 12

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- (2) The chairperson is to be a person who:
 - (a) in the opinion of the Minister, has no direct or indirect pecuniary interest in the fishery concerned, and
 - (b) is not a member of the advisory council.
 - (3) Subclause (2) (a) does not apply in respect of the chairperson of the Advisory Council on Aquaculture.
 - (4) The Minister may appoint a deputy chairperson for any advisory council. The appointee may be a member of the advisory council concerned.
 - (5) Both the chairperson and the deputy chairperson (if any) are entitled to attend and (in accordance with this clause) chair meetings of the advisory council.
 - (6) A meeting of an advisory council is to be chaired:
 - (a) by the chairperson of the advisory council, or
 - (b) in the absence of the chairperson:
 - (i) by the deputy chairperson of the advisory council, or
 - (ii) in the absence of the deputy chairperson (or if no deputy chairperson has been appointed)—by the person appointed by the Minister to chair the meeting in such circumstances (who may be a member of the advisory council), or
 - (iii) in the absence of the person appointed under subparagraph (ii)—by a member of the advisory council elected by the members present to chair the meeting.
 - (7) The person chairing a meeting of an advisory council is entitled to vote at the meeting only if the person is a member of that council.

362 General procedure for calling and holding meetings of advisory council

- (1) The procedure for the calling and holding of meetings of an advisory council is to be determined by the Minister, subject to clause 363.
- (2) An advisory council is to hold at least 2 meetings each calendar year, unless the advisory council otherwise determines.

Clause 363 Fisheries Management (General) Regulation 2002

Part 12 Administration

363 Transaction of business outside meetings or by telephone

- (1) An advisory council may, with the written approval of the Director, transact any of its business by the circulation of papers among all the members of the advisory council for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the advisory council.
- (2) An advisory council may, with the written approval of the Director, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the chairperson and each member have the same voting rights as they have at an ordinary meeting of the advisory council.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the advisory council.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

364 Quorum

The quorum for a meeting of an advisory council consists of a majority of its members for the time being.

365 Voting

A recommendation supported by a majority of votes cast at a meeting of an advisory council at which a quorum is present is the recommendation of the advisory council.

366 Disclosure of pecuniary interests

- (1) A member of an advisory council:
 - (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the advisory council, and

Fisheries Management (General) Regulation 2002

Clause 367

Administration

Part 12

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- (b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the chairperson of the advisory council.

- (2) A disclosure by a member of the advisory council at a meeting of the advisory council that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or
 - (b) is a partner, or is in the employment, of a specified person, or
 - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

- (3) After a member of an advisory council has disclosed the nature of an interest in any matter, the member must not, if the chairperson of the advisory council so determines:
- (a) be present during any deliberation of the advisory council with respect to the matter, or
 - (b) take part in any decision of the advisory council with respect to the matter.
- (4) A contravention of this clause does not invalidate any decision of the advisory council.

367 Functions of members

- (1) The members of an advisory council are to ensure that the advisory council exercises its advisory functions conferred by section 229 (3) of the Act and this Regulation.
- (2) The functions of the members do not include the expenditure of funds on behalf of the advisory council or representing the Minister, unless they are expressly authorised to do so by the Minister.

Clause 368 Fisheries Management (General) Regulation 2002

Part 12 Administration

Division 5 Composition of Management Advisory Committees and qualifications for election

368 Definitions

(1) In this Division:

election means an election conducted for the purposes of electing one or more members of a MAC as provided by section 230 (2) (a) of the Act.

endorsement means an endorsement on a commercial fishing licence that authorises a person to take fish for sale in a restricted fishery but does not include the classes of endorsement provided for by Division 11 of Part 8 (other than a skipper's endorsement under clause 270).

industry member, of a MAC, means a member of a MAC who is elected and appointed pursuant to section 230 (2) (a) of the Act.

MAC means a Management Advisory Committee.

Table means the Table to clause 369.

(2) Despite clause 4, the notes to the Table (at the end of the Table) form part of this Regulation.

369 Composition of MAC

(1) A MAC that is established for a share management fishery that is specified in column 1 of Part A of the Table is to be comprised of:

- (a) the number of industry members set out in column 2 next to the fishery concerned, elected in accordance with this Division, and
- (b) the members appointed by the Minister pursuant to section 230 (2) (b) of the Act.

(2) A MAC that is established for a restricted fishery that is specified in column 1 of Part B of the Table is to be comprised of:

- (a) the number of industry members set out in column 2 next to the fishery concerned, elected in accordance with this Division, and
- (b) the members appointed by the Minister pursuant to section 230 (2) (b) of the Act.

A MAC for such a fishery is to be composed of industry members representing commercial fishers who hold an endorsement in the

Fisheries Management (General) Regulation 2002

Clause 369

Administration

Part 12

fishery of the type specified in column 3 of Part B of the Table to this clause next to the fishery concerned.

Note. The number of appointed members of a MAC is to be less than the number of industry members of the MAC—see clause 399 (2).

Table Composition of MACs (industry members)

Part A Share management fisheries

Column 1	Column 2
Name of fishery	Number of industry members
Abalone share management fishery	5
Lobster share management fishery	5

Clause 369 Fisheries Management (General) Regulation 2002
 Part 12 Administration

Part B Restricted fisheries

Column 1	Column 2	Column 3
Name of fishery	Number of industry members	Fishers to be represented
Ocean hauling restricted fishery	8	7 members representing commercial fishers who hold a class A endorsement in each region of the fishery (that is, 1 member for each region) 1 member representing commercial fishers who hold a class C endorsement (a purse seine net endorsement)
Ocean prawn trawl restricted fishery	5	1 member representing commercial fishers who hold an endorsement in the upper north coast region of the fishery 1 member representing commercial fishers who hold an endorsement in the Clarence region of the fishery 1 member representing commercial fishers who hold an endorsement in the north coast region of the fishery 1 member representing commercial fishers who hold an endorsement in the central region of the fishery 1 member representing commercial fishers who hold an endorsement in the metropolitan, upper south coast or lower south coast regions of the fishery
Ocean fish trawl restricted fishery	4	3 members representing commercial fishers who hold an endorsement in the northern region of the fishery

Fisheries Management (General) Regulation 2002

Clause 369

Administration

Part 12

Column 1	Column 2	Column 3
Name of fishery	Number of industry members	Fishers to be represented
		1 member representing commercial fishers who hold an endorsement in the southern region of the fishery
Ocean trap and line restricted fishery	7	4 members representing commercial fishers who are resident in the north of the State, with 1 representing holders of a demersal fish trap endorsement, 1 representing holders of a line fishing (eastern zone) endorsement, 1 representing holders of a line fishing (western zone) endorsement and 1 representing holders of a spanner crab endorsement
		3 members representing commercial fishers who are resident in the south of the State, with 1 representing holders of a demersal fish trap endorsement, 1 representing holders of a line fishing (eastern zone) endorsement and 1 representing holders of a line fishing (western zone) endorsement
Estuary general restricted fishery	8	8 members representing commercial fishers who hold an endorsement in each region of the fishery (that is, 1 member for each region)
Estuary prawn trawl restricted fishery	4	1 member representing commercial fishers who hold an endorsement (including an endorsement for a further period) for which the fishers were eligible under clause 217 (1) (a)

Clause 369 Fisheries Management (General) Regulation 2002
 Part 12 Administration

Column 1	Column 2	Column 3
Name of fishery	Number of industry members	Fishers to be represented
		1 member representing commercial fishers who hold an endorsement (including an endorsement for a further period) for which the fishers were eligible under clause 217 (1) (b)
		1 member representing commercial fishers who hold an endorsement (including an endorsement for a further period) for which the fishers were eligible under clause 217 (1) (c)
		1 member representing commercial fishers who hold an endorsement (including an endorsement for a further period) for which the fishers were eligible under clause 217 (1) (d) or (e)
Inland restricted fishery	3	2 members representing commercial fishers who hold a class A endorsement
		1 member representing commercial fishers who hold a class B endorsement or class D endorsement (or both)

Notes to Table

- For the purposes of the ocean fish trawl restricted fishery:
northern region of the fishery means that part of the waters that are comprised in the fishery that are north of a line drawn due east from Barrenjoey Point.
southern region of the fishery means that part of the waters that are comprised in the fishery that are south of a line drawn due east from Barrenjoey Point.
- For the purposes of the ocean trap and line restricted fishery:
north of the State means that part of the State lying generally to the north of a line drawn due east and due west from Barrenjoey Point.

Fisheries Management (General) Regulation 2002

Clause 369

Administration

Part 12

south of the State means that part of the State lying generally to the south of a line drawn due east and due west from Barrenjoey Point.

- 3 For the purposes of the ocean prawn trawl restricted fishery and the ocean hauling restricted fishery, the following are the regions of those fisheries:
- (a) Upper north coast. That part of the State lying generally between the border between the States of Queensland and New South Wales and the parallel 29°15' south latitude.
 - (b) Clarence. That part of the State lying generally between the parallel 29°15' south latitude and the parallel 29°45' south latitude.
 - (c) North coast. That part of the State lying generally between the parallel 29°45' south latitude and the parallel 31°44' south latitude.
 - (d) Central. That part of the State lying generally between the parallel 31°44' south latitude and the parallel 33°25' south latitude.
 - (e) Metropolitan. That part of the State lying generally between the parallel 33°25' south latitude and the parallel 34°20' south latitude.
 - (f) Upper south coast. That part of the State lying generally between the parallel 34°20' south latitude and the parallel 35°25' south latitude.
 - (g) Lower south coast. That part of the State lying generally between the parallel 35°25' south latitude and the border between the States of New South Wales and Victoria.
- 4 For the purposes of the estuary general restricted fishery, the following are the regions of the fishery:
- (a) Upper north coast. That part of the State lying generally between the border between the States of Queensland and New South Wales and the parallel 29°15' south latitude.
 - (b) Clarence. That part of the State lying generally between the parallel 29°15' south latitude and the parallel 29°45' south latitude.
 - (c) North coast. That part of the State lying generally between the parallel 29°45' south latitude and the parallel 31°44' south latitude.
 - (d) Central north. That part of the State lying generally between the parallel 31°44' south latitude and the parallel 32°30' south latitude.
 - (e) Central south. That part of the State lying generally between the parallel 32°30' south latitude and the parallel 33°25' south latitude.
 - (f) Metropolitan. That part of the State lying generally between the parallel 33°25' south latitude and the parallel 34°20' south latitude.
 - (g) Upper south coast. That part of the State lying generally between the parallel 34°20' south latitude and the parallel 35°25' south latitude.
 - (h) Lower south coast. That part of the State lying generally between the parallel 35°25' south latitude and the border between the States of New South Wales and Victoria.

Clause 370 Fisheries Management (General) Regulation 2002

Part 12 Administration

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- 5 For the purposes of the Table, a fisher holds an endorsement in a particular part of a fishery if the endorsement authorises the holder to take fish for sale in that part of the fishery.

370 Qualifications for election to a MAC

(1) Share management fisheries

In order to qualify for election as an industry member for a MAC for a share management fishery, a person must be:

- (a) a shareholder in the fishery, or
- (b) a person the Minister considers likely to be a shareholder in the fishery, or
- (c) an individual nominated by a person in paragraph (a) or (b) who:
 - (i) is the fisher nominated by that person under section 69 of the Act, or
 - (ii) owns the highest (or equal highest) percentage of that person's fishing business and is directly involved in the administration of that business, or
 - (iii) owns at least 25 per cent of that person's fishing business and is directly involved in the administration of that business.

Only one nomination is permitted per shareholder or likely shareholder in relation to each election.

(2) Restricted fisheries

In order to qualify for election as an industry member for a MAC for a restricted fishery specified in Column 1 of Part B of the Table, a person must be:

- (a) a commercial fisher who holds an endorsement in the fishery of the type specified in Column 3 of Part B of the Table next to the fishery concerned, or
- (b) an individual nominated by a commercial fisher in paragraph (a) who:
 - (i) owns the highest (or equal highest) percentage of the commercial fisher's fishing business and is directly involved in the administration of that business, or
 - (ii) owns at least 25 per cent of the commercial fisher's fishing business and is directly involved in the administration of that business.

Fisheries Management (General) Regulation 2002

Clause 371

Administration

Part 12

Only one nomination is permitted per commercial fisher in relation to each election.

Note. Under section 230 (2) of the Act, only commercial fishers can be elected to a MAC.

371 General restrictions on election to a MAC

- (1) A person is not qualified to be elected to a position of industry member on a MAC if the person:
 - (a) is already a member of that MAC (unless the person is seeking re-election to the MAC) or another MAC, or
 - (b) is already a candidate for election to any other MAC.
- (2) Officers and employees of NSW Fisheries are not qualified to be elected to a position of industry member on a MAC.

372 Qualifications to vote

(1) **Share management fisheries**

In order to be qualified to vote in an election for the position of industry member on a MAC for a share management fishery, a person must be:

- (a) a shareholder in the fishery, or
- (b) a person the Minister considers likely to be a shareholder in the fishery, or
- (c) if the person in paragraph (a) or (b) is not a natural person, an individual nominated by that person.

(2) **Restricted fisheries**

In order to be qualified to vote in an election for the position of industry member on a MAC for a restricted fishery (as specified in Column 3 of Part B of the Table in relation to each fishery), a person must be a commercial fisher who holds an endorsement in the fishery of the type specified in Column 3 of Part B of the Table next to the fishery concerned.

373 Qualifications of owners of fishing businesses that operate in restricted fisheries

- (1) This clause applies if an individual is issued with a class 5 commercial fishing licence because the person owns (either alone or together with other individuals) a fishing business and, because of that fishing business:

Clause 374 Fisheries Management (General) Regulation 2002

Part 12 Administration

- (a) the individual would be entitled, if he or she held a Class 1, 2 or 3 commercial fishing licence, to an endorsement in a restricted fishery, or
- (b) the individual would be likely to be entitled to an endorsement in a restricted fishery.

The person who holds the licence is taken, for the purposes of this Part, to hold an endorsement of the type he or she would be entitled to, or would be likely to be entitled to, as determined by the Director. Accordingly, the person is qualified for election to a position of industry member on a MAC representing endorsement holders of that type and to vote in an election for such a MAC.

- (2) Any person who holds an endorsement in a restricted fishery, or who applied to the Minister for such an endorsement, and whose entitlement to such an endorsement arises only because he or she is employed in the fishing business of the holder of a Class 1, 2, 3 or 5 commercial fishing licence is not, by reason of holding that endorsement or having applied for that endorsement, qualified for election to a position as industry member on a MAC or to vote in an election for such a MAC.

Division 6 Procedure for election of industry members of Management Advisory Committees

374 Definitions

In this Division:

close of ballot, in relation to an election, means the time and date for the close of the ballot for the election that have been fixed under this Regulation by notice under clause 376 or, if that close has been extended, the time and date fixed under clause 377.

close of nominations, in relation to an election, means the time and date for the close of nominations for the election that have been fixed under this Regulation by notice under clause 376 or, if that close has been extended, the time and date fixed under clause 377.

close of roll, in relation to an election, means the time and date for the close of the roll for the election that have been fixed under this Regulation by notice under clause 376 or, if that close has been extended, the time and date fixed under clause 377.

Fisheries Management (General) Regulation 2002

Clause 375

Administration

Part 12

election means an election conducted for the purposes of electing one or more members of a MAC as provided by section 230 (2) (a) of the Act.

industry member, of a MAC, means a member of a MAC who is elected and appointed pursuant to section 230 (2) (a) of the Act.

MAC means a Management Advisory Committee.

returning officer means:

- (a) the Electoral Commissioner for New South Wales, or
- (b) a person nominated by the Electoral Commissioner for the purpose of exercising the functions of a returning officer.

roll, in relation to an election, means the roll prepared for the election by the Director under this Division.

375 Notice that election is required

When an election is required under section 230 (2) (a) of the Act, the Director is:

- (a) to give the returning officer written notice that an election is required, and
- (b) to prepare, certify and deliver to the returning officer a roll containing the full names and addresses of the persons who, in the opinion of the Director, are qualified to vote in the election, to stand as a candidate and to nominate a candidate in the election.

376 Notification of election

- (1) The returning officer is to publish written notice of an election as soon as practicable after having been notified in writing by the Director that the election is required.
- (2) The notice is to be published in at least one newspaper that circulates throughout New South Wales and in such other local newspaper (if any) as the returning officer considers appropriate.
- (3) The notice of the election must:
 - (a) fix a time and date for the close of nominations, and
 - (b) fix a time and date for the close of the roll, and

Clause 377 Fisheries Management (General) Regulation 2002

Part 12 Administration

- (c) state that if the election is contested a ballot will be held, and fix a time and date for the close of the ballot.

The notice may contain such other information concerning the election as the returning officer considers appropriate.

- (4) The close of nominations and the close of the roll must be not earlier than 21 days, and not later than 28 days, after the date on which the notice is published.
- (5) The returning officer must also forward to each person included in the roll a notice setting out the matters set out in the notice of election and including such other information as the returning officer considers appropriate.

377 Postponement of closing dates

- (1) The returning officer may postpone (for a period not exceeding 14 days) the close of nominations, the close of the roll or the close of the ballot by written notice in a form similar to, and published in the same manner as, the notice referred to in clause 376.
- (2) The returning officer may exercise the power conferred by this clause more than once in respect of an election.

378 Nomination of candidates

- (1) A person is qualified to nominate a candidate for an election if, and only if, the person is entitled to vote in the election.
- (2) A person is not entitled to nominate more than the number of candidates that are required to be elected to represent the person.
- (3) A nomination of a candidate:
- (a) must be in a form approved by the returning officer, and
 - (b) must be made by no fewer than 2 persons (other than the candidate) who are qualified to nominate a candidate, and
 - (c) must be lodged with the returning officer before the close of nominations.
- (4) If the returning officer is of the opinion that an insufficient number of the persons by whom a candidate has been nominated are qualified to nominate a candidate, the returning officer must, as soon as practicable, cause notice of that fact to be given to the candidate.

Fisheries Management (General) Regulation 2002

Clause 379

Administration

Part 12

379 Withdrawal of nomination

A candidate may withdraw his or her nomination by notice in writing addressed to the returning officer at any time before the close of nominations.

380 Exhibition of roll

- (1) The Director is to cause copies of the roll to be exhibited for public inspection at offices of NSW Fisheries for a period of at least 14 days ending at the close of the roll.
- (2) The Director may cause the copies of the roll to be exhibited at such other places the Director considers appropriate.

381 Application for enrolment by person not already enrolled

- (1) A person may apply to the Director, in a form approved by the Director, for inclusion in the roll.
- (2) The application must be lodged on or before the close of the roll.
- (3) On receipt of the application the Director must:
 - (a) if satisfied that the applicant is qualified to vote in the election, accept the application and enter the name and address of the applicant in the roll, or
 - (b) if not so satisfied, reject the application and inform the applicant in writing that the application has been rejected.
- (4) The Director may, before the close of the roll, make any other necessary correction of the roll.
- (5) A determination by the Director as to whether or not a person is likely to be a shareholder or commercial fisher in a fishery is final and conclusive.

382 Uncontested election—share management fishery

- (1) In the case of an election for industry members of a MAC for a share management fishery, if by the close of nominations no more than the minimum number of candidates have been duly nominated for election, the returning officer is to declare all those candidates duly elected.
- (2) If there are more than the minimum number of candidates, a ballot must be held.

Clause 383 Fisheries Management (General) Regulation 2002

Part 12 Administration

- (3) In this clause, a reference to the minimum number of candidates is a reference to the number of industry members on a MAC, as specified in column 2 of Part A of the Table to clause 369 next to the fishery concerned.

383 Uncontested elections—restricted fisheries

- (1) In the case of an election for industry members of a MAC for a restricted fishery, if by the close of nominations the number of candidates duly nominated for election to represent commercial fishers holding a particular type of endorsement in the fishery does not exceed the number required to be elected to represent those fishers (as specified in relation to the fishery concerned in column 3 of Part B of the Table to clause 369), the returning officer is to declare those candidates duly elected.
- (2) If the number of candidates in the election exceeds the number required to be elected, a ballot must be held.

384 Up-dating of roll

- (1) As soon as practicable after it becomes apparent to the returning officer that a ballot must be held, the returning officer is to notify the Director of that fact.
- (2) Within 7 days after having been so notified by the returning officer, the Director is to certify and deliver to the returning officer a copy of the roll, as in force at the close of the roll, together with an appropriately addressed label or an appropriately addressed envelope for each person whose name is included in that roll.
- (3) This clause does not apply to an election which is held as a consequence of an earlier election which has failed but in respect of which the relevant roll has been furnished to the returning officer under this clause.

385 Printing of ballot-papers

- (1) The returning officer must, as soon as practicable after the close of nominations in an election:
- (a) determine the order in which the candidates' names are to be listed on a ballot-paper by means of a ballot held in accordance with the procedure prescribed for the purposes of section 82A of the *Parliamentary Electorates and Elections Act 1912*, and

Fisheries Management (General) Regulation 2002

Clause 386

Administration

Part 12

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- (b) cause sufficient ballot-papers to be printed so that a ballot-paper may be forwarded to each person included in each of the rolls.
- (2) A ballot-paper for an election must contain:
- (a) the names of the candidates arranged in the order determined in accordance with subclause (1) (a), with a small square set opposite each name, and
 - (b) if, in the opinion of the returning officer, the names of two or more of the candidates are so similar as to cause confusion, such other matter as will, in the opinion of the returning officer, distinguish between those candidates, and
 - (c) such directions as to the manner in which a vote is to be recorded, and the ballot-paper returned to the returning officer, as the returning officer considers appropriate.

386 Distribution of ballot-papers

The returning officer must, as soon as practicable after the printing of the ballot-papers for an election, forward to each person included in the roll for the election:

- (a) a ballot-paper initialled by the returning officer or by a person authorised by the returning officer in that behalf, and
- (b) an unsealed reply-paid envelope addressed to the returning officer and bearing on the back the words "Name and address of voter" and "Signature of voter", together with appropriate spaces for the insertion of the person's name, address and signature.

387 Duplicate ballot-papers

- (1) At any time before the close of the ballot, the returning officer may supply a duplicate ballot-paper to any voter to whom a ballot-paper was forwarded if the voter satisfies the returning officer by statutory declaration that the ballot-paper has been spoiled, lost or destroyed, and that the voter has not already voted in the election to which the ballot-paper relates.
- (2) The returning officer is to maintain a record of all duplicate ballot-papers supplied under this clause.

Clause 388 Fisheries Management (General) Regulation 2002

Part 12 Administration

388 Recording of votes

In order to vote in an election, an elector must:

- (a) complete the ballot-paper in accordance with the directions printed on it, and
- (b) place the completed ballot-paper (folded so that the vote cannot be seen) in the envelope addressed to the returning officer and forwarded with the ballot-paper, and
- (c) seal the envelope, and
- (d) insert his or her full name and address on the back of the envelope and sign the back of the envelope, and
- (e) return the envelope to the returning officer so that it is received by the returning officer before the close of the ballot.

389 Receipt of ballot-papers

- (1) In any ballot, the returning officer must reject any envelope purporting to contain a ballot-paper, being an envelope:
 - (a) that is not received by the returning officer before the close of the ballot, or
 - (b) that is unsealed,without opening the envelope or inspecting the ballot-paper.
- (2) On receipt, before the close of the ballot, of an envelope purporting to contain a ballot-paper, the returning officer must examine the name on the back of the envelope and:
 - (a) if the returning officer is satisfied that a person of that name is included in the relevant roll for the election, accept the ballot-paper in the envelope for scrutiny without opening the envelope and draw a line through that person's name in the roll, or
 - (b) if the returning officer is not so satisfied, or if a signature does not appear on the back of the envelope, reject the ballot-paper in the envelope without opening the envelope.
- (3) If it appears to the returning officer that the signature on the back of any such envelope is not the signature of the person whose name and address appear on the back of the envelope, the returning officer may make such inquiries as the returning officer thinks fit. If the

Fisheries Management (General) Regulation 2002

Clause 390

Administration

Part 12

returning officer is satisfied after making those inquiries that the signature is not the signature of that person, the returning officer is to reject the ballot-paper in the envelope without opening the envelope.

390 Ascertaining result of ballot

The result of a ballot is to be ascertained by the returning officer as soon as practicable after the close of the ballot.

391 Scrutineers

Each candidate in a ballot is entitled to appoint, by notice in writing to the returning officer, a scrutineer to represent the candidate at all stages of the scrutiny.

392 Scrutiny of votes

- (1) At the scrutiny of votes in a ballot, a ballot-paper must be rejected as informal if:
 - (a) it is neither initialled by the returning officer (or by a person authorised by the returning officer in that behalf) nor bears a mark prescribed as an official mark for the purposes of section 122A (3) of the *Parliamentary Electorates and Elections Act 1912*, or
 - (b) it has on it any mark or writing which, in the opinion of the returning officer, could enable any person to identify the voter who completed it, or
 - (c) it has not been completed in accordance with the directions shown on it.
- (2) A ballot-paper must not be rejected as informal merely because:
 - (a) there is any mark or writing on it that is not authorised or required by this Division (not being a mark or writing referred to in subclause (1) (b)) if, in the opinion of the returning officer, the voter's intention is clearly indicated on the ballot-paper, or
 - (b) the number of candidates the voter has recorded a vote for is less than the number to be elected.
- (3) The scrutiny of votes in a ballot is to be conducted as follows:
 - (a) the returning officer must produce unopened the envelopes containing the ballot-papers accepted for scrutiny under clause 389 in respect of the ballot, other than any envelope

Clause 393 Fisheries Management (General) Regulation 2002

Part 12 Administration

purporting to contain a ballot-paper rejected under clause 389 (3),

- (b) the returning officer must then open each such envelope, extract the ballot-paper and (without unfolding it) place it in a locked ballot-box,
- (c) when the ballot-papers from all the envelopes so opened have been placed in the ballot-box, the returning officer must then unlock the ballot-box and remove the ballot-papers,
- (d) the returning officer must then examine each ballot-paper and reject those that are informal,
- (e) the returning officer must then proceed to count the votes and ascertain the result of the election in accordance with clause 393.

393 Counting of votes

- (1) In any election the method of counting votes is to be the “first past the post” method, that is, the candidate or candidates with the most votes is or are taken to be elected.
- (2) If the number of candidates to be elected cannot be determined because of an equality of votes, the candidate taken to be elected is the candidate whose name is drawn by lot from a receptacle containing the names of each of the candidates having equal votes.

394 Notification of result of election

- (1) As soon as practicable after a candidate has been elected, the returning officer must notify the Minister, in writing, of the name of the candidate or candidates so elected.
- (2) The Minister is to publish written notice of the appointment of elected industry members in the Gazette.

395 Decisions of returning officer final

If the returning officer is permitted or required by the Act or this Division to make a decision on any matter relating to the conduct of a ballot in an election, the decision of the returning officer on that matter is final.

396 Offence

Any person who:

- (a) votes, or attempts to vote, more than once in any election, or

Fisheries Management (General) Regulation 2002

Clause 397

Administration

Part 12

- (b) votes, or attempts to vote, in an election in which the person is not entitled to vote, or
- (c) makes a false or wilfully misleading statement (not being a statement verified by statutory declaration):
 - (i) to the returning officer in connection with an election, or
 - (ii) in any document that the person furnishes for the purposes of an election,

is guilty of an offence.

Maximum penalty: 5 penalty units.

397 Death of a candidate

Where a candidate dies after the close of nominations and before the close of the ballot for an election:

- (a) the returning officer must cause a notification of the death to be published in the Gazette, and
- (b) all proceedings in the election taken after the Director notified the returning officer that the election was required to be held are to be of no effect and those proceedings must be taken again.

Division 7 Provisions relating to members and procedure of Management Advisory Committees

398 Definitions

In this Division:

industry member means a member of a MAC elected and appointed pursuant to section 230 (2) (a) of the Act.

MAC means a Management Advisory Committee.

member means a member of a MAC.

non-elected member means a member of a MAC appointed pursuant to section 230 (2) (b) of the Act.

returning officer means the returning officer for an election (within the meaning of Division 6 of this Part).

Clause 399 Fisheries Management (General) Regulation 2002

Part 12 Administration

399 Non-elected members

- (1) For the purposes of section 230 (2) (b) of the Act, non-elected members are to be appointed from among the following interested groups:
 - (a) NSW Fisheries,
 - (b) groups representing recreational fishers,
 - (c) the Nature Conservation Council,
 - (d) groups representing indigenous Australians,
 - (e) such other groups as the Minister considers appropriate.
- (2) The number of non-elected members appointed to a MAC is to be less than the number of industry members of the MAC.
- (3) At least one of the non-elected members appointed to each MAC is to be a person selected from a panel of nominees of the Nature Conservation Council.
- (4) This clause does not apply in respect of the MAC for the inland restricted fishery.

400 Non-elected members—inland restricted fishery

In the case of the MAC for the inland restricted fishery, non-elected members are to be appointed from the following interested groups:

- (a) NSW Fisheries,
- (b) groups representing recreational fishers,
- (c) the Nature Conservation Council,
- (d) groups representing indigenous Australians.

401 Appointment of Nature Conservation Council representatives

- (1) For the purposes of clauses 399 (1) (c) and 400 (c), the Minister is to request the Nature Conservation Council to nominate one or more persons from among its officers and members as a candidate or as candidates for appointment to the MAC concerned.
- (2) The Minister may decline to accept the nomination of any such candidate. In such a case the Minister:
 - (a) is to advise the Nature Conservation Council of that decision and of the reason for that decision, and

Fisheries Management (General) Regulation 2002

Clause 402

Administration

Part 12

(b) if the Minister considers it appropriate, is to give the Nature Conservation Council an opportunity to nominate another candidate or candidates.

(3) If the Nature Conservation Council:

(a) fails to nominate a candidate, or a sufficient number of candidates, for appointment to the relevant MAC within 60 days after being requested to do so by the Minister, or

(b) fails to nominate within that period a candidate, or a sufficient number of candidates, whose nomination is, or whose nominations are, accepted by the Minister,

the Minister may appoint as a member of that MAC any person or persons whom the Minister considers suitable to represent the interests of the Council, instead of a person nominated by the Council.

402 Deputies of members

(1) A member may, from time to time, appoint a person to be the deputy of the member, and may at any time revoke any such appointment.

(2) Such an appointment may be made only with the approval of the Minister. The Minister may revoke such approval at any time.

(3) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member, and

(b) while so acting, has all the functions of the member and is to be taken to be the member.

(4) A person, while acting in the place of a member, is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

403 Terms of office

Subject to this Division:

(a) an industry member holds office for a term of 3 years but is eligible (if otherwise qualified) for re-election and re-appointment, and

(b) a non-elected member holds office for the term specified in his or her appointment (not exceeding 3 years) but is eligible (if otherwise qualified) for re-appointment.

Clause 404 Fisheries Management (General) Regulation 2002

Part 12 Administration

404 Allowances for members

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

405 Vacancy in office of a member

- (1) The office of a member becomes vacant if the member:
 - (a) dies, or
 - (b) completes a term of office and is not re-elected or re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Minister under this clause, or
 - (e) is absent from 3 consecutive meetings of the MAC of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (g) becomes a mentally incapacitated person.
- (2) The Minister may remove a non-elected member from office at any time.
- (3) The Minister may remove an industry member from office if the member:
 - (a) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (b) is convicted of an offence under the Act, this Regulation or any other regulation made under the Act or an offence relating to theft of fish, fishing gear or a boat or intentional damage to fishing gear or a boat, or
 - (c) ceases to be qualified to be elected to the MAC (see Division 5 of this Part).

Fisheries Management (General) Regulation 2002

Clause 406

Administration

Part 12

406 Filling of vacancy in office of member

- (1) If the office of an industry member becomes vacant because the term of office of the member has ended, an election is to be held in accordance with Division 6 of this Part for the purpose of appointing a new member.
- (2) If a vacancy occurs in the office of an industry member otherwise than because the term of office of the member has ended, the Minister may appoint a person to fill the office for the remainder of that term, being a person who would be qualified to be elected to the office and who the Minister decides, after consultation with the relevant industry sector, is appropriate for that office.

407 General procedure for calling and holding meetings of a MAC

- (1) The procedure for the calling and holding of meetings of a MAC is to be determined by the Minister, subject to clause 408.
- (2) The Minister is to call at least 2 meetings of a MAC each calendar year, unless otherwise determined by the MAC.

408 Transaction of business outside meetings or by telephone

- (1) A MAC may, with the written approval of the Director, transact any of its business by the circulation of papers among all the members of the MAC the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the MAC.
- (2) A MAC may, with the written approval of the Director, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
 - (a) the approval of a resolution under subclause (1), or
 - (b) a meeting held in accordance with subclause (2),the chairperson and each member have the same voting rights as they have at an ordinary meeting of the MAC.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the MAC.

Clause 409 Fisheries Management (General) Regulation 2002

Part 12 Administration

- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

409 Quorum

The quorum for a meeting of a MAC consists of the majority of its industry members for the time being.

410 Voting

- (1) A decision supported by a majority of votes cast at a meeting of a MAC at which a quorum is present is the decision of the MAC, but only if the majority of members present are industry members.
- (2) In the case of the MAC for the inland restricted fishery, a decision supported by a majority of votes cast at a meeting of a MAC at which a quorum is present, and by a majority of industry members for the time being, is a decision of the MAC.

Fisheries Management (General) Regulation 2002

Clause 411

Enforcement

Part 13

Part 13 Enforcement

Division 1 Fisheries officers

411 Class of persons that may be appointed as fisheries officers

For the purposes of section 243 (1) (d) of the Act, the prescribed class of persons consists of persons appointed to enforce a law relating to commercial fishing operations of the Commonwealth, another State or a Territory.

Note. This clause allows persons responsible for the enforcement of fisheries laws of other Australian jurisdictions to be appointed as fisheries officers for the purposes of the Act (in addition to other persons who may be appointed as fisheries officers under section 243 of the Act).

Division 2 Seizure

412 Forfeiture offences

For the purposes of section 265 (2) of the Act, the following fisheries offences are declared to be forfeiture offences:

- (a) an offence against section 14 of the Act (Offences relating to closures),
- (b) an offence against section 17 of the Act (Bag limits—taking of fish),
- (c) an offence against section 18 of the Act (Bag limits—possession of fish),
- (d) an offence against section 24 of the Act (Lawful use of nets or traps),
- (e) an offence against section 25 of the Act (Possession of illegal fishing gear),
- (f) an offence against section 247 of the Act (Obstructing, impersonating etc fisheries officers),
- (g) an offence against the *Fisheries Management (Aquatic Reserves) Regulation 2002*,
- (h) an offence against clause 112 of this Regulation (Dynamite and explosive substances),

Clause 413 Fisheries Management (General) Regulation 2002

Part 13 Enforcement

- (i) an offence against clause 114 of this Regulation (Use of electrical devices prohibited in all waters).

Note. A fisheries officer may seize a boat or motor vehicle that the officer has reason to believe has been used by a person engaged in commercial fishing activities for the purpose of committing a forfeiture offence (section 265 of the Act). This clause sets out the offences that are forfeiture offences.

Division 3 Criminal proceedings

413 Penalty notices

- (1) For the purposes of section 276 of the Act:
- (a) an offence specified in Column 1 of Schedule 5 (being an offence under the Act or Regulation indicated in the heading to the relevant part of that Schedule) is a prescribed offence, and
 - (b) an amount shown in Column 2 of Schedule 5 opposite the prescribed offence is the amount of penalty prescribed for the offence if that offence is dealt with under section 276 of the Act.
- (2) If the reference to a provision in Column 1 of Schedule 5 is qualified by words that restrict its operation to specified kinds of offence or to offences committed in specified circumstances, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or is committed in the circumstances so specified.
- (3) For the purposes of section 276 (9) of the Act, in relation to each offence referred to in Schedule 5, the prescribed class of persons (being persons who are “authorised officers” in relation to those offences) is the class of fisheries officers.

414 Evidence in relation to fishing authorities

For the purposes of section 280 of the Act, the following officers of NSW Fisheries are prescribed officers:

- (a) Deputy Director of Fisheries,
- (b) Director, Fisheries Services,
- (c) Director, Office of Conservation,
- (d) Director, Aquaculture,
- (e) Principal Manager Commercial,
- (f) Principal Manager Regional Services,

Fisheries Management (General) Regulation 2002

Clause 415

Enforcement

Part 13

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- (g) Principal Manager Recreational Fisheries,
 - (h) Senior Manager Licensing,
 - (i) Share Registrar,
 - (j) Registered Fish Receiver Registrar.

Note. Under section 280 of the Act, a certificate (relating to a fishing authority under the Act) signed, or purporting to be signed, by the Director of NSW Fisheries or by a person referred to in this clause is admissible in proceedings for an offence under the Act or the regulations and is evidence of the matters stated in the certificate.

Division 4 Miscellaneous

415 Payment by instalments

- (1) Despite any other provision of this Regulation, but subject to the Act, the Minister may approve the payment by instalments of any fee, charge or other sum of money payable under the Act or this Regulation.
- (2) An approval may establish guidelines in accordance with which instalments are to be paid.
- (3) An approval may require interest to be paid on late instalments, at a rate not exceeding the rate payable on judgments of the Supreme Court.
- (4) If a person fails to pay an instalment on or before the due date, the total amount of all instalments unpaid on that date, together with any interest, becomes due and payable.

Clause 416	Fisheries Management (General) Regulation 2002
Part 14	Savings and transitional

Part 14 Savings and transitional

416 Offences under 1935 Act

In this Regulation, a reference to an offence under the Act or regulations made under the Act is taken to include a reference to an offence under the 1935 Act or regulations made under that Act.

417 Savings provision concerning repealed regulation

Any act, matter or thing that had effect under the repealed regulation immediately before its repeal is taken to have effect under this Regulation.

418 Restricted fisheries—continuation of existing restricted fisheries

- (1) The sea urchin and turban shell restricted fishery declared under clause 169 is a continuation of the restricted fishery declared under clause 161 of the repealed regulation.
- (2) The ocean prawn trawl restricted fishery declared under clause 184 is a continuation of the restricted fishery declared under clause 175 of the repealed regulation.
- (3) The ocean fish trawl restricted fishery declared under clause 192 is a continuation of the restricted fishery declared under clause 184 of the repealed regulation.
- (4) The ocean trap and line fishery restricted fishery declared under clause 200 is a continuation of the restricted fishery declared under clause 191B of the repealed regulation.
- (5) The estuary general fishery restricted fishery declared under clause 208 is a continuation of the restricted fishery declared under clause 191K of the repealed regulation.
- (6) The estuary prawn trawl fishery restricted fishery declared under clause 216 is a continuation of the restricted fishery declared under clause 191T of the repealed regulation.
- (7) The inland fishery restricted fishery declared under clause 230 is a continuation of the restricted fishery declared under clause 200B of the repealed regulation.
- (8) The ocean hauling fishery restricted fishery declared under clause 256 is a continuation of the restricted fishery declared under clause 212B of the repealed regulation.

Fisheries Management (General) Regulation 2002

Clause 419

Savings and transitional

Part 14

419 Committees, Councils and Panels

- (1) Any Committee, Council or Panel established under or in accordance with the repealed regulation and in existence on the repeal of that regulation is taken to be established under or in accordance with (as the case may be) this Regulation.
- (2) Any person who is a member of any such Committee, Council or Panel on the repeal of the repealed regulation is taken to have been appointed or elected to that Committee, Council or Panel under or in accordance with the Act or this Regulation.
- (3) Any person who is the chairperson of any such Committee, Council or Panel on the repeal of the repealed regulation is taken to have been appointed as such under this regulation.
- (4) However, the chairperson of the Marine and Estuarine Recreational Charter Management Advisory Committee ceases, despite retaining the office of Chairperson, to be a member of that Committee on the repeal of the repealed regulation.
- (5) A person who so ceases to be a member of the Marine and Estuarine Recreational Charter Management Advisory Committee is not entitled to any remuneration or compensation because of the loss of that membership.

420 Refund in respect of review request

Clause 226S (3) of the repealed regulation applies, as if that subclause were still in force, to and in respect of any request made under clause 226S and not finally determined as at the commencement of this Regulation.

421 Interim licence

- (1) Clause 226Y (2)–(7) of the repealed regulation applies, as if that clause were still in force, to and in respect of any interim licence issued under clause 226Y and in force on the commencement of this Regulation.
- (2) The Minister may renew any such interim licence (on payment of the fee referred to in clause 226Y (3)) pending the outcome of the review that gave rise to its issue.

Fisheries Management (General) Regulation 2002

Schedule 1 Ocean waters

Schedule 1 Ocean waters

(Clause 3 (1))

Ocean waters

- 1 ***Ocean waters*** means waters east of the natural coast line of New South Wales.
- 2 The ***natural coast line*** is defined by a line drawn along the high water mark of the sea.
- 3 Where an estuary meets the coast, the ***natural coast line*** is defined as follows (unless item 4 applies):
 - (a) if an estuary has two breakwalls at the confluence with the South Pacific Ocean, by a line drawn across the easternmost extremity of both break walls,
 - (b) if an estuary has only one breakwall, by a line drawn from the easternmost extremity of the breakwall to the northern or southern extremity of the high water mark on the opposite bank,
 - (c) if an estuary enters the South Pacific Ocean and there are no defined points available, by a line drawn across the entrance between the easternmost extremity of the drying points on each bank.
- 4 In relation to the following waters, the ***natural coast line*** is defined as follows:
 - (a) Port Stephens—by a line drawn between the southern extremity of Yacaaba Point to the Northern extremity of Tomaree Point,
 - (b) Broken Bay—by a line drawn from the southern extremity of Box Head to the northern extremity of Barrenjoey Head,
 - (c) Port Jackson—by a line drawn from the southern extremity of North Head to the northern extremity of South Head,
 - (d) Botany Bay—by a line drawn from Endeavour Light to the northern extremity of Sutherland Point,
 - (e) Port Hacking—by a line drawn from the southernmost extremity of Hungry Point to the northern most extremity of Cabbage Tree or Pulpit Point,

Fisheries Management (General) Regulation 2002

Ocean waters

Schedule 1

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- (f) Jervis Bay—by a line drawn from the southeastern point of Point Perpendicular to the southeastern point of Bowen Island thence to the northeastern point of Governor Head,
 - (g) Wogonga River—by a line drawn northwest across the entrance from the northernmost extremity of Wogonga Head,
 - (h) Batemans Bay—by a line drawn from the southwestern extremity of Square Point to the northernmost extremity of Observation Point.

Fisheries Management (General) Regulation 2002

Schedule 2 Waters in which net and trap fishing are prohibited

Schedule 2 Waters in which net and trap fishing are prohibited

(Clause 21)

Brisbane Water/Broken Bay

Brisbane Water or any of its tributaries; Broken Bay north of a line drawn from Little Box Head to Green Point.

Port Hacking

Port Hacking or its tributaries to the westward of a line drawn southerly from the southernmost extremity of Hungry Point to the northernmost extremity of Cabbage Tree or Pulpit Point.

Wagonga River

Wagonga River or its tributaries westward of a line drawn north-west across the entrance from the northernmost extremity of Wagonga Head.

Narrabeen Lake

County of Cumberland. The whole of the waters of Narrabeen Lake and its tributaries including Deep Creek, Middle Creek, South Creek and Mullet Creek together with their affluents and tributaries.

Dee Why Lagoon, Curl Curl Lagoon and Manly Lagoon

County of Cumberland. The whole of the waters of Dee Why Lagoon, Curl Curl Lagoon and Manly Lagoon together with their affluents and tributaries.

Wallis Lake

County of Gloucester, parishes of Tuncurry and Forster at Wallis Lake: The whole of the waters within the following boundaries: Commencing at the entrance to Wallis Lake at the eastern extremity of the northern breakwater and bounded thence by that breakwater and a part of the foreshores of the village of Tuncurry generally southerly to the prolongation of the western side of Wharf Street; thence by a line bearing approximately 239 degrees to the north-eastern corner of Oyster Lease 71.295; thence by a line bearing approximately 168 degrees to the north-western corner of Oyster Lease 70.434 and by a line bearing approximately 155 degrees across the water to the south-western corner of Oyster Lease 57.295

Fisheries Management (General) Regulation 2002

Waters in which net and trap fishing are prohibited

Schedule 2

on Godwin Island; thence by the northern foreshore of that island north-easterly to its most northern point; thence by a line bearing 60 degrees to the foreshore of the village of Forster at the prolongation of the southern boundary of Section 27; thence by that foreshore generally northerly to the southern breakwater, by that breakwater north-easterly to its eastern extremity and by a line across the entrance to the point of commencement.

Tuggerah Lake and ocean waters adjoining

County of Northumberland: The waters of that part of Tuggerah Lake, its channel entrance and the adjacent ocean waters included within the following boundaries: Commencing on the line of high water mark at the southern extremity of Karagi, the headland on the northern side of that channel entrance, and bounded thence by the high water mark of the eastern shore of that channel entrance bearing generally northerly to Tuggerah Lake and by the high water mark of part of the eastern shore of that lake bearing generally northerly and north-easterly to a point distant 201 metres south-westerly from the north-western corner of portion 39 in the parish of Wallarah; thence by lines bearing 282 degrees 887 metres and 325 degrees 814 metres, respectively, into the waters of that lake; thence by a line bearing 210 degrees 2,743 metres; thence by lines bearing 91 degrees 631 metres and 136 degrees 1,102 metres, respectively, to a point on the high water mark of the eastern shore of that lake distant 805 metres southerly from the northern extremity of Picnic Point; thence by the high water mark of part of the eastern shore of that lake to that extremity of that point; thence by the high water mark of the southern-western shore of that channel entrance bearing generally south-easterly to the junction of that shore with the shore of the South Pacific Ocean; thence by a line bearing 135 degrees 443 metres into the waters of that ocean; thence by a line bearing northerly to a point due east of and distant 443 metres from the point of commencement, and thence by a line to that point.

Terrigal Lagoon, Wamberal Lagoon, Avoca Lake and Cockrone Lake

County of Northumberland. The whole of the waters of Terrigal Lagoon, Wamberal Lagoon, Avoca Lake (including Bulbararing Lagoon) and Cockrone Lake together with their affluents and tributaries.

Fisheries Management (General) Regulation 2002

Schedule 2 Waters in which net and trap fishing are prohibited

Lake Illawarra and ocean waters adjoining

County of Camden: The whole of the waters of that part of Lake Illawarra, the entrance thereto and the adjacent ocean waters comprised within the following boundaries: Commencing at the north-western corner of portion 44 in the parish of Wollongong; thence by lines bearing 291 degrees 30 minutes 333 metres 228 degrees 57 minutes 174 metres and 191 degrees 30 minutes 718 metres, respectively, to a post marked broad-arrow over FD on the north-western shore of Bevan's Island; thence by that shore of that island bearing generally south-westerly, in all about 233 metres to a point marked broad-arrow over FD at the westernmost extremity of that island, and thence by a line bearing approximately 205 degrees about 565 metres to a peg marked broad-arrow over E on the southern shore of Lake Illawarra and bounded thence by the southern shore of that lake, by the south-western shore of the entrance thereto and by that line of mean high water mark of the ocean beach to a point, bearing 237 degrees from the Trigonometrical Station on Windang Island, being the intersection of a line drawn from the Trigonometrical Station to the junction of Lake Entrance and Shellharbour Roads, thence by a line to that Trigonometrical Station and thence by a line to the sand spit at the northern point of entrance to that lake at its intersection with a line drawn from the Trigonometrical Station to the southern corner of portion 44 in the parish of Wollongong; thence by the north-eastern shore of that entrance and the eastern shore of that lake to the point of commencement.

Fisheries Management (General) Regulation 2002

Waters in which use of prawn net (set pocket) is permitted

Schedule 3

Schedule 3 Waters in which use of prawn net (set pocket) is permitted

(Clause 21)

Tuggerah Lake and ocean waters adjoining

County of Northumberland: The whole of the waters of the channel entrance to Tuggerah Lake within a distance of 46 metres measured rectangularly on the lake side of a line drawn across that channel entrance and being the prolongation of the outer shore of the (for the time being) more westerly point of entrance from the ocean to the channel entrance and also the whole of the ocean waters to the entrance to Tuggerah Lake described in Schedule 2.

Lake Illawarra and ocean waters adjoining

County of Camden: The whole of the waters of that part of the channel entrance to Lake Illawarra within a distance of 46 metres measured rectangularly on the lake side of a line drawn across that channel entrance and being the prolongation of the outer shore of the (for the time being) more westerly point of entrance from the ocean to that channel entrance and also the whole of the waters of that channel entrance lying on the ocean side of that line and the whole of the ocean waters adjacent to the entrance of Lake Illawarra described in Schedule 2.

Fisheries Management (General) Regulation 2002

Schedule 4 Waters in which spearfishing is prohibited

Schedule 4 Waters in which spearfishing is prohibited

(Clause 71)

Note. This Schedule lists the waters from which taking fish by use of a spear gun is prohibited under clause 71 (1) (b). Clause 71(1) (a) also prohibits the taking of fish from any inland waters by use of a spear gun.

Bellinger River

County of Raleigh: The whole of the waters of that part of the Bellinger River within the following boundaries. Commencing at a point on the western bank of the north arm of the River due west of the northern extremity of the northern training wall and thence bounded by a line easterly to that training wall; thence by the northern training wall and the northern breakwater southerly and southeasterly to the eastern extremity of the northern breakwater; thence by a line southeasterly to the eastern extremity of the southern breakwater; thence by that breakwater and the southern training wall northwesterly to the northwestern extremity of the southern training wall; thence by a line northeast to the inner training wall; thence by that training wall and the western bank of the north arm southeasterly and northerly to the point of commencement; and the whole of the waters of South Lagoon together with all its creeks, tributaries and inlets.

Boambee Creek

County of Raleigh, Parish of Bonville: The whole of the waters of Boambee Creek, together with all its creeks, tributaries and inlets extending from the South Pacific Ocean upwards to its source.

Bonville Creek

County of Raleigh, Parish of Bonville: The whole of the waters of Bonville Creek, together with all its creeks, tributaries and inlets extending from the South Pacific Ocean upwards to its source.

Brisbane Water

County of Northumberland: The whole of the waters of that part of Brisbane Water together with all its creeks, tributaries, inlets and bays north of a line drawn westerly from the southern extremity of Box or Hawk Head to the eastern extremity of Green Point.

Fisheries Management (General) Regulation 2002

Waters in which spearfishing is prohibited

Schedule 4

Brunswick River

That part of the Pacific Ocean within the following boundaries: Commencing at high water mark at a point 1,000 metres north of the northwestern corner of the northern training wall of the Brunswick River, County of Rouse, Parish of Billinudgel, then by that high water mark and the training wall to the easternmost point of the northern training wall; thence by a line to the easternmost point of the southern training wall; thence by that training wall and high water mark to a point 1,000 metres south of the southwestern corner of the southern training wall; thence by a line due east for 400 metres; thence by a line generally northwesterly to a point 400 metres due east of the point of commencement and thence by a line due west to the point of commencement.

Brunswick River

County of Rouse, Parishes of Brunswick and Billinudgel: The whole of the waters of Brunswick River and its tributaries from the most eastern extremities of the training walls to its source, excluding that part west of the traffic bridge (Pacific Highway) and that part north of the training walls in Marshall Creek and that part south of the foot bridge which crosses Simpsons Creek.

Burrill Lake

County of St Vincent, Parishes of Ulladulla and Woodburn: The whole of the entrance waters to Burrill Lake, including the bays and inlets and tributaries extending from a line drawn across the entrance waters from the northernmost point of Thisleton's Point in a northeastern direction bearing 23 degrees, about 291 metres to a point on the northeastern foreshore of the lake, downwards to the South Pacific Ocean.

Camden Haven Inlet

The waters of that part of Camden Haven Inlet, from a line drawn across the entrance to the inlet from the easternmost extremity of the northern training wall to the easternmost extremity of the southern training wall, upstream to the bridge across the Inlet at Laurieton and including the waters of Gogley's Bay and Gogley's Creek, and that part of the waters of Queens Lake Entrance, from their confluence with Camden Haven Inlet upstream to the North Haven road bridge.

Fisheries Management (General) Regulation 2002

Schedule 4 Waters in which spearfishing is prohibited

Candlagan Creek

County of St Vincent: The whole of the waters of Candlagan Creek and adjacent ocean waters below the traffic bridge, commencing from the southeast pylon of the bridge, thence by a line bearing 130 degrees to an established concrete cairn at the entrance of the creek, thence by a line bearing 66 degrees to a position marked by a broad arrow painted white on the rocks on the northern side of the entrance, thence bounded by the northern shore of Candlagan Creek to the northeastern pylon of the bridge, thence along the bridge to the point of commencement.

Clarence River

County of Clarence: The waters of that part of the main Clarence River from a line drawn across the entrance to that river from the eastern extremity of the Iluka training wall to the eastern extremity of the Yamba training wall, upstream to a line drawn southwesterly from the northwestern extremity of the Goodwood Island training wall to the northwestern extremity of Orogandiman or Freeburn Island, thence generally southeasterly by the northern and northeastern foreshores of that island to the northwestern extremity of the middle training wall at the northern end of the old viaduct and thence across to the southern end of that viaduct on the southern foreshore of the Clarence River, thence by the southern foreshore of the Clarence River (including Yamba Bay) to the commencing point at the eastern extremity of the Yamba training wall; together with the waters of those parts of the Clarence River and the South Pacific Ocean from the Yamba training wall by the coastline to a point 20 metres south of Yamba Point and extending easterly from that coastline for a distance of 400 metres.

Conjola Lake

County of St Vincent: the waters of that part of Conjola Lake and the whole of the waters of Berringer Lake, together with all their creeks, tributaries and inlets eastwards of a line drawn from the northern extremity of Roberts Point to the western extremity of Station Point, downstream to the South Pacific Ocean.

Crescent Head

County of Macquarie, Parish of Palmerston, Suburban Lands of Crescent Head. The whole of the tidal waters of that part of the South Pacific Ocean extending seawards for a distance of 400

Fisheries Management (General) Regulation 2002

Waters in which spearfishing is prohibited

Schedule 4

metres from the line of high water, between the prolongation of the northern boundary of portion 325, and the prolongation of the northernmost northwestern boundary of Reserve No 63725 for Public Recreation and Resting Place, notified 13 January 1933.

Cudgen Creek

County of Rouse, Parish of Cudgen: The whole of the waters of that part of Cudgen Creek north of the traffic bridge at Kingscliff.

Cudgera Creek

County of Rouse, Parish of Cudgen: The whole of the waters of Cudgera Creek, together with its inlets, bays and tributaries upwards to its source from the South Pacific Ocean.

Evans River

County of Richmond, Parish of Riley at Evans Head: The whole of the tidal waters of the Evans River together with all of its tributaries, from the Pacific Highway Bridge, downstream to its meeting with the South Pacific Ocean.

Gordons Bay

County of Cumberland: The whole of the waters of Gordons Bay (or Thompsons Bay) from a line drawn southwesterly from the eastern most point on the northern foreshore adjacent to the recreation reserve at the end of Clovelly Road, to the eastern most point on the southern foreshore to the entrance to Gordons Bay (or Thompsons Bay) adjacent to Arcadia Street.

Hastings River

County of Macquarie: The whole of the waters of that part of the Hastings River within the following boundaries: commencing at the eastern extremity of the northern breakwater and bounded thence by that breakwater and the northern training wall generally westerly and northerly to the P.W.D. Coal Wharf; thence by a line southwesterly to a point on the high water mark of that river at its intersection with the northerly prolongation of the eastern side of Park Street, Port Macquarie; thence by that high water mark, southeasterly, the confluence of Kooloonbung Creek with that river northeasterly, and again the high water mark of the Hastings River generally northeasterly to the southern training wall; thence by that training wall, and the southern breakwater generally easterly to the

Fisheries Management (General) Regulation 2002

Schedule 4 Waters in which spearfishing is prohibited

eastern extremity of that breakwater and thence by a line northerly to the point of commencement; also the whole of the waters of Kooloonbung Creek, Lake Innes, Cathie Lake and Cathie Creek, together with all their creeks, tributaries and inlets.

Inland Waters

Note. See clause 71 (1) (a) of this Regulation.

Killick Creek

County of Macquarie, Parish of Palmerston and Beranghi, Suburban Lands of Crescent Head: The whole of the waters of Killick or Crescent Head Creek and its creeks, tributaries, inlets and lagoons upwards from its confluence with the South Pacific Ocean to its source.

Korogoro Creek

County of Macquarie, Parish of Kinchela: The whole of the waters of Korogoro (Hat Head) Creek and Killick or Crescent Head Creek and their creeks, tributaries, inlets and lagoons upwards from their confluence with the South Pacific Ocean to their source.

Lake Illawarra

County of Camden, Parish of Wollongong: The waters described hereunder: commencing at the southeasternmost extremity of Berrwarra Point and bounded thence generally northwesterly by the northern foreshore of Lake Illawarra to the northwestern corner of portion 44, Parish of Wollongong; thence by lines bearing north 68 degrees 30 minutes west 444 metres south 48 degrees 57 minutes west 175 metres and south 11 degrees 30 minutes west 718 metres respectively, to a post marked broad arrow over "FD" on the northwestern shore of Bevans Island; thence by that shore of that island bearing generally south-southwesterly, in all about 233 metres to a point marked broad arrow over "FD" at the westernmost extremity of the said island, and thence by a line bearing approximately south 25 degrees west about 565 metres to a peg marked broad arrow over "E" on the southern shore of Lake Illawarra at the eastern point of entrance to Forster's Creek; thence by the southern foreshore of Lake Illawarra generally northeasterly and southeasterly to the northeasternmost extremity of Purr Purr Point; thence by a line northeasterly to the westernmost extremity of Windang Island; and thence by a line northwesterly to the point of commencement.

Fisheries Management (General) Regulation 2002

Waters in which spearfishing is prohibited

Schedule 4

Lake Macquarie

County of Northumberland: The whole of the waters of that part of the entrance to Lake Macquarie including Black Ned's Bay extending generally easterly to the South Pacific Ocean, from a line across that entrance being the easterly prolongation of the northern side of Rawson Street, Swansea, County Northumberland: and the whole of the waters of that part of the South Pacific Ocean west of a line joining the more easterly extremities of the northern and southern breakwaters at the entrance to Lake Macquarie.

Manning River

Counties of Gloucester and Macquarie: The whole of the tidal waters of that part of the Manning River at Harrington within the following boundaries: Commencing at the southwestern extremity of the northern training wall and bounded thence by a line west to the northwestern bank of Manning River, by the line of high water mark generally northerly and easterly to the breakwater; by that breakwater generally easterly to its eastern extremity: by a line southwesterly to the northern extremity of the sandbank forming the southern point of entrance of Manning River (Harrington Inlet): by the line of high water mark of the southeastern bank of the Manning River generally southwesterly to the eastern shore of the mouth of Mangrove Creek; and thence by a line generally northeasterly to the point of commencement.

Manning River

County of Macquarie, Parish of Harrington: The whole of the waters of the lagoon north of the northern training wall at Manning River and near the entrance of the said river, known as the Harrington Swimming Lagoon.

Minnamurra River

County of Camden, Parishes of Terragong and Kiama: the whole of the waters of Minnamurra River, its creeks and tributaries from its source downwards to the South Pacific Ocean.

Mooball Creek

County of Rouse, Parish of Cudgen: The whole of the tidal waters of that part of Mooball Creek from the traffic bridge at Pottsville downstream to its confluence with the waters of the South Pacific Ocean.

Fisheries Management (General) Regulation 2002

Schedule 4 Waters in which spearfishing is prohibited

Myall River

County of Gloucester, Parish of Fens: The whole of the waters of Myall River and Paddy Marr's Bar between a line drawn from the southern tip of Dredge Island due east to the eastern bank and due west to the western bank of the river and a line drawn due east and west from the southwestern end of the training wall in Paddy Marr's Bar but exclusive of Corrie Creek from its confluence with the Myall River.

Nambucca River

County of Raleigh, Parish of Nambucca: The tidal waters of that part of the Nambucca River within the following boundaries, together with all the creeks, tributaries, inlets, bays, lagoons etc, of that part, with the exception of Warrell or Gurravembi Creek: commencing at the eastern extremity of the northern breakwater at the entrance of the Nambucca River; and bounded thence by a line bearing southwest to the northernmost extremity of the right bank of that river at its entrance aforesaid; thence by that bank generally southwesterly to a point due east of Warrell Point, and by a line to that point: again by that bank southwesterly to a point due east of the southern extremity of Stuart's Island; and by a line due west to the left bank of the river: thence by that bank northeasterly and easterly to the northern breakwater aforesaid: and by that breakwater easterly to the point of commencement.

Narrabeen Lake

County of Cumberland, Parishes of Narrabeen and Manly Cove: The whole of the waters of Narrabeen Lake together with all its creeks, tributaries, and inlets.

Nelson Bay Boat Harbour

County of Gloucester, Parish of Tomaree: The whole of the waters of Nelson Bay Boat Harbour within the walls and extending a distance of 50 metres from the outer edge of both walls into the waters of Port Stephens commencing at the junction of the western wall and Teramby Street to the junction of the eastern wall and Nelson Bay beach.

Fisheries Management (General) Regulation 2002

Waters in which spearfishing is prohibited

Schedule 4

Ocean Beaches

The whole of the waters within territorial limits on the whole of the ocean beaches within the State of New South Wales, but exclusive of 20 metres at each extremity of each of the said ocean beaches.

Port Hacking

County of Cumberland: The whole of the waters of Port Hacking together with all its tributaries, inlets and bays west of a line drawn from the eastern extremity of Glashier Point to the northern extremity of Port Hacking Point.

Port Jackson

County of Cumberland, Parish of Willoughby: The whole of the waters of North Harbour, Manly Cove, Little Manly Cove and Spring Cove, their bays and tributaries, north of a line drawn between Grotto Point and outer North Head and those waters of Chowder Bay west of a line drawn from the eastern most extremity of Chowder Head, to the foreshore of the southeastern most extremity of Georges Head on the eastern side of the Army Maritime School.

Red Bank River

Counties of Fitzroy and Clarence: The waters of Red Bank River, Saltwater and Corindi Creeks, including all their creeks, inlets and tributaries, downstream from a line drawn from a white post marked "FD↑" erected on Jewfish point, and bearing 344 degrees across the River, to the River's confluence with the South Pacific Ocean.

Richmond River

Counties of Richmond and Rouse: The whole of the waters of the Richmond River including creeks and tributaries upstream from a line drawn between eastern extremities of the northern and southern breakwalls at its confluence with the South Pacific Ocean to the Burns Point ferry crossing.

Sandy Beach Creek

County of Auckland, Parish of Bournda: The whole of the waters of Sandy Beach Creek and Bournda Lagoon, together with all their inlets, creeks and tributaries.

Fisheries Management (General) Regulation 2002

Schedule 4 Waters in which spearfishing is prohibited

South West Rocks Creek

County of Macquarie, Parish of Arakoon: The whole of the waters of South West Rocks Creek (or Back Creek) and the whole of the waters of that part of the Macleay River and that part of the South Pacific Ocean lying generally north and northeasterly of a line drawn across the River in a southeasterly direction from the southernmost extremity of Shark Island to the point of highwater mark on the northern edge of the public boat ramp on the eastern training wall, fronting portion 302: to the easternmost extremities of the northern and southern breakwaters of the Macleay River; and including the waters of the South Pacific Ocean within 100 metres of the northwestern side of the northern breakwater and within 100 metres on the southeastern side of the southern breakwater.

Sussex Haven

County of St Vincent, Parishes of Farnham and Bherewerre: The whole of the waters of that part of Sussex Haven, its creeks and inlets, and that part of St Georges Basin, its creeks and bays, between a line drawn northeasterly from the most easterly southeastern corner of Reserve 81746 for Public Recreation notified 3 July 1959, to the point of junction of the eastern shore of Sussex Haven with the shore of the South Pacific Ocean and a line from the easternmost extremity of Kangaroo Point bearing 144 degrees to a point marked broad arrow over "FD" on the southern shore of the said Basin, situated about 1.6 km easterly from the junction of the southern shore of the said Basin with the eastern shore of Sussex Haven.

Tuggerah Lake Entrance

County of Northumberland: The waters of Tuggerah Lake Entrance within the following boundaries: commencing at the northwest corner of lots A and B of Strata Plan No 4000 on Marine Parade; thence by a line bearing 90° for a distance of 160 metres; then by a line bearing generally northwesterly to the southeast extremity of Karagi Point; then continuing generally northerly along mean highwater mark of the eastern shore of Tuggerah Lake to PWD Survey mark No 215 at Coogee Avenue; then continuing generally southwesterly to the northwesternmost point of Terilbah Island and to PWD Survey Mark No 217 on Picnic Point; then generally easterly and southeasterly along mean highwater mark of the southern shore of Tuggerah Lake to the point where the line bearing

Fisheries Management (General) Regulation 2002

Waters in which spearfishing is prohibited

Schedule 4

90° from the point of commencement intersects mean highwater mark.

Tweed River

County of Rouse, Parish of Terranora: The whole of the tidal waters of that part of the Tweed River comprised within the following boundaries: commencing at the easternmost extremity of the northern breakwater at the entrance to Tweed River and bounded thence by the high water mark of the western training wall, inclusive of northern boatharbour, generally south to its point of commencement, by the high water mark of Greenbank Island as reclaimed to the southern boatharbour, by the high water mark of the boatharbour, by the high water mark generally southwest to Boyd's Bay bridge, by the eastern side of that bridge, by the southwestern bank of Ukerebagh Passage to a point being the intersection of the northeastern prolongation of the northwestern boundary of portion 374 with the high water mark of that bank, and thence by a line easterly to the westernmost extremity of Ukerebagh Island, by the northwestern shore of Ukerebagh Island to the northernmost extremity of that island then by a line drawn north-easterly to the end of the eastern training wall by the high water mark of that wall inclusive of the tidal waters of Kerosene Inlet on the eastern side of the Eastern Training Wall and thence to the high water mark of the southern breakwater northwesterly and northeasterly to the easternmost extremity of that breakwater and thence by a line across the entrance to the Tweed River to the point of commencement.

Wagonga River

County of Dampier, Parishes of Wagonga and Narooma: That part of the waters of Wagonga River, east of a line from the Princess Highway Road Bridge to a line drawn between the eastern extremities of the northern and southern training walls at the entrance to Wagonga River.

Wallis Lake

County of Gloucester, Parish of Forster, at Wallis Lake: That part of the tidal waters within the following boundaries: commencing at the entrance to Wallis Lake at the eastern extremity of the northern breakwater; and bounded thence by that breakwater and a part of the foreshores of the Village of Tuncurry generally southerly to the southerly prolongation of the western side of Wharf Street; thence by a line drawn southwesterly to the northern foreshore corner of

Fisheries Management (General) Regulation 2002

Schedule 4 Waters in which spearfishing is prohibited

Oyster Farm 71–295; thence by a line drawn generally southerly to the northern foreshore corner of Oyster Farm 83–20; thence by a line drawn generally southeasterly to the southwestern foreshore of Oyster Farm 57–295 on the Godwin Island; thence by the northern foreshore of that island northeasterly to the most northern point; thence by a line drawn generally northeasterly to the western prolongation of the southern boundary of section 27, Village of Forster; thence by that foreshore generally northerly to the southern breakwater; by that breakwater to its eastern extremity and by a line across the entrance to the point of commencement.

Wonboyn River

County of Auckland, Parishes of Wonboyn and Narrabarba: The whole of the entrance waters of Wonboyn River downwards to their confluence with the South Pacific Ocean from a line drawn in a southerly direction from the northwesternmost foreshore corner of Oyster Farm No 71–305 to the westernmost foreshore corner of Oyster Farm No 74–1.

Woody Bay

County of Clarence, Parish of Nanegai, Shire of Maclean: Being the area known as Woody Bay and commencing from the broad arrow on a rock and marked FD, north of portion 54 thence in a northerly direction for approximately 300 metres to a spike in the rock, thence generally in a westerly direction to Big Knobby Rock, thence in a southwesterly direction to a 10 × 10 centimetre peg on the foreshore, thence along mean high water mark to the point of commencement.

Fisheries Management (General) Regulation 2002

Penalty notice offences

Schedule 5

Schedule 5 Penalty notice offences

(Clause 409)

Column 1	Column 2
Offence	Amount of penalty
Part 1 Offences under the Act	
Section 14 (1)	\$500
Section 14 (2)	\$500
Section 16 (1)	\$300
Section 16 (2)	\$300
Section 17 (2)	\$300
Section 18 (2)	\$300
Section 19 (2)	\$500
Section 19 (3)	\$500
Section 20 (2)	\$500
Section 20 (3)	\$500
Section 22 (2)	\$200
Section 24 (1)	\$500
Section 25 (1)	\$500
Section 34J (1)	\$200
Section 34J (2)	\$200
Section 35 (1)	\$500
Section 39 (2)	\$200

Fisheries Management (General) Regulation 2002

Schedule 5 Penalty notice offences

Column 1	Column 2
Offence	Amount of penalty
Section 65 (1)	\$200
Section 87 (4)	\$200
Section 87 (5)	\$200
Section 88 (2)	\$200
Section 102 (1)	\$500
Section 104 (7)	\$200
Section 107 (1)	\$300
Section 108 (7)	\$200
Section 110 (9)	\$100
Section 117 (1)	\$500
Section 118 (7)	\$200
Section 119 (3)	\$300
Section 121	\$200
Section 122	\$100
Section 123 (1) (a)	\$200
Section 123 (1) (b)	\$200
Section 123 (1) (c)	\$200
Section 123 (2) (a) (i)	\$200
Section 123 (2) (a) (ii)	\$200
Section 123 (2) (b)	\$200

Fisheries Management (General) Regulation 2002

Penalty notice offences

Schedule 5

Column 1	Column 2
Offence	Amount of penalty
Section 123 (2) (c)	\$200
Section 123 (3)	\$200
Section 124	\$300
Section 127B (2)	\$200
Section 127B (3)	\$500
Section 127C (7)	\$200
Section 144 (1)	\$500
Section 152 (3)	\$200
Section 155	\$100
Section 170 (3)	\$200
Section 171 (3)	\$200
Section 179 (1) (a)	\$200
Section 179 (1) (b)	\$200
Section 183 (5)	\$500
Section 184	\$300
Section 185	\$300
Section 186	\$300
Section 190 (2)	\$200
Section 197K (1)	\$500
Section 197K (2)	\$500

Fisheries Management (General) Regulation 2002

Schedule 5 Penalty notice offences

Column 1	Column 2
Offence	Amount of penalty
Section 200 (1)	\$500
Section 201 (1)	\$500
Section 205 (2)	\$300
Section 206 (1)	\$200
Section 207 (2)	\$200
Section 210 (1)	\$300
Section 211 (1)	\$300
Section 216 (1)	\$300
Section 217 (1)	\$300
Section 217 (2)	\$300
Section 219 (1)	\$200
Section 247 (1)	\$200
Section 247 (2) in relation to assaulting, abusing or threatening fisheries officer	\$200
Section 247 (2) in relation to encouraging another person to assault, abuse or threaten fisheries officer	\$200
Section 247 (3)	\$200
Section 248 (4)	\$200
Section 249 (3)	\$200
Section 251 (2)	\$200
Section 256 (4)	\$200

Fisheries Management (General) Regulation 2002

Penalty notice offences

Schedule 5

Column 1	Column 2
Offence	Amount of penalty
Section 257 (4)	\$200
Section 258 (2)	\$200
Section 259 (1)	\$300
Part 2 Offences under Fisheries Management (General) Regulation 2002	
Clause 66 (1) (a)	\$300
Clause 66 (1) (b) in relation to hand held line with more than 3 hooks or gangs of hooks attached	\$500
Clause 66 (1) (b) in relation to hand held line with more than 3 treble hooks attached to lure	\$500
Clause 66 (1) (c)	\$300
Clause 66 (3) (a)	\$500
Clause 66 (3) (b)	\$500
Clause 66 (6)	\$200
Clause 67 (1)	\$100
Clause 68 (1) (a)	\$200
Clause 68 (1) (b)	\$200
Clause 68 (1) (c)	\$200
Clause 68 (1) (d)	\$200
Clause 68 (2)	\$300
Clause 68 (3)	\$200
Clause 68 (4)	\$200

Fisheries Management (General) Regulation 2002

Schedule 5 Penalty notice offences

Column 1	Column 2
Offence	Amount of penalty
Clause 69 (1)	\$100
Clause 70 (1)	\$300
Clause 71 (1) (a)	\$300
Clause 71 (1) (b)	\$300
Clause 71 (1) (c)	\$300
Clause 72 (1)	\$300
Clause 73 (1)	\$300
Clause 74 (1)	\$100
Clause 75 (1)	\$300
Clause 75 (2)	\$500
Clause 75 (3)	\$300
Clause 75 (4)	\$300
Clause 76 (2)	\$200
Clause 77 (1)	\$200
Clause 77 (2)	\$200
Clause 77 (3)	\$300
Clause 78	\$500
Clause 79 (1)	\$500
Clause 79 (2)	\$300
Clause 79 (3)	\$300

Fisheries Management (General) Regulation 2002

Penalty notice offences

Schedule 5

Column 1	Column 2
Offence	Amount of penalty
Clause 80	\$200
Clause 81	\$300
Clause 107 in relation to the causing the dispersal of fish	\$200
Clause 107 in relation to the interference with the operations of commercial fisher	\$200
Clause 108 (1)	\$200
Clause 110	\$200
Clause 111 (2)	\$200
Clause 127 (1)	\$100
Clause 127 (2)	\$100
Clause 127 (3)	\$200
Clause 128 (1)	\$200
Clause 129 (1)	\$200
Clause 129 (2)	\$200
Clause 130 (1)	\$300
Clause 130 (2)	\$200
Clause 131 (1)	\$300
Clause 131 (3)	\$300
Clause 132 (1)	\$300
Clause 132 (2)	\$300

Fisheries Management (General) Regulation 2002

Schedule 5 Penalty notice offences

Column 1	Column 2
Offence	Amount of penalty
Clause 165 (1)	\$200
Clause 165 (2) (a)	\$200
Clause 165 (2) (b)	\$200
Clause 166 (2)	\$200
Clause 167	\$200
Clause 336	\$500
Part 3 Offences under Fisheries Management (Aquaculture) Regulation 2002	
Clause 54 (1)	\$200
Clause 54 (6)	\$200
Clause 54 (7)	\$200
Clause 55 (5)	\$200
Clause 56 (7)	\$200
Part 4 Offences under Fisheries Management (Aquatic Reserves) Regulation 2002	
Long Reef	
Clause 8 (1) (a)	\$500
Clause 8 (1) (b)	\$500
Clause 8 (2) (a)	\$500
Clause 8 (2) (b)	\$500

Fisheries Management (General) Regulation 2002

Penalty notice offences

Schedule 5

Column 1	Column 2
Offence	Amount of penalty
Shiprock	
Clause 11 (1) (a)	\$500
Clause 11 (1) (b)	\$500
Clause 11 (2) (a)	\$500
Clause 11 (2) (b)	\$500
Julian Rocks	
Clause 14 (1) (a)	\$500
Clause 14 (1) (b)	\$500
Clause 14 (2) (a)	\$500
Clause 14 (2) (b)	\$500
North Harbour	
Clause 17 (1) (a)	\$500
Clause 17 (1) (b)	\$500
Clause 17 (2) (a)	\$500
Clause 17 (2) (b)	\$500
Bushranger's Bay	
Clause 21 (1) (a)	\$500
Clause 21 (1) (b)	\$500
Clause 21 (2) (a)	\$500
Clause 21 (2) (b)	\$500

Fisheries Management (General) Regulation 2002

Schedule 5 Penalty notice offences

Column 1	Column 2
Offence	Amount of penalty
Fly Point–Halifax Park	
Clause 24 (1) (a)	\$500
Clause 24 (1) (b)	\$500
Clause 24 (2) (a)	\$500
Clause 24 (2) (b)	\$500
Towra Point	
Clause 27 (1) (a)	\$500
Clause 27 (1) (b)	\$500
Clause 27 (2) (a)	\$500
Clause 27 (2) (b)	\$500

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LEGISLATION

Regulations – *continued*

Fluoridation of Public Water Supplies Regulation 2002

under the

Fluoridation of Public Water Supplies Act 1957

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Fluoridation of Public Water Supplies Act 1957*.

CRAIG KNOWLES, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to replace, with some changes, the provisions of the *Fluoridation of Public Water Supplies Regulation 1997*, which is to be repealed by section 10 of the *Subordinate Legislation Act 1989* on 1 September 2002. The new Regulation deals with a number of matters relating to the fluoridation of public water supplies and the regulation of certain activities with respect to water supply works.

This Regulation is made under the *Fluoridation of Public Water Supplies Act 1957*, including section 11 (the general regulation-making power).

This Regulation refers to a *Code of Practice for the Fluoridation of Public Water Supplies*, published in the Government Gazette.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Fluoridation of Public Water Supplies Regulation 2002

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notes	3
Part 2 Fluoridation of public water supplies	
5 Applications to fluoridate a public water supply	4
6 Fluoridation equipment	4
7 Alterations to water supply capacity, water supply works and fluoridating apparatus	4
8 Analyses of water samples	5
9 Fluoridation to be carried out by qualified operators	5
10 Security of plant rooms	5
Part 3 Miscellaneous	
11 Records	7
12 Transitional provision	7

Fluoridation of Public Water Supplies Regulation 2002

Clause 1

Preliminary

Part 1

Fluoridation of Public Water Supplies Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Fluoridation of Public Water Supplies Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Fluoridation of Public Water Supplies Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

Director-General means the Director-General of the Department of Health.

fluoridating agent means a substance containing fluorine or a compound of fluorine.

Fluoridation Code means the document entitled *Code of Practice for the Fluoridation of Public Water Supplies* as published by the Director-General from time to time in the Gazette.

qualified operator means a person who has successfully completed a course of training in the fluoridation of water supplies, being a course recognised by the *Fluoridation Code*.

the Act means the *Fluoridation of Public Water Supplies Act 1957*.

4 Notes

The notes in the text of this Regulation do not form part of this Regulation.

Clause 5 Fluoridation of Public Water Supplies Regulation 2002

Part 2 Fluoridation of public water supplies

Part 2 Fluoridation of public water supplies

5 Applications to fluoridate a public water supply

An application by a water supply authority for approval to fluoridate a public water supply is to be in the form required by the *Fluoridation Code* and is to be accompanied by any documents that are required by the form.

6 Fluoridation equipment

A water supply authority must not fluoridate a public water supply under its control unless it uses equipment that allows for accurate fluoride dosing within the limits allowed by the *Fluoridation Code*.

Maximum penalty: 25 penalty units and, in the case of a continuing offence, an additional 5 penalty units for each additional day for which the offence continues.

7 Alterations to water supply capacity, water supply works and fluoridating apparatus

(1) A water supply authority that adds a fluoridating agent to any public water supply under its control:

- (a) must not increase the maximum capacity, or reduce the minimum capacity, of the water supply, and
- (b) must not make substantial alterations to the equipment or apparatus by which the agent is added to the water supply, and
- (c) must not make any substantial alterations to those parts of the water supply works that are in close proximity to the point at which the agent is added to the water supply,

except with the written approval of the Director-General.

Maximum penalty: 25 penalty units and, in the case of a continuing offence, an additional 5 penalty units for each additional day for which the offence continues.

(2) This clause does not apply to alterations that are permitted by or under the *Fluoridation Code*.

Fluoridation of Public Water Supplies Regulation 2002

Clause 8

Fluoridation of public water supplies

Part 2

8 Analyses of water samples

- (1) A water supply authority must collect from any public water supply fluoridated by it any samples of water that are required to be collected by the *Fluoridation Code*.
- (2) The authority must analyse the samples for their fluoride content using the equipment and methods recognised by the *Fluoridation Code*.
- (3) A water supply authority must forward:
 - (a) the results of the analyses carried out by it under this clause during the previous month, and
 - (b) a sample of the water from the authority's reticulation system, to the persons, and at the times, required by the *Fluoridation Code*.

Maximum penalty: 25 penalty units and, in the case of a continuing offence, an additional 5 penalty units for each additional day for which the offence continues.

- (4) A water supply authority must also forward to the Director-General additional samples of water from the authority's reticulation system as the Director-General may from time to time require.

Maximum penalty: 25 penalty units and, in the case of a continuing offence, an additional 5 penalty units for each additional day for which the offence continues.

9 Fluoridation to be carried out by qualified operators

A water supply authority must not, except as allowed by the *Fluoridation Code*, cause or permit a public water supply to be fluoridated by any person who is not a qualified operator.

Maximum penalty: 25 penalty units and, in the case of a continuing offence, an additional 5 penalty units for each additional day for which the offence continues.

10 Security of plant rooms

- (1) A water supply authority must ensure that premises containing any fluoridating agent, or any fluoridation plant or equipment, are kept

Clause 10 Fluoridation of Public Water Supplies Regulation 2002

Part 2 Fluoridation of public water supplies

locked whenever a qualified operator is not in attendance at those premises.

Maximum penalty: 25 penalty units and, in the case of a continuing offence, an additional 5 penalty units for each additional day for which the offence continues.

- (2) A person who is not a qualified operator must not enter any such premises unless:
- (a) in the company of a qualified operator, or
 - (b) with the approval of a qualified operator.

Maximum penalty: 10 penalty units.

- (3) An approval referred to in subclause (2) (b) may be given only in accordance with the provisions of the *Fluoridation Code*.

Note. Other matters relating to safety can be found in the *Occupational Health and Safety Regulation 2001*.

Fluoridation of Public Water Supplies Regulation 2002

Clause 11

Miscellaneous

Part 3

Part 3 Miscellaneous

11 Records

- (1) A water supply authority must keep records as required by the *Fluoridation Code*.
- (2) A water supply authority must cause a copy of those records to be forwarded to the Director-General if the Director-General so requires.

12 Transitional provision

Any act, matter or thing that, immediately before the repeal of the *Fluoridation of Public Water Supplies Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.

Gas Supply (Gas Meters) Regulation 2002

under the

Gas Supply Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Gas Supply Act 1996*.

JOHN AQUILINA, M.P.,
Minister for Fair Trading

Explanatory note

The object of this Regulation is to remake the *Gas Supply (Gas Meters) Regulation 1997* with some alteration. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

The new Regulation deals with the following matters:

- (a) the requirement that gas be supplied through gas meters (Part 2),
- (b) the authorisation of persons conducting testing of gas meters and gas meter testing equipment (Division 1 of Part 3),
- (c) the testing of gas meters before supply or installation and their testing while in service (Division 2 of Part 3),
- (d) other testing to be carried out on gas meters (Division 3 of Part 3),
- (e) gas meter testing equipment (Division 4 of Part 3),
- (f) other matters of a minor, consequential or ancillary nature (Parts 1 and 4).

This Regulation is made under the *Gas Supply Act 1996* and, in particular, under sections 83A (Regulations as to gas appliances and gas meters) and 83 (the general regulation-making power).

Gas Supply (Gas Meters) Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Notes	5
Part 2 Gas supply to be metered	
5 Gas supply to be metered	6
Part 3 Testing of gas meters and gas meter testing equipment	
Division 1 Authorisation of persons to conduct testing of gas meters and gas meter testing equipment	
6 Director-General may authorise persons to conduct testing	7
7 Authority holders to lodge description of testing procedures	7
Division 2 Testing of gas meters before supply or installation and in-service testing	
8 Testing of meters before supply or installation	8
9 In-service testing of meters	8
Division 3 Other testing of gas meters	
10 Meters to be tested if owner suspects inaccuracy	9
11 Testing of meters at the request of an interested party	9
12 Examining and testing of gas meters by Director-General	10
Division 4 Gas meter testing equipment	
13 Gas meter testing equipment to be tested and calibrated	11

Page 2

Gas Supply (Gas Meters) Regulation 2002

Contents

Part 4 Miscellaneous

14	Offence	12
15	Fees	12
16	Saving	13

Clause 1 Gas Supply (Gas Meters) Regulation 2002

Part 1 Preliminary

Gas Supply (Gas Meters) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Gas Supply (Gas Meters) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Gas Supply (Gas Meters) Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Department means the Department of Fair Trading.

Director-General means the Director-General of the Department.

interested party, in relation to a gas meter, means:

- (a) a person (including an end user customer and a supplier) to whom gas is conveyed through the gas meter, or
- (b) a supplier who supplies gas to other persons (including end user customers and other suppliers) through the gas meter, or
- (c) a network operator from whose distribution system gas is conveyed through the gas meter.

the Act means the *Gas Supply Act 1996*.

Note. Certain terms used in this Regulation, such as **authorised supplier** and **network operator** are defined in the *Gas Supply Act 1996*.

(2) For the purposes of this Regulation, a gas meter is inaccurate:

- (a) if a limit of error for gas meters has been prescribed under the *National Measurement Act 1960* of the Commonwealth and the gas meter over-registers or under-registers the flow of gas by more than the limit prescribed under that Act, or
- (b) if no such limit has been prescribed and:

Gas Supply (Gas Meters) Regulation 2002

Clause 3

Preliminary

Part 1

- (i) the gas meter over-registers the flow of gas by more than 2 per cent or if the Director-General determines, by order published in the Gazette, that a smaller percentage applies in relation to any particular class of gas meters, by more than that smaller percentage, or
- (ii) the gas meter under-registers the flow of gas by more than 3 per cent or if the Director-General determines, by order published in the Gazette, that a smaller percentage applies in relation to any particular class of gas meter, by more than that smaller percentage.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

Clause 5 Gas Supply (Gas Meters) Regulation 2002

Part 2 Gas supply to be metered

Part 2 Gas supply to be metered

5 Gas supply to be metered

- (1) A person must not convey gas to another person by means of a gas network otherwise than through a gas meter.

Maximum penalty: 100 penalty units in the case of a corporation and 25 penalty units in any other case.

- (2) This clause does not apply to:
- (a) the conveyance of gas to a network operator or an authorised supplier, or
 - (b) the conveyance of gas by or to any other person in accordance with an exemption referred to in subclause (3).
- (3) The Director-General may exempt any person from the operation of subclause (1) if, in the special circumstances of the case, the Director-General considers it appropriate to do so.
- (4) Such an exemption is to be in writing and may be granted unconditionally or subject to conditions.

Gas Supply (Gas Meters) Regulation 2002	Clause 6
Testing of gas meters and gas meter testing equipment	Part 3
Authorisation of persons to conduct testing of gas meters and gas meter testing equipment	Division 1

Part 3 Testing of gas meters and gas meter testing equipment

Division 1 Authorisation of persons to conduct testing of gas meters and gas meter testing equipment

6 Director-General may authorise persons to conduct testing

- (1) The Director-General may, by instrument in writing, authorise any person to do either of the following:
 - (a) to test and to seal and stamp gas meters,
 - (b) to test and calibrate equipment used for testing gas meters.
- (2) An authority may be granted subject to such conditions as the Director-General considers appropriate.
- (3) The holder of an authority must comply with the conditions (if any) imposed on the authority by the Director-General.
Maximum penalty: 100 penalty units in the case of a corporation and 25 penalty units in any other case.
- (4) The Director-General may revoke any such authority, at any time and for any reason, by instrument in writing served on the holder of the authority.

7 Authority holders to lodge description of testing procedures

A person who holds an authority under clause 6 must lodge with the Director-General a description of the procedures to be used by the person for testing gas meters or gas meter testing equipment in accordance with the requirements of this Part.

Maximum penalty: 100 penalty units in the case of a corporation and 25 penalty units in any other case.

Clause 8	Gas Supply (Gas Meters) Regulation 2002
Part 3	Testing of gas meters and gas meter testing equipment
Division 2	Testing of gas meters before supply or installation and in-service testing

Division 2 Testing of gas meters before supply or installation and in-service testing

8 Testing of meters before supply or installation

- (1) A person must not supply or install a gas meter for the purpose of measuring, for revenue purposes, a quantity of gas supplied, unless the gas meter has been tested, sealed and stamped:
 - (a) by a person authorised under clause 6 (1) (a), or
 - (b) by an organisation approved under subclause (2).Maximum penalty: 100 penalty units in the case of a corporation and 25 penalty units in any other case.
- (2) The Director-General may, by order published in the Gazette, declare an organisation in another State or a Territory to be an approved organisation for the purposes of this clause.
- (3) For the purposes of this clause:
 - (a) a gas meter is not sealed unless the seal is intact, and
 - (b) a gas meter is not stamped unless the seal applied to it is stamped with a stamp of a design approved by the Director-General.

9 In-service testing of meters

- (1) The owner of a gas meter used for registering the supply of gas must cause the gas meter to be in-service tested and resealed:
 - (a) at the intervals that the Director-General may from time to time require in respect of a particular meter or class of meters, and
 - (b) at any time, if the Director-General notifies the owner that the gas meter may be defective or inaccurate.Maximum penalty: 20 penalty units.
- (2) An owner may lodge with the Director-General a program for the in-service testing and resealing of meters owned by the owner. A program may provide for random sample in-service testing of meters.

Gas Supply (Gas Meters) Regulation 2002	Clause 9
Testing of gas meters and gas meter testing equipment	Part 3
Testing of gas meters before supply or installation and in-service testing	Division 2

- (3) If the Director-General approves an owner's program, subclause (1) (a) ceases to apply to the gas meters owned by that owner and, instead, the owner must cause those meters to be in-service tested and resealed in accordance with the program.

Maximum penalty: 20 penalty units.

Division 3 Other testing of gas meters

10 Meters to be tested if owner suspects inaccuracy

- (1) If the owner of a gas meter suspects that the gas meter is inaccurate, or the gas meter's seal is broken or illegible, the owner must arrange to have the gas meter tested.
- (2) If the gas meter is inaccurate, the owner:
- (a) must notify any relevant interested party in writing that the gas meter is inaccurate, and
 - (b) must record particulars of the inaccurate gas meter and of the date on which the gas meter was found to be inaccurate, and
 - (c) must, as soon as practicable, cause the gas meter to be replaced, repaired or adjusted, whichever is appropriate.
- (3) Any record of an inaccurate gas meter kept under this clause must be retained by the owner for a period of not less than 2 years.

11 Testing of meters at the request of an interested party

- (1) An interested party may ask the owner of a gas meter to arrange to have the gas meter tested.
- (2) The owner may request that the interested party pay in advance the reasonable cost of testing the meter. The owner is not required to test the meter if the interested party refuses to pay the amount in advance.
- (3) If the meter is found to be inaccurate the owner:
- (a) must refund any amount paid in advance and the interested party is not liable to pay the cost of testing if the meter is found to be inaccurate, and
 - (b) must, as soon as practicable, cause the gas meter to be replaced, repaired or adjusted, whichever is appropriate.

Clause 11	Gas Supply (Gas Meters) Regulation 2002
Part 3	Testing of gas meters and gas meter testing equipment
Division 3	Other testing of gas meters

- (4) The Director-General may, by order published in the Gazette, set a maximum fee that may be charged by the owner of a gas meter for testing the meter.

12 Examining and testing of gas meters by Director-General

- (1) The Director-General may, with the agreement of the occupier of the premises, examine or test any gas meter installed on premises for the purpose of registering the supply of gas to those premises.
- (2) The gas meter may be examined or tested while on the premises or may be removed from the premises for examination or testing.
- (3) If the gas meter is installed on premises supplied with gas at a gauge pressure of more than 35 kilopascal, the Director-General must give the owner of the gas meter, and any interested party, reasonable notice of the intention to conduct the examination or test.
- (4) The owner of a gas meter who receives a notice under subclause (3) must ensure that a suitably qualified person is available to provide assistance during the examination or test and to ensure that the gas installation to which the meter is connected is safely recommissioned after completion of the examination or test.
- (5) If, in the Director-General's opinion, a gas meter cannot conveniently or safely be tested on the premises, the Director-General may require the owner of the gas meter to disconnect the gas meter and deliver it to a specified testing place.
- (6) The owner of the gas meter:
- (a) must as soon as practicable comply with the requirement, and
 - (b) may witness, or be represented by another person at, the test, and
 - (c) must, as soon as practicable after it has been tested, return and reconnect the gas meter, or supply and connect another gas meter, to the premises from which it has been removed.
- (7) If a gas meter examined or tested under this clause is inaccurate, the owner must, as soon as practicable, cause the gas meter to be replaced, repaired or adjusted, whichever is appropriate.

Gas Supply (Gas Meters) Regulation 2002	Clause 13
Testing of gas meters and gas meter testing equipment	Part 3
Gas meter testing equipment	Division 4

Division 4 Gas meter testing equipment

13 Gas meter testing equipment to be tested and calibrated

- (1) Gas meter testing equipment is not suitable for use in testing a gas meter unless it has been tested and calibrated, in accordance with a method approved by the Director-General:
 - (a) by a person authorised under clause 6 (1) (b), or
 - (b) by or under the supervision of an organisation approved under subclause (2).
- (2) The Director-General may, by order published in the Gazette, declare an organisation in another State or a Territory to be an approved organisation for the purposes of this clause.

Clause 14 Gas Supply (Gas Meters) Regulation 2002

Part 4 Miscellaneous

Part 4 Miscellaneous

14 Offence

- (1) A person must not test a gas meter unless authorised to do so under this Regulation.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

- (2) A person must not remove, deface or break a gas meter's seal or the stamp on a gas meter's seal without notifying the owner of the gas meter and the Director-General, unless authorised to do so under this Regulation.

Maximum penalty: 20 penalty units.

- (3) A person must not, unless authorised to do so under this Regulation:

- (a) cause or knowingly allow a gas meter to be inaccurate, or
- (b) prevent a gas meter from registering an amount of gas supplied, or
- (c) otherwise affect the metrological performance of a gas meter, without notifying both the owner of the gas meter and the Director-General.

Maximum penalty: 20 penalty units.

- (4) Any notification required by this clause must be made within 7 days after the occurrence of the notifiable event, in a form approved by the Director-General.

15 Fees

- (1) The fee payable to the Director-General by:

- (a) the owner of a gas meter for the examination or testing of the gas meter by the Director-General, or
- (b) the owner of gas meter testing equipment for the examination or testing of that equipment by the Director-General, or
- (c) an applicant for authority to conduct in-service testing of gas meters for the examination of documents relating to the application, or

Gas Supply (Gas Meters) Regulation 2002

Clause 15

Miscellaneous

Part 4

- (d) an applicant for authority to test gas meter testing equipment for the examination of documents relating to the application, or
 - (e) an owner of gas meters for approval of an in-service testing program, or
 - (f) a person approved under clause 6 (1) (b) for approval of a method of testing of gas meters or gas meter testing equipment,
- is \$131 for the first hour plus \$33 for each quarter hour or part of a quarter hour after the first hour.

16 Saving

Any act, matter or thing that, immediately before the repeal of the *Gas Supply (Gas Meters) Regulation 1997*, was done for the purposes of, or had effect under, that Regulation is taken to have been done for the purposes of, or continues to have effect under, this Regulation.

Gas Supply (Network Safety Management) Regulation 2002

under the

Gas Supply Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Gas Supply Act 1996*.

KIM YEADON, M.P.,
Minister for Energy

Explanatory note

The aim of this Regulation is to provide for the safe operation of gas networks by network operators under the *Gas Supply Act 1996*. This Regulation incorporates (with some modifications) all of the provisions of the *Gas Supply (Safety and Operating Plans) Regulation 1997*, and certain provisions of the *Gas Supply (General) Regulation 1997*. The former of those regulations is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. This Regulation also contains new provisions relating to the safe operation of gas networks by network operators.

This Regulation provides for the following matters:

- (a) network safety (Part 2), including provisions with respect to the safe supply of gas, the provision of emergency services and the carrying out of gasfitting work, in relation only to connections to, and disconnections from, gas networks,
- (b) safety and operating plans (Part 3 and Schedule 1), including provisions with respect to the lodgment and implementation, form and content, review, audit, availability and amendment of safety and operating plans, and the measures for ensuring compliance with them,
- (c) natural gas standards (Part 4 and Schedule 2),

Gas Supply (Network Safety Management) Regulation 2002

Explanatory note

- (d) reports to be prepared by a network operator in relation to a gas network (Part 5),
- (e) other matters of a minor, consequential or ancillary nature (Parts 1 and 6).

This Regulation refers to:

- (a) the code issued by the Australian Gas Association under the title AG 603–1978, *Gas Distribution Code*, and
- (b) the following Australian Standards published by Standards Australia:
 - (i) AS/NZS 1596: 2002, *The storage and handling of LP Gas*,
 - (ii) AS 1697—1981, *Gas transmission and distribution systems* (known as the *SAA Gas Pipeline Code*),
 - (iii) AS 2885.1—1997, *Pipelines—Gas and liquid petroleum*, Part 1: *Design and construction*,
 - (iv) AS 2885.2—1995, *Pipelines—Gas and liquid petroleum*, Part 2: *Welding*,
 - (v) AS 2885.3—2001, *Pipelines—Gas and liquid petroleum*, Part 3: *Operation and maintenance*,
 - (vi) AS 3723—1989, *Installation and maintenance of plastics pipe systems for gas*,
 - (vii) AS 3814—2002/AG 501—2002, *Industrial and commercial gas-fired appliances*,
 - (viii) AS 5601—2002/AG 601—2002, *Gas installations*, and
- (c) a scheme conducted by the Australian Gas Association or the Australian Liquefied Petroleum Gas Association for the certification of gas appliances.

This Regulation is made under the *Gas Supply Act 1996*, including section 83 (the general regulation-making power).

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Gas Supply (Network Safety Management) Regulation 2002

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	5
2 Commencement	5
3 Definitions	5
Part 2 Network safety	
4 Network operators to ensure safe gas supply	7
5 Emergency services	7
6 Gasfitting work with respect to gas networks	8
7 Refusal or discontinuance of supply	9
Part 3 Safety and operating plans	
8 Network operators to lodge and implement safety and operating plans	10
9 Network operators to review safety and operating plans	11
10 Matters to be included in safety and operating plans	11
11 Nomination of persons to audit safety and operating plans	12
12 Initial audit of safety and operating plans	12
13 Periodical audits of safety and operating plans	13
14 Additional audits may be required	14
15 Availability of safety and operating plans	15
16 Director-General may direct amendment of safety and operating plans	15
17 Director-General may direct compliance with safety and operating plans	16
18 Exemptions	16
Part 4 Natural gas standards	
19 Definitions	17
20 Natural gas in pipelines to comply with standards	17
21 Exception from natural gas standards in special cases	17
22 Reticulator may obtain information and documents regarding natural gas standards	18

Gas Supply (Network Safety Management) Regulation 2002

Contents

	Page
23 Testing of natural gas	19
24 Testing agencies and suppliers to report non-compliant natural gas	19
25 Director-General may obtain information regarding non-compliant natural gas	20
26 Director-General may issue directions and take other measures regarding non-compliant natural gas	20
27 Natural gas must have odour	21
28 Exemptions	21
Part 5 Reporting	
29 Reports to the Director-General	22
Part 6 Miscellaneous	
30 Delegations	23
31 Amendment of Gas Supply (General) Regulation 1997	23
32 Savings provisions	23
Schedules	
1 Safety and operating plans	24
2 Natural gas standards	31

Gas Supply (Network Safety Management) Regulation 2002

Clause 1

Preliminary

Part 1

Gas Supply (Network Safety Management) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Gas Supply (Network Safety Management) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation incorporates (with some modifications) all of the provisions of the *Gas Supply (Safety and Operating Plans) Regulation 1997*, and certain provisions of the *Gas Supply (General) Regulation 1997*. The former of those regulations is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

AG 603 means the code issued by the Australian Gas Association under the title AG 603—1978, *Gas Distribution Code*, as in force for the time being.

AS/NZS 1596 means the Australian Standard entitled AS/NZS 1596: 2002, *The storage and handling of LP Gas*, published by Standards Australia, as in force for the time being.

AS 1697 means the Australian Standard entitled AS 1697—1981, *Gas transmission and distribution systems* (known as the *SAA Gas Pipeline Code*), published by Standards Australia, as in force for the time being.

AS 2885 means the Australian Standards entitled as follows, published by Standards Australia, as in force for the time being:

- (a) AS 2885.1—1997, *Pipelines—Gas and liquid petroleum*, Part 1: *Design and construction*,
- (b) AS 2885.2—1995, *Pipelines—Gas and liquid petroleum*, Part 2: *Welding*,

Clause 3 Gas Supply (Network Safety Management) Regulation 2002

Part 1 Preliminary

(c) AS 2885.3—2001, *Pipelines—Gas and liquid petroleum*, Part 3: *Operation and maintenance*.

AS 3723 means the Australian Standard entitled AS 3723—1989, *Installation and maintenance of plastics pipe systems for gas*, published by Standards Australia, as in force for the time being.

AS 3814 means the Australian Standard entitled AS 3814—2002/AG 501—2002, *Industrial and commercial gas-fired appliances*, published by Standards Australia, as in force for the time being.

AS 5601 means the Australian Standard entitled AS 5601—2002/AG 601—2002, *Gas installations*, published by Standards Australia, as in force for the time being.

audit certificate means a certificate issued by a nominated auditor in accordance with clause 12 or 13.

Director-General means the Director-General of the Ministry of Energy and Utilities.

gasfitting rules means gasfitting rules established by the network operator in accordance with clause 12 of Schedule 1.

gas network means a distribution pipeline or a distribution system.

hazardous event means an event that causes, or has the potential to cause, physical injury to, or damage to the health of, a person or damage to property or the environment.

nominated auditor, in relation to a network operator's safety and operating plan, means a person who is, for the time being, a person nominated by the network operator under clause 11 in respect of the plan.

safety and operating plan means a safety and operating plan referred to in clause 8 (1).

the Act means the *Gas Supply Act 1996*.

(1) The notes in this Regulation do not form part of this Regulation.

Gas Supply (Network Safety Management) Regulation 2002

Clause 4

Network safety

Part 2

Part 2 Network safety

4 Network operators to ensure safe gas supply

- (1) A network operator must develop, maintain and operate a safe gas network.
- (2) A network operator is to ensure that matters concerning the design, construction or operation of, or extension to, a gas network are carried out in accordance with:
 - (a) the requirements of AS/NZS 1596, AS 2885, AS 1697, AS 3723 and AG 603 (as appropriate), or
 - (b) the requirements of other standards (as appropriate) identified in the safety and operating plan that are no less stringent than the standards referred to in paragraph (a).

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

5 Emergency services

- (1) A network operator must:
 - (a) provide the public with an emergency telephone number, accessible 24 hours a day every day, for reporting any escape of gas from the operator's gas network or from premises directly connected to the network, and
 - (b) provide the public with a means of making such reports in person, during normal business hours, at the network operator's business premises, and
 - (c) provide an effective system for receiving and dealing with such reports, and
 - (d) cause every such report to be promptly acted on, and ensure that, as far as possible, everything is done that needs to be done to stop the escape of, and to disperse, any gas that is at risk of igniting or exploding, or that risks suffocating or otherwise harming any person, and
 - (e) ensure that adequate publicity is given of the ways in which the network operator can be contacted for the purpose of reporting any escape of gas, and

Clause 5 Gas Supply (Network Safety Management) Regulation 2002

Part 2 Network safety

- (f) make available to any person on request the details of the network operator's emergency services.
- (2) The details of a network operator's emergency services referred to in subclause (1) (f) must include a statement:
 - (a) to the effect that the operator will make safe any escape of gas from its gas network, and from that part of a gas installation directly connected to its gas network up to and including the gas meter outlet, and
 - (b) of the circumstances in which a gas user may be liable for the cost of repairs associated with a gas escape.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

6 Gasfitting work with respect to gas networks

- (1) This clause applies to the following kinds of gasfitting work:
 - (a) the connection of a gas installation to a gas network, or
 - (b) the disconnection of a gas installation from a gas network, or
 - (c) any other gasfitting work in relation to the connection of a gas installation to, or the disconnection of a gas installation from, a gas network.
- (2) A person must not carry out gasfitting work to which this clause applies otherwise than in accordance with:
 - (a) in the case of all gasfitting work, AS 5601, and
 - (b) in the case of gasfitting work involving liquefied petroleum gas, AS/NZS 1596.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

- (3) A person who carries out gasfitting work to which this clause applies on behalf of a network operator is exempt from the requirements of subclause (2) if instead the person complies with the requirements of the network operator's gasfitting rules.

Gas Supply (Network Safety Management) Regulation 2002

Clause 7

Network safety

Part 2

7 Refusal or discontinuance of supply

- (1) A network operator may refuse or discontinue the supply of gas to a person if, in the opinion of the operator:
 - (a) the supply or continued supply of gas is dangerous to life, health or property, or
 - (b) the person's gas installation, or any gas appliance connected to it, is not installed in accordance with any relevant gasfitting rules, or AS 5601, AS 3814 or AS/NZS 1596 (whichever is appropriate).
- (2) A network operator may discontinue a supply of gas to a person:
 - (a) by disconnecting the person's gas installation from its gas network, or
 - (b) by disconnecting any gas appliances from the person's gas installation, or
 - (c) by otherwise rendering the person's gas installation or any such gas appliances inoperable.
- (3) A network operator that refuses or discontinues the supply of gas to a person under this clause must cause written notice of the reasons for the refusal or discontinuance of supply to be given:
 - (a) to the person and any relevant supplier, and
 - (b) in the case of a discontinuance of supply of gas to premises, to the Director-General.

Clause 8 Gas Supply (Network Safety Management) Regulation 2002

Part 3 Safety and operating plans

Part 3 Safety and operating plans

8 Network operators to lodge and implement safety and operating plans

- (1) A network operator must:
 - (a) lodge with the Director-General a safety and operating plan for its gas network that complies with the requirements of this Regulation, and
 - (b) implement that plan.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).
- (2) The safety and operating plan must be lodged:
 - (a) within 6 months from the date of the grant of the authorisation or licence to operate the gas network to which the plan relates, or
 - (b) within such further period as may be approved by the Director-General in writing.
- (3) The safety and operating plan:
 - (a) must be in writing (but may include diagrams), and
 - (b) must be approved of in writing by an officer of the network operator who is competent, and specifically authorised by the network operator, to do so.
- (4) A network operator must not construct, alter, extend, maintain, repair or operate a gas network except in accordance with:
 - (a) a safety and operating plan, or
 - (b) a draft safety and operating plan (being a plan that complies with the requirements of this Regulation relating to the form and content, and review and availability, of safety and operating plans but which has not yet been audited in accordance with clause 12) that has been lodged with the Director-General.
- (5) Nothing in subclause (4) affects the requirement made by subclause (2).
- (6) The Director-General has the same powers under this Part in relation to a draft safety and operating plan as the Director-General has in relation to a safety and operating plan.

Gas Supply (Network Safety Management) Regulation 2002

Clause 9

Safety and operating plans

Part 3

9 Network operators to review safety and operating plans

- (1) The network operator is to review and, if necessary, revise the safety and operating plan:
 - (a) as soon as practicable after any significant change (including significant incremental change) occurs in relation to the operation or maintenance of the gas network, and
 - (b) in any case, at least once every 2 years (starting from the date of lodgment of the safety and operating plan under clause 8).

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).
- (2) For the purposes of subclause (1) (a), significant change includes (but is not limited to):
 - (a) any upgrade or modification in the engineering design of the gas network, and
 - (b) any other change in the risks to be managed by the network operator in relation to the gas network or in relation to the measures to be taken to manage such risks.

10 Matters to be included in safety and operating plans

- (1) The object of a safety and operating plan is to ensure the safe operation of the gas network to which it relates, having regard to a range of matters including gas quality, operating personnel, plant, equipment, the community and the environment.
- (2) A safety and operating plan must include (but is not limited to) the following matters in relation to each distribution district of the network operator:
 - (a) a description of the gas network operation and an outline of operating and maintenance procedures,
 - (b) an analysis of hazardous events that might be expected to occur,
 - (c) the procedures to be implemented in case of emergencies,
 - (d) the gas quality standards to be applied and the procedures to be implemented to ensure that the gas conveyed or supplied meets those standards,
 - (e) specification of the plan's objectives and of appropriate performance indicators developed by the network operator.

Clause 10 Gas Supply (Network Safety Management) Regulation 2002

Part 3 Safety and operating plans

- (3) If the Director-General so approves in writing, any matter that under this Regulation is to be included in a safety and operating plan in relation to each distribution district of a network operator may instead be included in relation to distribution districts of the network operator as a group.
- (4) A safety and operating plan must comply with Schedule 1.
Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

11 Nomination of persons to audit safety and operating plans

- (1) A network operator must give the Director-General a nomination in writing of a person as an auditor of its safety and operating plan at least one month before the person is first required to give a certificate in relation to the plan under this Part.
Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).
- (2) A person may not be nominated as an auditor under this clause unless the person is:
 - (a) independent of the network operator, and
 - (b) competent to exercise the functions of an auditor under this Regulation in respect of the network operator's safety and operating plan.
- (3) If the Director-General advises a network operator in writing that a nomination is not accepted or is no longer acceptable, the nomination ceases to have effect for the purposes of this Regulation.

12 Initial audit of safety and operating plans

- (1) A safety and operating plan must, when lodged, be accompanied by a report on the plan from a nominated auditor that includes a certificate by the auditor that:
 - (a) the plan complies with this Regulation, and
 - (b) the plan is appropriate having regard to the size and complexity of the gas network (subject to any exemptions granted by the Director-General), and

Gas Supply (Network Safety Management) Regulation 2002

Clause 12

Safety and operating plans

Part 3

-
- (c) all measures intended to prevent hazardous events identified in the plan from occurring, and intended to protect operating personnel, plant, equipment, the community and the environment should they occur, are in place, and
 - (d) there are properly trained and equipped personnel available to implement the plan.
- (2) The Director-General may, before the expiration of the period within which a safety and operating plan must be lodged by a network operator under clause 8, extend that period by notice in writing if the network operator provides the Director-General with a report from a nominated auditor indicating:
- (a) an audit has been carried out, and
 - (b) any failure to comply with subclause (1) (a), (b), (c) or (d), and
 - (c) the measures that the network operator proposes to take to rectify any such non-compliance, and
 - (d) the time within which the network operator has undertaken to rectify any such non-compliance.

13 Periodical audits of safety and operating plans

- (1) A network operator must lodge with the Director-General in respect of its safety and operating plan a report on the plan from a nominated auditor that complies with subclause (2):
- (a) within the period of 28 days after each anniversary of the date of lodgment of the safety and operating plan under clause 8, or
 - (b) within such other periods, of a lesser frequency, as the Director-General approves in writing in relation to the particular network operator.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

- (2) The report must include a certificate by the nominated auditor that:
- (a) the safety and operating plan complies with Schedule 1, and
 - (b) the measures implemented to prevent hazardous events identified in the plan from occurring, and intended to protect operating personnel, plant, equipment, the community and the environment should they occur, are being maintained, and
 - (c) there are properly trained and equipped personnel available to maintain the plan, and

Clause 13 Gas Supply (Network Safety Management) Regulation 2002

Part 3 Safety and operating plans

- (d) the plan is adequate and appropriate having regard to any changes in the gas network since the previous audit certificate was issued, and
 - (e) any measures to rectify non-compliance with the plan detected in any previous audit have been undertaken and are effective.
- (3) The Director-General may, before the expiration of a period within which a certificate must be lodged by a network operator under subclause (1), extend that period by notice in writing if the network operator provides the Director-General with a report from a nominated auditor indicating:
- (a) an audit has been carried out, and
 - (b) any failure to comply with the safety and operating plan, and
 - (c) the measures that the network operator proposes to take to rectify any such non-compliance, and
 - (d) the time within which the network operator has undertaken to rectify any such non-compliance.

14 Additional audits may be required

- (1) The Director-General may, by notice in writing to a network operator, require the network operator to carry out, or to provide such assistance and co-operation as is reasonable for the purposes of carrying out, a further audit of its safety and operating plan.
- (2) Such a requirement may be made if:
 - (a) the Director-General is satisfied that the further audit is required in order to verify that the safety and operating plan is being properly implemented, or
 - (b) the Director-General is not satisfied as to any aspect of an audit carried out by an auditor nominated by a network operator.
- (3) The Director-General may require such a further audit to be carried out by an auditor nominated or appointed by the Director-General.
- (4) The audit may relate to any or all of the matters to which an initial audit under clause 12 or a periodical audit under clause 13 may relate.
- (5) A network operator must comply, as soon as practicable, with a requirement made by the Director-General under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Gas Supply (Network Safety Management) Regulation 2002

Clause 15

Safety and operating plans

Part 3

15 Availability of safety and operating plans

- (1) A network operator:
- (a) must cause the following to be kept at its principal office and to be made available to the Director-General:
 - (i) a complete and up-to-date copy of its safety and operating plan, and
 - (ii) details of any incremental change (other than that requiring the plan to be revised under clause 9) that has occurred in relation to the operation or maintenance of the gas network and that is not yet reflected in the plan, and
 - (b) must cause the following to be made available to persons likely to be involved in the implementation of the plan:
 - (i) complete and up-to-date copies of the provisions of the plan that relate to safety, and
 - (ii) details of any incremental change (as referred to in paragraph (a) (ii)) but only to the extent that such change relates to safety.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

- (2) In subclause (1), a reference to a complete and up-to-date copy of a safety and operating plan (or the provisions of a safety and operating plan) is a reference to a complete copy of the most recent version of the plan (or the relevant provisions) including any revisions required to be made under clause 9 and any amendments required to be made under clause 16.

16 Director-General may direct amendment of safety and operating plans

- (1) If the Director-General is of the opinion:
- (a) that a network operator's safety and operating plan will not produce a safe outcome, or
 - (b) that its implementation has given rise to, or will give rise to, an unsafe situation,

the Director-General may, by order in writing, direct the network operator to amend the plan in such manner, and within such period of time, as is specified in the order.

Clause 16 Gas Supply (Network Safety Management) Regulation 2002

Part 3 Safety and operating plans

- (2) A network operator must, as soon as practicable, comply with any direction under this clause and must furnish a copy of the amended safety and operating plan to the Director-General within 7 days after complying with the direction.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

17 Director-General may direct compliance with safety and operating plans

- (1) If the Director-General is of the opinion that a network operator is not:
- (a) complying with the requirements of its safety and operating plan or any codes, standards or specifications set out or referred to in that plan, or
 - (b) following any procedures set out or referred to in that plan,
- the Director-General may, by order in writing, direct the network operator to take such action as is specified in the order to comply with those requirements, codes, standards or specifications or to follow those procedures.

- (2) A network operator must, as soon as practicable, comply with any direction under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

18 Exemptions

- (1) The Director-General may, by notice in writing, exempt a network operator from any requirement as to the content of a safety and operating plan if the Director-General is of the opinion that the requirement is inappropriate having regard to the size or complexity of its gas network.
- (2) An exemption under this clause may be given unconditionally or subject to conditions.
- (3) The Director-General may, by further notice in writing, vary or revoke any such exemption.

Gas Supply (Network Safety Management) Regulation 2002

Clause 19

Natural gas standards

Part 4

Part 4 Natural gas standards

19 Definitions

In this Part:

compliant natural gas means natural gas that complies with the standards set out in Schedule 2.

non-compliant natural gas means natural gas that is not compliant natural gas.

reticulator means an authorised reticulator.

supplier means an authorised supplier.

testing agency means a reticulator or other person who tests natural gas for the purpose of compliance by the reticulator with clause 23.

20 Natural gas in pipelines to comply with standards

- (1) A reticulator must not convey non-compliant natural gas through a distribution pipeline.
- (2) A supplier must not supply non-compliant natural gas to an end user customer through a distribution pipeline.
- (3) A person must not inject non-compliant natural gas, or cause such gas to be injected, into a distribution pipeline.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

21 Exception from natural gas standards in special cases

- (1) A reticulator does not commit an offence under clause 20 (1) by conveying non-compliant natural gas through a distribution pipeline if the gas is conveyed in accordance with this clause.
- (2) Non-compliant natural gas is conveyed by a reticulator in accordance with this clause if:
 - (a) the reticulator reasonably believes that the conveyance of the gas is necessary to ensure the safety of the public or the security of the reticulator's distribution pipeline, or
 - (b) the reticulator reasonably believes that the gas that is, or is to be, delivered to the end user customer is compliant natural gas.

Clause 21 Gas Supply (Network Safety Management) Regulation 2002

Part 4 Natural gas standards

- (3) A reticulator conveying non-compliant natural gas in accordance with this clause must notify the Director-General of the point of injection of the non-compliant natural gas:
- (a) by telephone, facsimile or email as soon as practicable after the time when the non-compliant natural gas began to be conveyed in the reticulator's distribution pipeline, and
 - (b) in writing within 14 days after that time.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

22 Reticulator may obtain information and documents regarding natural gas standards

- (1) If a reticulator has reason to believe that a person has information or a document that may assist the reticulator in determining whether natural gas being injected into, or conveyed through, the reticulator's distribution pipeline is compliant natural gas, the reticulator may by notice in writing served on the person require the person to give the reticulator the information or a copy of the document.
- (2) The notice must:
- (a) identify the type of information or document that is being sought, and
 - (b) specify:
 - (i) a reasonable time by which the requirement must be complied with, and
 - (ii) the form in which the information or copy of the document is to be given to the reticulator, and
 - (c) state that the requirement is made under this clause.
- (3) A person must not, in purported compliance with a requirement under this clause, give a reticulator information that the person knows, or ought to know, is false or misleading.
- (4) A person must not, without reasonable excuse, fail to comply with any requirement under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Gas Supply (Network Safety Management) Regulation 2002

Clause 23

Natural gas standards

Part 4

23 Testing of natural gas

- (1) A reticulator must not convey natural gas through a distribution pipeline unless the reticulator has tested the gas, or caused the gas to be tested, in accordance with the reticulator's safety and operating plan, to ascertain whether the gas is compliant natural gas.

Note. If the reticulator does not itself test the gas, the person actually testing the gas is referred to in this Part as the *testing agency*. See clause 19.

- (2) A testing agency must keep a register at the agency's main office containing copies of all test results.
- (3) If a test has been made to determine a derived value (such as a Wobbe index value), the test results required to be kept in the register include the raw measurements used to determine that derived value.
- (4) The testing agency must ensure that the register of test results is open for public inspection during ordinary business hours, and copies of or extracts from the register are to be made available:
- (a) to the Director-General—on request and at no cost, and
 - (b) to any other person—on request and on payment of a reasonable fee fixed by the testing agency.
- (5) A testing agency must maintain all testing equipment used to test natural gas, or cause that testing equipment to be maintained, in accordance with the reticulator's safety and operating plan.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

24 Testing agencies and suppliers to report non-compliant natural gas

- (1) A testing agency must notify the Director-General without delay if the testing agency becomes aware of any test result that shows that natural gas in a reticulator's distribution pipeline is non-compliant.
- (2) A supplier who knows or becomes aware that any non-compliant natural gas is being, or is to be, conveyed through a reticulator's distribution pipeline must notify the Director-General without delay.
- (3) Notice under this clause may be given by telephone, facsimile or email.
- (4) A testing agency or supplier who gives notice of any matter under this clause by telephone must, within 7 days after doing so, send written notice of that matter to the Director-General.

Clause 24 Gas Supply (Network Safety Management) Regulation 2002

Part 4 Natural gas standards

- (5) A testing agency or supplier must not send to the Director-General a copy of, or notice of, any test result that the testing agency or supplier knows, or ought to know, is false or misleading.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

25 Director-General may obtain information regarding non-compliant natural gas

- (1) If the Director-General believes that non-compliant natural gas is being, or is to be, injected into or conveyed through a reticulator's distribution pipeline, the Director-General may by notice in writing served on any person require that person to give the Director-General such information regarding the injection or conveyance of the non-compliant natural gas as the Director-General specifies.
- (2) The notice must:
- (a) specify:
 - (i) a reasonable time by which the requirement must be complied with, and
 - (ii) the form in which the information is to be given to the Director-General, and
 - (b) state that the requirement is made under this clause.
- (3) A person must not, in purported compliance with a requirement made by a notice under this clause, give the Director-General information that the person knows, or ought to know, is false or misleading.
- (4) A person must not, without reasonable excuse, fail to comply with any requirement made by a notice issued by the Director-General under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

26 Director-General may issue directions and take other measures regarding non-compliant natural gas

- (1) If the Director-General believes that non-compliant natural gas is being, or is to be, injected into or conveyed through a reticulator's distribution pipeline, the Director-General may issue directions to a reticulator or supplier regarding the injection or conveyance of the non-compliant natural gas.

Gas Supply (Network Safety Management) Regulation 2002

Clause 26

Natural gas standards

Part 4

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- (2) Without limiting subclause (1), the directions issued by the Director-General in accordance with this clause may require a reticulator or supplier to notify end user customers who may be supplied with the non-compliant natural gas that such gas is being, or is to be, injected into or conveyed through the distribution pipeline concerned.
 - (3) A person must not, without reasonable excuse, fail to comply with any direction issued by the Director-General under this clause.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

27 Natural gas must have odour

A reticulator must ensure that natural gas being conveyed, or to be conveyed, through the reticulator's distribution pipeline has a distinctive and unpleasant odour that is discernible at a level specified in the reticulator's safety and operating plan.

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

28 Exemptions

- (1) The Director-General may, by notice in writing, exempt a reticulator from any or all of the requirements of this Part.
- (2) The Director-General may, by a further notice in writing, revoke any such exemption.
- (3) If the Director-General grants an exemption to a reticulator under this clause, the Director-General may issue directions to the reticulator regarding the conveyance of natural gas through the reticulator's distribution pipeline.
- (4) A person must not, without reasonable excuse, fail to comply with any direction issued by the Director-General under subclause (3).

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Clause 29 Gas Supply (Network Safety Management) Regulation 2002

Part 5 Reporting

Part 5 Reporting

29 Reports to the Director-General

- (1) A safety and operating plan must include a schedule of reports to be made to the Director-General in relation to the maintenance and safety aspects of the operation of the gas network.
- (2) If the Director-General directs that the schedule should provide for:
 - (a) reports in respect of particular maintenance or safety aspects of the operation of the gas network, or
 - (b) all or any of the reports referred to in subclause (3),the network operator must comply with that direction.
- (3) The Director-General may direct a network operator to prepare reports, and the network operator must comply with any such direction, in relation to all or any of the following matters:
 - (a) gas network assets (for example, reports concerning the total length of the gas network, or descriptions of the gas network),
 - (b) the safety and integrity of the gas network (for example, reports on the number of incidents of mechanical damage occurring in network operations, or the number of emergency exercises conducted),
 - (c) the reliability of the gas network and consumer-related matters (for example, reports concerning incidents of poor pressure supply, deviations from gas quality specifications, or the number of meters and pressure regulators installed or replaced),
 - (d) any matter relating to high-pressure gas operations, that is, gas operations involving pressure exceeding 1050 kilopascals (for example, reports concerning corrosion inspections, or third-party activities impacting on high-pressure gas operations),
 - (e) any matters which, under this Regulation or the safety and operating plan, require immediate reporting (for example, reports concerning the reporting of emergencies, accidents, non-compliant gas, or any other incident that the plan requires to be reported as soon as practicable after the incident occurs).

Maximum penalty: 100 penalty units (in the case of a corporation) and 25 penalty units (in any other case).

Gas Supply (Network Safety Management) Regulation 2002

Clause 30

Miscellaneous

Part 6

Part 6 Miscellaneous

30 Delegations

The Director-General may delegate to any person the exercise of all or any of the Director-General's functions (other than this power of delegation) under this Regulation.

31 Amendment of Gas Supply (General) Regulation 1997

The *Gas Supply (General) Regulation 1997* is amended:

- (a) by omitting the definition of *gasfitting rules* from clause 3, and
- (b) by inserting “(not being gasfitting work referred to in clause 6 (1) of the *Gas Supply (Network Safety Management) Regulation 2002*)” before “otherwise” in clause 7 (1), and
- (c) by omitting “any relevant gasfitting rules or (if no gasfitting rules apply to the work) in accordance with” from clause 7 (1), and
- (d) by omitting clauses 23 and 24, Part 6 and Schedule 1.

32 Savings provisions

- (1) Any act, matter or thing that before the repeal of the *Gas Supply (Safety and Operating Plans) Regulation 1997* (effected by section 10 (2) of the *Subordinate Legislation Act 1989*) had effect under that Regulation continues to have effect under this Regulation, but only to the extent that it is not inconsistent with this Regulation and the acts, matters or things done under this Regulation.
- (2) Any act, matter or thing that before the amendment of the *Gas Supply (General) Regulation 1997* (effected by clause 31 of this Regulation) had effect under that Regulation continues to have effect under this Regulation, but only to the extent that it relates to this Regulation and is not inconsistent with this Regulation and the acts, matters or things done under this Regulation.

Gas Supply (Network Safety Management) Regulation 2002

Schedule 1 Safety and operating plans

Schedule 1 Safety and operating plans

(Clause 10 (4))

1 General provisions of safety and operating plan

The general matters that must be included in a safety and operating plan are as follows:

- (a) a statement that sets out the objectives of the plan,
- (b) a description of the management structure of the network operator and a schedule identifying each person designated by the network operator as being responsible for the development, approval and implementation of the plan,
- (c) identification of the distribution districts to which the plan applies and of those procedures set out or referred to in the plan that apply only in relation to a particular distribution district,
- (d) a description of the gas network within each distribution district, and of its operation and maintenance,
- (e) a statement to the effect that all procedures set out or referred to in the plan are in place and have been tested and proved,
- (f) if the plan sets out requirements relating to high-pressure gas operations (that is, gas operations involving pressure exceeding 1050 kilopascals), a statement to the effect that such requirements are consistent with the requirements of AS 2885.

2 Description of gas network

A description of a gas network, and its operation and maintenance, within each distribution district of the network operator must include all of the following:

- (a) the range of supply pressures applied within each distribution district,
- (b) references to maps showing the location of the gas works of each distribution district and the procedures for gaining access to those maps,
- (c) a description of the gas works within each distribution district,

Gas Supply (Network Safety Management) Regulation 2002

Safety and operating plans

Schedule 1

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- (d) a description of the engineering records that the network operator maintains, the location of those records, and the procedures for maintaining, filing and gaining access to those records.

3 Analysis of hazardous events

- (1) An analysis of hazardous events must be prepared in relation to each distribution district of the network operator unless subclause (2) applies.
- (2) A common analysis of hazardous events may be prepared in relation to those distribution districts of the network operator that possess the same characteristics from which the risk of hazardous events may be identified.
- (3) If a new gas network is to be constructed or an existing gas network extended, an analysis of hazardous events must be prepared in relation to the construction or extension before its construction is commenced.
- (4) An analysis of hazardous events must, consistent with the size and complexity of each distribution district or proposed distribution district, concerned:
 - (a) identify the range of supply pressures applied within each distribution district (or to be applied within each proposed distribution district, as the case may be), and
 - (b) systematically identify hazardous events that might be expected to occur, and
 - (c) identify the potential causes of those events, and
 - (d) identify the possible consequences of those events, and
 - (e) specify operational, maintenance and organisational measures intended to prevent those events from occurring or, should they occur, intended to protect operating personnel, plant, equipment, the community and the environment.
- (5) The operational and maintenance measures must include a maintenance schedule indicating, among other things, the type and frequency of inspections, coating surveys and checks on cathodic protection devices (if such coatings or devices are used).
- (6) In the case of new gas networks or extensions to existing networks, an analysis of hazardous events should also take into account hazardous events that may occur during construction.

Gas Supply (Network Safety Management) Regulation 2002

Schedule 1 Safety and operating plans

- (7) A safety and operating plan must include a description of the methodology to be used to conduct an analysis of hazardous events.
- (8) An analysis of hazardous events in relation to any section of a distribution district that may operate at pressures exceeding 1050 kilopascals must comply with the requirements for risk assessment provided for in AS 2885.

4 Emergencies

- (1) A safety and operating plan is to identify the emergency procedures to be implemented by the network operator to ensure an effective response to emergencies.
- (2) The types of emergencies in respect of which procedures must be implemented include (as a minimum):
 - (a) fires, explosions, leaks and impacts (with particular reference to those caused by the activities of other parties), and
 - (b) natural disasters, and
 - (c) civil disturbances.
- (3) A safety and operating plan must identify the procedures implemented by the network operator that ensure:
 - (a) all emergency procedures have been tested and proved, and
 - (b) all emergency procedures are reviewed and tested on a regular basis.

5 Gas quality

The gas quality standards to be applied must include standards relating to the following:

- (a) heating value,
- (b) relative density,
- (c) composition and purity.

6 Procedures for ensuring that gas is malodorous

A safety and operating plan must:

- (a) identify the procedures to be implemented by the network operator to ensure that gas conveyed or supplied has a distinctive and unpleasant odour, and
- (b) specify the odoriferous substances to be used, and

Gas Supply (Network Safety Management) Regulation 2002

Safety and operating plans

Schedule 1

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- (c) specify the odour intensities.

7 Procedures for testing gas

- (1) A safety and operating plan must identify the procedures to be implemented by the network operator to ensure that gas conveyed or supplied:
 - (a) meets the relevant gas quality and pressure standards, and
 - (b) complies with the relevant gas specification.
- (2) A safety and operating plan must specify:
 - (a) the equipment to be provided and maintained by or on behalf of the network operator for the testing of gas (including the order of accuracy of results the equipment delivers), and
 - (b) the place or places at which the equipment is to be kept, and
 - (c) how often calibration tests are to be conducted on the equipment to ensure its accuracy, and
 - (d) how often gas testing is to be carried out.

8 Procedures for approving Type B appliances

- (1) A network operator must include in its safety and operating plan procedures for approving:
 - (a) Type B appliances, and
 - (b) gas installations that are designed under standards other than AS 5601.
- (2) The procedures referred to in subclause (1) must be no less stringent than:
 - (a) AS 3814, or
 - (b) if that standard is not applicable to the appliance or installation, such other code or standard as the Director-General determines to be appropriate in the circumstances.
- (3) In this clause, *Type B appliances* means gas appliances other than those that are required to be certified under a scheme conducted by the Australian Gas Association or the Australian Liquefied Petroleum Gas Association for the certification of appliances.

Gas Supply (Network Safety Management) Regulation 2002

Schedule 1 Safety and operating plans

9 Plan must incorporate any relevant management system standards

A safety and operating plan is to incorporate any management system standards that are relevant to the management of a gas network (for example, standards relating to document control, record management, and procedures for conducting audits and management reviews).

10 Codes and standards

A safety and operating plan must specify the codes and standards that the network operator intends to follow in the design, installation, operation and maintenance of the gas network, and the year of publication of those codes and standards.

11 Meters, regulators and other basic metering equipment

- (1) A safety and operating plan must require any device or equipment used in the gas network (including any basic metering equipment):
 - (a) to be suitable for the design working pressure of the part or parts of the network in which it is used, and
 - (b) if installed, to be installed so as not to interfere with metering accuracy.
- (2) A safety and operating plan must require pressure regulators operating with an outlet pressure of more than 35 kilopascals and any compensating devices to be sealed.
- (3) In this clause, *basic metering equipment* means a gas meter and any one or more of the following used in conjunction with gas meters:
 - (a) valves to isolate gas supply,
 - (b) pipework (including a combination of pipes, flanges, tees, elbows and other pipe-connecting equipment designed to convey gas),
 - (c) fittings, smaller instruments used in connection with fittings, pressure sensing tubing and tube fittings, instrument valves and associated equipment,
 - (d) filters (being devices designed to trap and remove foreign matter from gas streams),
 - (e) pressure regulators (being devices designed to reduce and control pressure),

Gas Supply (Network Safety Management) Regulation 2002

Safety and operating plans

Schedule 1

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- (f) over-pressure protection devices (being devices designed to protect downstream equipment from exposure to excessive pressure if upstream equipment fails),
 - (g) non-return valves (being devices designed to ensure that gas flow travels in one direction and to prevent reverse flow),
 - (h) mechanical indexes (being devices designed to indicate consumption of raw metered gas),
 - (i) meter bars and other equipment designed to support a gas meter, and associated equipment that forms part of the meter installation,
 - (j) electrical connections and wiring designed to convey electrical signals for gas meters, flow correction devices, alarms and metering communications equipment,
 - (k) flow correction devices or software designed to enable raw metering data to be adjusted for the effects of temperature, pressure and gas quality (or any of these) and to be referenced to standard pressure and temperature conditions,
 - (l) temperature and pressure correction devices or software designed to enable raw metering data to be adjusted for the effects of temperature and pressure,
 - (m) devices and equipment designed to analyse and calculate the heating value of a gas stream (for example, chromatography equipment and calorimeters).

12 Gasfitting rules

- (1) A safety and operating plan must establish rules concerning the manner in which any work involved in the connection of a gas installation to, or the disconnection of a gas installation from, the network operator's gas network is to be carried out.
- (2) Any rules so established must be no less stringent than any code of practice or standard that is applied to any such work by any regulations under the Act.
- (3) A safety and operating plan must include a statement to the effect that any gasfitting work involved in the connection of a gas installation to, or the disconnection of a gas installation from, its gas network must be carried out by, or under the supervision of, suitably qualified gasfitters.

Gas Supply (Network Safety Management) Regulation 2002

Schedule 1 Safety and operating plans

13 Identification of ownership of pipes

A safety and operating plan must identify procedures to be implemented by the network operator to ensure that the network operator can identify its pipes as such if necessary (for example, in the case of an emergency).

Gas Supply (Network Safety Management) Regulation 2002

Natural gas standards

Schedule 2

Schedule 2 Natural gas standards

(Clause 19)

- 1 Natural gas is to comply with the following specification limits:

Specification		Limit
Wobbe Index	minimum	46.0 MJ/m ³
	maximum	52.0 MJ/m ³
Oxygen	maximum	0.2 mol %
Hydrogen sulphide	maximum	5.7 mg/m ³
Total sulphur	maximum	50.0 mg/m ³
Water content	maximum	Dew point 0°C at maximum transmission pressure (In any case, no more than 112.0 mg/m ³)
Hydrocarbon dew point	maximum	2.0°C 3500 kPa
Total inert gases	maximum	7.0 mol %

- 2 The standard testing conditions for all the gas properties listed above are:

Temperature: 15°C

Absolute pressure: 101.325 kPa

With the natural gas dry (that is, completely free from water vapour).

Independent Pricing and Regulatory Tribunal Regulation 2002

under the

Independent Pricing and Regulatory Tribunal Act 1992

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Independent Pricing and Regulatory Tribunal Act 1992*.

BOB CARR, M.P.,
Premier

Explanatory note

The object of this Regulation is to remake, without substantial alteration, the *Independent Pricing and Regulatory Tribunal Regulation 1996*. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation modifies the application of the *Commercial Arbitration Act 1984* to the arbitration of disputes (relating to a public infrastructure access regime) under Part 4A of the *Independent Pricing and Regulatory Tribunal Act 1992*. The modifications concern the right to legal representation, the private hearing of disputes and the recovery of the fees and expenses of the Independent Pricing and Regulatory Tribunal.

This Regulation also contains savings and transitional provisions.

This Regulation is made under the *Independent Pricing and Regulatory Tribunal Act 1992* and, in particular, under sections 24A (Arbitration of access disputes) and 29 (the general regulation-making power) and clause 1 (1) of Schedule 4 (Savings and transitional provisions) to the Act.

Independent Pricing and Regulatory Tribunal Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notes	3
Part 2 Application of Commercial Arbitration Act 1984	
5 Object of Part	4
6 Appearance of legal practitioners	4
7 Private hearing of disputes	4
8 Costs of arbitration	4
Part 3 Savings and transitional	
9 References to Licence Compliance Advisory Board	5
10 Saving	5

Independent Pricing and Regulatory Tribunal Regulation 2002

Clause 1

Preliminary

Part 1

Independent Pricing and Regulatory Tribunal Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Independent Pricing and Regulatory Tribunal Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Independent Pricing and Regulatory Tribunal Regulation 1996* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

dispute means a dispute referred to in section 24A of the Act.

the Act means the *Independent Pricing and Regulatory Tribunal Act 1992*.

4 Notes

Notes included in this Regulation do not form part of this Regulation.

Clause 5 Independent Pricing and Regulatory Tribunal Regulation 2002

Part 2 Application of Commercial Arbitration Act 1984

Part 2 Application of Commercial Arbitration Act 1984

5 Object of Part

The object of this Part is, in accordance with section 24A (2) of the Act, to modify the application of the *Commercial Arbitration Act 1984* to the arbitration of a dispute.

6 Appearance of legal practitioners

- (1) A party to a dispute may be represented in proceedings before an arbitrator or umpire by a legal practitioner only by leave granted by the arbitrator or umpire.
- (2) An arbitrator or umpire may grant leave only if he or she is of the opinion:
 - (a) that representation of the party by a legal practitioner is likely to shorten the hearing of the dispute or to reduce the costs of the dispute, or
 - (b) that the party would be unfairly disadvantaged if the party was not represented by a legal practitioner.
- (3) This clause has effect instead of section 20 (1) of the *Commercial Arbitration Act 1984*.

7 Private hearing of disputes

A dispute is to be heard in private, unless the arbitrator or umpire otherwise directs.

8 Costs of arbitration

For the purposes of section 34 (1) and (2) of the *Commercial Arbitration Act 1984*, and without limiting the fees and expenses of the arbitrator or umpire as referred to in section 34, the fees and expenses of the arbitrator or umpire are taken to include:

- (a) all costs incurred by the arbitrator or umpire, and
- (b) all costs incurred by the Tribunal,

in relation to the arbitration of a dispute, including administrative costs, costs incurred in engaging consultants and expert witnesses, and witnesses' expenses.

Independent Pricing and Regulatory Tribunal Regulation 2002	Clause 9
Savings and transitional	Part 3

Part 3 Savings and transitional

9 References to Licence Compliance Advisory Board

A reference in any Act, in any instrument made under any Act or in any other instrument of any kind to the Licence Compliance Advisory Board is taken to be a reference to the Tribunal.

10 Saving

Any act, matter or thing that had effect under the *Independent Pricing and Regulatory Tribunal Regulation 1996* immediately before the repeal of that Regulation by the *Subordinate Legislation Act 1989* is taken to have effect under this Regulation.

Legal Profession Regulation 2002

under the

Legal Profession Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Legal Profession Act 1987*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to replace, without substantial alteration, the *Legal Profession Regulation 1994*.

This Regulation deals with the following matters:

- (a) matters relating to practising certificates for legal practitioners, including the time within which applications for practising certificates must be made, late fees and the information to be provided in connection with such applications,
- (b) the keeping of registers of legal practitioners who hold practising certificates and the notification of changes in particulars affecting those registers,
- (c) notifications to be provided by interstate legal practitioners,
- (d) requirements in relation to foreign lawyers, including provisions relating to registration applications, scope of practice of foreign law and fidelity fund contributions,
- (e) requirements in relation to incorporated legal practices, including provisions relating to the keeping of accounts, auditing, costs and investigation and review of such practices,
- (f) the barristers and solicitors who are required to hold indemnity insurance,

Legal Profession Regulation 2002

Explanatory note

- (g) matters relating to the Solicitor's Fidelity Fund, including solicitors who are exempt from the requirement to contribute to the Fund, interest on claims against the Fund, time for appealing against failure to determine a claim and the operation of provisions of the Fund in relation to multidisciplinary partnerships,
- (h) legal fees and costs,
- (i) assessment of bills of costs and review of assessments,
- (j) requirements relating to trust accounts and controlled money (that is, certain money held by a solicitor on behalf of another person that is not held in the general trust account),
- (k) amounts to be deposited with the Law Society from trust funds held by a solicitor,
- (l) requirements that legal practitioners report irregularities suspected in relation to the way in which controlled money or trust money is dealt with by a solicitor,
- (m) reporting requirements relating to barristers and solicitors, including requirements that a barrister or solicitor report findings of guilt of certain offences committed by the barrister or solicitor and the commission of an act of bankruptcy by the barrister or solicitor,
- (n) the times within which show cause statements must be provided by barristers and solicitors in relation to the commission of certain offences or acts of bankruptcy,
- (o) requirements relating to certain advertising by barristers and solicitors,
- (p) the prevention of unlawful discriminatory practices by barristers and solicitors, including unlawful sexual harassment,
- (q) requirements for holders of practising certificates who are to undertake mandatory legal education to undertake certain courses,
- (r) interpretation provisions and savings and transitional provisions.

This Regulation is made under the *Legal Profession Act 1987* including section 216 (the general regulation-making power) and various other provisions of that Act specified in the Regulation.

Legal Profession Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	10
2 Commencement	10
3 Definitions	10
4 Notes	12
Part 2 Practising certificates	
5 Period for holder to apply for new certificate: sections 27 (3) and 28 (3)	13
6 Late fee: section 29 (3)	13
7 Information in application: section 30	13
8 Surrender of certificate	15
9 Refusal, cancellation or suspension	15
Part 3 Registers of practising legal practitioners	
10 Information included	17
11 Publication of information	17
12 Notification of change in particulars	17
13 Provision of information to Prothonotary	18
Part 4 National practising certificates	
14 Notification of establishment of office	19
15 Requirements of written notice	19
Part 5 Foreign lawyers	
16 Period after which registration application is taken to be refused: section 48ZM (2)	20
17 Period during which foreign lawyer may apply for renewal of registration: section 48ZN (3)	20
18 Information in application to register or renew registration: section 48ZO (1) (b)	20

Page 3

Legal Profession Regulation 2002

Contents

	Page
19 Cancellation of registration—time within which foreign lawyer must establish office or commercial presence: section 48ZQ (2) (d)	20
20 Scope of practice of foreign law: section 48ZS (1) (b) and (d)	20
21 Fidelity Fund contributions: sections 48ZAB and 78A	21
Part 6 Incorporated legal practices	
Division 1 Preliminary	
22 Definitions	22
23 Exempt corporations	22
Division 2 Disclosures to be made with respect to legal services	
24 Disclosures to be made with respect to legal services	22
Division 3 Application of Part 6 of the Act	
25 Money received by incorporated legal practice for non-legal services	23
26 Keeping of accounts: section 62	23
27 Audits	24
28 Application of section 64 of the Act to incorporated legal practices	24
Division 4 Application of Part 11 of the Act	
29 Solicitor directors must ensure cost disclosure requirements are complied with	25
30 Costs assessment	25
31 Liability for overcharging and misrepresentations as to costs	26
Division 5 Investigation and review of incorporated legal practices	
32 Purposes for which powers may be exercised	26
33 Examination of persons	27
34 Inspection of books	27
35 Power to hold hearings	28
36 Failure to comply with investigation or review	29

Page 4

Legal Profession Regulation 2002

Contents

	Page
Division 6 Appointment of solicitor director	
37 Appointment of new solicitor director	29
Part 7 Indemnity insurance	
38 Insurable barristers	30
39 Insurable solicitors	30
40 Provision of information relating to insurance	31
Part 8 Solicitors' fidelity fund	
41 Solicitors exempt from contributions: section 76 (5)	32
42 Interest on claims: section 85 (1)	32
43 Time for appeal against failure to determine claim: section 90D (3)	32
44 Multidisciplinary partnerships: section 48G	32
Part 9 Legal fees and costs	
Division 1 Bill of costs	
45 Particulars in bill of costs	33
Division 2 Costs fixed by regulation	
46 Prescribed costs for legal services in workers compensation matters: section 196 (1) (a)	34
47 Prescribed costs for recovery of certain debts and enforcement of certain judgments: section 196 (1) (b) and (b1)	34
48 Prescribed costs for non-legal services in workers compensation matters: section 196 (1) (c)	35
49 Prescribed costs for probate matters (non-contentious): section 196	35
50 GST may be added to costs	35
Division 3 Miscellaneous	
51 Barristers may receive costs in advance	36

Page 5

Legal Profession Regulation 2002

Contents

	Page
Part 10 Costs assessments	
Division 1 Assessment of bill of costs (other than party/party costs)	
52 Limitation period for applications by clients for cost assessment where bill paid or part paid	37
53 Form of, and fee for, application for assessment of bill of costs	37
54 Procedure before application for assessment of bill of costs referred to assessor	38
Division 2 Assessment of party/party costs	
55 Form of, and fee for, application for assessment of party/party costs	39
56 Procedure before application for assessment of party/party costs	40
57 Determination of costs of party/party assessment	42
Division 3 Assessment of costs (general provisions)	
58 Information relating to assessment of costs	43
59 Settlement of matter by consent	44
60 Delivery of application for assessment and related documents	44
61 Certificate of determination of costs and statement of reasons	45
62 Circumstances in which assessor may not refuse to issue certificate	45
63 Reference of applications to assessors	46
Division 4 Review of costs assessments by costs review panel	
64 Application for review by costs review panel	46
65 Settlement of review application by consent	46
66 Delivery of application for review and related documents	47
67 Copy of certificate of determination to be given to Manager, Costs Assessment	47
68 Statement of reasons	47
69 Circumstances in which costs review panel may not refuse to issue certificate in respect of determination of review	48

Page 6

Legal Profession Regulation 2002

Contents

	Page
70 Qualification for membership of costs review panels	49
71 Reference of applications to costs review panels	49
Part 11 Trust accounts and controlled money	
Division 1 General	
72 Definitions	50
73 "Associate"—extended meaning	51
74 Keeping of records	51
75 Computer systems control	52
76 Money in transit	53
77 Statements of account	54
78 Receipt and withdrawal of money for costs and disbursements	55
Division 2 Trust accounts	
79 Deposits	56
80 Receipts	56
81 Payment of trust money by cheque or electronic funds transfer	57
82 Daily receipt and payment transactions	59
83 Journal	60
84 Ledger	60
85 Ledger trial balance statement	61
86 Delegation	62
87 Account in the name of a solicitor	63
Division 3 Controlled money	
88 Notice to person on whose behalf controlled money is received	63
89 Controlled Money Register	64
90 Controlled money ledger	64
91 Listing of accounts	66
92 Payment of controlled money by cheque or electronic funds transfer	66
93 Delegation	66
Division 4 Accountant's report	
94 Accountant's report to be lodged with Law Society	67
95 Check list to be provided	67

Page 7

Legal Profession Regulation 2002

Contents

	Page
96 Duties regarding check list	68
97 Adverse or qualified reports	68
98 Cessation of practice or change in practice arrangements	68
99 Information to be provided to Law Society Council	69
Division 5 Mortgage transactions	
100 Definitions	69
101 Application of Division	70
102 Authority to secure by regulated mortgage	70
103 Loan applications	72
104 Identity of borrower	73
105 Independent advice	73
106 Insurance of secured property	74
107 Registration of mortgages	74
108 Summary of Mortgage	74
109 Investments Register	75
110 Investment restrictions	76
111 Valuation	77
112 Appointment of accountant	77
113 Notification of State regulated mortgages to Law Society Council	78
114 Mortgage held by nominee	78
115 Solicitor's nominee company	79
116 Dealing with money through trust account	79
117 Notice of variation of mortgage	80
118 Additional or substituted contributions	81
119 Declaration of trust	81
120 Retention of documents	81
121 Practicability of completion of Summary of Mortgage and Investments Register	82
122 Default procedures	82
123 Run-out mortgages	83
124 Managed investment schemes	83
125 Certain mortgages not regulated mortgages	83
Division 6 Crown Solicitor	
126 Application of Regulation to Crown Solicitor	84
127 Crown Solicitor's Trust Account	84
128 Report by Auditor-General	84
Part 12 Deposits with Law Society	
129 Definition	85

Legal Profession Regulation 2002

Contents

	Page
130 Amount of deposit: section 64	85
131 Time for deposit	86
Part 13 Reporting requirements	
132 Duty to report irregularities	88
133 Duty to report offences	88
134 Duty to report bankruptcy	89
135 Show cause statements relating to bankruptcy and indictable and tax offences	89
136 Show cause statements relating to failures to notify	90
137 Failures to notify—professional misconduct	90
Part 14 Advertising of personal injury services	
138 Definitions	91
139 Restriction on advertising personal injury services	91
140 What constitutes advertising of personal injury services	93
Part 15 Miscellaneous provisions	
141 Discriminatory conduct (including sexual harassment) prohibited	95
142 Mandatory continuing legal education—special requirement	95
143 Savings and transitional provisions	96
Schedules	
1 Forms	97
2 Costs for legal services in workers compensation matters	123
3 Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors	132
4 Costs for other services in workers compensation matters	137
5 Savings and transitional provisions	140

Clause 1 Legal Profession Regulation 2002

Part 1 Preliminary

Legal Profession Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Legal Profession Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Legal Profession Regulation 1994* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

appropriate Council means:

- (a) in relation to a person who is a barrister or applies for a practising certificate authorising the person to practise as a barrister—the Bar Council, or
- (b) in relation to a person who is a solicitor or applies for a practising certificate authorising the person to practise as a solicitor—the Law Society Council.

associate of a solicitor has the same meaning as it has in Division 1 of Part 6 of the Act.

Note. See also clause 73 of this Regulation.

controlled money has the same meaning as it has in section 61 (9) of the Act.

costs review panel means a panel of 2 costs assessors constituted to conduct a review of a costs assessor's determination under Subdivision 4A of Division 6 of Part 11 of the Act.

excluded offence means:

- (a) any offence under the road transport legislation (within the meaning of the *Road Transport (General) Act 1999*) other than the following:

Legal Profession Regulation 2002

Clause 3

Preliminary

Part 1

-
- (i) an offence under section 42 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle negligently on a road or road related area if the barrister or solicitor concerned is, by way of penalty, sentenced to imprisonment or fined a sum of not less than \$200,
 - (ii) an offence under section 42 (2) of the *Road Transport (Safety and Traffic Management) Act 1999* relating to driving a motor vehicle on a road or road related area furiously, recklessly or at a speed or in a manner dangerous to the public,
 - (iii) any offence under section 19 (2) of the *Road Transport (General) Act 1999* (which relates to refusing to comply with a requirement to produce a driver licence, or to state name and home address, or stating a false name and home address),
 - (iv) any offence under section 12 (1) of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to driving etc while under the influence of alcohol or any other drug),
 - (v) any offence under section 25A (1), (2) or (3) of the *Road Transport (Driver Licensing) Act 1998* (which relates to driving while unlicensed and other relevant matters),
 - (vi) any offence under section 70 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to failing to stop and give assistance after an accident),
 - (vii) any offence under section 9 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to presence of prescribed concentration of alcohol in person's blood),
 - (viii) an offence under section 43 of the *Road Transport (Safety and Traffic Management) Act 1999* (which relates to menacing driving),
 - (ix) any other offence under the road transport legislation if the court orders the disqualification of the barrister or solicitor concerned from holding a driver licence, or
- (b) any offence relating to the parking of motor vehicles.

register means a register kept by a Council under section 38C of the Act.

Clause 3 Legal Profession Regulation 2002

Part 1 Preliminary

solicitor director has the same meaning as it has in Division 2A of Part 3 of the Act.

the Act means the *Legal Profession Act 1987*.

trust money has the same meaning as it has in section 61 of the Act.

- (2) A reference in the definition of *excluded offence* in subclause (1):
- (a) to an offence under the road transport legislation includes a reference to an offence under the *Traffic Act 1909*, or the regulations under that Act, as previously in force, and
 - (b) a reference to an offence under a provision of an Act specified in paragraph (a) of that definition includes a reference to an offence under a corresponding provision of the *Traffic Act 1909*, or the regulations under that Act, as previously in force.
- (3) A reference in this Regulation to a legal practitioner's or solicitor's firm includes, in relation to a legal practitioner or solicitor who provides legal services in the capacity of an officer or employee of an incorporated legal practice, a reference to the incorporated legal practice.
- (4) A reference in this Regulation to a form is a reference to a form in Schedule 1.

4 Notes

The notes in this Regulation (except notes in a form) do not form part of this Regulation.

Legal Profession Regulation 2002

Clause 5

Practising certificates

Part 2

Part 2 Practising certificates

5 Period for holder to apply for new certificate: sections 27 (3) and 28 (3)

- (1) For the purposes of section 27 (3) of the Act, the prescribed period is the period commencing on 1 April and ending on 15 May before the current practising certificate expires.
- (2) For the purposes of section 28 (3) of the Act, the prescribed period is the period commencing on 1 April and ending on 7 June before the current practising certificate expires.

6 Late fee: section 29 (3)

For the purposes of section 29 (3) of the Act, the prescribed late fee is an amount determined by the appropriate Council not exceeding 20 per cent of the fee payable in relation to the application concerned in accordance with the Act.

7 Information in application: section 30

- (1) An application by a legal practitioner for a practising certificate must be in a form that is approved by the appropriate Council, and signed by the practitioner, and must contain or be accompanied by the following:
 - (a) particulars of any partnership of which the practitioner is a member,
 - (b) particulars of any incorporated legal practice of which the practitioner is an officer or employee, including the name of the incorporated legal practice, its Australian Company Number and the names of the directors of the incorporated legal practice,
 - (c) the address of the office or offices at which the practitioner practises or provides legal services and, if more than one office, an indication as to which of those addresses is that of the principal office,
 - (d) in the case of a practitioner who is a member of, or employed by, a partnership or is an officer or employee of an incorporated legal practice—the address of the office or offices at which the partnership or legal practice practises or provides legal services and, if more than one office, an indication as to which of those addresses is that of the principal office,

Clause 7 Legal Profession Regulation 2002

Part 2 Practising certificates

- (e) in the case of a practitioner who is employed otherwise than by a partnership or incorporated legal practice—the name of the employer and the address of the principal office of the employer,
 - (f) if the practitioner does not have in New South Wales an exchange box in a document exchange of Australian Document Exchange Pty. Limited, the name of the practitioner's Sydney agent (if any),
 - (g) if the practitioner has been found guilty of any offence (other than an excluded offence)—the nature of the offence,
 - (h) if the practitioner has committed an act of bankruptcy (within the meaning of section 3 (3) of the Act)—details of the act of bankruptcy,
 - (i) if the practitioner is a solicitor director of an incorporated legal practice and a financial report and director's report is required to be prepared in respect of the incorporated legal practice under section 292 of the *Corporations Act 2001* of the Commonwealth, a copy of those reports (being the reports most recently lodged with the Australian Securities and Investments Commission).
- (2) Subclause (1) (g):
- (a) applies to an offence whether or not committed in the course of practice as a legal practitioner, and
 - (b) applies to any finding of guilt of an offence whether or not the court proceeded to a conviction for the offence, and
 - (c) applies to an offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an offence, other than an excluded offence, if committed in New South Wales), and
 - (d) applies to a finding of guilt even if other persons are prohibited from disclosing the identity of the offender, and
 - (e) extends to an indictable offence committed before the commencement of this Regulation (and so extends whether the finding of guilt was made before or after that commencement), and
 - (f) extends to an offence (other than an indictable offence) committed after 8 March 1991, and

Legal Profession Regulation 2002

Clause 7

Practising certificates

Part 2

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- (g) does not apply to a finding of guilt previously disclosed in an application for a practising certificate or under clause 133.
 - (3) Subclause (1) (h) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under clause 134.
 - (4) Subclause (1) (h) applies to acts of bankruptcy whether occurring before or after the commencement of this Regulation.
 - (5) The appropriate Council may require the legal practitioner to furnish such further information as it considers relevant to its determination of the application within such time as it specifies.
 - (6) In this clause, *offence* includes a tax offence.

8 Surrender of certificate

- (1) The appropriate Council may accept from the holder of a current practising certificate the surrender of the certificate and an application for a new practising certificate and may issue a new practising certificate for the rest of the term of the surrendered certificate.
- (2) The appropriate Council may accept from the holder of a practising certificate the surrender of the certificate if:
 - (a) the Council is satisfied that there is a good reason for the surrender of the certificate (for example, that the holder is retiring from practising as a barrister or solicitor or no longer intends to practise as a barrister or solicitor in New South Wales), and
 - (b) the Council is not aware of any circumstances relating to the holder that would give rise to the conducting of an investigation, or the taking of disciplinary action, under the Act.
- (3) The Council may refund part of the fee paid in respect of a certificate surrendered under this clause if the Council considers that a refund should be made.

9 Refusal, cancellation or suspension

- (1) If a Council refuses an application by a legal practitioner for a practising certificate or decides to cancel or suspend a legal practitioner's practising certificate, it must, within 14 days after its decision, serve written notice of the decision on the practitioner.

Clause 9 Legal Profession Regulation 2002

Part 2 Practising certificates

- (2) If the practitioner is a solicitor director, the appropriate Council must also, within 14 days after its decision, serve written notice of the decision on the incorporated legal practice of which the practitioner is a solicitor director.
- (3) A decision of the Council to cancel or suspend the practising certificate of a legal practitioner has effect from the date on which service of notice of the decision on the legal practitioner was effected or at the expiration of a period following that date and specified in the notice.
- (4) A notice required to be served under subclause (1) on a legal practitioner must be served:
 - (a) personally, or
 - (b) by post addressed to the principal office at which the practitioner practises or provides legal services (as last notified under clause 7) or by delivering it to that office.

Legal Profession Regulation 2002

Clause 10

Registers of practising legal practitioners

Part 3

Part 3 Registers of practising legal practitioners

10 Information included

- (1) The appropriate Council may include in a register information that the Council considers appropriate that was furnished by legal practitioners in their applications to the Council for practising certificates (or furnished by them in relation to the determination of their applications).
- (2) The appropriate Council is not to include in a register information supplied under clauses 7 (1) (g) or (h), 133 or 134.

11 Publication of information

- (1) The appropriate Council may publish, in circumstances which it considers appropriate, all or any of the following information:
 - (a) the name of any legal practitioner on the register,
 - (b) the name of the practitioner's firm (including a firm that is a partnership or an incorporated legal practice) and the address at which the practitioner or the practitioner's firm practises or provides legal services,
 - (c) any other relevant contact information.
- (2) Despite subclause (1), the appropriate Council is not to publish any such information that the legal practitioner concerned has requested the appropriate Council in writing not to publish.

12 Notification of change in particulars

- (1) A legal practitioner must notify the appropriate Council, in writing, of any change in the particulars relating to the practitioner as disclosed in the practitioner's last application for a practising certificate within 7 days after the change occurs.
- (2) A legal practitioner must, in accordance with any request from the appropriate Council, also notify the appropriate Council of the following particulars:
 - (a) particulars relating to any change to or dissolution of a partnership, formation of a new partnership, or acquisition of the practice of another legal practitioner, by the legal practitioner,

Clause 12	Legal Profession Regulation 2002
Part 3	Registers of practising legal practitioners

- (b) particulars relating to the formation of an incorporated legal practice, or the commencement of the provision of legal services by an incorporated legal practice, or any change to or winding up of an incorporated legal practice, including any change in the directors of the incorporated legal practice.
- (3) The request must be in the form of a notice served on the legal practitioner and must specify which particulars are requested.
- (4) For the purposes of this clause, a change in particulars includes a change in the information required to be disclosed under clause 7 (1) (g) or (h).

13 Provision of information to Prothonotary

The appropriate Council must, if requested by the Prothonotary of the Supreme Court to do so, provide to the Prothonotary any information in relation to a legal practitioner or a legal practitioner's practice that is recorded on the register and any changes in that information that are notified to the Council from time to time.

Legal Profession Regulation 2002

Clause 14

National practising certificates

Part 4

Part 4 National practising certificates

14 Notification of establishment of office

Written notice under section 48T of the Act is to be given within 21 days after the interstate legal practitioner establishes an office in this State.

15 Requirements of written notice

A notice under section 48T (2) of the Act is to contain the following particulars:

- (a) the full name and residential address of the interstate legal practitioner,
- (b) the participating State in which the practitioner has been admitted to legal practice,
- (c) a description of the authority to practice conferred by the current practising certificate issued or given by a regulatory authority in that State,
- (d) any other State in which the practitioner has been admitted to legal practice or been issued with or given a current practising certificate,
- (e) the firm name, or the name of the employer, of the practitioner including:
 - (i) if the practitioner is a partner, the name of the partnership, and
 - (ii) if the practitioner is a solicitor director or an officer or employee of an incorporated legal practice, the name of the incorporated legal practice,
- (f) the address of the office established in this State by the practitioner,
- (g) the address of the sole or principal place of legal practice in the home State of the practitioner as well as the addresses of any other offices in Australia,
- (h) any other particulars requested in writing by the appropriate Council.

Clause 16 Legal Profession Regulation 2002

Part 5 Foreign lawyers

Part 5 Foreign lawyers

16 Period after which registration application is taken to be refused: section 48ZM (2)

For the purposes of section 48ZM (2) of the Act, the prescribed period is 3 months.

17 Period during which foreign lawyer may apply for renewal of registration: section 48ZN (3)

For the purposes of section 48ZN (3) of the Act, the prescribed period is the period commencing on 1 April and ending on 15 May before the current registration expires.

18 Information in application to register or renew registration: section 48ZO (1) (b)

- (1) For the purposes of section 48ZO (1) (b) of the Act, an application to register, or renew the registration of, a foreign lawyer under Part 3C of the Act must contain or be accompanied by a New South Wales address for service for the foreign lawyer.
- (2) The address referred to in subclause (1) may be an office or residential address but may not be a post office box address, an E-mail address or the number of an exchange box at a document exchange (DX).

19 Cancellation of registration—time within which foreign lawyer must establish office or commercial presence: section 48ZQ (2) (d)

For the purposes of section 48ZQ (2) (d) of the Act, the prescribed period is 3 months.

20 Scope of practice of foreign law: section 48ZS (1) (b) and (d)

- (1) For the purposes of section 48ZS (1) (b) of the Act, a locally registered foreign lawyer may provide legal services (including appearances) in relation to all kinds of arbitration proceedings, including but not limited to services relating to the arbitration of industrial disputes undertaken in accordance with Chapter 3 of the *Industrial Relations Act 1996*.
- (2) For the purposes of section 48ZS (1) (d) of the Act, a locally registered foreign lawyer may provide legal services in relation to all kinds of

Legal Profession Regulation 2002

Clause 20

Foreign lawyers

Part 5

conciliation, mediation and other forms of consensual dispute resolution, including but not limited to the following:

- (a) services relating to the conciliation of industrial disputes undertaken in accordance with Chapter 3 of the *Industrial Relations Act 1996*, and
- (b) services relating to mediation and neutral evaluation undertaken in accordance with the following provisions:
 - (i) Part 4A of the *Compensation Court Act 1984*,
 - (ii) Part 3A of the *District Court Act 1973*,
 - (iii) Part 5A of the *Land and Environment Court Act 1979*,
 - (iv) Part 3C of the *Local Courts (Civil Claims) Act 1970*,
 - (v) Part 7B of the *Supreme Court Act 1970*.

21 Fidelity Fund contributions: sections 48ZAB and 78A

- (1) This clause applies to a locally registered foreign lawyer practising foreign law in the State in partnership with, or as an employee of, a domestic lawyer, firm of domestic lawyers or incorporated legal practice.
- (2) A foreign lawyer to whom this clause applies must on registration by the domestic registration authority (being the Law Society Council) pay to the Law Society on account of the Fidelity Fund the appropriate contribution to the Fidelity Fund for the year ending on 30 June during which the registration is to be in force.
- (3) The amount of a contribution to the Fidelity Fund is the amount determined by the Law Society Council and approved by the Attorney General in accordance with section 76 (2) of the Act in respect of solicitors (other than solicitors who are interstate legal practitioners).
- (4) The Law Society Council may permit a contribution to be paid by instalments under an arrangement approved by the Council.
- (5) If the foreign lawyer is registered after 31 December in a year ending on 30 June, the amount of the contribution that would otherwise be payable for that year is reduced by one-half.
- (6) If a foreign lawyer to whom this clause applies has paid a contribution for a year ending on 30 June and ceases to practise as a locally registered foreign lawyer at any time before 30 June in that year, the Law Society may refund a part of the contribution at a rate determined by the Law Society Council.

Clause 22 Legal Profession Regulation 2002

Part 6 Incorporated legal practices

Division 1 Preliminary

Part 6 Incorporated legal practices

Division 1 Preliminary

22 Definitions

In this Part:

ASIC means the Australian Securities and Investments Commission.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

non-legal services means services provided by an incorporated legal practice that are not legal services, but does not include clerical or administrative services (such as typing, filing and photocopying) that are provided in connection with legal services.

23 Exempt corporations

For the purposes of section 47C (3) (c) of the Act, the following corporations are exempt and are not incorporated legal practices:

- (a) the Law Society,
- (b) the Bar Association,
- (c) a community legal centre that complies with section 48H of the Act.

Division 2 Disclosures to be made with respect to legal services

24 Disclosures to be made with respect to legal services

- (1) If a client engages an incorporated legal practice to provide legal services, each solicitor director of the incorporated legal practice, and any solicitor who provides the legal services, must ensure that a disclosure is made to the client in connection with the provision of legal services.
- (2) The disclosure is to be made by giving the client a notice in writing setting out the following:
 - (a) a description of the legal services to be provided to the client,

Legal Profession Regulation 2002	Clause 24
Incorporated legal practices	Part 6
Disclosures to be made with respect to legal services	Division 2

- (b) advice that the provision of legal services by the incorporated legal practice, including by any officer or employee of the corporation who is a solicitor, is regulated by the *Legal Profession Act 1987*,
 - (c) a description of the non-legal services (if any) to be provided to the client,
 - (d) advice that the *Legal Profession Act 1987* does not regulate the provision of those non-legal services.
- (3) The disclosure is to be made before any legal services are provided to the client, or as soon as practicable afterwards.
 - (4) The disclosure is to be made on every occasion that the client retains the incorporated legal practice to provide legal services.
 - (5) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.

Division 3 Application of Part 6 of the Act

Note. Section 47L of the Act provides that Part 6 of the Act applies to incorporated legal practices and, for that purpose, authorises the regulations to modify the application of Part 6.

25 Money received by incorporated legal practice for non-legal services

- (1) This clause applies to money received by an incorporated legal practice, including by an officer or employee of an incorporated legal practice, in connection with or in the course of providing non-legal services.
- (2) Each solicitor director of an incorporated legal practice must ensure that any money to which this clause applies:
 - (a) is not deposited in a general trust account that is kept for the purposes of section 61 of the Act, and
 - (b) is not kept in the same account as any controlled money.
- (3) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.

26 Keeping of accounts: section 62

- (1) Each solicitor director of an incorporated legal practice must ensure that section 62 of the Act, and the regulations under that section, are complied with:

Clause 26 Legal Profession Regulation 2002

Part 6 Incorporated legal practices

Division 3 Application of Part 6 of the Act

- (a) in respect of any money received by the incorporated legal practice on behalf of another person in connection with legal services provided by the practice, and
 - (b) in respect of any money received by an officer or employee of the incorporated legal practice on behalf of another person in the course of providing legal services.
- (2) A contravention of this clause is capable of being unsatisfactory professional conduct or professional misconduct.
 - (3) This clause does not affect the liability of any other solicitor, who provides legal services in the capacity of officer or employee of an incorporated legal practice, for a failure to comply with section 62 of the Act, or the regulations under that section.

27 Audits

- (1) Section 63 of the Act, and the regulations under that section, apply to the records of an incorporated legal practice in the same way as they apply to a solicitor's records or the records relating to a solicitor's practice.
- (2) A reference in section 63 (2) of the Act to a solicitor is, in relation to an incorporated legal practice, a reference to each solicitor director of the incorporated legal practice and to any solicitor who is an officer or employee of the incorporated legal practice.

Note. The effect of subclause (2) is that the obligation under section 63 (2) of the Act to co-operate with an auditor falls on both the solicitor director of an incorporated legal practice and any solicitors who are officers or employees of the incorporated legal practice.

28 Application of section 64 of the Act to incorporated legal practices

Section 64 of the Act applies to each solicitor who is an officer or employee of an incorporated legal practice, and to money paid to a trust account kept by the incorporated legal practice, in the same way as it applies to a solicitor and a trust account kept by a solicitor.

Legal Profession Regulation 2002	Clause 28
Incorporated legal practices	Part 6
Application of Part 11 of the Act	Division 4

Division 4 Application of Part 11 of the Act

Note. Section 47J of the Act provides that Part 11 of the Act applies to legal services provided by an incorporated legal practice and, for that purpose, authorises the regulations to modify the application of Part 11.

29 Solicitor directors must ensure cost disclosure requirements are complied with

- (1) Each solicitor director of an incorporated legal practice must ensure that Division 2 of Part 11 of the Act is complied with in respect of any legal services provided to a client by the incorporated legal practice (including by an officer or employee of the incorporated legal practice).
- (2) A failure by a solicitor director of an incorporated legal practice to ensure that Division 2 of Part 11 of the Act is complied with, in respect of such legal services, is capable of being unsatisfactory professional conduct or professional misconduct.
- (3) This clause does not affect the liability of any other solicitor, who provides legal services in the capacity of an officer or employee of an incorporated legal practice, for a failure to comply with Division 2 of Part 11 of the Act.

30 Costs assessment

- (1) Sections 200 and 201 of the Act apply in respect of an incorporated legal practice.
- (2) However, an application:
 - (a) under section 200 of the Act for an assessment of a bill of costs given to an incorporated legal practice by a barrister or solicitor retained by the incorporated legal practice, or
 - (b) under section 201 of the Act for an assessment of a bill of costs given by the incorporated legal practice,may be made only by a solicitor director of the incorporated legal practice, on behalf of the incorporated legal practice, and not by the incorporated legal practice itself.
- (3) Section 203 of the Act applies in respect of the application, but references to documents of or held by the applicant are taken to include references to documents of or held by the incorporated legal practice.

Clause 30 Legal Profession Regulation 2002

Part 6 Incorporated legal practices

Division 4 Application of Part 11 of the Act

- (4) An application for a review of such an assessment under section 208KA of the Act may be made only by a solicitor director of the incorporated legal practice, on behalf of the incorporated legal practice, and not by the incorporated legal practice itself.
- (5) Despite anything to the contrary in this clause, any certificate issued under Subdivision 4 or 4A of Division 6 of Part 11 of the Act in respect of an assessment or a review applied for by a solicitor director on behalf of an incorporated legal practice is enforceable against the incorporated legal practice and not the solicitor director.

31 Liability for overcharging and misrepresentations as to costs

- (1) Section 208Q of the Act applies in respect of any conduct of an incorporated legal practice.
- (2) For that purpose, the deliberate charging of grossly excessive amounts of costs or a deliberate misrepresentation as to costs by an incorporated legal practice (including by an officer or employee of the incorporated legal practice) constitutes professional misconduct by:
 - (a) each solicitor director of the incorporated legal practice, and
 - (b) the solicitor (if any) involved in the conduct.

Division 5 Investigation and review of incorporated legal practices

32 Purposes for which powers may be exercised

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred by this Division for the following purposes:
 - (a) an investigation referred to in section 55 or 152 of the Act (as applied by section 47O of the Act),
 - (b) a review conducted under section 47P of the Act.
- (2) The Law Society Council and the Legal Services Commissioner are not required to jointly exercise the powers conferred by this Division.
- (3) This Division does not limit any powers the Law Society Council and the Legal Services Commissioner have under the Act.

Legal Profession Regulation 2002	Clause 33
Incorporated legal practices	Part 6
Investigation and review of incorporated legal practices	Division 5

33 Examination of persons

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred on ASIC by Division 2 of Part 3 of the ASIC Act.
- (2) Division 2 of Part 3 of the ASIC Act applies to and in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
 - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
 - (b) a reference to a matter that is being or is to be investigated under Division 1 of Part 3 of that Act is taken to be a reference to a matter that is being or is to be investigated or reviewed by the Law Society Council or the Legal Services Commissioner as referred to in clause 32,
 - (c) a reference in section 19 to a person is taken to be a reference to a solicitor or an incorporated legal practice,
 - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Law Society Council or the Legal Services Commissioner.
- (3) Sections 22 (2), 25 (2), 26 and 27 of the ASIC Act do not apply in respect of the exercise of the powers conferred on the Law Society Council and the Legal Services Commissioner by this clause.

34 Inspection of books

- (1) The Law Society Council and the Legal Services Commissioner may exercise the powers conferred on ASIC by sections 30 (1), 34 and 37–39 of the ASIC Act.
- (2) Those provisions apply to and in respect of the exercise of those powers, with the following modifications (and any other necessary modifications):
 - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
 - (b) a reference to a body corporate (including a body corporate that is not an exempt public authority) is taken to be a reference to an incorporated legal practice,

Clause 34	Legal Profession Regulation 2002
Part 6	Incorporated legal practices
Division 5	Investigation and review of incorporated legal practices

- (c) a reference to an eligible person in relation to an incorporated legal practice is taken to be a reference to an officer or employee of the incorporated legal practice,
- (d) a reference to a member or staff member is taken to be a reference to the Law Society Council, the Legal Services Commissioner or a person authorised by the Council or the Commissioner who is an officer or employee of the Council or the Commissioner,
- (e) a reference in section 37 to a proceeding is taken to be a reference to an investigation or review referred to in clause 32, or any proceedings under the Act that arise as a result of that investigation or review.

35 Power to hold hearings

- (1) The Law Society Council and the Legal Services Commissioner may hold hearings for the purpose of an investigation or review referred to in clause 32.

Note. Compare section 51 of the ASIC Act.

- (2) Sections 52, 56 (1), 58, 59 (1), (2), (5), (6) and (8) and 60 (paragraph (b) excepted) of the ASIC Act apply to and in respect of any such hearing, with the following modifications (and any other necessary modifications):
 - (a) a reference to ASIC (however expressed) is taken to be a reference to the Law Society Council or the Legal Services Commissioner,
 - (b) a reference to a member or staff member is taken to be a reference to the Law Society Council, the Legal Services Commissioner or a person authorised by the Council or the Commissioner who is an officer or employee of the Council or the Commissioner,
 - (c) a reference to a person in section 58 is taken to be a reference to a solicitor or an incorporated legal practice,
 - (d) a reference to a prescribed form is taken to be a reference to a form approved by the Law Society Council or the Legal Services Commissioner.

Legal Profession Regulation 2002	Clause 36
Incorporated legal practices	Part 6
Investigation and review of incorporated legal practices	Division 5

36 Failure to comply with investigation or review

The following acts or omissions are capable of being unsatisfactory professional conduct or professional misconduct:

- (a) a failure by a solicitor to comply with any requirement made by the Law Society Council or the Legal Services Commissioner, or a person authorised by the Council or the Commissioner, in the exercise of the powers conferred by this Division,
- (b) a contravention by a solicitor of any condition imposed by the Law Society Council or Legal Services Commissioner in the exercise of the powers conferred by this Division,
- (c) a failure by a solicitor director of an incorporated legal practice to ensure that the incorporated legal practice, or any officer or employee of the incorporated legal practice, complies with any of the following:
 - (i) any requirement made by the Law Society Council or the Legal Services Commissioner, or a person authorised by the Council or the Commissioner, in the exercise of the powers conferred by this Division,
 - (ii) any condition imposed by the Law Society Council or Legal Services Commissioner in the exercise of the powers conferred by this Division.

Division 6 Appointment of solicitor director

37 Appointment of new solicitor director

For the purposes of section 48D (3) of the Act, the prescribed time (being the time in which a new solicitor director must be appointed for the purposes of that section) is the period of 7 days commencing when the incorporated legal practice ceases to have a solicitor director.

Clause 38 Legal Profession Regulation 2002

Part 7 Indemnity insurance

Part 7 Indemnity insurance

38 Insurable barristers

- (1) For the purposes of the definition of *insurable barrister* in section 38R (4) of the Act, a barrister is required to be an insured barrister if the barrister holds a practising certificate which entitles the holder to practise as a barrister on his or her own account.
- (2) However, a barrister is not required to be an insured barrister:
 - (a) if the barrister is exempted, or is a member of a class of barristers which is exempted, from that requirement by the Bar Council, or
 - (b) because of any practice referred to in section 38Q of the Act.
- (3) The Bar Council may exempt barristers or classes of barristers from the requirement to be insured on such grounds as the Council considers sufficient.

39 Insurable solicitors

- (1) For the purposes of the definition of *insurable solicitor* in section 39 of the Act, a solicitor is required to be an insured solicitor if the solicitor holds a practising certificate which entitles the holder to practise as a solicitor on his or her own account.
- (2) However, a solicitor is not required to be an insured solicitor:
 - (a) if the solicitor has given a written undertaking to the Law Society Council that the solicitor will not practise during the period to which the practising certificate relates otherwise than in the course of the solicitor's employment by a body or person specified in the undertaking, or
 - (b) if the solicitor is exempted, or is a member of a class of solicitors which is exempted, from the requirement by the Law Society Council.
- (3) Subclause (2) (a) does not apply in respect of a solicitor who is employed by an incorporated legal practice.
- (4) The Law Society Council may exempt solicitors or classes of solicitors from the requirement to be insured on such grounds as the Council considers sufficient.

Legal Profession Regulation 2002

Clause 40

Indemnity insurance

Part 7

40 Provision of information relating to insurance

- (1) An insurable barrister or insurable solicitor must, on receipt of a request in writing from the appropriate Council, provide to the Council or its brokers (as the Council may direct) such information as to the conduct of the barrister's or solicitor's practice as the Council may require for any purpose related to the insurance of barristers or solicitors under the Act.
- (2) Without limiting the type of information that may be required under subclause (1), the information required may include the following:
 - (a) particulars of the income earned by the practice and the terms of employment of the persons employed in the practice,
 - (b) in relation to a solicitor director, information as to the conduct of an incorporated legal practice of which the solicitor is a solicitor director.
- (3) In this clause:

insurable barrister means a barrister required by clause 38 to be an insured barrister.

insurable solicitor means a solicitor required by clause 39 to be an insured solicitor.

Clause 41 Legal Profession Regulation 2002

Part 8 Solicitors' fidelity fund

Part 8 Solicitors' fidelity fund

41 Solicitors exempt from contributions: section 76 (5)

Each corporation that is:

- (a) an authority that is established by or under an Act and that is (or whose governing body is) constituted by persons appointed by the Governor or a Minister, or
- (b) a statutory body that represents the Crown,

is prescribed for the purposes of section 76 (5) of the Act.

42 Interest on claims: section 85 (1)

The rate of interest prescribed for the purposes of section 85 (1) of the Act is 5 per cent per annum.

43 Time for appeal against failure to determine claim: section 90D (3)

For the purposes of section 90D (3) of the Act, the prescribed period is the period of 28 days after the day on which the claim is received by the Law Society.

44 Multidisciplinary partnerships: section 48G

A claim may not be made under Part 7 of the Act in respect of a failure to account or a dishonest default by a person who is in a partnership authorised under section 48G of the Act but who is not a barrister or solicitor unless the failure to account or dishonest default occurred in the course of the business of the partnership that is business of a barrister or solicitor.

Note. Section 48G (3) (e) of the Act applies Part 7 of the Act, subject to the regulations, in respect of a partnership in which a barrister or solicitor is authorised by that section to be a member.

Legal Profession Regulation 2002

Clause 45

Legal fees and costs

Part 9

Bill of costs

Division 1

Part 9 Legal fees and costs

Division 1 Bill of costs

45 Particulars in bill of costs

- (1) For the purposes of section 193 (1) of the Act, the following particulars are to be included in a bill of costs:
 - (a) a description of the legal service provided,
 - (b) the total amount of the costs charged,
 - (c) any intended claim for interest under section 190 of the Act if the costs are not paid (including the rate of interest),
 - (d) a statement that the client may apply to have the costs assessed under Part 11 of the Act, but that if the costs have been wholly or partly paid, the application must be made within 12 months after the client is given the bill of costs,
 - (e) the work done in providing the legal service,
 - (f) the period over which that work was done,
 - (g) the identity of the persons who did that work (including the position of the persons, for example, partner, associate),
 - (h) the basis on which the costs have been calculated and charged (whether on a lump sum basis, an hourly rate basis, an item of work basis, a part of proceedings basis or other basis),
 - (i) the facts relied on to justify the costs charged by reference to the above, the practitioner's skill, labour and responsibility, the complexity, novelty or difficulty of the matter, the quality of the work done or any other relevant matter.
- (2) However, the particulars referred to in subclause (1) (e)–(i) need not be included in the bill of costs if:
 - (a) the total amount of costs charged is the amount, or an amount calculated on the basis, set out in a costs agreement for the legal service made under Division 3 of Part 11 of the Act or disclosed in accordance with Division 2 of that Part, and
 - (b) the bill of costs refers to the relevant costs agreement or disclosure document.

Clause 45 Legal Profession Regulation 2002

Part 9 Legal fees and costs

Division 1 Bill of costs

- (3) A bill of costs may comprise more than 1 document.

Note. The above particulars are prescribed for a bill of costs required to be given by a practitioner before costs may be recovered from a client (see section 192 of the Act). A copy of the bill must be attached to an application for assessment of practitioner/client costs (see Forms 1 and 2). In an assessment of party/party costs, the particulars required are those set out in Form 3.

Division 2 Costs fixed by regulation

46 Prescribed costs for legal services in workers compensation matters: section 196 (1) (a)

- (1) This clause applies to costs for legal services provided in any workers compensation matter.
- (2) The fair and reasonable costs fixed for a legal service specified in Schedule 2 are the costs specified in relation to that service in that Schedule, calculated in accordance with that Schedule.
- (3) However, after calculating the costs for legal services specified in Parts 1 and 2 of Schedule 2, the total of all such costs is to be reduced by 10%.

Note. Section 208O (1) of the Act requires any assessment of costs for a legal service provided in any workers compensation matter to be made in accordance with the costs fixed by this clause. (Section 196 (2) of the Act provides that a barrister or solicitor may not charge a client more than the fixed cost for such a legal service.)

However, this clause is subject to the *Workplace Injury Management and Workers Compensation Act 1998* which includes provisions in relation to costs and the assessment of costs in workers compensation matters.

47 Prescribed costs for recovery of certain debts and enforcement of certain judgments: section 196 (1) (b) and (b1)

- (1) The costs payable for:
 - (a) the uncontested recovery of a lump sum debt, or
 - (b) the enforcement of a judgment by a judgment creditor,
 are the costs specified in Schedule 3.
- (2) The costs specified in Schedule 3 are inclusive of all attendances, copying, letters, perusals, searches and telephone calls by or on behalf of the legal practitioner (being the legal practitioner retained by the plaintiff) in relation to the action concerned.

Legal Profession Regulation 2002	Clause 48
Legal fees and costs	Part 9
Costs fixed by regulation	Division 2

48 Prescribed costs for non-legal services in workers compensation matters: section 196 (1) (c)

- (1) This clause applies to costs for a matter that is not a legal service but is related to proceedings in any workers compensation matter.
- (2) The amount of costs fixed for a service specified in Schedule 4 is the amount specified in relation to that service in that Schedule, calculated in accordance with that Schedule.

Note. Section 208O (2) of the Act requires an assessment of costs for a non-legal service to be made having regard to the costs fixed by this clause. (Section 196 (2) of the Act does not regulate the amount that a barrister or solicitor may charge a client for such a non-legal service.)

49 Prescribed costs for probate matters (non-contentious): section 196

A determination of the Legal Fees and Costs Board in force under section 179 of the Act immediately before the substitution of that section by the *Legal Profession Reform Act 1993* continues in force, on and from that repeal, as if it were a regulation under section 196 (1) (b2) of the Act but only to the extent that the determination:

- (a) applies to legal services relating to probate matters (other than the administration of estates), and
- (b) could have been made as a regulation if section 196 (1) (b2) (as inserted by the *Legal Profession Amendment Act 1996*) had been in force when the determination was made.

50 GST may be added to costs

- (1) Despite the other provisions of this Division, a cost fixed by this Division may be increased by the amount of any GST payable in respect of the legal or other service to which the cost relates, and the cost as so increased is taken to be the cost fixed by this Division.
- (2) This clause does not permit a legal practitioner to charge or recover, in respect of GST payable in respect of a legal or other service, an amount that is greater than:
 - (a) 10% of the maximum amount payable to the legal practitioner in respect of the legal or other service apart from this clause, or
 - (b) the amount permitted under the New Tax System Price Exploitation law,
 whichever is the lesser.

Clause 50 Legal Profession Regulation 2002

Part 9 Legal fees and costs

Division 2 Costs fixed by regulation

(3) In this clause:

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

New Tax System Price Exploitation law means:

- (a) the *New Tax System Price Exploitation Code*, as applied as a law of New South Wales by the *Price Exploitation Code (New South Wales) Act 1999*, or
- (b) Part VB of the *Trade Practices Act 1974* of the Commonwealth.

Division 3 Miscellaneous

51 Barristers may receive costs in advance

- (1) A barrister may, in the course of practising as a barrister, receive money in advance for costs to accrue due to, or to be paid by, the barrister.

Note. "Costs" includes barristers' fees as well as other charges by barristers (such as expenses and disbursements): section 3 of the Act.

- (2) This clause does not affect any trust to which money received by a barrister is subject, or any obligation of a barrister under such a trust.

Legal Profession Regulation 2002

Clause 52

Costs assessments

Part 10

Assessment of bill of costs (other than party/party costs)

Division 1

Part 10 Costs assessments

Division 1 Assessment of bill of costs (other than party/party costs)

52 Limitation period for applications by clients for cost assessment where bill paid or part paid

For the purposes of section 199 (2) of the Act, the prescribed period for making an application for an assessment of a bill of costs is:

- (a) except as provided by paragraph (b), the period of 12 months after the bill was given to the client, or
- (b) if a Council or the Commissioner applies for an assessment of costs for the purpose of investigating a complaint as referred to in section 153 (1) of the Act, the period of 12 months after the complaint was made.

53 Form of, and fee for, application for assessment of bill of costs

- (1) For the purposes of section 203 (1) of the Act, the prescribed form of application for assessment (other than an application for assessment of party/party costs under section 202 of the Act) is:

- (a) in the case of an application by the client—Form 1, or
- (b) in any other case—Form 2.

The application is to be made to the Manager, Costs Assessment in duplicate.

- (2) For the purposes of section 203 (1) of the Act, the prescribed fee that is to accompany such an application is the greatest of the following amounts:

- (a) \$100,
- (b) 1 per cent of the amount remaining unpaid on the bill of costs at the time the application is made,
- (c) 1 per cent of the amount of costs in dispute at the time the application is made.

- (3) For the purposes of this clause, the amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the person liable to pay them.

Clause 54	Legal Profession Regulation 2002
Part 10	Costs assessments
Division 1	Assessment of bill of costs (other than party/party costs)

54 Procedure before application for assessment of bill of costs referred to assessor

- (1) On receipt of an application for assessment of a bill of costs made under section 199 of the Act by a client or under section 200 of the Act by an instructing practitioner, the Manager, Costs Assessment is to deal with the application as follows:
 - (a) A copy of the application that is required by section 204 to be sent by the Manager, Costs Assessment to the practitioner who gave the bill of costs is to be accompanied by a notice advising the practitioner that any response to the application must be lodged with the Manager, Costs Assessment in writing within 21 days after the practitioner receives the notice.
 - (b) A copy of any response duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the applicant.
 - (c) The application is to be referred by the Manager, Costs Assessment to a costs assessor for assessment in accordance with section 206 of the Act as soon as practicable after any response is duly lodged with the Manager, Costs Assessment or, if no response is duly lodged, as soon as practicable after the period referred to in paragraph (a).
 - (d) Any relevant response, and any response that is lodged out of time, is to be sent by the Manager, Costs Assessment to the costs assessor to whom the application for assessment is referred.
- (2) In subclause (1), *instructing practitioner* means a barrister or solicitor who retains another barrister or solicitor to act on behalf of a client.
- (3) On receipt of an application for assessment of a bill of costs made under section 201 of the Act by the barrister or solicitor giving the bill, the Manager, Costs Assessment is to deal with the application as follows:
 - (a) A copy of the application required by section 204 to be sent by the Manager, Costs Assessment to the person who was given the bill of costs is to be accompanied by a notice advising the person that any objection to the application must be lodged with the Manager, Costs Assessment in writing within 21 days after the person receives the notice.

Legal Profession Regulation 2002	Clause 54
Costs assessments	Part 10
Assessment of bill of costs (other than party/party costs)	Division 1

- (b) A copy of any objection duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the applicant with a notice advising the applicant that any response to the objection must be lodged with the Manager, Costs Assessment in writing within 21 days after the applicant receives the notice.
- (c) A copy of any response duly lodged with the Manager, Costs Assessment is to be sent by the Manager, Costs Assessment to the person who lodged the objection.
- (d) The application is to be referred by the Manager, Costs Assessment to a costs assessor for assessment in accordance with section 206 of the Act:
 - (i) if no objection is duly lodged with the Manager, Costs Assessment—as soon as practicable after the period referred to in paragraph (a), or
 - (ii) if an objection is duly lodged—as soon as practicable after a response is duly lodged with the Manager, Costs Assessment or, if no response is duly lodged, as soon as practicable after the period referred to in paragraph (b).
- (e) Any relevant objection or response, and any objection or response that is lodged out of time, is to be sent by the Manager, Costs Assessment to the costs assessor to whom the application for assessment is referred.

Note. Section 204 of the Act requires the Manager, Costs Assessment to cause a copy of an application for assessment (whether or not for practitioner/client costs) to be given to any barrister, solicitor or client concerned or any other person whom the Manager, Costs Assessment thinks it appropriate to notify.

Section 207 of the Act enables the costs assessor to whom an application is referred to obtain further particulars about the application by notice served on a party.

Division 2 Assessment of party/party costs

55 Form of, and fee for, application for assessment of party/party costs

- (1) For the purposes of section 203 (1) of the Act, the prescribed form of application for assessment of party/party costs under section 202 (1) of the Act is Form 3.
- (2) The application is to be made to the Manager, Costs Assessment in duplicate.

Clause 55 Legal Profession Regulation 2002

Part 10 Costs assessments

Division 2 Assessment of party/party costs

- (3) For the purposes of section 203 (1) of the Act, the prescribed fee that is to accompany such an application is the greatest of the following amounts:
- (a) \$100,
 - (b) 1 per cent of the amount of costs remaining unpaid at the time the application is made,
 - (c) 1 per cent of the amount of costs in dispute at the time the application is made.
- (4) For the purposes of this clause, the amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the person liable to pay them.

56 Procedure before application for assessment of party/party costs

- (1) The following procedure applies to an application for assessment of party/party costs made under section 202 (1) of the Act by the person to whom the costs are payable:
- (a) Before the application is made to the Manager, Costs Assessment, the person proposing to make the application is to complete the form of application in Form 3 and send a copy of the application to the person liable to pay the costs with a notice advising the person that any objection to the application must be lodged with the applicant in writing within 21 days after the person receives the notice.
 - (b) The applicant is to attach to the application any such objection received by the applicant before the application is lodged with the Manager, Costs Assessment. The applicant may attach to the application a response to any such objection.
 - (c) If no such objection is received, the applicant is to certify in the application that no objection was received by the applicant before the application was lodged with the Manager, Costs Assessment.
 - (d) The application may not be lodged with the Manager, Costs Assessment until after the applicant duly receives an objection or the period referred to in paragraph (a) expires (whichever first occurs).
 - (e) In accordance with section 204 of the Act, a copy of the application is to be sent by the Manager, Costs Assessment to the person who is liable to pay the costs.

Legal Profession Regulation 2002

Clause 56

Costs assessments

Part 10

Assessment of party/party costs

Division 2

- (f) Any objection that is lodged with the applicant after the application is lodged with the Manager, Costs Assessment is to be sent by the applicant to the costs assessor to whom the application for assessment is referred (together with any response that the applicant wishes to make).
- (2) The following procedure applies to an application for assessment of party/party costs made under section 202 (1) of the Act by the person liable to pay the costs:
- (a) Before the application is made to the Manager, Costs Assessment, the person proposing to make the application is to complete the relevant parts of the form of application in Form 3 and send the application to the person to whom the costs are payable with a notice advising the person that the information required by paragraph 5 of Form 3 is to be provided by the person and the completed application form returned to the applicant within 21 days after the person receives the notice (or within such longer period as the applicant and the person agree).
- (b) If the applicant wishes to object to the information provided, the applicant is to lodge the objection in writing with the person who provided the information with a notice advising the person that any response to the objection must be lodged with the applicant in writing within 21 days after the person receives the notice.
- (c) The applicant is to attach to the application any such objection made by the applicant and any response received by the applicant before the application is lodged with the Manager, Costs Assessment.
- (d) If no such response is received, the applicant is to certify in the application that no response to the objection made by the applicant was received by the applicant before the application was lodged with the Manager, Costs Assessment.
- (e) The application may not be lodged with the Manager, Costs Assessment until after the applicant receives the information referred to in paragraph (a) and, if an objection is duly made by the applicant, until:
- (i) if no response is duly lodged by the other person—after the period referred to in paragraph (b), or
- (ii) if a response is duly lodged—after the response is lodged.

Clause 56 Legal Profession Regulation 2002

Part 10 Costs assessments

Division 2 Assessment of party/party costs

- (f) However, if the information referred to in paragraph (a) is not provided within the period specified in that paragraph, the application may be lodged with the Manager, Costs Assessment at any time after that period has expired.
 - (g) In accordance with section 204 of the Act, a copy of the application is to be sent by the Manager, Costs Assessment to the person to whom the costs are payable.
 - (h) Any response that is lodged with the applicant after the application is lodged with the Manager, Costs Assessment is to be sent by the applicant to the costs assessor to whom the application for assessment is referred.
- (3) On receipt of a direction by a court or tribunal under section 202 (2) of the Act for assessment of party/party costs, the Manager, Costs Assessment is to deal with the direction as if it were an application referred to in subclause (2) made by the person liable to pay the costs and as if the Manager, Costs Assessment were the applicant.

Note. Section 204 of the Act requires the Manager, Costs Assessment to cause a copy of an application for assessment (whether or not for party/party costs) to be given to any barrister, solicitor or client concerned or any other person whom the Manager, Costs Assessment thinks it appropriate to notify.

Section 207 of the Act enables the costs assessor to whom an application is referred to obtain further particulars about the application by notice served on a party.

57 Determination of costs of party/party assessment

In determining under section 208F (4) of the Act by whom and to what extent the costs of the assessment of party/party costs are to be paid, the costs assessor may have regard to the following:

- (a) the extent to which the determination of the amount of fair and reasonable party/party costs differs from the amount of those costs claimed in the application for assessment,
- (b) whether or not, in the opinion of the costs assessor, either or both of the parties to the application made a genuine attempt to agree on the amount of the fair and reasonable costs concerned,

Legal Profession Regulation 2002	Clause 57
Costs assessments	Part 10
Assessment of party/party costs	Division 2

- (c) whether or not, in the opinion of the costs assessor, a party to the application unnecessarily delayed the determination of the application for assessment.

Note. Section 208F (5) of the Act provides that the costs under any such determination, to the extent that it relates to the costs of the costs assessor, are to be paid to the Manager, Costs Assessment of the Supreme Court. A certificate of such a determination may, under section 208J (3) of the Act, be filed in a court of competent jurisdiction and operates as a judgment debt.

Division 3 **Assessment of costs (general provisions)**

58 Information relating to assessment of costs

- (1) In addition to the requirements of section 208 of the Act, the costs assessor to whom an application for assessment of costs is referred is to give due consideration to the information in the application and the information provided in accordance with clause 54 or 56.

Note. Section 208 of the Act imposes an obligation on the costs assessor to give the parties a reasonable opportunity to make written submissions to the costs assessor in relation to the application for assessment and to give due consideration to any submission so made.

- (2) The costs assessors' rules committee may, for the purpose of assisting costs assessors in assessing costs, distribute to costs assessors any of the following:
- (a) information that has been published about market rates for legal costs,
 - (b) information about comparative assessments of costs previously made by costs assessors,
 - (c) relevant judgments of the Supreme Court on appeal from costs assessors' determinations,
 - (d) information about relevant provisions of the Act and this Regulation relating to costs assessment,
 - (e) any other relevant information.

Clause 59	Legal Profession Regulation 2002
Part 10	Costs assessments
Division 3	Assessment of costs (general provisions)

59 Settlement of matter by consent

A costs assessor may determine that the amount of fair and reasonable costs is the amount agreed to by the parties if during the course of the assessment the parties notify the costs assessor that they have agreed on the amount of those costs.

Note. In the case of party/party costs, section 208F (4) of the Act provides that the costs assessed are to include, in addition to the fair and reasonable amount of costs, the costs of the assessment (including the costs of the costs assessor).

60 Delivery of application for assessment and related documents

- (1) This clause applies to an application for assessment of costs, and any notice, information, objection, response or other document in relation to the application.
- (2) A document to which this clause applies may be given to a party to a costs assessment in the same way as a bill of costs may be given under section 195 of the Act.
- (3) A document to which this clause applies may be given to a costs assessor:
 - (a) in the same way as a bill of costs may be given under section 195 of the Act, or
 - (b) in any other manner that the costs assessor authorises.
- (4) A document to which this clause applies may be given to the Manager, Costs Assessment in any of the following ways:
 - (a) by filing it with the Manager, Costs Assessment,
 - (b) by sending it by post to the Manager, Costs Assessment, or
 - (c) by delivering it to the appropriate place in a document exchange in which the Manager, Costs Assessment has receiving facilities, or
 - (d) in any other manner that the Manager, Costs Assessment authorises.

Legal Profession Regulation 2002

Clause 61

Costs assessments

Part 10

Assessment of costs (general provisions)

Division 3

61 Certificate of determination of costs and statement of reasons

- (1) A costs assessor is to give to the Manager, Costs Assessment a copy of the certificate required to be given under section 208J of the Act.

Note. Section 208J of the Act requires a costs assessor, on making a determination, to issue to each party a certificate that sets out the determination.

- (2) A statement of reasons for a costs assessor's determination that is required by section 208JAA of the Act to accompany a certificate issued under section 208J of the Act must be accompanied by the following information:
- (a) the total amount of costs for providing legal services determined to be fair and reasonable,
 - (b) the total amount of disbursements determined to be fair and reasonable,
 - (c) each disbursement varied by the determination,
 - (d) in respect of any disputed costs, an explanation of:
 - (i) the basis on which the costs were assessed, and
 - (ii) how the submissions made by the parties were dealt with,
 - (e) if the costs assessor declines to assess a bill of costs under section 208C of the Act—the basis for doing so,
 - (f) if the costs assessor determines that a term of a costs agreement is unjust—the basis for doing so,
 - (g) a statement of any determination under section 208E of the Act that interest is not payable on the amount of costs assessed or, if payable, of the rate of interest payable.
- (3) A statement of reasons to which this clause applies may be accompanied by such further information as the costs assessor concerned considers is necessary to clarify the determination of the application for a costs assessment.

62 Circumstances in which assessor may not refuse to issue certificate

Section 208J (5) of the Act does not apply in respect of the issue of a certificate by a costs assessor under section 208J of the Act if the fee for the application for the costs assessment has been waived or postponed (either wholly or in part) by the Manager, Costs Assessment.

Clause 63	Legal Profession Regulation 2002
Part 10	Costs assessments
Division 3	Assessment of costs (general provisions)

63 Reference of applications to assessors

- (1) The Manager, Costs Assessment may, for the purpose of assisting in the reference of applications for assessment to costs assessors, group costs assessors in panels according to expertise, location and jurisdiction.
- (2) The Manager, Costs Assessment is to refer applications for assessment of costs to the most suitable costs assessor having regard to the following:
 - (a) the availability of costs assessors,
 - (b) the nature of the matter,
 - (c) in the case of an assessment of party/party costs—the jurisdiction of the court or tribunal in which the order for costs was made,
 - (d) the location of the parties and the legal practitioners acting for the parties concerned,
 - (e) the avoidance of conflict of interests of costs assessors.
- (3) The Manager, Costs Assessment must inform the parties to an application for assessment of the name, address and other contact details of the costs assessor to whom the application has been referred.

Division 4 Review of costs assessments by costs review panel

64 Application for review by costs review panel

- (1) For the purposes of section 208KA (2) (a) of the Act, an application for a review of a determination of a costs assessor is to be in Form 4 and is to be filed in triplicate.
- (2) For the purposes of section 208KA (2) (b) of the Act, the prescribed fee that is to accompany such an application is \$275.

65 Settlement of review application by consent

A costs review panel reviewing the determination of a costs assessor may determine that the amount of fair and reasonable costs is the amount agreed to by the parties to the review if during the course of the review the parties notify the panel that they have agreed on the amount of those costs.

Legal Profession Regulation 2002

Clause 66

Costs assessments

Part 10

Review of costs assessments by costs review panel

Division 4

66 Delivery of application for review and related documents

- (1) An application under section 208KA of the Act for a review by a costs review panel of a determination of a costs assessor is to be accompanied by (in addition to the prescribed fee required by that section):
 - (a) an affidavit that notice of the application has been given to the other parties, and
 - (b) a copy of all the costs assessor's certificates of determination relating to the assessment that is the subject of the application, and
 - (c) a copy of the costs assessor's statement of the reasons for the determination.
- (2) The applicant must give a copy of the application to the other parties.
- (3) Any other document in relation to the application that is required or permitted to be given to the Manager, Costs Assessment or a costs review panel may be given to the Manager, Costs Assessment or to the review panel in any of the following ways:
 - (a) by filing it with the Manager, Costs Assessment,
 - (b) by sending it by post to the Manager, Costs Assessment, or to a place nominated by the review panel,
 - (c) by delivering it to the appropriate place in a document exchange in which the Manager, Costs Assessment has receiving facilities,
 - (d) in any other way that a member of the panel on behalf of the panel directs.

67 Copy of certificate of determination to be given to Manager, Costs Assessment

The panel is to give to the Manager, Costs Assessment of the Supreme Court a copy of a certificate setting out the determination by the panel of an application for the review of a determination of a costs assessor.

68 Statement of reasons

- (1) A statement of reasons for a costs review panel's determination that is required by section 208KG of the Act to accompany a certificate issued under section 208KF of the Act must be accompanied by the following information:

Clause 68	Legal Profession Regulation 2002
Part 10	Costs assessments
Division 4	Review of costs assessments by costs review panel

- (a) the total amount of costs for providing legal services determined to be fair and reasonable,
 - (b) the total amount of disbursements determined to be fair and reasonable,
 - (c) each disbursement varied by the determination,
 - (d) in respect of any disputed costs, an explanation of:
 - (i) the basis on which the costs were assessed, and
 - (ii) how the submissions made by the parties were dealt with,
 - (e) a statement of any determination as to the person by whom and the extent to which either the fee paid or payable for the application for review or the costs of the costs assessor, or both, are to be paid,
 - (f) if the determination relates to costs other than party/party costs:
 - (i) if the panel declines to assess a bill of costs under section 208C of the Act, the basis for doing so,
 - (ii) if the panel determines that a term of a costs agreement is unjust, the basis for doing so,
 - (iii) a statement of any determination under section 208E of the Act that interest is not payable on the amount of costs (or any part of the amount) assessed, or, if payable, of the rate of interest payable.
- (2) A statement of reasons to which this clause applies may be accompanied by such further information as the costs review panel concerned considers is necessary to clarify the review of a costs assessor's determination.

69 Circumstances in which costs review panel may not refuse to issue certificate in respect of determination of review

Section 208KF (4) of the Act does not apply in respect of the issue of a certificate by a costs review panel under section 208KF of the Act if the fee for the application for a review by the panel has been waived or postponed (either wholly or in part) by the Manager, Costs Assessment.

Legal Profession Regulation 2002

Clause 70

Costs assessments

Part 10

Review of costs assessments by costs review panel

Division 4

70 Qualification for membership of costs review panels

- (1) A costs assessor is qualified to be a member of a costs review panel only if the assessor's name appears on the list compiled under subclause (2).
- (2) The Chief Justice of New South Wales may compile a list of costs assessors considered by the Chief Justice to be suitably qualified to be members of costs review panels.
- (3) The Chief Justice may amend or revoke any list compiled under this clause for any reason that the Chief Justice considers appropriate.
- (4) The Chief Justice may delegate any of his or her functions under this clause (other than this power of delegation) to:
 - (a) a Judge of the Supreme Court, or
 - (b) a committee comprised of 1 Judge of the Supreme Court and such other persons as the Chief Justice may appoint.

71 Reference of applications to costs review panels

- (1) The Manager, Costs Assessment may, for the purpose of assisting in the reference of applications for reviews of determinations by costs review panels under section 208KB of the Act, group costs assessors in panels according to factors including expertise, location and jurisdiction.
- (2) The Manager, Costs Assessment is to refer an application for a review by a costs review panel to a panel of the most suitable costs assessors having regard to the following:
 - (a) the availability of costs assessors,
 - (b) the nature of the matter,
 - (c) the location of the parties and the legal practitioners acting for the parties concerned,
 - (d) the avoidance of conflict of interests of costs assessors.
- (3) The Manager, Costs Assessment is:
 - (a) to issue a notice advising all parties directly affected by the review of the names of the costs assessors who constitute the costs review panel, and
 - (b) to direct that all correspondence to the panel be addressed care of the Manager, Costs Assessment unless a member of the panel on behalf of the panel directs otherwise.

Clause 72	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 1	General

Part 11 Trust accounts and controlled money

Division 1 General

72 Definitions

(1) In this Part:

bill of costs has the same meaning as it has in section 173 (1) of the Act.

computer control records means the records required to be kept under clause 75.

controlled money records means a Controlled Money Register maintained under clause 89, a controlled money ledger maintained under clause 90, a listing of accounts under clause 91 and any pass books, statements (including duplicate copies of statements of account kept under clause 77 (7)) or other documents relating to controlled money.

Investments Register means the register kept under Division 5.

run-out mortgage has the same meaning as it has in Part 9 of the Act.

trust records includes records of the following:

- (a) original receipts (if not delivered to the person from whom trust money is received, or if cancelled) and duplicate receipts,
- (b) bank, building society or credit union deposits,
- (c) cheques,
- (d) withdrawals by electronic funds transfer,
- (e) bank, building society or credit union statements,
- (f) daily receipt and cheque transactions,
- (g) ledger account journal transfers and adjustments,
- (h) ledger transactions,
- (i) ledger trial balance statements,
- (j) monthly reconciliations,
- (k) duplicate copies of statements of account kept under clause 77 (7),
- (l) authorities obtained under clause 102 (1).

Legal Profession Regulation 2002

Clause 72

Trust accounts and controlled money
GeneralPart 11
Division 1

visible form means any record of information by means of which the information can be produced on demand in permanent legible form in the English language.

- (2) A reference in this Part to money received by a solicitor has the same meaning as it has in section 60 (4) of the Act.
- (3) A reference in this Part to an account or deposit of controlled money includes a reference to:
 - (a) an account established in respect of controlled money at a bank, building society, credit union or other financial institution, and
 - (b) an interest bearing deposit or other deposit of controlled money.

73 “Associate”—extended meaning

For the purposes of paragraph (g) of section 60 (2) of the Act, an incorporated legal practice is an associate of a solicitor who is a solicitor director of the incorporated legal practice or an officer or employee of the incorporated legal practice.

74 Keeping of records

- (1) A solicitor must maintain, or cause to be maintained, in visible form at an office at which the solicitor’s practice is conducted and of which the Law Society has been notified (under clause 7):
 - (a) trust records and controlled money records, and
 - (b) if those records are maintained by means of a computer system—computer control records.
- (2) A solicitor may, at any other office at which the solicitor’s practice is conducted and of which the Law Society has been notified (under clause 7), maintain, or cause to be maintained, for that office in visible form separate records of the kind referred to in subclause (1).
- (3) A solicitor who maintains records under subclause (2) must, within 21 days after the end of each named month:
 - (a) compile with the records kept under subclause (1) the original, or a true copy, of each trial balance statement prepared by the solicitor in accordance with clauses 85 and 91 for that month, and
 - (b) maintain a monthly summary of the total of trust money and controlled money disclosed in the trial balance statements.

Clause 74	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 1	General

- (4) A solicitor who has maintained, or caused to be maintained, a record, statement or summary referred to in subclause (1), (2) or (3) or who has lawfully acquired possession of any such record, statement or summary must retain it for not less than 6 years after it is made.
- (5) However, subclause (4) does not apply to the solicitor if the record, statement or summary has passed to the lawful possession of another solicitor as a consequence of the disposal of the solicitor's practice.

75 Computer systems control

- (1) Without limiting any other provision of this Part, if a solicitor maintains trust records or controlled money records by means of a computer system, the solicitor must comply with this clause in relation to the records.
- (2) The solicitor must maintain a record, compiled in chronological sequence, of all changes (by creation, amendment or deletion) to any of the following information:
 - (a) the name of person for whom or on whose behalf trust money or controlled money is held,
 - (b) the address of the person,
 - (c) the matter number,
 - (d) matter description,
 - (e) the identification number of the person,
 - (f) the bank account number.
- (3) The solicitor must ensure in respect of any journal that:
 - (a) entries balance before entries are made to the ledger, and
 - (b) any journal reference numbers are allocated in sequence under program control.
- (4) The solicitor must ensure in respect of any ledger that no program is capable of accepting the entry of a transaction resulting in a debit balance to an account unless a contemporaneous record of the transaction is made in such a manner as to enable the production in permanent legible form, on demand, of a separate chronological report of all such occurrences.
- (5) The solicitor must ensure that no program enables the deletion of a ledger account unless:

Legal Profession Regulation 2002

Clause 75

Trust accounts and controlled money

Part 11

General

Division 1

- (a) a permanent record of the account, as it was immediately before its deletion, is retained in visible form, and
 - (b) in the case of a trust ledger account, the balance of the account is zero.
- (6) The solicitor must ensure that any entry in a record produced in visible form appears in chronological sequence.
- (7) The solicitor must ensure that a report, or each page or entry in a report, is numbered sequentially under program control in a manner that enables the completeness of the records required to be kept by this Part to be conveniently verified.
- (8) The solicitor must ensure that no amendment to the particulars of a transaction already recorded can be made otherwise than by a separate transaction effecting the amendment.
- (9) The solicitor must ensure that each program requires input in each field of a data entry screen that is intended to receive information required by this Part to be included in trust records or controlled money records.
- (10) The solicitor must ensure that:
- (a) a back-up copy of all records to which this clause refers is made not less frequently than once each month, and
 - (b) the most recent back-up copy is kept in a separate location such that any incident that could adversely affect the records would not also affect the back-up copy.

76 Money in transit

- (1) A solicitor who is authorised or instructed by another person, from whom or on whose behalf the solicitor has received money, to pay or deliver the money to a third party (not an associate of the solicitor) free of the solicitor's control must comply with subclause (2).
- (2) The solicitor complies with this subclause if the money is paid or delivered:
- (a) before the end of the next banking day or, if that is not practicable, as soon as practicable after the next banking day, or
 - (b) no later than the day allowed by the solicitor's authority or instructions if it is a day that is later than the day allowed under paragraph (a).

Clause 77	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 1	General

77 Statements of account

- (1) A solicitor who is required to maintain a trust ledger or a controlled money ledger must deliver to each person for whom, or on whose behalf, money is held or controlled by the solicitor, a separate statement of account in respect of each ledger account maintained for the person.
- (2) A statement of account is to contain particulars of the following:
 - (a) the money received and held or controlled by the solicitor for or on behalf of the person,
 - (b) the disbursement of the money,
 - (c) the remaining balance (if any) of the money.
- (3) A statement of account is to be delivered as soon as practicable after:
 - (a) completion of the matter to which the ledger account relates, or
 - (b) the solicitor receives a written request for the statement from the person for whom, or on whose behalf, the money is held or controlled, or
 - (c) except as provided by subclause (4), 30 June in each year.
- (4) A solicitor is not required to furnish a statement of account under subclause (3) (c) in respect of a ledger account if, at 30 June:
 - (a) the ledger account has been open for less than 6 months, or
 - (b) the balance of the ledger account is zero and no transaction affecting the account has taken place within the last preceding 12 months, or
 - (c) a statement of account has been delivered within the last preceding 12 months and there has been no subsequent transaction affecting the account.
- (5) If a statement of account has been delivered in respect of the same ledger account within the preceding 12 months, the opening balance of the new statement of account may be the closing balance of the previous statement of account.
- (6) A statement of account is to be delivered in the same way in which a bill of costs may be given to a person under section 195 of the Act.
- (7) A solicitor must retain a copy of a statement of account delivered under this clause.

Legal Profession Regulation 2002

Clause 78

Trust accounts and controlled money
General

Part 11
Division 1

78 Receipt and withdrawal of money for costs and disbursements

- (1) For the purposes of section 61 (3) (b) of the Act, the prescribed procedure to be followed by a solicitor for withdrawing or receiving, from trust money or controlled money:
 - (a) reimbursement for disbursements paid by the solicitor, or
 - (b) money for disbursements to be paid by the solicitor, or
 - (c) money due, or to accrue due, to the solicitor for costs,is the procedure set out in this clause.
- (2) A solicitor who has disclosed information about the costs of legal services in accordance with section 175 of the Act to a person from whom the solicitor has received trust money or controlled money, or who can reasonably claim, in terms of section 180 of the Act, that the disclosure was not required because, in the circumstances, it was not reasonably practicable, may withdraw or receive, from that money, money for a purpose referred to in subclause (1) if any of the following circumstances apply:
 - (a) the solicitor has delivered to the person a bill of costs in accordance with Part 11 of the Act and the person has authorised the withdrawal or receipt,
 - (b) the solicitor has delivered to the person a bill of costs in accordance with Part 11 of the Act, together with written notice that, unless the person objects, the solicitor intends to withdraw the money and to apply it towards payment of the bill at the expiration of 30 days after the delivery, and that period has expired without an objection being made to the solicitor,
 - (c) an objection has been made in the circumstances referred to in paragraph (b), neither the person nor the solicitor has referred the bill of costs for assessment within the time limited by section 192 (1) or 201 (2) of the Act and at least 30 days have passed since the objection was made to the solicitor,
 - (d) a determination of the solicitor's costs has been made under Part 11, a certificate setting out the determination has been served on the person and all review and appeal rights in relation to the determination have been exhausted or can no longer be exercised.

Clause 78	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 1	General

- (3) In any case other than a case referred to in subclause (2), a solicitor must not withdraw or receive, from trust money or controlled money, money for a purpose referred to in subclause (1) unless a determination of the solicitor's costs has been made under Part 11, a certificate setting out the determination has been served on the person and all appeal and review rights in relation to the determination have been exhausted or can no longer be exercised.

Division 2 Trust accounts

79 Deposits

- (1) A solicitor who receives trust money must pay it into his or her trust bank account:
- (a) before the end of the next banking day after the day of its receipt, if that is practicable, or
 - (b) if that is not practicable, as soon as practicable after that day.
- (2) A solicitor who makes a deposit to his or her trust bank account must ensure that:
- (a) a bank deposit record is produced to the bank at the time the deposit is made, and
 - (b) the particulars referred to in subclause (3) are then entered in the record.
- (3) A bank deposit record must include provision for the entry of particulars of the following:
- (a) the date of the deposit,
 - (b) the amount of the deposit,
 - (c) whether the deposit consists of cheques, notes or coins, and
 - (d) in the case of cheques, the name of the drawer, bank and branch and the amount of each cheque.
- (4) A bank deposit record is not required in the case of money credited directly to a bank account electronically or otherwise.

80 Receipts

- (1) A solicitor must, as soon as practicable after receipt of trust money (not being a transfer by journal entry), make out, or cause to be made out, a receipt that complies with subclause (2).

Legal Profession Regulation 2002

Clause 80

Trust accounts and controlled money

Part 11

Trust accounts

Division 2

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- (2) Receipts must be in duplicate, must be machine numbered in series, must contain the name of the solicitor's firm and the expression "Trust Account" or "Trust A/c" and must include provision for, and on being made out must include, the following:
- (a) the date of the receipt,
 - (b) the amount of money received and the form in which it is received,
 - (c) the name of the person from whom, and of the person on whose behalf, the money is received,
 - (d) details identifying the ledger account to be credited,
 - (e) particulars sufficient to identify the purpose for which the money is received.
- (3) If the solicitor maintains an accounting system that (at the same time as that at which, and in the same operation as that in which, a receipt is made out) causes the particulars required by subclause (2) to be entered in the cash book required to be kept under clause 82, the entry of the particulars in the cash book is a sufficient compliance with the requirement of subclause (2) for a duplicate receipt.
- (4) A solicitor must issue receipts in the numerical order of the series to which they belong.
- (5) The original of a receipt is to be delivered, on demand, to the person from whom the trust money is received.
- (6) A solicitor must retain the following:
- (a) any original receipt that is not delivered to the person from whom the trust money is received,
 - (b) any original receipt that is cancelled after issue,
 - (c) duplicate receipts.

81 Payment of trust money by cheque or electronic funds transfer

- (1) Trust money must not be drawn from a solicitor's trust bank account otherwise than by cheque or electronic funds transfer in accordance with this clause.
- (2) A cheque must:
 - (a) be machine numbered in series, and
 - (b) include a crossing that has effect as a direction to the drawee bank not to pay the cheque otherwise than to a bank, and

Clause 81	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 2	Trust accounts

- (c) be payable to a named payee and not drawn to cash, and
 - (d) contain the name of the solicitor's firm and the expression "Trust Account" or "Trust A/c".
- (3) A cheque must be signed by:
- (a) except as provided by paragraph (b)—the solicitor, a partner of the solicitor who is a solicitor or 2 persons authorised under clause 86 (1) to sign the cheque, or
 - (b) in the case of a trust bank account maintained by an incorporated legal practice—a solicitor director of the incorporated legal practice or 2 persons authorised under clause 86 (1) to sign the cheque.
- (4) A solicitor is to draw cheques in the numerical order of the series to which they belong and, in respect of each cheque drawn, must make and retain a record of the following:
- (a) the number and date of the cheque, the name of the payee and the amount for which the cheque is drawn,
 - (b) details identifying the ledger account to be debited and the name of the person on whose behalf the cheque is drawn,
 - (c) particulars of the purpose for which the cheque is drawn.
- (5) If the solicitor maintains an accounting system that (at the same time as that at which, and in the same operation as that in which, a cheque is drawn) causes the particulars required by subclause (4) to be entered directly in the cash book required to be kept under clause 82, the entry of the particulars in the cash book is a sufficient compliance with subclause (4).
- (6) An electronic funds transfer is to be effected by, or under the direction or with the authority of:
- (a) except as provided by paragraph (b)—the solicitor, a partner of the solicitor who is a solicitor, or 2 persons authorised under clause 86 to effect an electronic funds transfer from the trust account concerned, or
 - (b) in the case of a trust bank account maintained by an incorporated legal practice—a solicitor director of the incorporated legal practice or 2 persons authorised under clause 86 to effect an electronic funds transfer from the trust account concerned.

Legal Profession Regulation 2002	Clause 81
Trust accounts and controlled money	Part 11
Trust accounts	Division 2

- (7) The solicitor must ensure that, for each electronic funds transfer, a record is kept of the following particulars:
- (a) the name of the person effecting the transfer and, if the transfer is effected under the direction or with the authority of some other person, of the person under whose direction or with whose authority the transfer is effected,
 - (b) details identifying the ledger account debited and the name of the person on whose behalf the amount is transferred,
 - (c) brief particulars of the subject-matter and purpose for which the money is transferred,
 - (d) the reference number or other means of identification of the transfer,
 - (e) the name or style of the bank account to which the money is paid, its number and the identifying numbers of the receiving bank and its branch,
 - (f) the date of the transfer and the amount transferred.

82 Daily receipt and payment transactions

- (1) A solicitor must keep a record of daily receipt and payment transactions.
- (2) The records must be in the nature of a cash book the pages of which are consecutively numbered and on the respective pages of which are shown the consecutive numbers of receipts issued or cancelled or cheques drawn or cancelled or, in the case of money received or disbursed by means of electronic funds transfer, the reference number or other means of identification of the transfer.
- (3) The solicitor must:
 - (a) in respect of receipt of money—enter in the cash book the particulars required by clause 80 (2) to be entered in a receipt for the money together with the date of the deposit of the money to the trust bank account and the amount of the deposit, and
 - (b) in respect of a payment of money—enter in the cash book the particulars required by clause 81 (4) to be recorded for a cheque or required by clause 81 (7) (b)–(f) to be recorded for an electronic funds transfer.

Clause 82	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 2	Trust accounts

- (4) At the end of each named month, the solicitor must balance the cash book and:
 - (a) carry forward the balance to the commencement of the next month, or
 - (b) carry forward the balance to a ledger account, entitled the "Cash Book Control Account", provided for the purpose.
- (5) The solicitor must, at the end of each named month, prepare a statement reconciling the balance of his or her trust bank account with the balance of the related cash book.

83 Journal

- (1) A solicitor must record in a journal, maintained exclusively for his or her trust account, all transfers between accounts in the trust account ledger that are not effected by cheque.
- (2) The recording must include the following:
 - (a) the date of the transfer,
 - (b) the amount transferred to and from each ledger account,
 - (c) the names of all ledger accounts to be debited or credited,
 - (d) the relevant reference number or other identification,
 - (e) sufficient particulars to identify the transfer and the reason for the transfer.
- (3) The pages of the journal are to be numbered consecutively, and the record of each transfer, when entered in the journal, is to be numbered consecutively.

84 Ledger

- (1) A solicitor must maintain a separate ledger account for each matter for each person for whom, or on whose behalf, trust money is held.
- (2) The ledger account must include the name of the person, a reference number or other identification and particulars of each transaction affecting trust money in relation to the matter, including the following:
 - (a) the date of the transaction,
 - (b) a description of the transaction,
 - (c) particulars sufficient to identify the trust record originating the transaction,
 - (d) the amount of the transaction,

Legal Profession Regulation 2002	Clause 84
Trust accounts and controlled money	Part 11
Trust accounts	Division 2

- (e) the resulting current balance of account arising from the transaction.
- (3) The name of the person entered in the ledger account must be the name that the person claims is the person's name or the name that the person usually uses in the conduct of his or her business or professional affairs and must not be a name that the solicitor knows:
 - (a) is false, or
 - (b) is calculated to prevent the identification of the person for whom, or on whose behalf, the money credited to the account is held.
- (4) A solicitor must maintain in a separate account in his or her trust ledger for any trust money deposited by the solicitor with the Law Society in compliance with section 64 of the Act and the solicitor must record in the account particulars of all transactions affecting it.

85 Ledger trial balance statement

- (1) A solicitor must, within 21 days after the end of each named month, prepare a trial balance statement disclosing each account in his or her trust ledger (including an account for any trust money deposited by the solicitor with the Law Society in compliance with section 64 of the Act), effective as at the end of that month.
- (2) However, a solicitor is not required to disclose in the trial balance an entry of account particulars in respect of any account that has a zero balance at the end of the month concerned.
- (3) The trial balance statement must:
 - (a) state the month to which it refers and the date of its preparation, and
 - (b) list each ledger account at the end of that month by stating the name of the person for whom the account is maintained, the reference number or other identification and the balance of the account at the end of that month, and
 - (c) show the total of the ledger account balances at the end of that month, and
 - (d) show a comparison between that total and the balance in the cash book reconciled with the balance in the trust bank account as required by clause 82 (5).

Clause 86	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 2	Trust accounts

86 Delegation

- (1) A solicitor who complies with the requirements of this clause may delegate his or her authority to sign a cheque drawn on, or to effect an electronic funds transfer from, a trust bank account maintained under section 61 of the Act:
 - (a) if the solicitor is practising on his or her own account and is unable to sign the cheque or effect the transfer with due expedition because of his or her illness, injury or absence for good reason, or
 - (b) if the solicitor is practising in partnership and neither the solicitor nor any partner of the solicitor is able to sign the cheque or effect the transfer with due expedition because of the illness, injury or absence for good reason of the solicitor and any partner of the solicitor, or
 - (c) if the solicitor is a solicitor director of an incorporated legal practice and neither the solicitor nor any other solicitor director is able to sign the cheque or effect the transfer with due expedition because of the illness, injury or absence for good reason of the solicitor or any other solicitor director.
- (2) The delegation must be in writing signed by the solicitor, and may be to any 2 of the following persons only:
 - (a) a solicitor holding a current practising certificate,
 - (b) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth,
 - (c) the manager of the branch of the bank at which the solicitor's trust bank account is maintained,
 - (d) a person approved of or nominated by the Law Society Council for the purposes of the delegation before the delegation is made.
- (3) The delegation may authorise the signing of a cheque or the effecting of an electronic funds transfer by 2 delegates only.
- (4) A solicitor must give the Law Society written notice of the delegation immediately it is made.
- (5) A delegation ceases to have effect if the Law Society Council resolves that the delegation should be cancelled and serves notice of the resolution on the delegates and the branch of the bank at which the trust bank account, the subject of the delegation, is maintained.

Legal Profession Regulation 2002	Clause 86
Trust accounts and controlled money	Part 11
Trust accounts	Division 2

- (6) Sufficient service of the resolution is effected on the delegates if a copy of the resolution is delivered to the office that the delegating solicitor has notified the Law Society is the principal place at which the solicitor carries on business.

87 Account in the name of a solicitor

- (1) A solicitor may maintain in his or her trust ledger an account in his or her name:
- for the purpose of aggregating in the account, by transfer from other accounts in the trust ledger, money properly due to the solicitor for costs and disbursements, and
 - in respect of money in which the solicitor has a personal and beneficial interest as a vendor, purchaser, mortgagor, mortgagee, lessor, lessee or other similar capacity.
- (2) A solicitor must withdraw the money held in an account under subclause (1) (a) not later than 7 days after the day on which the money is transferred to the account.
- (3) A solicitor must withdraw money held in an account under subclause (1) (b):
- at the conclusion of any matter to which the money relates, or
 - if it comprises rent, interest, instalments of principal or other periodic payment—not later than 6 months after the date on which the money was credited to the account.

Division 3 Controlled money

88 Notice to person on whose behalf controlled money is received

- (1) A solicitor must, as soon as practicable after receiving controlled money, issue to the person on whose behalf it was received, a notice that is in or to the effect of Part 1 of Form 5 and contains the particulars required to complete the Form.
- (2) If the solicitor, as authorised or instructed by the person, pays any controlled money to a third party while continuing to control the money directly or through an associate, the solicitor must, as soon as practicable after the payment, complete in duplicate, and issue to the person the original of, a notice that is in or to the effect of Part 2 of Form 5 and contains the particulars required to complete the Form.

Clause 88	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 3	Controlled money

- (3) A notice under subclause (2) must, if appropriate and practicable, be included as part of and be issued at the same time as the notice under subclause (1).
- (4) If:
- (a) a solicitor pays controlled money to a third party as referred to in subclause (2), and
 - (b) while the solicitor continues to control the money directly or through an associate, a change occurs in the arrangements under which the money is held or deposited,
- the solicitor must, as soon as practicable after the change, complete in duplicate, and issue to each person on whose behalf the controlled money was received, the original of a notice in or to the effect of Form 5 containing such of the particulars specified in Parts 1 and 2 of the Form as are applicable.
- (5) Forms of notice kept by a solicitor for issue under this clause:
- (a) must comprise both Parts 1 and 2 of Form 5, and
 - (b) must be in duplicate, and
 - (c) must be machine numbered in series.
- (6) A solicitor need not issue to a person a notice under subclause (1) or (2) in respect of money received by way of interest or for deposit if:
- (a) the money is, as soon as practicable, credited to, or deposited in, an account for which an initial notice has been issued and for which a ledger account has been opened, and
 - (b) the particulars of the money received are recorded in the ledger account as soon as practicable.

89 Controlled Money Register

A solicitor must maintain a Controlled Money Register comprising a compilation in numerical sequence of the duplicate copies of the notices issued under clause 88.

90 Controlled money ledger

- (1) A solicitor must, for each person on whose behalf controlled money is received and in accordance with this clause, open and maintain a separate ledger account for each account or deposit of controlled money received on behalf of, or held for, the person.

Legal Profession Regulation 2002

Clause 90

Trust accounts and controlled money

Part 11

Controlled money

Division 3

- (2) The ledger account must bear the name of the person and any relevant reference number or other identification.
- (3) If the controlled money received is a specific sum, the initial entry to the ledger account must record:
 - (a) the amount of money, its source and the date of receipt, and
 - (b) the date and amount of any payment or deposit from the money to or with a third party, the identity of the third party and the terms on which the money was so paid or deposited.
- (4) The entry made under subclause (3) (b) must include particulars of the following:
 - (a) the term and duration of the deposit,
 - (b) the rate of interest,
 - (c) the date from which the interest is calculated and the dates on which interest is payable,
 - (d) a description of the security (if any) held for the deposit.
- (5) If controlled money is comprised in one or more accounts or deposits in respect of which a solicitor or an associate has a power or authority exercisable independently of the person on whose behalf the solicitor has received the controlled money, or jointly and severally with the person or a nominee of the person, the initial entry to the ledger account must record particulars of the nature, description and date of the power or authority and particulars of the accounts or deposits including:
 - (a) the name and address of the person holding each account or deposit, and
 - (b) the name in which each account or deposit is maintained and any relevant identifying number, and
 - (c) if applicable, the particulars required by subclause (4).
- (6) All transactions affecting the receipt or disbursement of controlled money by the solicitor or an associate must be recorded in the ledger by the entry in the relevant account of the following:
 - (a) the date of each transaction,
 - (b) a description of each transaction,
 - (c) a reference to the source of each transaction,
 - (d) the amount of each transaction,

Clause 90	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 3	Controlled money

- (e) if it is ascertainable from the solicitor's records, the current balance of the account.
- (7) If controlled money is deposited with a person who issues to the solicitor a document of record or pass book that remains in the possession of the solicitor and in which are recorded all transactions affecting the money in a manner that, together with other written records of the solicitor, shows the required particulars of the transactions, those documents collectively may constitute a ledger account for the purposes of this clause.

91 Listing of accounts

- (1) A solicitor must, within 21 days after the end of each named month, prepare a statement in the nature of a trial balance statement that relates to the ledger accounts required to be maintained under clause 90 and is effective at the end of that month.
- (2) The statement must:
 - (a) state the period to which it refers and the date of preparation, and
 - (b) list each ledger account by the name of the person on whose behalf the controlled money is received, the reference number or other identification and, in the case of an account relating to a specific amount over which the solicitor has sole control, the balance of account at the end of the month.
- (3) If controlled money is deposited with a person who issues periodical statements of account, those statements:
 - (a) must be maintained with the trial balance statements prepared for the periods to which they relate, and
 - (b) form part of the solicitor's controlled money records.

92 Payment of controlled money by cheque or electronic funds transfer

Controlled money must not be withdrawn or received from any account in which it is held or deposited otherwise than by cheque or electronic funds transfer.

93 Delegation

Clause 86 applies in relation to an account in which controlled money is held or deposited by a solicitor in the same way as it applies in relation to a trust bank account maintained by the solicitor.

Legal Profession Regulation 2002	Clause 94
Trust accounts and controlled money	Part 11
Accountant's report	Division 4

Division 4 Accountant's report

94 Accountant's report to be lodged with Law Society

- (1) If a solicitor received, held or disbursed money to which section 61 (1) of the Act applies at any time during the year ending on 31 March that last preceded an application by the solicitor for the issue or renewal of a practising certificate, the solicitor must ensure that, on or before the making of the application, there is lodged with the Law Society an accountant's report in respect of:
 - (a) each practice conducted by the solicitor as a sole practitioner, and
 - (b) each firm of which the solicitor was a partner, at any time during that year, and
 - (c) each incorporated legal practice of which the solicitor was a solicitor director, at any time during that year.
- (2) The accountant's report is to be in or to the effect of Form 6, and is to be prepared by a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.
- (3) If the Law Society Council so requires, a solicitor must:
 - (a) obtain, and pay for, another report that complies with subclause (2), and
 - (b) forthwith, on its receipt, lodge the report with the Law Society.
- (4) The Law Society Council may require the report under subclause (3) to be made by a registered company auditor nominated by the Law Society Council.
- (5) It is a sufficient compliance with this clause by a solicitor practising in partnership if one accountant's report is lodged for the partnership.
- (6) It is a sufficient compliance with this clause by a solicitor practising as a solicitor director of an incorporated legal practice if one accountant's report is lodged for the incorporated legal practice.

95 Check list to be provided

The registered company auditor who makes a report under clause 94 must, at the time of making the report, complete and leave in the custody of the solicitor a check list in a form approved by the Law Society Council.

Clause 96	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 4	Accountant's report

96 Duties regarding check list

A solicitor must:

- (a) retain a completed check list provided under clause 95 with his or her trust account records and controlled money records for the same period of time as those records are required to be retained, and
- (b) permit a trust account inspector of the Law Society to inspect the check list at any time.

97 Adverse or qualified reports

A registered company auditor who makes an adverse or qualified report under clause 94 must, within 7 days after completing the report, forward a copy to the Chief Trust Account Inspector of the Law Society.

98 Cessation of practice or change in practice arrangements

- (1) This clause applies to a solicitor who:
 - (a) ceases to practice as a solicitor, or
 - (b) enters into partnership with another solicitor, or
 - (c) is a party to a dissolution or change of partnership, or
 - (d) ceases to be a solicitor director of an incorporated legal practice, or
 - (e) becomes a solicitor director of another incorporated legal practice, or
 - (f) is a party to a dissolution of an incorporated legal practice.
- (2) If a solicitor to whom this clause applies:
 - (a) ceases to operate a trust account and the trust account is not continued, or
 - (b) ceases to hold or control controlled money and the controlled money is not held or controlled by a former partner who is, or the former partners of the solicitor who are, continuing to practise, or

Legal Profession Regulation 2002	Clause 98
Trust accounts and controlled money	Part 11
Accountant's report	Division 4

- (c) ceases to hold or control controlled money and the controlled money is not held or controlled by a person or persons who were solicitor directors of the incorporated legal practice of which the solicitor was a solicitor director and who are continuing to practise in that role,

the solicitor must, within the next 21 days, lodge with the Law Society a report by a registered company auditor that complies with clause 94 in respect of all trust money and controlled money held or controlled by the solicitor on behalf of another person.

- (3) The report must be lodged in addition to the notification of change of practice under clause 12.

99 Information to be provided to Law Society Council

A solicitor must, at such time as the Law Society Council determines, furnish to the Law Society such information as the Law Society requires with respect to the following:

- (a) the amount of trust money or controlled money held or controlled by the solicitor,
- (b) the accounts or institutions in which the money is held,
- (c) the solicitor's records and books of account that relate to the money.

Division 5 Mortgage transactions

100 Definitions

- (1) In this Division:

borrower has the same meaning as it has in Part 9 of the Act.

contributor has the same meaning as it has in Part 9 of the Act.

contributory mortgage has the same meaning as it has in Part 9 of the Act.

lender has the same meaning as it has in Part 9 of the Act.

mortgage has the same meaning as it has in Part 9 of the Act.

mortgagee includes anyone who takes a mortgage or proposes to take a mortgage to secure money lent to a borrower.

Clause 100	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 5	Mortgage transactions

nominee means a person who holds a mortgage, as mortgagee, as a trustee for or on behalf of one or more persons.

registered valuer means a practising real estate valuer registered under the *Valuer's Registration Act 1975*.

regulated mortgage has the same meaning as it has in Part 9 of the Act.

responsible entity has the same meaning as it has in Part 9 of the Act.

run-out mortgage has the same meaning as it has in Part 9 of the Act.

solicitor's nominee company means a corporation of which each member and each director is a solicitor, a partner of a solicitor or a person approved by the Law Society Council.

State regulated mortgage has the same meaning as it has in Part 9 of the Act.

Summary of Mortgage means the Summary of Mortgage required to be prepared and issued under clause 108.

valuation means a valuation of a kind required to be obtained under clause 111.

- (2) For the purposes of this Division, 2 or more persons who are lenders on a joint account are to be regarded as one person.

101 Application of Division

This Division applies to a solicitor who, in the solicitor's capacity as solicitor for a lender or contributor, negotiates the making of or acts in respect of a regulated mortgage.

102 Authority to secure by regulated mortgage

- (1) A solicitor must provide a contributor or lender lending, or proposing to lend, money secured by a regulated mortgage with a form of disclosure notice approved by the Law Society Council for the purposes of this clause and a lending authority in the form of Form 7.
- (2) A solicitor must not, whether alone or by an associate or otherwise, cause or permit the application to a loan secured by a regulated mortgage of:
- (a) any money to which section 61 (1) of the Act applies, or
 - (b) any money that is advanced, or to be advanced, where the borrower is introduced to the lender or contributor by:
 - (i) the solicitor or an associate of the solicitor, or

Legal Profession Regulation 2002	Clause 102
Trust accounts and controlled money	Part 11
Mortgage transactions	Division 5

- (ii) an agent of the solicitor, or
- (iii) a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors,

unless the solicitor has previously obtained from the lender or contributor for whom or on whose behalf the money is to be applied a lending authority in the form of Form 7 in respect of that money.

- (3) Subclause (2) does not apply if:
- (a) the money is applied pursuant to the written instructions of a lender or contributor who has nominated the borrower and specified the security, its priority and the terms of the loan independently of any advice given by the solicitor to the lender, and
 - (b) the lender or contributor has not been introduced to the borrower by:
 - (i) the solicitor or an associate of the solicitor, or
 - (ii) an agent of the solicitor, or
 - (iii) a person engaged by the solicitor for the purpose of introducing the borrower to the lender or contributors.
- (4) A solicitor who is the attorney under power of a lender or contributor must not:
- (a) apply the funds of the lender or contributor to a loan not authorised in accordance with subclause (2), or
 - (b) execute, on the lender's or contributor's behalf, an authority referred to in subclause (2) unless subclause (5) is complied with.
- (5) This subclause is complied with only if:
- (a) the instrument granting the power was executed before 1 January 1987, or
 - (b) the instrument granting the power contains a specific power enabling the solicitor to make the loan to which the authority relates, or
 - (c) at the time the instrument granting the power was executed, the signature of the donor was witnessed by a solicitor instructed independently of the donee and that solicitor certified in writing on the instrument that he or she had explained to the donor the donee's power of investment and that the donee had a discretion to choose the security and the terms for any investment.

Clause 102	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 5	Mortgage transactions

- (6) A solicitor who obtains the execution, by or on behalf of a lender or contributor, of a lending authority in the form of Form 7 must not delete any of the contents of the Form (except if an alternative is provided in the Form) and must ensure that any clauses in the Form are not varied or contravened, whether directly or indirectly, by the mortgage documents or any associated documents.
- (7) An authority in the form of Form 7 is taken to be an authority for the purposes of section 122 (2) (b) of the Act.

103 Loan applications

- (1) A solicitor must advise a lender or contributor whose loan is proposed to be secured by a regulated mortgage as to the effect of any applicable provisions of the *Consumer Credit (New South Wales) Code* and the *Farm Debt Mediation Act 1994*.
- (2) A solicitor must, before advancing the money for, or extending, a loan secured by a regulated mortgage do the following:
- verify the identity of the borrower, so as to ensure that the person executing the mortgage as the mortgagor is identical with, and the same person as, the registered proprietor of the property secured by the mortgage,
 - satisfy himself or herself as to the borrower's ability to meet his or her obligations under the mortgage,
 - check the credit record of the borrower through the Credit Reference Association of Australia (CRAA) and disclose any default record of the borrower to the lender or contributor in the disclosure statement given under clause 102,
 - carry out appropriate enquiries in relation to any property to be secured by the mortgage, including a title search, land tax search, a certificate under section 149 of the *Environmental Planning and Assessment Act 1979* and an identification survey report if the security comprises improved land (other than strata title).
- (3) A solicitor must, before advancing the money for, or extending, a loan secured by a regulated mortgage obtain written approval to the advance or extension from:
- in the case of a firm of solicitors, each principal of the firm (if there are 3 or fewer principals) or 3 principals of the firm (if there are more than 3 principals), or

Legal Profession Regulation 2002	Clause 103
Trust accounts and controlled money	Part 11
Mortgage transactions	Division 5

- (b) in the case of an incorporated legal practice, each solicitor director of the practice (if there are 3 or fewer solicitor directors) or 3 solicitor directors of the practice (if there are more than 3 solicitor directors).
- (4) A solicitor's letter of offer relating to a loan to be secured by a regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.
- (5) A solicitor's loan approval letter relating to a loan to be secured by a regulated mortgage must contain the form of words approved by the Law Society Council for the purposes of this subclause.

104 Identity of borrower

A solicitor must ensure that, in relation to loans secured by a regulated mortgage:

- (a) there is a standard process for verifying the identity of borrowers, and
- (b) records are kept of the method of verification of identity for the duration of the mortgage.

105 Independent advice

- (1) A solicitor must if:
 - (a) a borrower does not have a solicitor acting for the borrower in relation to a loan secured by a regulated mortgage, or
 - (b) the solicitor is also acting for the borrower,
 obtain from the borrower a certificate by another solicitor to the effect that the other solicitor has explained the effect of the mortgage to the borrower.
- (2) A solicitor must obtain from any guarantor of a loan secured by a regulated mortgage a certificate by another solicitor to the effect that the other solicitor has explained the effect of the guarantee to the guarantor.
- (3) A certificate obtained under this clause must be retained by the solicitor.
- (4) A solicitor must not act for both the borrower and the lender or contributor in respect of a regulated mortgage unless the solicitor has complied with subclause (1).

Clause 106	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 5	Mortgage transactions

106 Insurance of secured property

- (1) A solicitor must ensure that, in the case of mortgaged property under a regulated mortgage that is improved land (other than strata title property), an insurance policy is in force, in the name of the mortgagee and the mortgagor, for the full replacement value of the improvements.
- (2) The solicitor must sight a Certificate of Currency for the insurance policy at or before the time of settlement and must retain a copy of it.
- (3) A solicitor must, in the case of property that is a strata title property, sight a Certificate of Currency relating to building insurance for the property at or before the time of settlement and must retain a copy of it.

107 Registration of mortgages

- (1) A solicitor must ensure that the regulated mortgage, and any variation of the mortgage, is registered.
- (2) Subclause (1) applies to a variation of the term of the mortgage, an increase in the principal secured by the mortgage or a variation of the interest rate.

108 Summary of Mortgage

- (1) A solicitor must comply with this clause within 21 days after the date on which any of the following occurs:
 - (a) when money is first advanced under a regulated mortgage on behalf of a lender or contributor (including a contributor who becomes a contributor in addition to, or in substitution for, any other contributor to the loan),
 - (b) on the transfer of a regulated mortgage,
 - (c) on being authorised to collect the principal and interest due under a regulated mortgage except on any discharge or partial discharge of a mortgage,
 - (d) on any variation of a regulated mortgage.
- (2) A solicitor must:
 - (a) prepare and issue to each lender and contributor whose money has been lent or will be lent under a regulated mortgage a Summary of Mortgage in respect of the money and its application that is in the form of Form 8, and

Legal Profession Regulation 2002

Clause 108

Trust accounts and controlled money

Part 11

Mortgage transactions

Division 5

- (b) include a copy of the Summary of Mortgage, in alphabetical order according to the name of the mortgagor, in the Investments Register kept by the solicitor.

109 Investments Register

- (1) A solicitor must keep and maintain an Investments Register in accordance with this clause.
- (2) The Investments Register must include the following:
 - (a) copies of all Summaries of Mortgage required to be prepared by the solicitor for regulated mortgages, in alphabetical order according to the mortgagor's names, with separate sections for undischarged and discharged mortgages,
 - (b) a mortgage history register for each regulated mortgage,
 - (c) a record for each lender or contributor,
 - (d) a list of undischarged regulated mortgages, capable of being produced on demand from the Register, disclosing for each mortgage the mortgage reference number, the name of the mortgagor and the total amount of the mortgage,
 - (e) a list of the following:
 - (i) all regulated mortgages arranged, varied and discharged, including details of the mortgagor, mortgagee, principal contributed by each lender or contributor and the date of each mortgage, variation or discharge,
 - (ii) the names of all lenders or contributors who have invested in regulated mortgages, the mortgages in which they have invested, the date of investment and repayment and the amount of principal secured by each mortgage.
- (3) The mortgage history register for a regulated mortgage is to contain the following:
 - (a) the mortgage reference number,
 - (b) the name and address of the mortgagor,
 - (c) the address of the property subject to the mortgage,
 - (d) the date the mortgage is repayable,
 - (e) the date of, and details of, any variations of the mortgage,
 - (f) the name and address of each lender or contributor and the principal amount contributed by each lender or contributor.

Clause 109	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 5	Mortgage transactions

- (4) The record for each lender or contributor is to contain the following:
 - (a) the mortgage reference number,
 - (b) the name and address of the lender or contributor,
 - (c) the amounts invested and the date of the mortgage or substitution,
 - (d) the amounts repaid and the date of discharge of the mortgage or substitution,
 - (e) a resulting balance after each entry.
- (5) On the discharge of a regulated mortgage, the solicitor must ensure that the date of discharge is recorded on the Summary of Mortgage in the Investments Register and that the Summary is relocated with the Summaries applying to discharged mortgages.

110 Investment restrictions

- (1) Money received by a solicitor for investment in a regulated mortgage must not be invested in the following regulated mortgages:
 - (a) any mortgage where the total amount of money secured by all current regulated mortgages arranged by the solicitor and any associate of the solicitor exceeds \$7.5 million,
 - (b) any mortgage where the total amount of money secured by the mortgage exceeds \$1 million,
 - (c) any mortgage where the loan to valuation ratio exceeds 75% of a valuation based on the unencumbered present day value of the property,
 - (d) a mortgage that is subject to a prior mortgage,
 - (e) any mortgage securing a loan or advance under which the borrower is in default.
- (2) A solicitor must not:
 - (a) publicly advertise seeking money for investment in mortgages, or
 - (b) offer a loan to any person whose usual address is outside New South Wales, except for a local offer in a border area.

Legal Profession Regulation 2002

Clause 111

Trust accounts and controlled money

Part 11

Mortgage transactions

Division 5

111 Valuation

- (1) A solicitor must, before any money is advanced under a loan secured by a regulated mortgage, obtain:
 - (a) for the lender or contributor, a current valuation of the mortgaged property by a registered valuer, and
 - (b) evidence that the valuer holds current professional indemnity insurance to a value that is not less than \$500,000 and that covers valuations made for the purposes of regulated mortgages.
- (2) The valuation must be expressed to be for the purpose of establishing the unencumbered present day value of the property, not taking into account any future proposed development, and must address the matters contained in the solicitor's request for the valuation.
- (3) The solicitor's request for a valuation must contain the form of words approved by the Law Society Council for the purposes of this clause.
- (4) A valuation prepared for the borrower may be assigned to a lender or contributor for the purposes of this clause, but only if the valuer and the valuation meet the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.
- (5) If a mortgage is varied and the lender or contributor previously relied on a valuation prepared for the borrower, the lender or contributor may continue to rely on that valuation if it meets the requirements of this clause in respect of a valuation obtained on behalf of a lender or contributor.
- (6) A valuation obtained under this clause must be not more than 6 months old when money is first advanced under the loan and, in the case of a loan that is rolled-over, must be not more than 3 years old when the loan is rolled-over.

112 Appointment of accountant

A solicitor must:

- (a) appoint an accountant to audit the solicitor's mortgage practice, and
- (b) appoint the accountant on terms that require the accountant to carry out annual compliance examinations in accordance with a work program approved by the Law Society Council, and

Clause 112	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 5	Mortgage transactions

- (c) ensure that the accountant lodges with the Law Society, within 21 days of completing the examination, a report on the examination in the form approved by the Law Society Council.

113 Notification of State regulated mortgages to Law Society Council

- (1) For the purposes of section 119 (1) of the Act, a solicitor must notify the Law Society Council in writing of the following matters on a quarterly basis:
 - (a) a list of current State regulated mortgages in respect of which the solicitor has acted for the lender or contributor and the total amount secured by all those mortgages,
 - (b) the name of each mortgagor and mortgagee,
 - (c) the amount secured by each mortgage.
- (2) The notice is to be given within 28 days of the end of each quarter.

114 Mortgage held by nominee

- (1) A solicitor must not, whether alone or by an associate or otherwise, cause or permit an application to a loan secured by a regulated mortgage of any money referred to in clause 102 (2) if the loan is to be secured by a regulated mortgage to be held by a nominee, unless the nominee is one of the following:
 - (a) the solicitor,
 - (b) one or more of the solicitor's partners, with or without the solicitor,
 - (c) a solicitor's nominee company maintained by the solicitor and the solicitor's partners (if any) in the manner prescribed by clause 115.
- (2) Except in the case of a mortgage to be held by a solicitor's nominee company or an incorporated legal practice, a solicitor must not arrange or agree to arrange a regulated mortgage that is intended to be held in the name of a corporation (other than a public trustee company) of which that solicitor is a member or director if the mortgage is to be held by that corporation as a trustee for the beneficial owner.

Legal Profession Regulation 2002	Clause 115
Trust accounts and controlled money	Part 11
Mortgage transactions	Division 5

115 Solicitor's nominee company

- (1) If a solicitor's nominee company is a nominee, a solicitor who is a member or director of the company must not, while the company holds a regulated mortgage for another person:
 - (a) cause or permit any person to become a member or director of the company unless the person is a partner of the solicitor or, in the case of a sole practitioner, a person who is approved by the Law Society Council, holds only 1 share in the company and holds the share in trust for the solicitor as beneficial owner, or
 - (b) cause or permit the company to act otherwise than as a nominee company holding regulated mortgages, or an interest in regulated mortgages, on trust for the beneficial owners, or
 - (c) receive, or cause or permit the company to receive, any financial benefit from its activities other than any professional costs or management fees properly chargeable by the solicitor in respect of a regulated mortgage held by the company, or
 - (d) cause or permit the constitution of the company, while any of its members or directors are persons other than the solicitor or his or her partner or partners, to contain a provision that:
 - (i) denies the solicitor a casting vote at a meeting of its directors, or
 - (ii) entitles a director to appoint an alternate director or attorney to act in the place of the director, or
 - (iii) entitles a shareholder to appoint a proxy other than the solicitor.
- (2) A solicitor who has obtained from a lender or contributor an authority under clause 102 must not prepare a transfer of any regulated mortgage to a company of which the solicitor is a member or director unless:
 - (a) the company is the solicitor's nominee company, an incorporated legal practice, a public trustee company or a responsible entity, and
 - (b) the mortgage is to be held by the company as trustee for the beneficial owner of the mortgage.

116 Dealing with money through trust account

- (1) A solicitor must apply money for a loan secured by a regulated mortgage, or paid as principal or interest in respect of any such loan, only in accordance with this clause.

Clause 116	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 5	Mortgage transactions

- (2) The money to be advanced must first be credited to an account in the name of the lender or contributor established in the solicitor's trust account ledger.
- (3) Before any money is advanced under the regulated mortgage, the solicitor must:
 - (a) establish in his or her trust account ledger an account in respect of the mortgage in the mortgagor's name or, if the mortgage is held in the name of a nominee, in the name of the nominee and the mortgagor, and
 - (b) transfer to that account from the accounts of the lender, or of the contributors in the case of a contributory mortgage, the money to be lent.
- (4) If the regulated mortgage is held by a nominee, then a separate account in the solicitor's trust account ledger must be established in the name of the nominee in respect of each mortgage loan held or intended to be held in the name of the nominee.
- (5) All payments under the regulated mortgage in respect of interest and the repayment of principal:
 - (a) are to be received by the solicitor, and
 - (b) must be paid to the credit of the account in the trust account ledger relating to the regulated mortgage.
- (6) An amount credited to the account in the trust account ledger relating to a regulated mortgage must be transferred, as soon as is practicable:
 - (a) to the lender's account in the solicitor's trust account ledger, or
 - (b) in the case of a contributory mortgage, to the account of the contributors in the solicitor's trust account ledger in the proportions to which the contributors are entitled.

117 Notice of variation of mortgage

A solicitor must, within 21 days after the day on which a variation of a regulated mortgage is executed by a borrower:

- (a) give written notice of the particulars of the variation to each lender or contributor, and
- (b) record the particulars of the variation in the solicitor's Investments Register.

Legal Profession Regulation 2002	Clause 118
Trust accounts and controlled money	Part 11
Mortgage transactions	Division 5

118 Additional or substituted contributions

The requirements of this Division apply to a new contributor to a contributory mortgage and to money advanced by a new contributor in the same way as they apply to the original contributors to the contributory mortgage and to money advanced by the original contributors.

119 Declaration of trust

A solicitor who is required to prepare and issue a Summary of Mortgage must, within 21 days after the obligation to do so arises in relation to a mortgage held by a nominee, prepare and have executed by the nominee an instrument in writing sufficient to manifest and declare the trust on which the mortgage is held by the nominee in accordance with section 23C (1) (b) of the *Conveyancing Act 1919*.

120 Retention of documents

- (1) A solicitor must retain at his or her principal place of practice any regulated mortgage together with all other mortgage documents and instruments declaring trusts related to the mortgage until:
 - (a) the mortgage is discharged, or
 - (b) the solicitor is directed otherwise in writing by the lender or, in the case of a contributory mortgage, by all the contributors.
- (2) The requirements of clause 74 as to the retention by a solicitor of trust records and controlled money records apply to an Investments Register maintained under this Division. The particulars of a mortgage recorded in the Investments Register must be retained in the Register during the currency of the mortgage and for 6 years following its discharge.
- (3) For the purposes of subclause (1), mortgage documents include title documents, lending authorities, valuations, insurance policies and any other deeds or documents relating to any security in respect of which any mortgage has been given.
- (4) The mortgage and documents referred to in subclause (1) must be kept together in a deed packet filed in the name of the mortgagor and, if the mortgagor has more than one loan, the particular mortgage is to be identified on the deed packet by indicating the address of the security property.
- (5) A solicitor must maintain a current register of mortgage deed packets.

Clause 120	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 5	Mortgage transactions

- (6) The mortgage deed packet may be retained in a normal safe custody register and must be cross-referenced to the matter file to which it relates. The matter file must also be cross-referenced to the mortgage deed packet.

121 Practicability of completion of Summary of Mortgage and Investments Register

A solicitor who for any good reason is unable to record within the prescribed time all of the prescribed particulars in a Summary of Mortgage required by this Division to be given to a lender or contributor or in an entry to be made in the Investments Register must:

- (a) record the portion of the prescribed particulars that is then available in the required Summary of Mortgage and in an entry in the Investments Register, and
- (b) as soon as practicable after the omitted particulars are available, issue a duly completed Summary of Mortgage to any person who is entitled to receive it and complete the required entry in the Investments Register.

122 Default procedures

- (1) A solicitor must maintain systems to enable the early detection of defaults in the payment of principal or interest secured by a regulated mortgage or under the terms of a regulated mortgage.
- (2) The solicitor is to ensure that the following steps are taken if a default in the repayment of a loan secured by a regulated mortgage occurs:
 - (a) the borrower must be contacted within 7 days of the solicitor becoming aware of the default and the reason for the default ascertained,
 - (b) the borrower must be requested to pay the penalty rate of interest and any such interest is to be paid to the lender or contributor,
 - (c) the lender or contributor must be advised of the default and the action being taken with respect to the default,
 - (d) unless the lender or contributor instructs otherwise, action is to be commenced to recover outstanding principal, interest and costs if there is a default in payment of more than 2 months (in the case of interest) or 2 weeks (in the case of principal),

Legal Profession Regulation 2002	Clause 122
Trust accounts and controlled money	Part 11
Mortgage transactions	Division 5

- (e) if a default continues for more than 2 months, the solicitor must notify the Law Society Council in writing of the default and the action taken to rectify the default.

123 Run-out mortgages

- (1) The provisions of Division 5 of Part 7A of the *Legal Profession Regulation 1994*, as in force immediately before 7 September 2001, continue to apply in respect of run-out mortgages.

Note. Division 4 of Part 9 of the Act limits the actions that a solicitor may take in respect of run-out mortgages.

- (2) The provisions of this Division (other than this clause) do not apply to run-out mortgages.

124 Managed investment schemes

A solicitor must ensure that the office of a responsible entity for a managed investment scheme is not located on the same part of any premises on which the legal practice of the solicitor is conducted.

125 Certain mortgages not regulated mortgages

The following mortgages are exempt from the definition of *regulated mortgage* in section 115 of the Act:

- (a) a mortgage of which a solicitor, or an associate of a solicitor, is the sole beneficial owner,
- (b) a mortgage held by a solicitor or an associate of a solicitor as the trustee of a will or settlement or a mortgage that, when executed or transferred, will be so held,
- (c) a mortgage to a mortgagee who is the subject of a notice given by the Law Society Council to a solicitor that exempts a mortgage to that mortgagee from the definition,
- (d) except as provided by clause 124, a mortgage that is part of a managed investment scheme that is operated by a responsible entity.

Clause 126	Legal Profession Regulation 2002
Part 11	Trust accounts and controlled money
Division 6	Crown Solicitor

Division 6 Crown Solicitor

126 Application of Regulation to Crown Solicitor

This Part (other than this Division) does not apply to the Crown Solicitor.

127 Crown Solicitor's Trust Account

- (1) A Crown Solicitor's Trust Account must be established in a bank in New South Wales.
- (2) The Crown Solicitor:
 - (a) must cause to be kept in his or her office such records in relation to the Crown Solicitor's Trust Account, and
 - (b) must follow, or cause to be followed, such procedures in relation to operations on the Crown Solicitor's Trust Account, as the Attorney General directs.

128 Report by Auditor-General

- (1) An application by the Crown Solicitor for a practising certificate must be accompanied by a report of the Auditor-General stating:
 - (a) that the Auditor-General has inspected the trust records kept under clause 127 during the year that ended on the last preceding 31 March, and
 - (b) whether the Auditor-General is of the opinion that the trust records have been kept as directed under clause 127.
- (2) A report under this clause may be provided by the Deputy Auditor-General or an Assistant Auditor-General if the Auditor-General so approves.

Legal Profession Regulation 2002

Clause 129

Deposits with Law Society

Part 12

Part 12 Deposits with Law Society

129 Definition

- (1) In this Part, *applicable period* means a period of 12 months ending on 31 March.
- (2) However, in relation to a solicitor, firm of solicitors or incorporated legal practice that commences practice or provides legal services after 1 April in any year, the first applicable period is the period starting on the commencement of the practice or the provision of legal services and ending on 31 March next following.

130 Amount of deposit: section 64

- (1) The amount to be deposited and kept deposited with the Law Society for the purposes of section 64 of the Act in respect of an applicable period is an amount that is not less than the sum of:
 - (a) the lowest balance recorded in the trust account kept by the solicitor, firm of solicitors or incorporated legal practice during the previous applicable period, and
 - (b) the amount (if any) on deposit by the solicitor, firm or incorporated legal practice with the Law Society under section 64 of the Act on the day on which that lowest balance is recorded.
- (2) Despite subclause (1), if, in the case of a particular solicitor, firm or incorporated legal practice, on any day during the period beginning with the end of the previous applicable period and ending with the 15th banking day after the end of that period, the sum of the lowest balance recorded in the trust account during that 15-day period and the amount (if any) on deposit with the Law Society on that day is less than the sum of the amounts referred to in subclause (1) (a) and (b), the amount that the solicitor, firm or incorporated legal practice is to deposit and keep deposited with the Law Society is the amount that is equivalent to 80% of the lesser sum.
- (3) Despite subclauses (1) and (2), if during an applicable period money is repaid to the solicitor, firm or incorporated legal practice under section 65 of the Act, the amount to be deposited and kept deposited with the Law Society in respect of that period becomes an amount that is not less than the sum of:

Clause 130 Legal Profession Regulation 2002

Part 12 Deposits with Law Society

- (a) the lowest balance recorded in the trust account kept by the solicitor, firm or incorporated legal practice during the period beginning with the start of that applicable period and ending with the 15th banking day after the repayment, or the lowest balance recorded in that trust account during the previous applicable period (whichever of those balances is the lower), and
 - (b) the amount (if any) on deposit by the solicitor, firm or incorporated legal practice with the Law Society under section 64 of the Act on the day on which the lower of those balances is recorded.
- (4) Despite this clause, if the sum referred to in subclause (1), (2) or (3) is less than \$10,000, the amount to be deposited and kept deposited with the Law Society in respect of an applicable period is nil.
 - (5) If, during an applicable period, money is repaid to the solicitor, firm or incorporated legal practice under section 65 of the Act on more than one occasion, subclause (3) operates in relation to each such repayment.
 - (6) Despite this clause, if a particular solicitor, firm or incorporated legal practice is unable to comply with the requirements of clause 131 (1) or (2), the solicitor, firm or incorporated legal practice must request the Law Society, in a form approved by the Society, to determine the amount that the solicitor, firm or incorporated legal practice is to deposit and keep deposited with the Society.
 - (7) A reference in this clause to the lowest balance recorded in the trust account during a period is a reference to the lowest balance recorded during that period in a statement of account issued by a bank in relation to the trust account.

131 Time for deposit

- (1) The solicitor, firm of solicitors or incorporated legal practice must have the amount calculated under clause 130 (1) or (2) in respect of an applicable period on deposit with the Law Society not later than 20 banking days after the end of the previous applicable period.
- (2) The solicitor, firm of solicitors or incorporated legal practice must have the amount calculated under clause 130 (2) on deposit with the Law Society not later than 20 banking days after the day on which the money was repaid under section 65 of the Act.

Legal Profession Regulation 2002

Clause 131

Deposits with Law Society

Part 12

-
- (3) The solicitor, firm of solicitors or incorporated legal practice must have the amount determined by the Law Society under clause 130 (6) on deposit with the Law Society not later than 5 banking days after the Law Society notifies the solicitor, firm or incorporated legal practice of its determination.

Clause 132 Legal Profession Regulation 2002

Part 13 Reporting requirements

Part 13 Reporting requirements

132 Duty to report irregularities

- (1) If a legal practitioner has reasonable grounds for suspecting that a solicitor (other than the legal practitioner) or an associate of the solicitor has dealt with controlled money or trust money in a manner that may be dishonest or irregular, the legal practitioner must, as soon as practicable, notify the president of the Law Society, in writing, of the name and address of the solicitor or associate and of the grounds on which the suspicion is based.
- (2) The president must cause the matter to be investigated by the Law Society.

133 Duty to report offences

- (1) If a barrister or solicitor is found guilty of an offence (other than an excluded offence), the barrister or solicitor must:
 - (a) notify the appropriate Council in writing of the finding and the nature of the offence, and
 - (b) furnish to the appropriate Council, within the time specified by the appropriate Council, such further information as it requires relating to the finding or the commission of the offence.
- (2) Subclause (1):
 - (a) applies to an offence whether or not committed in the course of practice as a legal practitioner, and
 - (b) applies to a finding of guilt of an offence whether or not the court proceeded to a conviction for the offence, and
 - (c) applies to an offence committed in New South Wales or to an offence committed outside New South Wales (so long as it would have been an offence, other than an excluded offence, if committed in New South Wales), and
 - (d) applies to a finding of guilt even if other persons are prohibited from disclosing the identity of the offender, and
 - (e) extends to an indictable offence committed before the commencement of this Regulation (and so extends whether the finding of guilt was made before or after that commencement), and

Legal Profession Regulation 2002

Clause 133

Reporting requirements

Part 13

-
- (f) extends to an offence (other than an indictable offence) committed after 8 March 1991.
 - (3) A notification under subclause (1) must be made within 7 days after the finding was made.
 - (4) Subclause (1) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under this clause.
 - (5) In this clause, *offence* includes a tax offence.

134 Duty to report bankruptcy

- (1) A barrister or solicitor who commits an act of bankruptcy (within the meaning of section 3 (3) of the Act) must notify the appropriate Council in writing of the details of the act of bankruptcy.
- (2) A notification under subclause (1) must be made within 7 days after the act of bankruptcy was committed.
- (3) Subclause (1) does not require the disclosure of any information previously disclosed in an application for a practising certificate or under this clause.

135 Show cause statements relating to bankruptcy and indictable and tax offences

- (1) For the purposes of section 38FB (1) of the Act, the written statement required to be provided by an applicant for a practising certificate must be provided to the appropriate Council within 14 days after the application is made.
- (2) For the purposes of section 38FB (3) of the Act, the written statement required to be provided by a barrister or solicitor must be provided to the appropriate Council within 14 days after the appropriate date.
- (3) In this clause:
 - appropriate date* means:
 - (a) for a statement that relates to an act of bankruptcy—the first date on which the act of bankruptcy was committed, or
 - (b) for a statement that relates to a finding of guilt—the date on which the finding of guilt was made.

Clause 136 Legal Profession Regulation 2002

Part 13 Reporting requirements

136 Show cause statements relating to failures to notify

- (1) For the purposes of section 38FB (2) and (4) of the Act, the written statement required to be provided by an applicant for a practising certificate, or a barrister or solicitor, who has failed to notify a matter as required by this Regulation must be provided to the appropriate Council within 7 days after the appropriate date.
- (2) In this clause:
appropriate date means:
 - (a) if the applicant, barrister or solicitor notifies the matter after the period in which the notification was required to be made by this Regulation and the last day of that period occurs on or after the commencement of this Regulation—the date on which the notification was made, or
 - (b) if the Council has given notice in writing under section 38FC (2) to the applicant, barrister or solicitor in relation to the act of bankruptcy or finding of guilt that should have been notified—the date on which the notice was given.

137 Failures to notify—professional misconduct

Each of the following failures to notify is declared to be professional misconduct:

- (a) a failure to notify, without reasonable cause, information in relation to a finding of guilt of the commission of an indictable offence or a tax offence as required by clause 7 (1) (g),
- (b) a failure to notify, without reasonable cause, information in relation to an act of bankruptcy as required by clause 7 (1) (h),
- (c) a failure to notify, without reasonable cause, a finding of guilt of the commission of an indictable offence or a tax offence as required by clause 133 in the time and manner specified in that clause,
- (d) a failure to notify, without reasonable cause, an act of bankruptcy as required by clause 134 in the time and manner specified in that clause.

Legal Profession Regulation 2002

Clause 138

Advertising of personal injury services

Part 14

Part 14 Advertising of personal injury services

138 Definitions

In this Part:

hospital means:

- (a) a public hospital within the meaning of the *Health Services Act 1997* controlled by an area health service or the Crown, or
- (b) a statutory health corporation or affiliated health organisation within the meaning of that Act, or
- (c) an establishment within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988* or a nursing home within the meaning of the *Nursing Homes Act 1988*,

and any land or building occupied or used in connection with any such hospital, establishment or nursing home.

personal injury includes:

- (a) death, and
- (b) pre-natal injury, and
- (c) psychological or psychiatric injury, and
- (d) disease.

printed publication means a newspaper, magazine, journal, periodical, directory or other printed publication.

public place means a place or vehicle that the public, or a section of the public, is entitled to use or that is open to, or is being used by, the public or a section of the public (whether on payment of money, by virtue of membership of a club or other body, or otherwise).

139 Restriction on advertising personal injury services

- (1) A barrister or solicitor must not advertise personal injury services except by means of a statement that:
 - (a) states only the name and contact details of the barrister or solicitor, together with information as to any area of practice or specialty of the barrister or solicitor, and
 - (b) is published by an allowable publication method, as provided by subclause (4).

Clause 139 Legal Profession Regulation 2002

Part 14 Advertising of personal injury services

- (2) A contravention of subclause (1) is capable of being professional misconduct.
- (3) Subclause (2) applies only in respect of contraventions that occur after the commencement of this clause.
- (4) Subject to subclause (5), each of the following is an allowable publication method:
- (a) publication of the statement in a printed publication,
 - (b) publication of the statement on an Internet website by means of the publication of an electronic version of a printed publication, but only if the statement merely reproduces a statement as published in that printed publication and the printed publication is published independently of the barrister or solicitor,
 - (c) publication of the statement on an Internet website by the publication of the contents of a directory or database that includes the statement and that is published or maintained independently of the barrister or solicitor,
 - (d) public exhibition of the statement in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place,
 - (e) display of the statement on any printed document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle,
 - (f) display of the statement on any printed document provided to a person as a receipt or record in respect of a transaction or bet.
- (5) Each of the following is not an allowable publication method for the purposes of this clause:
- (a) public exhibition of the statement in or on a hospital,
 - (b) display of the statement on any printed document gratuitously sent or delivered to a hospital or left in a hospital or on any vehicle in the vicinity of a hospital.
- (6) This clause does not prevent a barrister or solicitor from advertising personal injury services:
- (a) to any person who is already a client of the barrister or solicitor, or
 - (b) to any person at a place of business of the barrister or solicitor, or

Legal Profession Regulation 2002

Clause 139

Advertising of personal injury services

Part 14

-
- (c) in accordance with any order by a court.
 - (7) This clause does not apply to or in respect of a disclosure made by a barrister or solicitor under Division 2 of Part 11 of the Act.
 - (8) A printed publication, directory or database is considered to be published or maintained independently of a barrister or solicitor only if:
 - (a) it is not published or maintained by the barrister or solicitor or by a partner, employee or member of the practice of the barrister or solicitor, and
 - (b) the person who publishes or maintains it does so in the ordinary course of the conduct of the person's business or affairs.

140 What constitutes advertising of personal injury services

- (1) For the purposes of this Part, a person advertises personal injury services when the person publishes or causes to be published a statement that may reasonably be thought to be intended or likely to encourage or induce a person:
 - (a) to make a claim for compensation or damages under any Act or law in respect of a personal injury, or
 - (b) to use the services of a barrister or solicitor in connection with the making of any such claim.
- (2) It does not matter that the statement also relates to other matters.
- (3) For the purposes of this clause, a statement is published if it is:
 - (a) published in a printed publication, or
 - (b) disseminated by means of the exhibition or broadcast of a photograph, slide, film, video recording, audio recording or other recording of images or sound, either as a public exhibition or broadcast or as an exhibition or broadcast to persons attending a place for the purpose of receiving professional advice, treatment or assistance, or
 - (c) broadcast by radio or television, or
 - (d) displayed on an Internet website or otherwise publicly disseminated by means of the Internet, or
 - (e) publicly exhibited in, on, over or under any building, vehicle or place or in the air in view of persons in or on any street or public place, or

Clause 140 Legal Profession Regulation 2002

Part 14 Advertising of personal injury services

- (f) displayed on any document gratuitously sent or delivered to any person or thrown or left on premises occupied by any person or on any vehicle, or
- (g) displayed on any document provided to a person as a receipt or record in respect of a transaction or bet.

Legal Profession Regulation 2002

Clause 141

Miscellaneous provisions

Part 15

Part 15 Miscellaneous provisions

141 Discriminatory conduct (including sexual harassment) prohibited

A legal practitioner must not, in connection with the practice of law, engage in any conduct, whether consisting of an act or omission, that constitutes unlawful discrimination (including unlawful sexual harassment) under the *Anti-Discrimination Act 1977* against any person.

142 Mandatory continuing legal education—special requirement

- (1) If the holder of a practising certificate is required to undertake continuing legal education, that continuing legal education must include a course in connection with the management of the practice of law that deals only with the following issues:
 - (a) equal employment opportunity,
 - (b) unlawful discrimination (including unlawful sexual harassment),
 - (c) occupational health and safety.
- (2) The course is to be undertaken at least once in every relevant period and is to comprise at least one-fifth of the minimum number of units of courses to be undertaken in the year concerned.
- (3) In this clause:

continuing legal education means courses of continuing legal education that the holder of a practising certificate is required to undertake under the conditions attached to the certificate.

relevant period means:

- (a) in relation to a person who is the holder of a practising certificate at the commencement of this Regulation—the period of 3 years after the commencement of this Regulation (the “initial period”) and every period expiring on the third anniversary after the expiration of that initial period, or
- (b) in relation to a person who becomes the holder of a practising certificate after the commencement of this Regulation—the period of 3 years after the person becomes the holder of a practising certificate (the “initial period”) and every period

Clause 143 Legal Profession Regulation 2002

Part 15 Miscellaneous provisions

expiring on the third anniversary after the expiration of that
initial period.

143 Savings and transitional provisions

Schedule 5 has effect.

Legal Profession Regulation 2002

Forms

Schedule 1

Schedule 1 Forms

(Clause 3 (4))

Form 1 Application by client for assessment of costs (other than party/party costs)

(Clause 53 (1) (a))

(Legal Profession Act 1987)

IN THE SUPREME COURT OF NEW SOUTH WALES

AT SYDNEY

COMMON LAW DIVISION

No of 20

.....
[Applicant]

.....
[Respondent]

1 I wish to object to the bill of costs given to me by my legal practitioner. I apply to have this matter referred to a costs assessor.

2 The costs which are the subject of this application were included in the bill of costs (or request for payment where costs paid without bill) dated , a copy of which is attached.

There is a costs agreement between myself and my legal practitioner (copy attached)/There is no costs agreement between myself and my legal practitioner*.

I seek to have the costs agreement (or part) set aside as unjust under section 208D of the Act and provide the following details to support the request:*

.....

Legal Profession Regulation 2002

Schedule 1 Forms

I make the following objections to the bill of costs:

Note. Objections on the ground that it does not comply with any costs agreement, or that it does not comply with any practitioner's disclosures as to costs, to be so identified.

The following additional information is provided that is relevant to the assessment of fair and reasonable costs in this matter:*

3 The costs have been fully paid/partly paid* in the sum of \$ /not paid*. *[In the case of part payment, a copy of any receipt given for that payment is to be attached.]*

4 The amount of costs in dispute is the whole bill/is the costs for the following services (being \$): * *[The amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the party liable to pay them.]*

5 The address for the service of notices on the applicant, respondent and any interested parties are the following:
Applicant:
Respondent:
Other:

6 I authorise the costs assessor to whom this matter is referred to have access to, and to inspect all my documents that are held by me, or by any barrister or solicitor concerned, in relation to this matter.

7 I declare that there is no reasonable prospect of settlement of the matter by mediation.
Date:
Applicant: *[or Applicant's Practitioner]*

* Cross out whichever is inapplicable.

Legal Profession Regulation 2002

Forms

Schedule 1

Form 2 Application by practitioner for assessment of costs (other than party/party costs)

(Clause 53 (1) (b))

(Legal Profession Act 1987)

IN THE SUPREME COURT OF NEW SOUTH WALES
AT SYDNEY
COMMON LAW DIVISION
No of 20

.....
[Applicant]

.....
[Respondent]

- 1 I apply to have this matter referred to a costs assessor.
- 2 *COSTS OF RETAINED PRACTITIONER WHERE APPLICATION FOR ASSESSMENT MADE BY INSTRUCTING PRACTITIONER
 - (a) The costs which are the subject of this application were included in the retained practitioner's bill of costs dated , a copy of which is attached.
 - (b) There is no costs agreement between the client and the retained practitioner.
 - (c) There is a costs agreement between the instructing and retained practitioners (copy attached)/There is no costs agreement between the instructing and retained practitioners*.
 - (d) I make the following objections to the bill of costs:
Note. Objections on the ground that it does not comply with any costs agreement to be so identified.
.....
 - (e) The following additional information is provided that is relevant to the assessment of fair and reasonable costs in this matter:*

.....
OR
.....

Legal Profession Regulation 2002

Schedule 1 Forms

2 *COSTS OF PRACTITIONER WHERE THAT PRACTITIONER IS THE APPLICANT

(a) The costs which are the subject of this application were included in my bill of costs dated , a copy of which is attached. The bill was given to the client on in the following manner:

.....

(b) *The bill of costs was given at least 30 days prior to the making of this application.

OR

(b) *An application for assessment of the bill of costs has already been made by

.....

(c) There is a costs agreement between myself and the client (copy attached)/There is no costs agreement between myself and the client*.

(d) The following disclosures about costs were made to the client in accordance with the Act:

.....

3 The costs have been fully paid/partly paid* in the sum of \$ /not paid*.

[In the case of part payment, a copy of any receipt given for that payment is to be attached.]

4 The amount of costs in dispute is the whole bill/is the costs for the following services (being \$):

..... *

[The amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the party liable to pay them.]

Legal Profession Regulation 2002

Forms

Schedule 1

-
- 5 The addresses for the service of notices on the applicant, respondent and any interested parties are the following:
 Applicant:

 Respondent:

 Other:

 - 6 I authorise the costs assessor to whom this matter is referred to have access to, and to inspect all my documents that are held by me, or by any barrister or solicitor concerned, in relation to this matter.

 - 7 I declare that there is no reasonable prospect of settlement of the matter by mediation.
 Date:
 Applicant:
 [or Applicant's Practitioner]

* *Cross out whichever is inapplicable.*

Legal Profession Regulation 2002

Schedule 1 Forms

Form 3 Application for assessment of party/party costs

(Clause 55 (1))

(Legal Profession Act 1987)

IN THE SUPREME COURT OF NEW SOUTH WALES
AT SYDNEY

COMMON LAW DIVISION

No of 20

.....
[Applicant]

.....
[Respondent]

- 1 I apply to have this matter referred to a costs assessor.
- 2 The costs which are the subject of this application are the costs payable by the applicant/respondent* as a result of an order of the Court at on [date] in matter No / .
- 3 The costs have been fully paid/partly paid* in the amount of \$ /not paid*.
[In the case of part payment, a copy of any receipt given for that payment is to be attached.]
- 4 The amount of costs in dispute is the whole bill/is the costs for the following services (being \$):
..... *
[The amount of costs in dispute is the total amount of costs for those legal services in respect of which the costs claimed are disputed by the party liable to pay them.]
- 5 The following information relating to this matter is provided**:
 - (a) Details of the proceedings in respect of which the costs are payable, including the identity of the parties to the proceedings and of their legal representatives:
 - (b) The total amount of costs payable:

Legal Profession Regulation 2002

Forms

Schedule 1

- (c) The relevant work done in those proceedings and the period over which that work was done:
- (d) The identity of the persons who did that work (including the position of the persons eg partner, associate):
- (e) The basis on which the costs have been calculated and charged (whether on a lump sum basis, an hourly rate basis, an item of work basis, on a part of proceedings basis or other basis):
- (f) The facts relied on to justify the costs charged as fair and reasonable by reference to the above, the practitioner’s skill, labour and responsibility, the complexity, novelty or difficulty of the matter, the quality of the work done or any other relevant matter:

[The above information may be given by attaching a separate statement containing the information, or by attaching a copy of a bill of costs containing the information that has been given to a client or instructing practitioner.]

- 6 A copy of this application was sent to the respondent on
- 7 Attached are objections to this application, and any response, made in accordance with clause 56 of the Regulation.*

I certify that:

- (a) no objection to this application by the respondent was received by me before the lodging of the application.*
[where application made by person to whom costs are payable]
- (b) no response by the respondent to the objections made by me was received by me before the lodging of the application.*
[where application made by person by whom costs are payable]

- 8 The addresses for the service of notices on the applicant, respondent and any interested parties are the following:

Applicant:

.....

Respondent:

.....

Other:

.....

Legal Profession Regulation 2002

Schedule 1 Forms

- 9 I authorise the costs assessor to whom this matter is referred to have access to, and to inspect all my documents that are held by me, or by any barrister or solicitor concerned, in relation to this matter.

Date:

Applicant:
[or Applicant's Practitioner]

** Cross out whichever is inapplicable.*

*** If this application is made by the person by whom the costs are payable, the information in para. 5 is to be completed by the person to whom the costs are payable after a copy of this application is sent to that person.*

Legal Profession Regulation 2002

Forms

Schedule 1

Form 4 Application for review of costs assessment

(Clause 64)

(Legal Profession Act 1987)

IN THE SUPREME COURT OF NEW SOUTH WALES
AT SYDNEY
COMMON LAW DIVISION

No of

.....
[Applicant]

.....
[Respondent]

- 1 I apply to have a determination of a costs assessor reviewed by a costs review panel.
- 2 The determination to be reviewed was set out in the certificate(s) of determination issued on [date] by Costs Assessor
- 3 A copy of the certificate(s) of determination and the statement of reasons given by the costs assessor are attached to this application.
- 4 The grounds for making the application for review are set out in the space provided on the back of this form.
- 5 I certify that:
 - (a) this application is made within 28 days after the issue of the certificate(s) of determination to be reviewed, and
 - (b) notice of this application was served on the respondent on [date].
(being not less than 7 days before this application was made).
- 6 An affidavit proving service of notice of this application on the respondent is attached to this application.
- 7 This application relates to the assessment of:

*party/party costs	*practitioner/client costs
*client/ practitioner/client costs	*practitioner/practitioner costs

Legal Profession Regulation 2002

Schedule 1 Forms

8 * I am responsible for payment/ * Another person is responsible for payment of the costs the subject of the determination to be reviewed.

9 I declare that there is no reasonable prospect of settlement of the matter by mediation.

10 The addresses for the service of notices on the applicant and the respondent are:

Applicant:
.....
.....
.....

Applicant's legal practitioner, if any:
.....
.....
.....
.....

Telephone:

Fax:

Note. If the application is signed by a legal practitioner acting for the applicant, the name, address, telephone and facsimile numbers of the legal practitioner's firm are to be stated.

Respondent:
.....
.....
.....

Respondent's legal practitioner, if any:
.....
.....
.....
.....

Legal Profession Regulation 2002

Forms

Schedule 1

Telephone:

Fax:

Note. If the respondent is represented by a legal practitioner, the name, address, telephone and facsimile numbers of the legal practitioner's firm are to be stated.

Date:

Applicant:

[or Applicant's legal practitioner]

This form is to be filed in triplicate

* *Cross out whichever is inapplicable*

The grounds for making the application for review are as follows:

Legal Profession Regulation 2002

Schedule 1 Forms

Form 5 Notice to person on whose behalf controlled money is received

(Clause 88)

(Legal Profession Act 1987)

Part 1

Note. This notice is issued when a solicitor acquires control of a person's money or deposits or invests money for a person and retains control of the money.

1 Name and address of person on whose behalf controlled money is received:

2 *[Where specific sum of money received]*

(a) Amount of money received:

(b) When money received:

(c) From whom money received:

(d) How/where money is held by solicitor:
or*[Where solicitor has power or authority over money in person's accounts/deposits]*

(e) Names and numbers of accounts/deposits:

(f) Names and addresses of financial institutions or persons where or with whom accounts or deposits are held:

(g) Date, registration particulars (if any) and nature of instrument granting power or authority to solicitor:

3 Solicitor's instructions received from:

on:

to deal with money received or held in accounts/deposits noted in paragraph 2, as follows:

Legal Profession Regulation 2002

Forms

Schedule 1

Part 2

Particulars as to the payment or investment of money referred to in Part 1 of this notice (or in Part 1 of Notice No. dated _____).

Name and address of person on whose behalf controlled money is received:

- 1 Amount of money paid/invested:
- 2 Date of payment/deposit:
- 3 Name and address of person or institution holding the money paid or deposited:
- 4 Name and number of the account or deposit:
- 5 Terms on which money is deposited or invested:
 - (a) Term or maturity date of deposit:
 - (b) The rate of interest:
 - (c) Date from which interest is computed:
 - (d) The deposit or investment is unsecured:
or
The deposit or investment is secured and particulars of the security are:
 - (e) Special terms (if any):

Legal Profession Regulation 2002

Schedule 1 Forms

Form 6 Accountant’s report for the period
/ / to / /

(Clause 94)

(Legal Profession Act 1987)

To: The Law Society of New South Wales

1 (a) Practice Name:

The name(s) of the solicitor(s) who at any time during the period carried on practice solely or in partnership under the above name or as solicitor director(s) of the above incorporated legal practice and the period of practice are as follows:

Name	Period
.....	From To
.....	From To
.....	From To
.....	From To

(b) The Trust Records referred to in this report relate to the Bank Account(s) conducted under the above practice name and described in Schedule 1 to this report.

(c) The Controlled Money Records referred to in this report relate to the accounts and money recorded in any controlled money ledger accounts closed during the 12 months ended 31/3/20 and in any controlled money ledger accounts current at that date and described in Schedule 2 to this report.

2 The limited examination of the Trust Records and Controlled Money Records conducted for the purpose of completing this Report does not constitute an audit.

3 Particulars of any letter of credit issued in respect of the deposit made under the provisions of section 64 of the Act are contained in Schedule 3 to this report.

4 I have completed and signed the Reporting Accountant’s Check List in the form approved by the Council of the Law Society of New South Wales.

Legal Profession Regulation 2002

Forms

Schedule 1

-
- 5 A true copy of the Summary of Breaches of Regulation from the Reporting Accountant's Check List is Schedule 4 to this report.
- 6 The Summary Review Memorandum is Schedule 5 to this Report.
- 7 In my opinion, based on appropriate examinations and sampling techniques, throughout the period covered by the report, and subject to the qualifications noted below:***

Qualifications:***

Note. If qualifications are made/an adverse report is given, a copy of this report is to be forwarded direct to the Chief Trust Account Inspector c/- Law Society of NSW

(1) **Trust money**

- (a) The accounting systems and internal controls used by the solicitor(s) to ensure that trust money has been properly accounted for were:
- (i) Appropriate/inappropriate for the practice conducted, and ***
- (ii) Operated/did not operate satisfactorily.***
- (b) Trust money recorded as received, held and/or disbursed during the period has/had not been accurately recorded in the manner prescribed.***
- (c) The records prescribed for the recording of trust money have/have not been maintained regularly and properly.***

(2) **Controlled money**

- (a) The accounting system and internal controls used by the solicitor(s) to ensure that controlled money has been properly accounted for were:
- (i) Appropriate/inappropriate for the practice conducted, and ***
- (ii) Operated/did not operate satisfactorily.***
- (b) Controlled money recorded as received, held and/or disbursed during the period has/had not been accurately recorded in the manner prescribed.***
- (c) The records prescribed for the recording of controlled money have/have not been maintained regularly and properly.***

Legal Profession Regulation 2002

Schedule 1 Forms

*** Delete as appropriate.

Date:

Signed:

Full name: *[Block letters]*

Company Auditor's Registration No:

Firm Name (if any):

Postal Address:

Phone No:

Schedule 1 Trust money

1 Trust Bank Account Number:

Bank:

Branch Address:

BSB Number:

Period from:

to

Bank statement balance as at 31/3/20 \$

Total client funds as at 31/3/20 \$

(ie Cash book balance plus Statutory Deposit balance)

Number of Trust Ledger Accounts as at 31/3/20 (excluding zero balances):

2* Trust Bank Account number:

Bank:

Branch Address:

BSB Number:

Period from:

to

Legal Profession Regulation 2002

Forms

Schedule 1

Bank statement balance as at 31/3/20 \$

Total client funds as at 31/3/20 \$

(ie Cash book balance plus Statutory Deposit balance)

Number of Trust Ledger Accounts as at 31/3/20 (excluding zero balances):

** Delete where appropriate/attach separate list if space is insufficient.*

Schedule 2 Controlled money/mortgages

[Where appropriate, show "NIL" or "NOT APPLICABLE"]

Controlled Money Ledger

- (1) Listing of accounts total as at 31/3/20 \$
- (2) Number of Ledger Accounts as at 31/9/20

Investments Register

- (1) Listing of Mortgages total as at 31/3/20 \$
- (2) Number of Mortgages as at 31/9/20

Schedule 3 Letter of credit details

[Where appropriate, show "NIL" or "NOT APPLICABLE"]

(a) Letter of Credit Details as at 31 March 20 .

Bank	Letter of Credit Number	\$
.....		
.....		
.....		
		\$ _____

(b) Movement Schedule Balance at 31 March 20 .

Date	\$
Adjustment during period:	
.....	

Legal Profession Regulation 2002

Schedule 1 Forms

Balance at 31 March 20 :		\$	_____
(c) April 19 Adjustment Balance at 1 April 20 .		\$	_____
Adjustments:	Date	\$	

Balance and date of report / /			_____

Schedule 4 Summary of breaches of Regulation

[If no breaches, show "NIL"]

Regulation	Check List Item Reference	Description and Extent of Breach

Schedule 5 Summary Review Memorandum

This memorandum summarises the reasons for issuing an unqualified, qualified or adverse Report and is to be completed after considering the results of all procedures conducted to complete the Report.

** Attach additional schedule if space is insufficient.*

Legal Profession Regulation 2002

Forms

Schedule 1

Form 7 Lending authority

(Clause 102)

(Legal Profession Act 1987)

To: *[insert name of legal firm]*

I/we: *[insert name(s) of investors]*

of: *[insert address(es)]*

authorise and instruct you to invest on my/our behalf the sum of \$ on the terms and conditions contained in the Disclosure Notice (given under clause 102 of the *Legal Profession Regulation 2002*) dated and subject to the terms and conditions in this application form.

Full details of lender(s)

1 My/Our full name(s) and address(es) for the description on the mortgage document is/are:

Applicant

Mr/Mrs/Miss/Ms

Surname

Other names

Company name ACN

Address

Suburb/Postcode

Contact name (if company)

Email address

Date of birth

Occupation

[or]

Legal Profession Regulation 2002

Schedule 1 Forms

The mortgage is to be registered in the following name as Mortgagee:

Applicant

Mr/Mrs/Miss/Ms

Surname

Other names

Company name ACN

Address

Suburb/Postcode

Contact name (if company)

Email address

Date of birth

Occupation

Details of Borrower

2 Full name and address of the Borrower is

Value of security

3 The estimated value of the security at the date of the loan will be at least \$
The value will be evidenced by

4 Total principal sum to be lent under the mortgage \$

Security information

5 The total principal sum must be secured by way of a first registered mortgage over the security described in this Authority.

6 Details of the security:

(a) Term of Mortgage months

(b) Address of the property

(c) Nature of improvements

7 Name and address of Guarantor

8 There are to be no prior mortgages or charges affecting security.

Contribution of lender

9 My/Our contribution to the loan \$

Legal Profession Regulation 2002

Forms

Schedule 1

Authority

- 10 (a) Unless otherwise specified in paragraph 19 of this Authority, I am/we are not entitled to the repayment of my/our contribution until the mortgage is discharged.
- (b) Unless I/we notify the firm in writing at least 14 days before the maturity date that I/we wish to withdraw from the investment, the firm may permit the investment to continue until the mortgage is renewed or paid in full.
- (c) Unless I/we notify the firm in writing within 14 days of receipt of a request of a renewal confirmation that I/we wish this investment to end on the review date, the firm may renew the investment for a further term set out in the renewal confirmation.

Payment of principal and interest

11 Payments of interest and principal are to be:

* (a) paid by cheque to:

[or]

* (b) by direct payment to the following account:

Account name

Bank details

Account number

Branch (BSB) number

* *Strike out whichever is not applicable*

Interest

12 * (a) The interest rate must not be varied during the term of the loan,

[or]

* (b) The interest rate may be varied during the term of the loan on the following basis:

* *Strike out whichever is not applicable*

13 The interest rate applicable to the loan is to be _____ per cent per annum payable _____ in advance/arrears subject to a reduction to _____ per cent per annum for any payment that is made within _____ days after the due date for that payment.

Legal Profession Regulation 2002

Schedule 1 Forms

Fees and charges

14 I/we authorise [*insert name of legal firm*] to deduct the following fees:

- (a) a management fee of % from the interest paid by the borrower,
- (b) an exit fee of % of the value of the contribution.

The firm pays commission to brokers and licensed dealers as follows:

.....

Tax file number

15 I/we have/have not supplied tax file numbers to [*insert name of legal firm*].

Early repayment by Borrower

16 The Borrower may in some circumstances repay the loan before the expiration of the period specified in paragraph 6 (a) of this Authority on the following conditions

Limitations to Authority

17 This Authority is given on the understanding that at the date of the making of the loan:

- (a) the Borrower will not be you or an associate, by which term is meant a person or company associated with a solicitor (as defined in section 60 (2) of the *Legal Profession Act 1987*), and
- (b) you or any such associate will have no financial interest in the Borrower unless you disclose the relationship or interest to me/us and I/we have received written advices from an independent solicitor in the prescribed form,
- (c) I am/We are aware that, in respect of any mortgage loan to which my/our money may be applied, you may also/will not act as solicitor for the Borrower.

Fidelity coverage

18 (a) I/We are aware that the fidelity insurance policy of [*insert name of legal firm*] is limited to \$4 million.

- (b) I/We are also aware that under a State regulated mortgage we are not entitled to make a claim against the Fidelity Fund for the purposes of obtaining compensation for pecuniary loss if a claim relates to a regulated mortgage for which the solicitor is required to have fidelity insurance.

Legal Profession Regulation 2002

Forms

Schedule 1

Special conditions

19 Special conditions or instructions not relating to the security.

I/We acknowledge having received, read and understood the information contained in the Disclosure Notice (given under clause 102 of the *Legal Profession Regulation 2002*), this Authority and the valuation(s) relating to the security property(s) and declare that the decision to invest in this mortgage is a decision based on my/our enquiries and is not based on any advice of the *[insert name of legal firm]*.

Before I/we signed this Authority all of the required particulars had been inserted and all blank spaces had been filled up or ruled out.

Signature of investors

This form must be signed by the investor. All joint investors must sign. If the investor is a corporation, partnership, firm or unincorporated association, the person(s) authorised by its constitution must sign and state the capacity in which they are signing (eg director, secretary). If signed under power of attorney, the attorney must state that no notice of cancellation of the power has been received. The power of attorney must be produced if it has not already been noted by the firm.

Date:

Signed:

.....
[Full name] [Signature]

.....
[And capacity if applicable]

.....
[Full name] [Signature]

.....
[And capacity if applicable]

.....
[Full name] [Signature]

.....
[And capacity if applicable]

Legal Profession Regulation 2002

Schedule 1 Forms

Form 8 Summary of mortgage

(Clause 108)

(Legal Profession Act 1987)

- 1 Mortgagor:
- Postal address:
- 2 Mortgagee:
- Postal address:
- [Where principal sum contains contributions of more than one lender]*
- Name and address of Mortgagee to whom this summary is sent
-
- Amount advanced by him/her
- Total principal sum
- 3 Principal \$
- 4 Repayable
- 5 Interest per cent per annum (reducible to per cent per annum if paid
within 14 days after due dates).
- 6 Special conditions
-
-
- 7 Particulars of security:
- (a) General description:
- (b) Date of execution:
- (c) Registered number or dealing number:
- (d) Standing in order of priority to other mortgages or charges:
- (e) Total loan secured:

Legal Profession Regulation 2002

Forms

Schedule 1

8 Particulars of property comprising security:

- (a) Real property:
 - (i) Address:
 - (ii) Shire/Municipality:
 - (iii) Title reference:
 - (iv) Improved/unimproved:
 - (v) Nature of improvements:
 - (vi) Assessment of value:
 - Issued by:
 - Dated:
 - (vii) Special conditions as to progress payments:
- (b) Other:
 - (i) Description of property:
 - (ii) Assessment of value:
 - Issued by:
 - Dated:
- (c) Other relevant particulars:

9 Prior encumbrances:

- (a) Encumbrances (described):
- (b) Amount secured:
- (c) Parties:
- (d) Date:

Legal Profession Regulation 2002

Schedule 1 Forms

This Notice/Summary is issued to
on *[date]*

.....
[Signature]

.....
[Name of Solicitor]

.....
[Firm]

.....
[Address]

Legal Profession Regulation 2002

Costs for legal services in workers compensation matters

Schedule 2

Schedule 2 Costs for legal services in workers compensation matters

(Clause 46)

Part 1 Schedule of practitioners' costs

1 Preparing process

Drawing/typing/checking originating process, notice of appeal to the court, notice of application for leave to make an appeal to the court, or third or subsequent party notice \$56

2 Preparing other documents

Drawing/typing/checking any document, including any notice of subpoena or document necessarily or properly filed or delivered to another party or to counsel or the court, but excluding a certificate of readiness, per page \$17

Drawing/typing/checking certificate of readiness where required \$39

If the certificate of readiness is special or necessarily long, such allowance as the registrar thinks proper, not exceeding per page \$17

3 Letters (including drafting, typing and checking)

Short letter (up to one folio in length) \$17

Circular, being identical (save for address details) with any other letter \$8

Any other letter, per folio \$17

4 Telephone calls

Not requiring skill \$14

Requiring skill or legal knowledge:

(a) not more than six minutes \$20

(b) more than six minutes—per six minute unit after the first \$14

Legal Profession Regulation 2002

Schedule 2 Costs for legal services in workers compensation matters

5 Perusal of documents

Perusal of Court documents (being any document filed in court), per page or part of a page	\$15
Perusal of other documents, including correspondence, per folio	\$56
Where it is not necessary to peruse but it is necessary to scan a document, per page	\$3

6 Copying

Being a photographic reproduction, carbon or other copy of a document including copies for use in court, copies of doctors' reports for use on hearing, sending or receiving facsimile transmission, including the time reasonably spent by a legal practitioner or clerk in preparing, sorting and collating such documents for copying, per page	\$1
--	-----

Note. In respect of facsimile transmissions, STD and IDD transmission fees may be claimed as disbursements.

7 Attendance

Time reasonably spent by a legal practitioner (not being time spent at a conciliation conference) including travelling, waiting time, other than work referred to in items 1–6 inclusive, per quarter hour or part of a quarter hour	\$35
Time spent by a legal practitioner at a conciliation conference, per hour or part of an hour	\$250
Time reasonably spent by a clerk including travelling, waiting time on work other than work referred to in items 1–6 inclusive, per six minute unit	\$4

Note.

- Where the hearing of any proceedings is not reached, or is adjourned on payment of the costs of the day, there may be allowed in respect of any time lost in awaiting the commencement of the hearing an amount not exceeding the amount that would have been allowed under item 7 if that time had been spent in the hearing of the proceedings.
- Where the legal practitioner is engaged in any other proceedings on the same day, the amount under item 7 will be such proportion only as the registrar thinks reasonable, having regard to all the circumstances.
- Where a party is not notified of any payment, withdrawal or discontinuance in time to prevent attendance at Court, there may be allowed for that attendance an amount in the discretion of the registrar not exceeding the amount claimable under item 7 for one hour's attendance appropriate to the proceedings.

8 Specific skill, care and responsibility

Legal Profession Regulation 2002

Costs for legal services in workers compensation matters

Schedule 2

Where any individual item merits any particular skill or attention an additional allowance is to be made in addition to any general allowance under item 9.

9 Skill, care and responsibility

Such sum as may be reasonable, having regard to all of the circumstances of the case and in particular to:

- (a) the complexity of the matter,
- (b) the difficulty or novelty of the questions involved in the matter,
- (c) the skill, specialised knowledge and responsibility involved and the time and labour extended by the legal practitioner,
- (d) the number and importance of the documents prepared and perused, however brief,
- (e) the general care and conduct of the legal practitioner having regard to his/her instructions and all relevant circumstances, including the preparation for hearings generally and for hearing of taxation/assessment of a bill of costs specifically.

10 Disbursements

Any disbursement necessarily incurred is to be allowed except in so far as any such disbursement is of an unreasonable amount or has been unreasonably incurred and any doubts which the taxing officer/costs assessor may have as to whether any disbursement was reasonably incurred or was reasonable in amount are to be resolved in favour of the receiving party.

11 Definitions

An allowance under items 1, 2 and 3 includes any file copy.

In this Part:

folio means 100 words.

page means a page typewritten or printed and which is a page of a nature or kind usual for the particular document and includes part of a page.

Legal Profession Regulation 2002

Schedule 2 Costs for legal services in workers compensation matters

Part 2 Advocates' fees

- 1 Briefs on hearing—Brief Fees are to be calculated on the nature of the relief obtained, in accordance with the following scale:

Scale A	\$620
Scale B	\$850
Scale C	\$980

The scale appropriate for the relief obtained is to be as follows:

- | | | |
|-----|--|---|
| (a) | Property damage | A |
| (b) | Medical, hospital etc | A |
| (c) | Commutations and redemptions | A |
| (d) | Lump sum loss of faculties under <i>Workers' Compensation Act 1926</i> | A |
| (e) | Lump sum for compensation under s 66 of <i>Workers Compensation Act 1987</i> , including any claim for pain and suffering | C |
| (f) | Lump sum for pain and suffering | C |
| (g) | Weekly payments (closed period) | B |
| (h) | Weekly payments (continuing period) | C |
| (i) | Death claims | C |
| (j) | Death claims where respondent admits liability subject only to formal proof of marriage, dependency or other similar issue, only if certified by the Court | A |
| (k) | Review of decisions of Commissioners (substantive matters) | C |
| (l) | Review of decisions of Registrars or of Commissioners (procedural matters) | A |
| (m) | Appeals to the Court | C |
-
- | | | |
|---|---|-------------|
| 2 | To appear in respect of any motion, or at any conciliation conference, where the court certifies that the matter is appropriate for an advocate | \$370 |
| 3 | To attend any second or subsequent conference in respect of the applicant, if certified | \$125–\$310 |
| 4 | To advise on evidence | \$125–310 |

Legal Profession Regulation 2002

Costs for legal services in workers compensation matters

Schedule 2

-
- 5 For drawing, settling any necessary document, conferences, advice (not including advice on evidence), pleadings or for any work involving an advocate in his or her chambers or offices, views, including travelling time, taking a reserved judgment, appearing at call overs, mentions and adjournments, other than any work referred to in items 1–3 inclusive—per hour \$140
- 6
- (a) In respect of items 1 to 4 for senior counsel: an amount to be decided at the discretion of the taxing officer/costs assessor.
 - (b) Fees for senior counsel or more than one advocate will not be allowed without an order of the court.
 - (c) The court may in a special case order that fees additional to those provided in this Schedule be payable to an advocate.
- 7 Refreshers:
- (a) Where the hearing is not concluded on the date on which it is begun, there will be allowed, unless the court otherwise orders, in respect of each further day on which the hearing continues—for more than 3 hours, a refresher of 75%, or for 3 hours or less, a refresher fee of 65% of the brief fee.
 - (b) In respect of hearings outside the Sydney metropolitan area:
 - (i) a full refresher of 75% will be allowed in respect of any subsequent day on which the hearing continues at a town other than that at which it commenced, and
 - (ii) unless the court otherwise orders no refresher fee will be allowed in respect of a hearing which continues at another town on the day on which it commenced, and
 - (iii) no loading will be taken into account in calculating any refresher.
 - (c) Where the hearing is adjourned on an order for payment of the costs of the day—the fee equal to a refresher of 65% of the brief fee.
 - (d) Where the matter is not reached on a day on which it is listed for hearing—a fee equal to a refresher of 75% of the brief fee (if certified by the court).

Legal Profession Regulation 2002

Schedule 2 Costs for legal services in workers compensation matters

- 8 Loadings:
- (a) An advocate whose principal chambers or offices are in the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in a town outside that area, to a loading in accordance with Part 3 of this Schedule for that town. If proceedings take place at two or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
 - (b) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard in the Sydney Metropolitan area, to a loading in accordance with Part 3 of this Schedule for that town.
 - (c) An advocate whose principal chambers or offices are in a town outside the Sydney Metropolitan area is entitled, in respect of proceedings heard or partially heard at another such town, to a loading in accordance with Part 3 of this Schedule for that other town. If proceedings take place at two or more towns outside that area, the loading payable is that appropriate to the town that is the farther or farthest from those chambers or offices.
 - (d) For the purposes of this item, if a town is not included in Part 3 of this Schedule, the loading for that town is to be the loading for the nearest town that is so included.
 - (e) If an advocate holds more than one brief in respect of proceedings heard at a place on any one day and a loading is applicable under this item, the loading is to be divided equally between those briefs in respect of which an advocate's fees are awarded or payable.
- 9 A solicitor providing an advocacy service is entitled to only 66% of the fee calculated under this Part when the service is provided to his or her own client or to a client of his or her employer.

Legal Profession Regulation 2002

Costs for legal services in workers compensation matters

Schedule 2

Part 3 Country loadings

- 1 For the purposes of item 8 of Part 2 of this Schedule, the loading for attending a hearing at any of the following towns, for the first day is:

Town	Loading
	\$
Albury	723
Armidale	663
Bateman's Bay	662
Bathurst	525
Bega	799
Bourke	1141
Broken Hill	1232
Campbelltown	63
Casino	745
Cessnock	411
Cobar	1049
Coffs Harbour	584
Condobolin	889
Cooma	882
Coonamble	850
Cootamundra	603
Cowra	464
Deniliquin	777
Dubbo	615
Forbes	615

Legal Profession Regulation 2002

Schedule 2 Costs for legal services in workers compensation matters

Town	Loading
	\$
Glen Innes	584
Gosford	176
Goulburn	434
Grafton	715
Griffith	588
Gundagai	690
Gunnedah	680
Hay	761
Inverell	683
Katoomba	239
Kempsey	629
Lismore	658
Lithgow	273
Maitland (including East Maitland)	411
Moree	616
Moruya	516
Moss Vale	284
Mudgee	490
Murwillumbah	761
Muswellbrook	436
Narrabri	572
Narrandera	568
Newcastle	411

Legal Profession Regulation 2002

Costs for legal services in workers compensation matters

Schedule 2

Town	Loading
	\$
Nowra	411
Nyngan	977
Orange	468
Parkes	633
Penrith	63
Port Macquarie	530
Queanbeyan	526
Singleton	632
Tamworth	613
Taree	490
Tweed Heads	714
Wagga Wagga	544
Wentworth	1154
Wollongong	260
Yass	463
Young	603

- 2 If the advocate is a senior counsel—add \$75 per day to the relevant loading.
- 3 For each additional day attending a hearing at any of the towns listed above—add \$163.
- 4 Where the NRMA car rental discount is applicable, the amount of the loading is to be reduced by an amount that is calculated by subtracting the discount amount paid from the amount allowed in the loading of \$99.

Legal Profession Regulation 2002

Schedule 3 Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

Schedule 3 Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

(Clause 47)

Part 1 Supreme Court

- | | | |
|-----|--|--------|
| 1 | Costs of taking instructions, preparing documents and filing statement of claim for uncontested recovery of lump sum debt including drawing/typing/checking of originating process, being first page of document ((Form 1), statement of claim (Form 5) and affidavit verifying statement of claim (Form 20A), and cheque to pay account of process server | \$858 |
| 2 | Costs of service—for each additional defendant | \$50 |
| 3 | Costs of substituted service including drawing/typing/checking of affidavit (Form 49), minute of order (Form 51) and cheque to pay account of process server | \$488 |
| 4 | Costs of service in another jurisdiction: | |
| (a) | within Australia under the <i>Supreme Court Rules</i> —including obtaining leave to proceed and drawing/typing/checking affidavit (Form 49) | \$187 |
| (b) | outside Australia in a country where English is the official language—including drawing/typing/checking of request for service (Form 15) and notice to defendant to be served (Form 13A) | \$128 |
| (c) | outside Australia in a country where English is not the official language—including drawing/typing/checking of request for special service (Form 14) and notice to defendant to be served (Form 13A) | \$578 |
| 5 | Costs on entering a default judgment for recovery of lump sum debt including all matters listed in Item 1 plus drawing/typing/checking of affidavit of service (Form 49), minute of judgment (Form 50) and affidavit of debt (Form 20C) | \$1246 |
| 6 | Costs on obtaining certificate of judgment under section 13 of the <i>Foreign Judgments Act 1973</i> including drawing/typing/checking of minute of judgment (Form 50), certificate under section 13 of the <i>Foreign Judgments Act 1973</i> (Form 51A) and affidavit of facts (Form 49): | |

Legal Profession Regulation 2002

Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors Schedule 3

- | | | |
|-----|--|-------|
| (a) | if a solicitor is required to attend the court to settle judgment | \$687 |
| (b) | if a solicitor is not so required | \$481 |
| 7 | Costs of taking instructions, preparing documents and filing a writ of execution (whether or not the matter was contested) including drawing/typing/checking of writ for levy of property (Form 57), affidavit (Form 49) and cheque for payment of proceeds to plaintiff | \$530 |

Legal Profession Regulation 2002

Schedule 3 Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

Part 2 District Court

1	Costs to be entered on statement of claim signed by a solicitor in respect of the solicitor's costs of taking instructions, preparing documents and filing the statement of claim including drawing/typing/checking of originating process, being first page of document (Form 1), ordinary statement of claim (Form 8) or statement of liquidated claim (Form 9) and cheque to pay account of process server	\$642
2	Costs of service—for each additional defendant	\$50
3	Costs of substituted service including drawing/typing/checking of application (Form 14), affidavit (Form 5), order (Form 39) and cheque to pay account of process server	\$462
4	Costs on obtaining an order for judgment on ordinary statement of claim or entering a default judgment on statement of liquidated claim including all matters listed in Item 1 plus drawing/typing/checking of affidavit of debt (Form 29) and checking of Forms 24 and 25	\$956
5	Costs on obtaining judgment in undefended action in which order for judgment has been made (unless the Court otherwise orders) including all matters listed in Items 1 and 4	\$1335
6	Costs on examination summons including drawing/typing/checking of examination summons (Form 76) and cheque to pay account of process server	\$506
7	Costs on issue of warrant for apprehension of judgment debtor including drawing/typing/checking of affidavit for issue of warrant (Form 79) and warrant (Form 80)	\$217
8	Costs on issue of writ of execution including drawing/typing/checking of affidavit to ground writ (Form 93), writ (Form 94) and cheque to plaintiff	\$388
9	Costs on issue of writ against the person including drawing/typing/checking of affidavit in support of summons (Form 5), summons to show cause why writ should not issue (Form 109), order authorising issue of writ (Form 110), praecipe for issue of writ (Form 111)	\$855

Legal Profession Regulation 2002

Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors Schedule 3

Part 3 Local Court

If the amount at issue in the action in the Court:

- (a) does not exceed \$1,000—the costs are 40% of the amount specified for the relevant Item, or
- (b) exceeds \$1,000 but does not exceed \$5,000—the costs are 60% of the amount specified for the relevant Item, or
- (c) exceeds \$5,000 but does not exceed \$20,000—the costs are 80% of the amount specified for the relevant Item, or
- (d) exceeds \$20,000—the costs are the full amount specified for the relevant Item.

However, Items 1, 2, 3 and 4 are alternatives. Only one of those Items is applicable in any matter.

1	Costs of taking instructions, preparing documents and filing and issue of a statement of claim including drawing/typing/checking of ordinary statement of claim and affidavit of service (Form 8) or statement of liquidated claim and affidavit of service (Form 9) and cheque to pay account of process server	\$491
2	Costs on entry of default judgment including all matters listed in Item 1 plus drawing/typing/checking of affidavit of debt and minute of judgment (Form 22)	\$712
3	Costs on obtaining order of judgment on ordinary statement of claim including all matters listed in Item 1 plus drawing/typing/checking of application for order for judgment (Form 19A), order for judgment (Forms 19 and 20) and affidavit of evidence (Form 6)	\$810
4	Costs on obtaining judgment by the Court in an undefended action including all matters listed in Item 1 plus drawing/typing/checking certificate of readiness (Form 20A) and statement as to particulars in personal injuries matter	\$1228
5	Costs on issue of examination summons including drawing/typing/checking of examination summons and affidavit of service (Form 60), request for examination of judgment creditor (Form 61) and cheque to pay account of process server	\$293
6	Costs on examination of judgment debtor by solicitor if no request for examination by the Registrar has been filed	\$213

Legal Profession Regulation 2002

Schedule 3 Costs for uncontested recovery of lump sum debts and for enforcement of judgments by judgment creditors

- | | | |
|---|---|-------|
| 7 | Costs on issue of warrant for apprehension of judgment debtor including drawing/typing/checking of judgment creditor's affidavit for issue of warrant (Form 64) | \$155 |
| 8 | Costs on issue of writ of execution including drawing/typing/checking of application to issue execution (Form 72) | \$198 |

Legal Profession Regulation 2002

Costs for other services in workers compensation matters

Schedule 4

Schedule 4 Costs for other services in workers compensation matters

(Clause 48)

Allowances to witnesses

1	Barristers, solicitors, accountants, medical practitioners, surveyors, architects, pharmacists and other professional persons attending to give evidence	\$160–300
	or per hour	\$125–200
2	Whenever a barrister, solicitor, accountant, surveyor, architect, pharmacist, or other professional person (not being a medical practitioner) prepares a report, the fee for the preparation of the report is to be allowed at a rate per hour or part of an hour	\$125–200
3	Whenever the persons mentioned in item 1 are called to give expert evidence and not evidence of fact:	
	(a) attending to give expert evidence, including travelling to Court, where period from departure from home, hospital, place of practice, office, place of employment or other place to return to that place from attendance at Court does not exceed one and a half hours	\$250–400
	(b) for every full hour after the first hour and a half or a proportion of an hour if not for a full hour	\$125–200
	(c) the maximum amount payable per day under item (1) and paragraphs (a) and (b) is the total of the number of hours that reasonably involved a witness at the rates applicable in item (1) and paragraphs (a) and (b)	
4	Travelling and other allowances:	
	(a) payment to be made at the rate of \$0.90 per kilometres one way after the first kilometre up to and including 80 kilometres, plus reasonable parking fees,	
	(b) exceeding 80 kilometres—the reasonable costs of travelling plus the costs of reasonable accommodation, meals and parking	

Legal Profession Regulation 2002

Schedule 4 Costs for other services in workers compensation matters

-
- 5 Other witnesses:
- (a) such allowance as is commensurate with the witnesses' remuneration or circumstances, but not exceeding the allowances provided under items (1) and (3),
 - (b) such additional amount as is reasonable for travelling expenses and sustenance and, in cases where accommodation is required, such further amount as having regard to all the circumstances is reasonable and has been paid in respect of accommodation

Medical examinations and reports

- 6 The following fees may vary within the stated range, depending on the complexity of the matter, the number of documents to be studied and the amount of research needed to give the medical opinion:
- (a) Report made by an attending general practitioner:
 - (i) in respect of an initial consultation and examination of a patient \$120–160
 - (ii) in respect of any further consultation and examination after the first \$80–120
 - (iii) where a re-examination of the patient is not required \$60–80
 - (b) Report made by an attending specialist:
 - (i) in respect of an initial consultation and examination of a patient \$200–300
 - (ii) in respect of any further consultation and examination after the first \$150–250
 - (iii) where a re-examination of the patient is not required \$100–175
 - (c) Report made by a specialist who has not previously treated the patient:
 - (i) in respect of an initial consultation and examination of a patient \$220–500
 - (ii) in respect of any further consultation and examination after the first \$200–450
 - (iii) where a re-examination of the patient is not required \$100–215
- 7 Attending a joint examination (including travelling time where the distance does not exceed 8 kilometres):

Legal Profession Regulation 2002

Costs for other services in workers compensation matters

Schedule 4

-
- | | | |
|-----|--|-----------|
| (a) | as an examining practitioner (including provision of report) | \$300–500 |
| (b) | as a non-examining practitioner where the examination is conducted by another practitioner | \$130–175 |
| (c) | provision of report by non-examining practitioner [see paragraph (b)] | \$100–175 |
- 8 Where special circumstances are shown to exist, eg, as in the case of a psychiatrist or psychologist necessitating prolonged or repeated attendances in a particular case, fees may be charged in accordance with item (1)

Interpreters

9 Allowances for interpreters:

- | | | |
|------|---|-------|
| (a) | amounts reasonably paid to an interpreter attending court in respect of hearing | |
| | not exceeding per day | \$250 |
| (b) | in respect of attending any conference or medical examination: | |
| (i) | for the first two hours or part of two hours | \$80 |
| (ii) | for every hour or part of an hour after the initial two hours | \$30 |
| (c) | in respect of a translation of any document—per folio of 100 words | \$22 |
| (d) | travelling—as per amounts allowed under item (5), [Other witnesses] of this scale | |

Legal Profession Regulation 2002

Schedule 5 Savings and transitional provisions

Schedule 5 Savings and transitional provisions

(Clause 143)

Part 1 Preliminary

1 Definitions

(1) In this Schedule:

former, in relation to a provision of the Act, is defined in subclause (2).

former Board means the Legal Profession Standards Board constituted under former Part 10 of the Act.

former Review Panel means the Legal Profession Conduct Review Panel constituted under former Part 10 of the Act.

former taxation principles means any principles that were applied in the taxation of costs before 1 July 1994 (including any relevant scales and determinations).

former taxation provisions means the provisions of Division 5 of Part 11 of the Act as in force immediately before 1 July 1994 and any relevant rules of court as in force immediately before that date.

former Tribunal means the Legal Profession Disciplinary Tribunal constituted under former Part 10 of the Act.

new, in relation to a provision of the Act, is defined in subclause (3).

new Tribunal means the Legal Services Tribunal constituted under new Part 10 of the Act.

the Act means the *Legal Profession Act 1987*.

(2) A reference in this Schedule to a former provision of the Act is a reference to that provision as in force immediately before 1 July 1994.

(3) A reference in this Schedule to a new provision of the Act is a reference to that provision as in force on or after 1 July 1994.

Legal Profession Regulation 2002

Savings and transitional provisions

Schedule 5

Part 2 Complaints and appeals

2 Complaints made under former Part 10 and not yet subject to proceedings

- (1) This clause and clause 3 apply in respect of a complaint made under former Part 10 of the Act.
- (2) If a complaint made before 1 July 1994 has not, before that date, been the subject of proceedings before the former Board or the former Tribunal, the complaint is to be dealt with as if it had been made under new Part 10 of the Act. A matter that has been referred under former Part 10 of the Act to the former Board or the former Tribunal by a Council, but has not, by 1 July 1994, been the subject of proceedings before the former Board or former Tribunal, is taken to be a matter referred to the new Tribunal under new Part 10 of the Act.
- (3) If a complaint has been made to a Council (or is the subject of a notice given to a Council by the former Review Panel under former section 140 (2) of the Act) before 1 July 1994, but the Council has made no decision in response to the complaint or notice, as the case may be, before that day, the complaint is to be dealt with by the Council as if it had been made under new Part 10 of the Act.
- (4) Anything done under former Part 10 of the Act in respect of a complaint to which this clause applies is taken to have been done under new Part 10 of the Act.

3 Complaints made under former Part 10 and already subject to proceedings

- (1) If a complaint is the subject of proceedings before the former Board or the former Tribunal that are pending on 1 July 1994, those proceedings may be continued before, and determined by, that Board or that Tribunal as if former Part 10 of the Act were still in force.
- (2) If a complaint made under former Part 10 of the Act has (whether before, on or after 1 July 1994) been the subject of proceedings before the former Board or the former Tribunal resulting in a determination in relation to the complaint or the termination of the proceedings, any

Legal Profession Regulation 2002

Schedule 5 Savings and transitional provisions

further action in respect of the complaint that is taken on or after 1 July 1994 is to be taken under new Part 10 of the Act. In that case, the determination or termination is to be treated as if it had been made under new Part 10 of the Act by the new Tribunal.

Note. Examples of further action are a review of the determination, a reference of the complaint to the Tribunal or an appeal.

- (3) To the extent that a complaint has been the subject of proceedings before the former Tribunal, this clause applies to the complaint whether the proceedings are in relation to the review of the determination of a complaint by the former Board or they are in relation to a complaint referred directly to the former Tribunal.
- (4) A reference in this clause to a determination:
 - (a) is a reference to a determination that continues to have effect after 30 June 1994, and
 - (b) includes a determination that, because of this clause, is made under a provision of former Part 10 of the Act on or after 1 July 1994, and
 - (c) includes any reprimand or order made as a result of a determination.

4 Continuation of former Board and former Tribunal

- (1) The former Board continues in existence (as constituted immediately before 1 July 1994) for the purposes of determining any proceedings under clause 3.
- (2) The provisions of former Part 10 of the Act that relate to the constitution and functions of the former Board continue to apply to the former Board while it continues in existence under this clause.
- (3) The former Tribunal continues in existence (as constituted immediately before 1 July 1994) for the purposes of determining any proceedings under clause 3.
- (4) The provisions of former Part 10 of the Act that relate to the constitution and functions of the former Tribunal continue to apply to the former Tribunal while it continues in existence under this clause.

Legal Profession Regulation 2002

Savings and transitional provisions

Schedule 5

5 Former Review Panel

- (1) If an application has been made to the former Review Panel under former Part 10 of the Act for a review of a Council's decision to dismiss a complaint, the review is to be conducted as if that Part were still in force.
- (2) If the former Review Panel has made a recommendation under former Part 10 of the Act to the Attorney General in connection with a complaint, the Attorney General is to treat the recommendation as if former Part 10 of the Act were still in force (but as if a reference to the former Board or to the former Tribunal in the recommendation to the Attorney General were a reference to the new Tribunal).
- (3) A reference in former section 140 (3) (b) of the Act to the referral of a matter by a Council to the former Board or the former Tribunal is taken, if the referral is made on or after 1 July 1994, to be a reference to the institution of proceedings in relation to the matter by the Council in the new Tribunal.
- (4) The former Review Panel continues in existence (as constituted immediately before 1 July 1994) for the purposes of determining any review under this clause.
- (5) The provisions of former Part 10 of the Act that relate to the constitution and functions of the former Review Panel continue to apply to the former Review Panel while it continues in existence under this clause.
- (6) If a Council has decided to dismiss a complaint under former Part 10 of the Act, and no application has been made to the former Review Panel for a review of the decision to dismiss the complaint, but, as at 1 July 1994, the period specified in former section 137 (2) of the Act for applications for review has not passed, the complainant may apply for a review of the decision under Division 6 of new Part 10 of the Act. The application may be made at any time after 30 June 1994 and before the period of 2 months after the decision was made (or, according to former Part 10 of the Act, is deemed to have been made) has passed.

6 Appeals to Supreme Court

- (1) An appeal to the Supreme Court under former Part 10 of the Act that has not been heard before 1 July 1994 is to be heard under new Part 10 of the Act as if it had been made to the Supreme Court under new Part 10.

Legal Profession Regulation 2002

Schedule 5 Savings and transitional provisions

- (2) An appeal to the Supreme Court under former Part 10 of the Act that has been partly heard (or has been completely heard but not determined) before 1 July 1994 may continue to be heard, and may be determined, as if that Part were still in force.

Part 3 Legal fees and other costs

7 Disclosures as to costs

- (1) Division 2 of new Part 11 of the Act does not apply in respect of legal services provided by a legal practitioner on or after 1 July 1994 if the practitioner was retained to provide those services before 1 July 1994.
- (2) Nothing in this clause prevents a legal practitioner from making a disclosure in accordance with that Division in respect of legal services referred to in subclause (1).

8 Disclosures by incorporated legal practices

Clauses 24 and 29 do not apply in respect of legal services provided to a client by an incorporated legal practice if the solicitor who provides those services (in the capacity of an officer or employee of the incorporated legal practice) was retained by the client to provide those services before 1 July 2001 and made any disclosure required by Division 2 of Part 11 of the Act.

9 Agreements as to costs

- (1) Division 3 of new Part 11 of the Act does not apply in respect of legal services provided by a legal practitioner on or after 1 July 1994 if the practitioner was retained to provide those services before 1 July 1994.
- (2) However, if Division 2 of that Part is complied with by a legal practitioner in relation to the provision of legal services, and the practitioner and the relevant client agree to the application of Division 3 of that Part in respect of those services, this clause does not prevent that application.

10 Assessments where bills or orders on or after 1 July 1994, but costs incurred before

- (1) This clause applies in respect of costs which are the subject of a bill given to a client (or which are the subject of an order of a court or tribunal made) on or after 1 July 1994.

Legal Profession Regulation 2002

Savings and transitional provisions

Schedule 5

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- (2) An assessment of those costs under Division 6 of new Part 11 of the Act, to the extent that the costs relate to any work done by a solicitor or barrister, or action taken, before 1 July 1994, is to be made by a costs assessor in accordance with new Part 11 of the Act. However, the former taxation principles apply to any such assessment and that Part is to be construed accordingly.

11 Bills or orders before 1 July 1994

- (1) This clause applies to costs which were the subject of a bill given to a client (or which were the subject of an order of a court or tribunal made) before 1 July 1994.
- (2) The former taxation provisions continue to apply (and new Part 11 of the Act does not apply) in respect of costs if application is made before 1 July 1995, whether for the taxation or assessment of the costs.
- (3) If, however, application is made on or after 1 July 1995 (whether for the taxation or assessment of the costs), the costs are to be assessed in accordance with new Part 11 of the Act. However, the former taxation principles apply to any such assessment and that Part is to be construed accordingly.

Part 4 Statutory deposits

12 Statutory deposits by solicitors

Anything done under section 64 of the Act in accordance with the *Legal Profession Regulation 1994* before the commencement of this Regulation is taken to have been done in accordance with this Regulation.

Part 5 Provisions relating to practice

13 Provisions relating to solicitors corporations

For the purposes of clause 81 of Schedule 8 to the Act, and despite the repeal of the *Legal Profession (Solicitors Corporations) Regulation 1996*, the provisions of that Regulation continue to apply to solicitor corporations to which that clause applies.

Legal Profession Regulation 2002

Schedule 5 Savings and transitional provisions

Part 6 Miscellaneous

14 Fidelity Fund claims

- (1) Clause 44 does not affect any claim made under Part 7 of the Act before the commencement of that clause.
- (2) Clause 44 does not apply to a failure to account or dishonest default that occurred before the commencement of that clause.

15 Saving of certain matters

Subject to any other provision of this Schedule, anything that had effect under, or was done for the purposes of, a provision of the *Legal Profession Regulation 1994* continues to have effect under, or is taken to have been done for the purposes of, the corresponding provision of this Regulation.

Lord Howe Island (Elections) Amendment (Method of Voting) Regulation 2002

under the

Lord Howe Island Act 1953

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Lord Howe Island Act 1953*.

BOB DEBUS, M.P.,
Minister for the Environment

Explanatory note

The object of this Regulation is to amend the *Lord Howe Island (Elections) Regulation 1999* to alter the system of voting for an election of more than 1 person to the Lord Howe Island Board from the method as provided, with certain modifications, by Part 2 of the Sixth Schedule to the *Constitution Act 1902* (a proportional representation method) to the “first past the post” method.

This Regulation is made under the *Lord Howe Island Act 1953*, including sections 9C (Elections) and 38 (the general regulation-making power).

Clause 1 Lord Howe Island (Elections) Amendment (Method of Voting) Regulation 2002

Lord Howe Island (Elections) Amendment (Method of Voting) Regulation 2002

1 Name of Regulation

This Regulation is the *Lord Howe Island (Elections) Amendment (Method of Voting) Regulation 2002*.

2 Amendment of Lord Howe Island (Elections) Regulation 1999

The *Lord Howe Island (Elections) Regulation 1999* is amended as set out in Schedule 1.

Lord Howe Island (Elections) Amendment (Method of Voting) Regulation
2002

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 2)

[1] Clause 22 Printing of ballot papers

Omit clause 22 (2). Insert instead:

- (2) An elector must record the elector's vote on the ballot-paper in accordance with the following directions:
 - (a) if there is more than 1 person to be elected, the elector must record the elector's vote for the number of persons to be elected by placing a number of ticks or crosses, each tick or cross being placed in a square opposite the name of a candidate for whom the elector desires to record a vote, where the number of ticks or crosses placed is equal to the number of persons to be elected,
 - (b) if there is 1 person to be elected:
 - (i) the elector must record the elector's vote for at least 1 candidate by placing the number "1" in the square opposite the name of the candidate for whom the elector desires to give a first preference vote, and
 - (ii) the elector may vote for additional candidates by placing consecutive numbers (beginning with the number "2") in the squares opposite the names of those additional candidates in the order of the elector's preferences for them.

[2] Clause 44 Informal ballot papers

Omit "A ballot-paper" from clause 44 (3).

Insert instead "If there is only 1 person to be elected, a ballot-paper".

Lord Howe Island (Elections) Amendment (Method of Voting) Regulation
2002

Schedule 1 Amendments

[3] Clause 44 (4)–(6)

Insert after clause 44 (3):

- (4) If there is more than 1 person to be elected, despite anything to the contrary in this Regulation, a ballot-paper must not be rejected as informal by reason only that the number of candidates the elector has recorded a vote for is less than the number of persons to be elected.
- (5) If there is more than 1 person to be elected, despite anything to the contrary in this Regulation, a ballot-paper must not be rejected as informal by reason only that the elector has placed a single number in a number of squares if the number of squares with a single number in them is no more than the number of persons to be elected, but the ballot-paper is to be treated as if any such single number was a tick or a cross.
- (6) Nothing in subclause (5) authorises any person, if there is more than 1 person to be elected, to encourage an elector to place a number in a square on a ballot-paper.

[4] Clause 45

Omit the clause. Insert instead:

45 Method of counting votes for 2 or 3 vacancies

- (1) If there is more than 1 person to be elected, the method of counting votes is to be the “first past the post” method, that is, the candidates with the most votes are taken to be elected.
- (2) If the number of candidates to be elected cannot be determined because of an equality of votes, the candidate taken to be elected is the candidate whose name is drawn from a lot containing the names of each of the candidates having equal votes.

Mine Subsidence Compensation Regulation 2002

under the

Mine Subsidence Compensation Act 1961

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Mine Subsidence Compensation Act 1961*.

The Hon EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

Explanatory note

The object of this Regulation is to remake the provisions of the *Mine Subsidence Compensation Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) rates of contribution to the Mine Subsidence Compensation Fund (clause 4 and Schedule 1),
- (b) the period for which compensation for untenable buildings and works is payable in relation to certain kinds of damage arising from mine subsidence (clause 5),
- (c) the period within which certain claims for compensation must be made under section 12 of the Act (clause 6),
- (d) certain matters relating to the making of claims for compensation under section 12A of the Act (clause 7),
- (e) qualifications in valuation to be recognised for the purposes of section 13 of the Act (clause 8),
- (f) fees for the purposes of sections 15B and 15C of the Act (clauses 9 and 10),
- (g) other minor, consequential and ancillary matters (clauses 1, 2, 3 and 11).

Mine Subsidence Compensation Regulation 2002

Explanatory note

This Regulation is made under the *Mine Subsidence Compensation Act 1961*, including section 18 (the general regulation making power) and sections 11, 12, 12A, 13, 15B and 15C.

Page 2

Mine Subsidence Compensation Regulation 2002

Contents

Contents

	Page
1 Name of Regulation	4
2 Commencement	4
3 Definitions and notes	4
4 Contributions under section 11 (1A)	4
5 Prescribed period under section 12 (1) (c)	5
6 Notifications under section 12 (2)	5
7 Claims under section 12A	5
8 Prescribed qualifications of valuer under section 13 (1) (a)	6
9 Prescribed fee under section 15B (2)	6
10 Prescribed fee under section 15C (2)	6
11 Savings	6
Schedule 1 Rate of contribution to mine subsidence compensation fund for 2001	7

Clause 1 Mine Subsidence Compensation Regulation 2002

Mine Subsidence Compensation Regulation 2002

1 Name of Regulation

This Regulation is the *Mine Subsidence Compensation Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Mine Subsidence Compensation Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions and notes

(1) In this Regulation:

approved means approved for the time being by the Chairman of the Board.

the Act means the *Mine Subsidence Compensation Act 1961*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Contributions under section 11 (1A)

For the purposes of section 11 (1A) of the Act, in respect of the year referred to in the heading to Schedule 1:

(a) the contribution payable to the Mine Subsidence Compensation Fund by the proprietor of a colliery holding specified in Column 1 of that Schedule is, for each dollar of the land value of that colliery holding, to be calculated at the rate (if any) specified in Column 2 of that Schedule opposite that colliery holding, and

(b) the proprietor of a colliery holding specified in Column 1 of that Schedule is, if no rate is specified in Column 2 of that Schedule opposite that colliery holding, excepted from contributing to the Mine Subsidence Compensation Fund.

5 Prescribed period under section 12 (1) (c)

The prescribed period for the purposes of section 12 (1) (c) of the Act is the period, not exceeding 6 months, during which any buildings or works are (by reason of damage arising from subsidence due to the extraction of coal or shale) untenable, under repair or in course of construction.

6 Notifications under section 12 (2)

A notification under section 12 (2) of the Act must be lodged with the Secretary of the Board:

- (a) within 12 months after the day on which it became known to the owner concerned that the damage was caused by subsidence, or
- (b) if the Board determines that the owner should have known on a particular day that the damage was caused by subsidence, within 12 months after that day, or
- (c) if the Board determines that a longer period is justified in the circumstances of the case, within the longer period so determined.

7 Claims under section 12A

- (1) Any claim under section 12A of the Act must be in or to the effect of the approved form.
- (2) For the purposes of section 12A (2) (a) of the Act, the prescribed time within which a claim referred to in section 12A (1) (a) must be lodged with the Secretary of the Board is 3 months from the date on which the damage occurred.
- (3) However, if the claimant satisfies the Board:
 - (a) that he or she was not aware of the damage on the date on which it occurred or was not aware that the damage was caused by the exercise by the Board of its powers under section 13A of the Act, and
 - (b) that he or she was the owner of the improvements or the household or other effects on the date on which the damage occurred and on the date on which the notification was lodged,

Clause 7 Mine Subsidence Compensation Regulation 2002

then the prescribed time within which the claim must be lodged is 3 months from the date on which he or she became aware of the damage or became aware that the damage was caused by the exercise by the Board of its powers under section 13A of the Act.

8 Prescribed qualifications of valuer under section 13 (1) (a)

For the purposes of section 13 (1) (a) of the Act, a valuer has the prescribed qualifications if the valuer is registered as a practising real estate valuer under the *Valuers Registration Act 1975*.

9 Prescribed fee under section 15B (2)

For the purposes of section 15B (2) of the Act, the prescribed fee to accompany an application for a certificate of compliance is \$40.

10 Prescribed fee under section 15C (2)

For the purposes of section 15C (2) of the Act, the prescribed fee to accompany an application for a certificate to the effect that a compensation claim has been paid is \$20.

11 Savings

Any act, matter or thing that, immediately before the repeal of the *Mine Subsidence Compensation Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.

Mine Subsidence Compensation Regulation 2002

Rate of contribution to mine subsidence compensation fund for 2001

Schedule 1

Schedule 1 Rate of contribution to mine subsidence compensation fund for 2001

(Clause 4)

Column 1	Column 2
Colliery holding	Rate (in \$)
Aberdare North	Excepted
Airly	0.00118
Angus Place	0.03768
Antiene	Excepted
Appin	0.02487
Avon	Excepted
Avondale	0.00064
Baal Bone	0.06377
Bargo	Excepted
Bayswater No 2	0.38356
Bengalla	0.04866
Berrima	0.00488
Bloomfield	0.00847
Blue Mountains	0.00667
Boggabri	0.00053
Brimdale	Excepted
Brimstone	Excepted
Brimstone Extended	Excepted
Bulli Main	Excepted
Camberwell	0.02528
Canyon	0.00132
Cardiff Borehole	Excepted
Chain Valley	0.01572
Charbon	0.00959
Clarence	0.02719

Page 7

Mine Subsidence Compensation Regulation 2002

Schedule 1 Rate of contribution to mine subsidence compensation fund for 2001

Column 1	Column 2
Colliery holding	Rate (in \$)
Coal Cliff	0.00083
Cooranbong	0.03686
Cordeaux	0.01001
Cullen Valley	0.10606
Cumnock No 1	0.01253
Dartbrook	0.06278
Donaldson Coal	Excepted
Drayton	0.04393
Duralie	0.00043
Elouera	0.01605
Enhance Place	0.01676
Fernbrook	0.00303
Glendell	Excepted
Glennies Creek	0.00672
Gunnedah	0.00357
Hunter Valley Extended	0.00124
Hunter Valley Operations	0.02399
Huntley	0.00038
Invincible	0.00960
Ivanhoe	0.02524
John Darling	0.01458
Kandos No 3	0.00648
Kemira	0.00053
Lambton	Excepted
Lemington	0.03169
Liddell	0.01669
Lithgow Valley	Excepted
Mandalong Mine	Excepted
Maules Creek	0.00053
Metropolitan	0.02416

Mine Subsidence Compensation Regulation 2002

Rate of contribution to mine subsidence compensation fund for 2001

Schedule 1

Column 1	Column 2
Colliery holding	Rate (in \$)
Mitchells Flat	0.00057
Mt Owen	0.35008
Mt Thorley	0.03869
Munmorah	0.01923
Muswellbrook	0.02019
Myuna	0.03926
Narama	0.14657
Nardell Underground	0.00145
Nattai	0.00189
New Wallsend No 2	0.09249
Newdell	Excepted
Newstan	0.01405
North Cliff	Excepted
Northern	0.02028
Preston & Preston Extended Tunnel	0.00800
Ravensworth East	Excepted
Ravensworth No 2	0.00904
Rixs Creek	0.01815
Saxonvale	0.04403
South Bulli	0.00721
Southland	0.01408
Springvale	0.03003
Stratford	0.03686
Swamp Creek	0.00025
Tahmoor	0.01899
Teralba	0.00879
Tower	0.02175
Ulan No 2	0.08340
United	0.02878
Valley No 1	0.02222

Mine Subsidence Compensation Regulation 2002

Schedule 1 Rate of contribution to mine subsidence compensation fund for 2001

Column 1	Column 2
Colliery holding	Rate (in \$)
Valley No 3	0.04000
Vickery	0.00078
Wallarah	0.02086
Wallerawang	0.00426
Wambo	0.03704
Warkworth	0.05618
West Cliff	0.02961
West Wallsend	0.07085
Western Main	0.00250
Westside	0.00477
Whitehaven	0.01259
Wyee	0.03037



Motor Dealers Amendment (Savings) Regulation 2002

under the

Motor Dealers Act 1974

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Motor Dealers Act 1974*.

JOHN AQUILINA, M.P.,
Minister for Fair Trading

Explanatory note

The object of this Regulation is to extend for a further 6 months the period during which certain forms of register or notice under the repealed *Motor Dealers Regulation 1986* may continue to be used.

This Regulation is made under the *Motor Dealers Act 1974*, including section 57 (the general regulation-making power).

Clause 1 Motor Dealers Amendment (Savings) Regulation 2002

Motor Dealers Amendment (Savings) Regulation 2002

under the

Motor Dealers Act 1974

1 Name of Regulation

This Regulation is the *Motor Dealers Amendment (Savings) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Amendment of Motor Dealers Regulation 1999

The *Motor Dealers Regulation 1999* is amended as set out in Schedule 1.

Motor Dealers Amendment (Savings) Regulation 2002

Amendment

Schedule 1

Schedule 1 Amendment

(Clause 3)

Clause 70 Repeal and savings

Omit “1 September 2002” from clause 70 (3).

Insert instead “1 March 2003”.

National Parks and Wildlife Regulation 2002

under the

National Parks and Wildlife Act 1974

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *National Parks and Wildlife Act 1974*.

BOB DEBUS, M.P.,
Minister for the Environment

Explanatory note

The object of this Regulation is to repeal and remake the *National Parks and Wildlife (Administration) Regulation 1995*, the *National Parks and Wildlife (Fauna Protection) Regulation 2001* and the *National Parks and Wildlife (Land Management) Regulation 1995* so as to consolidate those Regulations.

This Regulation makes provision for or with respect to the following:

- (a) the regulation of the use of national parks and other areas administered by the National Parks and Wildlife Service (Part 2),
- (b) the preservation of public health in Kosciuszko National Park (Part 3),
- (c) licences and certificates (Part 4),
- (d) the protection of fauna (Part 5),
- (e) the exemption of Aboriginal people from the restrictions imposed by various sections of the Act on the hunting of certain animals and the gathering of certain plants (Part 6),
- (f) boards of management and plans of management in relation to Aboriginal land (Part 7),
- (g) advisory committees constituted under section 24 of the *National Parks and Wildlife Act 1974* (Part 8),

National Parks and Wildlife Regulation 2002

Explanatory note

- (h) trustees of state recreation areas and regional parks (Part 9),
- (i) the issue of penalty notices (Part 10),
- (j) other matters of a minor, consequential or ancillary nature (Parts 1 and 11).

The Regulation is made under the *National Parks and Wildlife Act 1974*, including sections 154 (the general regulation-making power), 155 (the general power to make regulations in relation to parks), 155A (the power to make certain regulations relating to Kosciuszko National Park) and 156.

In so far as this Regulation repeals and remakes the two 1995 Regulations referred to above, it is made in connection with the staged repeal of subordinate legislation.

National Parks and Wildlife Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	8
2 Commencement	8
3 Definitions	8
Part 2 Regulation of use of parks	
Division 1 Regulation by notices or direction	
4 Regulation by public or other notice	11
5 Regulation by direction	12
Division 2 Regulation of traffic	
6 Entry of vehicles to parks	13
7 Use of vehicles, camels, horses, vessels and machines in parks	13
Division 3 Regulation of conduct generally	
8 Removal of certain persons	16
9 Taking and keeping of animals in parks	17
10 Camping and residing	18
11 Littering and damage	19
12 Protection of animals	21
13 Offensive conduct	22
14 Lighting of fires	23
15 Cultural heritage	23
16 Erection of structures	24
17 Protection of vegetation	25
18 Beehives	26
19 Weapons	27
20 Commercial activities	28
21 Sporting, recreational and other activities	28

Page 3

National Parks and Wildlife Regulation 2002

Contents

	Page
22 Research activities	30
23 Caves	30
24 Interference with park management	31
25 Use of snow chains in Kosciuszko National Park	31
Division 4 Mooring vessels within Ku-ring-gai Chase National Park	
26 Definitions	32
27 Setting up of moorings	33
28 Mooring of vessels	34
29 Misrepresentation of authority to moor vessel	35
Division 5 Miscellaneous	
30 Consents	35
31 Exercise of park authority's functions	35
32 Defences	36
33 Second and subsequent offences	36
Part 3 Public health in Kosciuszko National Park	
34 Definitions	37
35 Object of Part	37
36 Orders requiring the preservation of healthy conditions in the park	37
37 Orders requiring the doing of things to or on premises	38
38 Orders relating to premises used for shared accommodation	38
39 Orders requiring that premises not be used in specified ways	39
40 Procedures to be observed before giving orders and provisions relating to orders generally	39
41 Provision of services relating to the health of the public in the park	39
42 Power of entry and inspection	40
43 Functions relating to Public Health Act 1991	40
Part 4 Licences and certificates	
44 Applications for licences or registration certificates	41
45 Terms of licences or registration certificates	41

National Parks and Wildlife Regulation 2002

Contents

	Page
Part 5 Fauna protection	
Division 1 Preliminary	
46 Meaning of “authorised officer”	42
Division 2 Licences and certificates	
47 Authorisation for issue of licences	42
48 Issue of tags	42
49 Supply of tags to trappers	43
50 Grounds for refusing import or export licence	43
51 Grounds for cancelling import or export licence	44
52 Payment of royalty	44
53 False receipts and records	45
Division 3 Care and protection of fauna	
54 Caging and confinement of protected fauna	45
55 Consignment or sale of young birds	46
56 Native waterfowl not to be interbred with non-native waterfowl	47
57 Minimum approach distances to certain marine mammals	47
Division 4 Miscellaneous	
58 Notification of possession of certain animals	48
59 Prescribed substances	48
60 Notice of preparation of plan of management for marine mammals	49
61 Proceedings for offences—prescribed officers of the National Parks and Wildlife Service who may issue evidentiary certificates	49
Part 6 Exemptions in favour of Aboriginal people	
62 Exemption: section 70	50
63 Exemption: section 71	50
64 Exemption: section 98	51
65 Exemption: section 117	51

National Parks and Wildlife Regulation 2002

Contents

	Page	
Part 7	Aboriginal land	
	Division 1 Boards of management	
66	Definitions	53
67	Appointment of deputies of members of boards of management	53
68	Chairing of meetings	53
	Division 2 Plans of management	
69	Land for community development purposes	54
Part 8	Advisory committees	
70	Application of Part	55
71	Meetings to be held	55
72	Appointment of officers	55
73	Presiding member	56
74	Administrative matters	56
Part 9	Trustees	
75	Application of Part	57
76	Meetings to be held	57
77	Special meetings	57
78	Appointment of officers	57
79	Presiding member	58
80	Conduct of meetings	58
81	Committees	58
82	Common seal	58
83	Administrative matters	58
84	Financial matters	59
Part 10	Penalty notices	
85	Penalty notice offences	61
Part 11	Miscellaneous	
86	Ex-officio rangers	62
87	Notice of preparation of plans of management	62
88	Transfer of relics	63
89	Appeal period	63
90	Appeals	63
91	Notification of site of relics	64

National Parks and Wildlife Regulation 2002

Contents

	Page
92 Terms of interim protection orders	64
93 Interest on overdue money	65
94 Evidence of authority	65
95 Disposal of property seized or delivered up	65
96 Nomination by universities of persons for appointment to Advisory Council	65
97 Repeal and savings	66
Schedules	
1 Caging of protected fauna	67
2 Penalty notice offences	69
3 Form	79

Clause 1 National Parks and Wildlife Regulation 2002

Part 1 Preliminary

National Parks and Wildlife Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *National Parks and Wildlife Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Definitions

(1) In this Regulation:

Aboriginal person means a person:

- (a) who is a member of the Aboriginal race of Australia, and
- (b) who identifies as an Aboriginal person, and
- (c) who is accepted by the Aboriginal community as an Aboriginal person.

determining authority has the same meaning as it has in Part 5 of the *Environmental Planning and Assessment Act 1979*.

Director-General means the Director-General of National Parks and Wildlife.

disability assistance aid means a vehicle other than a motor car designed for use by a disabled person and includes a motorised wheelchair.

drive includes ride or draw (in relation to a vehicle) and ride or lead (in relation to an animal).

litter includes:

- (a) any solid or liquid domestic or commercial refuse, debris or rubbish deposited in or on a place, and includes any glass, metal, cigarette butts, paper, fabric, wood, food, construction or demolition material, garden remnants and clippings, soil, sand or rocks, and

National Parks and Wildlife Regulation 2002

Clause 3

Preliminary

Part 1

- (b) any other material, substance or thing deposited in or on a place if its size, shape, nature or volume makes the place where it is deposited disorderly or detrimentally affects the proper use of that place,

whether or not it has any value when or after being deposited in or on the place.

moor a vessel includes attach a vessel to a mooring by any means.

mooring means any post, stake, pile, float, pontoon or any other object (other than the anchor of a vessel) secured by any direct or indirect means to the waters' bed or placed on the waters' bed for the purpose of attaching a vessel to the bed.

park:

- (a) when used as a noun, means a national park, historic site, state recreation area, regional park, nature reserve, state game reserve, karst conservation reserve or Aboriginal area, or any land acquired by the Minister under Part 11 of the Act, and includes all roads and waters within the boundaries of any such park, site, area, reserve or land, and
- (b) when used as a verb, means to park a vehicle or to cause or allow a vehicle to park, stand or wait.

park authority means the following:

- (a) in relation to a state recreation area:
- (i) except when used in connection with the imposition or waiver of fees and charges—the trust having the care, control and management of the area (or, if there is no such trust, the Director-General), or
 - (ii) when used in connection with the imposition or waiver of fees and charges—the Minister,
- (b) in relation to a regional park:
- (i) except when used in connection with the imposition or waiver of fees and charges—the trust or local council having the care, control and management of the park (or, if there is no such trust or local council, the Director-General), or
 - (ii) when used in connection with the imposition or waiver of fees and charges—the Minister,

Clause 3 National Parks and Wildlife Regulation 2002

Part 1 Preliminary

-
- (c) in relation to a karst conservation reserve of which the Jenolan Caves Reserve Trust is trustee—the Jenolan Caves Reserve Trust,
 - (d) in relation to a national park, historic site, nature reserve, state game reserve, karst conservation reserve (other than a karst conservation reserve of which the Jenolan Caves Reserve Trust is trustee), Aboriginal area or any land acquired by the Minister under Part 11 of the Act—the Director-General,
 - (e) in relation to each area of land reserved or dedicated under Part 4A of the Act:
 - (i) until such time as a board of management is established, in accordance with Division 6 of Part 4A, for the area—the Director-General, and
 - (ii) on and from the establishment of the board of management—the board of management.

park user means a person in a park or intending to enter a park.

tag includes a label, slip or other object for affixing or attaching to the skins or carcasses of fauna.

the Act means the *National Parks and Wildlife Act 1974*.

trustees, in relation to a state recreation area or regional park, means:

- (a) the trustees of the area or regional park appointed under the Act, or
- (b) a person appointed as administrator of the area or regional park under the Act, or
- (c) if there are no trustees and no administrator of the area or regional park, the Director-General.

waters includes a stream, creek, river, estuary, dam, lake or reservoir.

- (2) Notes in the text of this Regulation do not form part of this Regulation.

National Parks and Wildlife Regulation 2002

Clause 4

Regulation of use of parks

Part 2

Regulation by notices or direction

Division 1

Part 2 Regulation of use of parks

Division 1 Regulation by notices or direction

4 Regulation by public or other notice

- (1) A park authority may do any of the following by means of notices displayed in, or at the boundary of, the park or part of the park to which the notices relate or by means of written notices given to park users:
 - (a) designate points of entry to the park,
 - (b) close the park, or any part of the park, to the public,
 - (c) reserve the park, or any part of the park, for a particular use or for the use of particular persons or bodies or a particular sector of the public,
 - (d) impose fees and charges on persons (whether on foot or driving vehicles, horses or camels) entering or using the park, any part of the park or any facilities in the park and on persons driving vehicles, horses or camels who enter or use any public or other road traversing the park,
 - (e) regulate or prohibit the use of any facilities in the park or the carrying out of activities (including driving vehicles, horses or camels or operating or mooring vessels) in the park,
 - (f) grant any consent that is required by this Regulation in relation to the use of the park,
 - (g) impose conditions, including conditions relating to the payment of fees or charges, on persons (whether on foot or driving vehicles, horses or camels) entering or using the park, any part of the park or any facilities in the park,
 - (h) impose conditions relating to the payment of fees or charges by persons driving vehicles, horses or camels who enter or use any public or other road traversing the park.
- (2) A person must not:
 - (a) enter any park or part of a park that is closed to the public in accordance with this clause, or

Clause 4 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 1 Regulation by notices or direction

- (b) remain, or leave a vehicle parked, in any park or part of a park after the time that it is closed to the public in accordance with this clause, or
- (c) enter any park or part of a park that is reserved for the use of particular persons or bodies or for a particular sector of the public in accordance with this clause unless the person is a person, or belongs to a body or sector of the public, for whose use it is reserved, or
- (d) use any park or part of a park for a use other than that for which it is reserved, or
- (e) enter or use any park or part of a park or any public or other road traversing a park without paying any fee or charge that is imposed in that regard in accordance with this clause, or
- (f) use any facilities in a park or carry out any activity (including driving a vehicle, horse or camel) in a park in contravention of the terms of a notice under this clause, or
- (g) enter or use any park, any part of a park, any facilities in a park or any public or other road traversing a park otherwise than in accordance with any conditions imposed in accordance with this clause.

Maximum penalty: 30 penalty units.

- (3) A person does not commit an offence under this clause for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (4) A park authority may waive payment by any person or class of persons of any fee or charge imposed under this clause.

5 Regulation by direction

- (1) A park authority may issue an oral direction to a park user in relation to any of the following:
 - (a) points of entry to the park to be used by the park user,
 - (b) the closing of the park, or any part of the park, to the park user,
 - (c) reserving the park, or any part of the park, for a particular use or for the use of particular persons or bodies or a particular sector of the public,

National Parks and Wildlife Regulation 2002	Clause 5
Regulation of use of parks	Part 2
Regulation by notices or direction	Division 1

- (d) the regulation or prohibition of the use of any facilities in the park or the carrying out of activities (including driving vehicles, horses or camels) in the park,
 - (e) the granting of any consent that is required by this Regulation in relation to the use of the park,
 - (f) the imposition of conditions, including conditions relating to the payment of fees or charges, on the park user (whether on foot or driving vehicles, horses or camels) entering or using the park, any part of the park or any facilities in the park.
- (2) A park user to whom such a direction is given must comply with the direction.
- Maximum penalty: 30 penalty units.
- (3) A person does not commit an offence under this clause for anything done or omitted to be done with the consent of a park authority and in compliance with a direction under this clause.

Division 2 Regulation of traffic

6 Entry of vehicles to parks

- (1) A person must not drive a vehicle into a park otherwise than on a road leading into or traversing the park.
- Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject.

7 Use of vehicles, camels, horses, vessels and machines in parks

- (1) A person must not do any of the following in a park:
- (a) operate, drive or use any vehicle (other than a motor car, motor omnibus, motor truck, motor cycle, motor scooter, bicycle or other human powered wheeled vehicle, quadbike, disability assistance aid or horse drawn carriage),
 - (b) operate, drive, use or have within the person's possession an oversnow vehicle,
 - (c) drive or park a vehicle that does not clearly display a valid pass for entry into the park,

Clause 7 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 2 Regulation of traffic

- (d) drive or park a vehicle that is not registered,
- (e) drive or park a vehicle that does not display a valid registration label,
- (f) drive or park a vehicle that has no number-plate or registration plate or that has its number-plate or registration plate covered or obscured,
- (g) drive a vehicle, camel or horse, or tether a camel or horse, otherwise than on a road, track, trail or way, or in an area, set aside for that purpose,
- (h) drive a vehicle, camel or horse in a dangerous or reckless manner,
- (i) park a vehicle otherwise than in an area set aside for the parking of vehicles,
- (j) operate or use a vessel on any waters on which the operation or use of such a vessel is prohibited,
- (k) operate or use a vessel in such a manner as to cause a nuisance or endanger the safety of other users of the park,
- (l) operate or use a vessel in a commercial operation,
- (m) tie a vessel by any means to any vegetation,
- (n) moor a vessel otherwise than in an area set aside for the mooring of vessels,
- (o) operate or use any heavy or noisy machinery.

Maximum penalty: 30 penalty units.

- (2) A person must not drive or park a vehicle on a road, track, trail or way or in an area in a park if:
- (a) a gate, barrier or similar device is positioned, or an obstruction has been created by any means, in such a way as to restrict or obstruct vehicular access to the road, track, trail, way or area, or
 - (b) vehicular access to a road, track, trail, way or area is restricted or obstructed in any other way.

Maximum penalty: 30 penalty units.

National Parks and Wildlife Regulation 2002

Clause 7

Regulation of use of parks

Part 2

Regulation of traffic

Division 2

- (3) A person must not drive a vehicle so as to cause damage to any road, track, trail, way or area in a park if vehicular access to the road, track, trail, way or area has been prohibited or restricted by the park authority in any way.

Maximum penalty: 30 penalty units.

- (4) A person must not:
- (a) open, damage or destroy any gate, barrier or similar device in a park, or
 - (b) remove, shift, damage or destroy any obstruction that has been positioned or created, by any means, so as to restrict or obstruct vehicular access to any road, track, trail, way or area in a park.

Maximum penalty: 30 penalty units.

- (5) A person does not commit an offence under this clause for anything done with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (6) A person does not commit an offence under subclause (1) (i) if no area has been set aside for parking, and the person parks a vehicle on a road, track or trail in such a way as not to obstruct the use of the road, track or trail by other vehicles, or endanger the safety of other park users, or damage or destroy any vegetation.

- (7) In this clause:

horse means any animal of the genus *Equus*, including an ass.

number-plate means a number-plate issued:

- (a) under the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) by a competent authority of another jurisdiction.

registered means registered:

- (a) under the *Road Transport (Vehicle Registration) Act 1997*, or
- (b) by a competent authority of another jurisdiction, or
- (c) in New South Wales under the *Interstate Road Transport Act 1985* of the Commonwealth.

registration plate means a registration plate issued:

- (a) under the *Recreation Vehicles Act 1983*, or
- (b) by a competent authority of another jurisdiction.

Clause 7 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 2 Regulation of traffic

vessel includes a boat, surf board, boogie board, wind surfer, wave jumper, sail board, raft, kayak, canoe, dinghy, jet ski and the like.

Division 3 Regulation of conduct generally

8 Removal of certain persons

- (1) An authorised officer may direct a person to leave a park or any part of a park if, in the opinion of the authorised officer, the person:
 - (a) is trespassing, or
 - (b) is causing annoyance or inconvenience to any other person in the park, or
 - (c) has committed an offence under the Act or this Regulation.

- (2) A person to whom such a direction is given must comply with the direction.

Maximum penalty: 30 penalty units.

- (3) An authorised officer may remove from a park, or any part of a park, any person who fails to comply with a direction under this clause and any vehicle, vessel, animal or other property in the possession of the person.
- (4) A person who has been given a direction under subclause (1), or who has been removed from a park under subclause (3), must not re-enter the park for a period of 24 hours after the direction was given or after he or she was removed from the park, whichever is later.

Maximum penalty: 30 penalty units.

- (5) A person does not commit an offence under subclause (4) by doing or omitting anything with the consent of an authorised officer and in accordance with any conditions to which that consent is subject.
- (6) In this clause:

authorised officer, in relation to a park, means:

- (a) an officer or employee of the National Parks and Wildlife Service, or
- (b) a person who is authorised by the park authority to exercise the powers conferred by this clause, or
- (c) a police officer.

National Parks and Wildlife Regulation 2002

Clause 9

Regulation of use of parks

Part 2

Regulation of conduct generally

Division 3

9 Taking and keeping of animals in parks

- (1) A person must not:
- (a) take into or release an animal in a park or onto any public or other road traversing a park, or
 - (b) place or keep an animal in a park or on any public or other road traversing a park, or
 - (c) have charge, possession or control of an animal in a park or on any public or other road traversing a park, or
 - (d) fail to prevent an animal of which the person has charge, possession or control from entering a park or entering onto any public or other road traversing a park.

Maximum penalty: 30 penalty units.

- (2) A person does not commit an offence under this clause:
- (a) if the animal is an assistance animal, or
 - (b) if a person takes an animal into a park or onto any public or other road traversing a park, in accordance with and subject to any conditions stated in a plan of management for a park, unless a notice erected in the park or given to the person prohibits the taking of animals into the park or any part of the park to which the plan of management relates, or
 - (c) for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (3) Nothing in this clause prevents a park authority for a regional park from prohibiting the things referred to in subclause (1) by means of notices displayed in accordance with this Regulation.

- (4) In this clause:

assistance animal means an animal referred to in section 9 (Disability discrimination—guide dogs, hearing assistance dogs and trained animals) of the *Disability Discrimination Act 1992* of the Commonwealth.

park does not include a regional park.

Clause 10 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 3 Regulation of conduct generally

10 Camping and residing

- (1) A person must not camp in a park except in an area set aside for camping.

Maximum penalty: 30 penalty units

- (2) A person must not camp in a park:
- (a) for a continuous period of more than 21 days, or
 - (b) if a different maximum number of days is set out in a plan of management for the park but not in any notice erected in the park or given to the person—for more than the maximum number of days for camping in the park set out in the plan of management, or
 - (c) if a different maximum number of days is set out in a notice erected in the park or given to the person—for more than the maximum number of days set out in the notice.

Maximum penalty: 30 penalty units.

- (3) A person must not permanently reside in a park.

Maximum penalty: 30 penalty units.

- (4) A person does not commit an offence under this clause:

- (a) for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
- (b) if a plan of management for a park makes provision for camping otherwise than by setting aside an area for camping—the person camps in the park in accordance with the plan of management, or
- (c) if there is no plan of management for the park—the person camps in a non-designated camping area if that area is more than 1 kilometre from any designated camping area, car parking area or picnic area or from a road, track or trail designated for vehicular use by the public.

- (5) A person does not commit an offence under subclause (3) if the person has been granted a lease or licence by the Minister under the Act that allows the person to reside in the park.

National Parks and Wildlife Regulation 2002

Clause 10

Regulation of use of parks

Part 2

Regulation of conduct generally

Division 3

- (6) Despite subclause (4) (b) and (c), a person must not camp in a park if a notice erected in the park or given to the person prohibits camping in the park or any part of the park.

Maximum penalty: 30 penalty units.

- (7) In this clause:

camp means reside temporarily (whether or not in a tent, caravan, cabin, vehicle, trailer or other structure) or use any part of a park for the purpose of camping.

11 Littering and damage

- (1) A person must not:

- (a) deposit or leave any litter in a park except in an area or receptacle provided by the park authority for that purpose, or
- (b) if no area or receptacle for litter is provided by the park authority—fail to remove from the park all litter taken into or created by the person in the park, or
- (c) deposit or leave any waste in a park, or
- (d) deposit, discharge or leave in a park any offal, filth, dung or dead animal or any noisome, noxious, offensive or polluting substance, matter or thing, or
- (e) wilfully break any article of glass, china, pottery or plastic in a park, or
- (f) write or paint or otherwise mark or affix any bill, notice or advertisement on or to, or deface by painting, carving, scratching or any other means, or damage, destroy, remove or interfere with, any fixture, improvement, rock, tree, equipment, water supply or relic in a park, or
- (g) deposit, leave or abandon a vehicle or part of a vehicle in a park, or
- (h) interfere with, dig up, cut up, collect or remove for any purpose any soil, sand, gravel, clay, rock, ochre, mineral, timber (whether or not consisting of or including dead timber), gum resin, humus or other natural substance or object in a park, whether on land or on or under water, or
- (i) dam, divert or pollute the water in any waters or water tank in a park, or

Clause 11 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 3 Regulation of conduct generally

- (j) carry or possess any soil, sand, gravel, clay, rock, ochre, mineral, timber (whether or not consisting of or including dead timber), gum resin, humus or other natural substance or object in a park, or
 - (k) carry, possess or use any spray cans of paint, or any bolt cutters, oxy-acetylene equipment, angle grinder or other cutting equipment in a park, or
 - (l) possess or have custody of any key or other similar device that is capable of opening any lock or other device securing a gate or barricade located in a park, or
 - (m) discharge stormwater into a park.
- Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted:
 - (a) with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
 - (b) if the act or omission was necessary for the carrying out of:
 - (i) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
 - (ii) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*), or
 - (c) if the act or omission was authorised by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
 - (3) A person does not commit an offence under subclause (1) (j) if the substance or object referred to in that subclause was obtained by the person from a person authorised to sell such substances or objects or from an area outside a park.
 - (4) A person does not commit an offence under subclause (1) (k) merely because the person carries or possesses any object referred to in that subclause on a road traversing a park if the person does not stop in the park.

National Parks and Wildlife Regulation 2002	Clause 11
Regulation of use of parks	Part 2
Regulation of conduct generally	Division 3

(5) For the purposes of subclause (1) (c), *waste* includes the following:

- (a) rubbish and refuse,
- (b) marine craft, aircraft and parts of them,
- (c) household effects, appliances and materials,
- (d) clothing,
- (e) agricultural, building, commercial and industrial materials,
- (f) machinery, plant and equipment and parts of them,
- (g) chemicals, minerals and metals,
- (h) vegetable matter,
- (i) stone, sand, shells, clay, earth and ash,
- (j) radioactive material.

(6) In this clause:

divert includes extract water (whether by means of a pump or not) otherwise than pursuant to, and in accordance with the conditions of, a water licence issued under Division 3 of Part 2 of the *Water Act 1912* by a competent authority.

12 Protection of animals

(1) A person must not in a park:

- (a) carry, lay or set any trap, snare or poison, or drop from an aircraft or otherwise deposit any poison bait or poisonous chemical substance, or
- (b) hunt, shoot, poison, net, spear, pursue, interfere with, injure, hurt, capture, destroy, trap or snare, or have in the person's possession, an animal, or
- (c) take any animal's nest or egg, or interfere with any animal's nest or egg or habitation or resting place or any beehive, or
- (d) set any trap or net for fish in any waters, or have in the person's possession any fish trap or fishing net other than a landing net, or
- (e) carry, possess or use a spiked collar, a breast plate or radio tracking equipment for use on any dog, or
- (f) have under the person's control any dog on which a spiked collar, a breast plate or radio tracking equipment is carried, or

Clause 12	National Parks and Wildlife Regulation 2002
Part 2	Regulation of use of parks
Division 3	Regulation of conduct generally

(g) feed any animal.

Maximum penalty: 30 penalty units.

- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (3) A person does not commit an offence under this clause in relation to netting or trapping if that netting or trapping is authorised under or by the *Fisheries Management Act 1994*.
- (4) In this clause, *interfere with* includes brand, chase, harass, herd, mark and tag.

13 Offensive conduct

- (1) A person must not in a park:
 - (a) behave in a disorderly manner or use insulting or offensive language or commit a nuisance or act of indecency or cause annoyance or inconvenience to other persons, or
 - (b) use, or be affected by, any prohibited drugs (within the meaning of the *Drug Misuse and Trafficking Act 1985*), or
 - (c) drive, ride, operate or use any machinery, plant, radio, television, cassette player, compact disc player, record player or other equipment for relaying music or sound, or any vehicle, vessel or aircraft (including any model vehicle, vessel or aircraft) in a manner likely to interfere with or cause a nuisance to any person or animal.

Maximum penalty: 30 penalty units.

- (2) A person must not ride or use a skate board, roller skates, bicycle, scooter or other means of conveyance (other than a disability assistance aid) on a track, trail or way, or in an area, set aside in a park for pedestrian traffic only.

Maximum penalty: 30 penalty units.

- (3) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

National Parks and Wildlife Regulation 2002

Clause 14

Regulation of use of parks

Part 2

Regulation of conduct generally

Division 3

14 Lighting of fires

- (1) A person must not in a park:
- (a) light, maintain or use a fire:
 - (i) if there are fireplaces designated for that purpose by a park authority—elsewhere than in such a fireplace, or
 - (ii) if there are no fireplaces designated for that purpose—elsewhere than in a temporary fireplace situated at least 4.5 metres from any log or stump and at least 1.5 metres from any other flammable material, or
 - (iii) in any case—in contravention of a notice erected or displayed or given to a park user by a park authority regulating the use of fire in the park, or
 - (iv) when a total fire ban has been imposed under the *Rural Fires Act 1997*, or
 - (b) leave unattended any fire that the person has lit, maintained or used, or
 - (c) fail to call for help to control or extinguish a fire that the person has lit, maintained or used and that is beyond the person's power to control or extinguish, or
 - (d) handle any inflammable substance (such as petrol, matches or cigarettes) in a manner that is likely to cause a fire in the park.
- Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (3) A person does not commit an offence under subclause (1) (a) (iv) by doing anything authorised by or under the *Rural Fires Act 1997*.

15 Cultural heritage

- (1) A person must not deposit or leave any bone, shell, charcoal, stone or wood within an Aboriginal area or Aboriginal place.
- Maximum penalty: 30 penalty units.
- (2) A person must not within any Aboriginal area or Aboriginal place have in the person's possession:
- (a) any chalk, paint or other colouring substance, matter or thing, or

Clause 15 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 3 Regulation of conduct generally

- (b) any sieve, spade, shovel, fork, mattock, pick, bar, axe, chisel, hammer or similar implement.

Maximum penalty: 30 penalty units.

- (3) A person must not in a park:
- (a) use any metal detector or other apparatus for detecting any metal or metal object, or
 - (b) touch or interfere with or do anything that may cause or assist the mutilation or destruction of any relic, or
 - (c) take any rubbing, latex peel or impression by whatever means of any relic, or
 - (d) interfere with or remove or assist in the removal of any deposit, object or material evidence relating to the settlement or occupation of New South Wales or a part of New South Wales (not being Aboriginal settlement or occupation) if the deposit, object or material evidence is more than 25 years old at the date of the interference or removal, or
 - (e) deposit or leave any relic in a park.

Maximum penalty: 30 penalty units.

- (4) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (5) A person does not commit an offence under subclause (3) (d) if the interference or removal was necessary for the carrying out of:
- (a) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
 - (b) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*.

16 Erection of structures

- (1) A person must not:
- (a) erect, alter, extend or occupy any building in a park, or
 - (b) install, use or occupy a moveable dwelling in a park, or

National Parks and Wildlife Regulation 2002	Clause 16
Regulation of use of parks	Part 2
Regulation of conduct generally	Division 3

- (c) construct, operate or use any structure, installation, engineering work, plant, equipment, amusement device, fixture or improvement in a park, or
- (d) erect a hoarding or notice, or exhibit any commercial or political advertising matter, sign, bill or poster, in a park.

Maximum penalty: 30 penalty units.

- (2) A person does not commit an offence under this clause for anything done or omitted:
 - (a) with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
 - (b) if the act or omission was necessary for the carrying out of:
 - (i) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
 - (ii) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*).
- (3) A person does not commit an offence under subclause (1) (b) if the person camps in a manner that is not prohibited by clause 10.
- (4) In this clause, **moveable dwelling** means any tent or any caravan or other van or other portable device (whether on wheels or not), used for human habitation.

17 Protection of vegetation

- (1) A person must not:
 - (a) gather, pluck, pull up, poison, take, dig up, cut, fell, remove, damage or destroy any vegetation in a park, or
 - (b) have any vegetation in the person's possession in a park, whether for removal or otherwise, or
 - (c) introduce any exotic vegetation into a park.

Maximum penalty: 30 penalty units.

Clause 17 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 3 Regulation of conduct generally

- (2) A person does not commit an offence under this clause for anything done or omitted:
- (a) with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
 - (b) if the act or omission was necessary for the carrying out of:
 - (i) development in accordance with a development consent (within the meaning of the *Environmental Planning and Assessment Act 1979*), or
 - (ii) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the *Environmental Planning and Assessment Act 1979*), or
 - (c) if the act or omission was authorised by or under Part 2 of the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* or the *State Emergency Service Act 1989* and was reasonably necessary in order to avoid a threat to life or property.
- (3) A person does not commit an offence under subclause (1) (b) if the person has in his or her possession vegetation (including firewood) that was lawfully obtained from outside the park.
- (4) A person does not commit an offence under this clause by using firewood:
- (a) that has been provided at established visitor use areas in the park where the burning of fires is permitted, or
 - (b) that comes from deadfalls of timber, if timber is not provided at established visitor use areas in the park.
- (5) In this clause:
vegetation means the whole or part of any tree, shrub, fern, creeper, vine, palm, plant or seed, whether alive or dead.

18 Beehives

- (1) A person must not remove any beehive from, or place any beehive in, a park.
 Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

National Parks and Wildlife Regulation 2002	Clause 19
Regulation of use of parks	Part 2
Regulation of conduct generally	Division 3

19 Weapons

- (1) A person must not in a park:
- (a) unless the person is a police officer—carry or discharge or have in the person's possession any firearm within the meaning of the *Firearms Act 1996* or prohibited weapon within the meaning of the *Weapons Prohibition Act 1998*, or
 - (b) carry or discharge or have in the person's possession any airgun, speargun or other lethal weapon, or
 - (c) carry or use or have in the person's possession any explosive, flare or firework, or
 - (d) throw or propel by any means any object likely to cause damage or injury to any person, animal or thing, or
 - (e) without reasonable excuse, carry, use, possess or have custody of a knife in a park.

Maximum penalty: 30 penalty units.

- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (3) For the purposes of subclause (1) (e), a person has a reasonable excuse to carry, use, possess or have custody of a knife if:
- (a) the possession or custody is reasonably necessary in all the circumstances for any of the following:
 - (i) the preparation or consumption of food or drink,
 - (ii) participation in a lawful entertainment, recreation or sport,
 - (iii) the wearing of an official uniform, or
 - (b) the possession or custody is reasonably necessary in the circumstances during travel to or from or incidental to an activity referred to in paragraph (a).
- (4) For the purposes of subclause (1) (e), it is not a reasonable excuse for a person to have possession or custody of a knife, or to carry or use a knife, solely for the purpose of self defence or the defence of another person.
- (5) A person does not commit an offence under subclause (1) (b) if the person carries or possesses an unloaded speargun in a park, unless a plan of management for a park or a notice erected in the park or given

Clause 19	National Parks and Wildlife Regulation 2002
Part 2	Regulation of use of parks
Division 3	Regulation of conduct generally

to the person prohibits the carrying or possession of a speargun (whether loaded or unloaded) in a park or any part of the park.

- (6) A person does not commit an offence under subclause (1) (c) if the flare is carried in a boat as a part of the boat's safety equipment as required by or under any other Act or when used as a distress signal.
- (7) In this clause, *unloaded speargun* means:
- (a) an assembled rubber powered speargun that does not have the shaft engaged in the trigger mechanism and the rubbers stretched and engaged in the shaft, or
 - (b) in the case of a pneumatic, spring or gas powered speargun—one that does not have the spear shaft located within the barrel of the speargun.

20 Commercial activities

- (1) A person must not in a park:
- (a) sell or hire, attempt to sell or hire, expose for sale or hire or solicit for sale or hire any article, thing or service to any person, or
 - (b) conduct, or assist in the conduct of, any amusement, entertainment, instruction, performance or activity for money or other consideration of any kind, or
 - (c) compete with or hinder the commercial operations of any person, business or corporate body possessing a lease, licence, occupancy or franchise from the Minister or the Director-General for a specific purpose or purposes, or
 - (d) take any photograph, video, movie or television film for sale, hire or profit.

Maximum penalty: 30 penalty units.

- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

21 Sporting, recreational and other activities

- (1) A person must not in a park:
- (a) conduct or take part in any sporting activity that forms part of an organised competition or tournament, or

National Parks and Wildlife Regulation 2002	Clause 21
Regulation of use of parks	Part 2
Regulation of conduct generally	Division 3

- (b) organise, attend or participate in any concert, public meeting, function, demonstration or gathering involving more than 40 persons or such other number of persons as is stated in a plan of management for the park, or stated in a notice erected in the park or given to a park user, whichever is the lesser, or
- (c) organise, attend or participate in any group activity involving more than 40 persons, or such other number of persons as is stated in a plan of management for the park, or stated in a notice erected in the park or given to a park user, whichever is the lesser, any manoeuvre whether of a military, naval, aerial nature or otherwise, any course of training or any similar activity, or
- (d) engage in any activity or recreational pursuit that involves risking the safety of the person or the safety of other persons or damaging the environment.

Maximum penalty: 30 penalty units.

- (2) Without limiting the generality of subclause (1) (d), the activities and recreational pursuits to which that paragraph applies include abseiling, base jumping, bungee jumping, rock climbing, caving, parachuting, white water boating, paragliding, parasailing and hang gliding, but the paragraph will not apply if the activity is permitted in a plan of management for the park.
- (3) A person does not commit an offence under this clause:
 - (a) for anything done or omitted to be done with the consent of a park authority and in accordance with any conditions to which the consent is subject, or
 - (b) if a plan of management for a park makes provision for the undertaking of an activity in the park, the person undertakes the activity in the park in accordance with the plan of management, or
 - (c) if there is no plan of management for a park, the person undertakes an activity in a park in accordance with a notice erected in the park or given to the person which permits the undertaking of the activity in the park.
- (4) Despite subclause (3) (b), a person must not undertake an activity in a park if a notice erected in the park or given to the person prohibits the undertaking of the activity in the park or any part of the park.

Maximum penalty: 30 penalty units.

Clause 22 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 3 Regulation of conduct generally

22 Research activities

- (1) A person must not carry out any kind of research in a park.
Maximum penalty: 30 penalty units.
- (2) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.

23 Caves

- (1) A person must not enter or remain in a cave in a park except with the consent of the park authority.
Maximum penalty: 30 penalty units.
- (2) A person must not in a park:
 - (a) exhibit a number or other identifying mark in or near a cave in a manner that suggests that the number or mark has been allocated to identify the cave, or
 - (b) carry out any excavation, or use any explosive, in or in the vicinity of a cave, or
 - (c) use any string or other thing for the purpose of laying a track in a cave, or
 - (d) remove from a cave:
 - (i) any rocks, soil, sand, stone or other similar substances, or
 - (ii) any flora or fauna, or
 - (iii) any equipment, or
 - (e) interfere with any equipment in a cave, or
 - (f) smoke any substance or any cigar, cigarette, pipe or other device in a cave, or
 - (g) light a fire in a cave, or
 - (h) leave any equipment in a cave whether or not the person intends to return to the cave, or
 - (i) urinate or defecate in a cave, or
 - (j) damage any speleothems in a cave, or
 - (k) vandalise any cave, or

National Parks and Wildlife Regulation 2002

Clause 23

Regulation of use of parks

Part 2

Regulation of conduct generally

Division 3

- (l) interfere with, dig or disturb in a cave or remove from a cave any Aboriginal objects.

Maximum penalty: 30 penalty units.

- (3) A person does not commit an offence under this clause for anything done or omitted with the consent of a park authority and in accordance with any conditions to which the consent is subject.
- (4) A person does not commit an offence under subclause (2) (c) if the person is authorised to enter a cave and lays a track as a temporary safety measure and removes the track when the person leaves the cave.

24 Interference with park management

A person must not:

- (a) destroy, damage or remove any thing that is being used or intended to be used by the park authority for the suppression or destruction of any animals in a park, or
- (b) interfere with any thing that is being used or intended to be used by the park authority for the suppression or destruction of any animals in a park in a manner that is likely to impair its effectiveness, or
- (c) remove, relocate, damage, destroy or obscure by any means any sign or notice that has been erected or displayed in a park by a park authority or that has been erected or displayed in a park with the consent of the park authority, or
- (d) interfere with or obstruct any action taken by a park authority for the purpose of the care, control and management of the park, or
- (e) attempt to do any of the things referred to in paragraphs (a)–(d).

Maximum penalty: 30 penalty units.

25 Use of snow chains in Kosciuszko National Park

- (1) A person travelling by motor vehicle on any designated snow/ice risk road within Kosciuszko National Park at any time on or after 1 June and before 11 October in any year must carry snow chains suitable for use on the tyres of the motor vehicle.

Maximum penalty: 30 penalty units.

Clause 25	National Parks and Wildlife Regulation 2002
Part 2	Regulation of use of parks
Division 3	Regulation of conduct generally

- (2) A person travelling by motor vehicle within Kosciuszko National Park between 1 June and 10 October in any year must use snow chains on the tyres of the motor vehicle when directed to do so by an authorised officer or by a notice erected in the park or given to the park user.

Maximum penalty: 30 penalty units.

- (3) In this clause:

authorised officer, in relation to a park, means:

- (a) an officer or employee of the National Parks and Wildlife Service, or
- (b) a person who is authorised by the park authority to exercise the powers conferred by this clause, or
- (c) a police officer.

designated snow/ice risk road means a road on which there is a sign, erected by or on behalf of the Director-General, requiring snow chains to be carried on the road.

motor vehicle does not include a four-wheel drive vehicle.

Division 4 Mooring vessels within Ku-ring-gai Chase National Park

26 Definitions

In this Division:

Cowan Water includes all tributaries of Cowan Water within the boundaries of the Ku-ring-gai Chase National Park.

licence means a licence issued by the Minister or Director-General to permit occupation for the purpose of placing a mooring.

public mooring means a mooring set up by the Director-General.

set up a mooring includes erect, construct or lay down a mooring.

vessel means any boat, yacht, cruiser, houseboat, barge or other floating craft used for the conveyance of persons or things that has been, or is required to be, registered by the relevant authority, but does not include a raft, kayak, canoe, dinghy or other small floatation device.

National Parks and Wildlife Regulation 2002

Clause 27

Regulation of use of parks

Part 2

Mooring vessels within Ku-ring-gai Chase National Park

Division 4

27 Setting up of moorings

- (1) The Director-General may grant licences for marinas and moorings in Cowan Water, subject to any terms and conditions that may be imposed by the Director-General.
- (2) The Director-General may revoke, or vary the terms of, any such licence.
- (3) Except as authorised by a licence, a person must not set up a marina or mooring in Cowan Water.
Maximum penalty: 30 penalty units.
- (4) The Director-General may direct a person by whom an unlicensed marina or mooring has been set up or used to remove the mooring.
- (5) Such a direction may be given to the person to whom it is addressed personally or by leaving it on, or attaching it to, the marina or mooring.
- (6) A person to whom such a direction is given must not fail to comply with the direction.
Maximum penalty: 30 penalty units.
- (7) The Director-General may remove from Cowan Water:
 - (a) any unlicensed mooring or marina, or
 - (b) any mooring or marina that has been abandoned or has become submerged, come adrift or fallen into a state of disrepair, or
 - (c) any part of a mooring or marina that has become separated from the mooring or marina or that constitutes, in the opinion of the Director-General, a danger, hazard, impediment or menace to the use of Cowan Water.
- (8) The Director-General may, in any court of competent jurisdiction, recover the cost and expenses:
 - (a) incurred as a result of a removal authorised by subclause (7) (a)—from the person by whom the unlicensed mooring or marina was set up, or
 - (b) incurred as a result of a removal authorised by subclause (7) (b) or (c)—from the current licensee or (if the licence is no longer in force) the previous licensee.
- (9) This clause does not apply to a public mooring.

Clause 27	National Parks and Wildlife Regulation 2002
Part 2	Regulation of use of parks
Division 4	Mooring vessels within Ku-ring-gai Chase National Park

- (10) For the purposes of this clause, a marina or mooring is unlicensed if:
- (a) no licence has been issued in relation to it, or
 - (b) a licence has been issued in relation to it subject to terms and conditions that have not been met.

28 Mooring of vessels

- (1) A person must not moor a vessel on any part of Cowan Water otherwise than:
- (a) at a public mooring, or
 - (b) at a mooring in respect of which the person:
 - (i) is the licensee, or
 - (ii) is the hirer from the licensee of the mooring to which the licence relates, or
 - (iii) has the consent of the licensee or hirer to use the mooring.

Maximum penalty: 30 penalty units.

- (2) A person must not moor a vessel at a public mooring in Cowan Water for more than 24 hours at any one time.

Maximum penalty: 30 penalty units.

- (3) A person must not moor at any mooring (not being a mooring forming part of a marina) in Cowan Water:
- (a) more than one vessel (whether or not secured directly to the mooring or to another vessel secured to the mooring), or
 - (b) any vessel in contravention of the terms and conditions applicable to the licence in respect of the mooring.

Maximum penalty: 30 penalty units.

- (4) The holder of a licence in respect of a marina must not moor at a mooring forming part of the marina in Cowan Water:
- (a) more than one vessel (whether or not secured directly to the mooring or to another vessel secured to the mooring), or
 - (b) any vessel in contravention of the terms and conditions applicable to the licence in respect of the marina.

Maximum penalty: 30 penalty units.

- (5) An authorised officer may direct a person to remove a vessel from a mooring if the vessel is moored in contravention of this clause.

National Parks and Wildlife Regulation 2002	Clause 28
Regulation of use of parks	Part 2
Mooring vessels within Ku-ring-gai Chase National Park	Division 4

- (6) A person must not, without reasonable excuse, fail to comply with a direction given under subclause (5).

Maximum penalty: 30 penalty units.

- (7) In this clause:

authorised officer means:

- (a) an officer or employee of the National Parks and Wildlife Service, or
- (b) a person who is authorised by the park authority for Ku-ring-gai Chase National Park to exercise the powers conferred by this clause, or
- (c) a police officer.

29 Misrepresentation of authority to moor vessel

A person must not falsely represent (by the display of numbers or names, the production of documents or otherwise) that the person is authorised to moor a vessel, or to permit other persons to moor vessels, in Cowan Water.

Maximum penalty: 30 penalty units.

Division 5 Miscellaneous

30 Consents

- (1) The consent of a park authority under this Part may be given:
- (a) by means of a written statement, or
 - (b) by means of a notice referred to in clause 4, or
 - (c) in the form of a permit, licence, approval or other form of authorisation.
- (2) Such a consent may be given:
- (a) either generally or in a particular case, and
 - (b) either unconditionally or subject to conditions.

31 Exercise of park authority's functions

Any function that is conferred on a park authority by this Part may be exercised by the authority or by any person authorised by the authority to exercise that function.

Clause 32 National Parks and Wildlife Regulation 2002

Part 2 Regulation of use of parks

Division 5 Miscellaneous

32 Defences

A person does not commit an offence under this Part for anything done or omitted:

- (a) by a member of staff of a park authority in the exercise of his or her employment as such, or
- (b) under the direction of a park authority.

33 Second and subsequent offences

- (1) A person who commits (or is, by virtue of section 159 of the Act, guilty of) a second or subsequent offence against this Part is liable to be excluded from a park by the park authority for any period of time determined by the park authority.
- (2) For the purpose of this clause, a person is taken to have committed (or to be guilty of) an offence against this Part if:
 - (a) a court convicts the person of the offence, or
 - (b) a court makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* or section 33 (1) (a) of the *Children (Criminal Proceedings) Act 1987* in respect of the person in relation to the offence, or
 - (c) a penalty notice has been issued in respect of an offence and the penalty notice amount has been paid.
- (3) A person who has been excluded from a park under this clause must not re-enter the park before the period of exclusion ends.

Maximum penalty: 30 penalty units.

National Parks and Wildlife Regulation 2002

Clause 34

Public health in Kosciuszko National Park

Part 3

Part 3 Public health in Kosciuszko National Park

34 Definitions

In this Part:

premises means premises in the park.

the park means the Kosciuszko National Park.

35 Object of Part

- (1) The object of this Part is to confer or impose on the Director-General, under section 155A of the Act, certain functions relating to the health of the public in the park.
- (2) The functions concerned are, in accordance with section 155A of the Act, the same (but for being modified by this Part) as certain functions conferred or imposed on a council constituted by the *Local Government Act 1993* in relation to the health of the public in its area.

36 Orders requiring the preservation of healthy conditions in the park

- (1) The Director-General may, if any premises, vehicle or article in the park, used for the manufacture, preparation, storage, sale or transportation of food to the public are not in a clean or sanitary condition, order the occupier of the premises, or the owner or operator of the vehicle or article, to put the premises, vehicle or article into a clean or sanitary condition.
- (2) The Director-General may, if premises are not in a safe or healthy condition, order the occupier of the premises to do or refrain from doing all things that are specified in the order to ensure that the premises are placed or kept in a safe or healthy condition.
- (3) The Director-General may, if waste (other than waste that is dealt with under the *Waste Avoidance and Resource Recovery Act 2001*) is present or generated on premises and it is not being satisfactorily dealt with, order the occupier of the premises, or the person responsible for the waste or for any receptacle or container in which the waste is contained, to store, treat, process, collect, remove, dispose of or destroy the waste in the manner specified in the order.

Clause 36 National Parks and Wildlife Regulation 2002

Part 3 Public health in Kosciuszko National Park

- (4) The Director-General may, if premises are not connected to any available water supply or sewerage system, order the occupier of the premises to connect the premises to an available water supply and sewerage system by a date specified in the order.
- (5) The Director-General may, if in the opinion of the Director-General it is necessary for the purpose of protecting the health of the public in the park, order the occupier of premises not to use or permit the use of a human waste storage facility on the premises after a date specified in the order.
- (6) A person to whom an order under this clause is given must not fail to comply with the order.

Maximum penalty: 30 penalty units.

37 Orders requiring the doing of things to or on premises

- (1) The Director-General may, if it is necessary or expedient to do so in the interests of public health, order the occupier of premises to repair or make structural alterations to the premises (including the renewal or repair of a roof) or to erect a fence between the land on which the premises are located and an adjoining place that is open to the public.
- (2) A person to whom an order under this clause is given must not fail to comply with the order.

Maximum penalty: 30 penalty units.

38 Orders relating to premises used for shared accommodation

- (1) The Director-General may, if premises used for shared accommodation do not comply with the standards set out in Schedule 1 to the *Local Government (Orders) Regulation 1999*, order the occupier of the premises to take the action that is necessary to bring the premises into compliance with those standards.
- (2) A person to whom an order under this clause is given must not fail to comply with the order.

Maximum penalty: 30 penalty units.

National Parks and Wildlife Regulation 2002

Clause 39

Public health in Kosciuszko National Park

Part 3

39 Orders requiring that premises not be used in specified ways

- (1) The Director-General may, if an activity conducted on premises constitutes or is likely to constitute a threat to the health of the public in the park, order the person apparently engaged in promoting, conducting or carrying out the activity not to conduct, or to cease conducting, the activity.
- (2) A person to whom an order under this clause is given must not fail to comply with the order.
Maximum penalty: 30 penalty units.
- (3) If the person fails to comply with the order, the Director-General may:
 - (a) order the person to cease the use of the premises or to evacuate the premises, and
 - (b) order any other person or persons to leave the premises or not to enter the premises.

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

- (1) Sections 129, 130, 132–137, 139–141, 143–148, 152 and 153 (1) of the *Local Government Act 1993* apply in relation to orders given by the Director-General under clauses 36–39 of this Part in the same way as they apply to orders given by a council constituted under that Act.
- (2) Accordingly, references in those sections to a council are, for the purposes of this clause, to be read as references to the Director-General.

41 Provision of services relating to the health of the public in the park

- (1) The Director-General may provide public health services and facilities, and carry out activities relating to public health, appropriate to the needs of the public in the park.
- (2) In particular, the Director-General may provide for, or enter into arrangements for, the collection, removal and treatment of garbage, rubbish, refuse or other forms of waste from premises in the park.
- (3) The Director-General may, in the interests of the health of the public in the park and in whatever manner the Director-General thinks fit:
 - (a) maintain and regulate depots in the park for the disposal and destruction of garbage, rubbish, refuse or other forms of waste, and

Clause 41 National Parks and Wildlife Regulation 2002

Part 3 Public health in Kosciuszko National Park

- (b) control and regulate the depositing on land in the park of any material likely to give rise to a condition that will endanger public health.
- (4) The Director-General may give directions to ensure that any requirement imposed by the Director-General in connection with the Director-General's functions under this clause is complied with.

42 Power of entry and inspection

- (1) The Director-General may, in exercising the Director-General's functions under this Part, exercise the same functions as a council may exercise under Part 2 of Chapter 8 of the *Local Government Act 1993* for the purpose of enabling the council to exercise its functions relating to public health under that Act.
- (2) Accordingly, references in that Part to a council are, for the purposes of this clause, to be read as references to the Director-General, and the reference in section 199 (2) (f) of that Act to the general manager is to be read as a reference to the Director-General.

43 Functions relating to Public Health Act 1991

- (1) The Director-General may exercise the functions of an environmental health officer under Part 4 of the *Public Health Act 1991* (Microbial control) and the *Public Health (Swimming Pools and Spa Pools) Regulation 2000* in relation to any park.
- (2) For the purposes of this clause, the National Parks and Wildlife Service is taken to be a local authority (within the meaning of the *Public Health Act 1991*) and the Director-General is taken to be the general manager of that authority.

National Parks and Wildlife Regulation 2002

Clause 44

Licences and certificates

Part 4

Part 4 Licences and certificates

44 Applications for licences or registration certificates

- (1) An application for the issue of a licence or a registration certificate under the Act must be made in a form approved by the Director-General.
- (2) If a form of application requires a fee or charge to accompany it, that fee or charge must be lodged with the application.
- (3) A person must not, in connection with an application for the issue of a licence or a registration certificate under the Act, make any statement or provide any information or other material that the person knows, or ought reasonably to know, is false or misleading.

Maximum penalty: 30 penalty units.

45 Terms of licences or registration certificates

A licence or registration certificate issued under the Act is in force (unless cancelled):

- (a) until midnight on 31 December following the date of issue, or
- (b) if an expiry date is specified in the licence or certificate—until midnight on that date.

Clause 46	National Parks and Wildlife Regulation 2002
Part 5	Fauna protection
Division 1	Preliminary

Part 5 Fauna protection

Division 1 Preliminary

46 Meaning of “authorised officer”

In this Part, *authorised officer* has the same meaning as in section 119 of the Act.

Division 2 Licences and certificates

47 Authorisation for issue of licences

In accordance with paragraph (b) (ii) of the definition of *authorised officer* in section 119 of the Act, each of the following is a prescribed office, position or rank for the purposes of the provisions of Part 9 of the Act:

- (a) Manager, Biodiversity Research and Management Division,
- (b) Manager, Biodiversity Management Unit,
- (c) Coordinator, Wildlife Licensing.

48 Issue of tags

- (1) The Director-General or an officer authorised by the Director-General may (on payment of any fees or charges fixed by the Director-General) issue tags for affixing or attaching to the skin or carcase of any fauna in compliance with a condition of a licence under Part 9 of the Act.
- (2) Commercial tags may be issued for affixing or attaching to the skins or carcasses of kangaroos, wallaroos or wallabies harmed for sale.
- (3) Non-commercial tags may be issued for affixing or attaching to the skins or carcasses of kangaroos, wallaroos or wallabies harmed otherwise than for sale.
- (4) A separate series of commercial tags is to be issued for each year. Commercial tags may be used only during the year for which they are issued.

National Parks and Wildlife Regulation 2002

Clause 49

Fauna protection

Part 5

Licences and certificates

Division 2

49 Supply of tags to trappers

An occupier's licence authorising the licensee to permit a person to harm kangaroos, wallaroos or wallabies is subject to the condition that the licensee must make available to any person permitted to harm kangaroos, wallaroos or wallabies under the licence a quantity of commercial tags or non-commercial tags equal in number to the number of kangaroos, wallaroos or wallabies that the person is permitted to harm.

50 Grounds for refusing import or export licence

For the purposes of section 126 (3) of the Act, the grounds on which an application for an import or export licence may be refused are as follows:

- (a) that, in the opinion of the Director-General, the proposed import or export of protected fauna, if effected:
 - (i) could be detrimental to the protection and conservation of fauna in the State, or
 - (ii) could result in a person contravening a law of the State, or
 - (iii) could result in a person contravening a law of the place from which it is intended to import, or to which it is intended to export, the protected fauna, or
 - (iv) could introduce species of protected fauna that do not normally occur in the State and that may constitute a threat to agricultural or horticultural activities in the State, or
 - (v) could introduce species of protected fauna that cannot readily be kept in captivity or confinement, or
 - (vi) could introduce a species of protected fauna that may constitute a threat to human health or safety,
- (b) that the applicant is not the holder of a licence under the Act (other than an import or export licence) that authorises dealings with the protected fauna proposed to be imported or exported,
- (c) that the applicant has not given a written undertaking to the Director-General:
 - (i) in the case of an application for an import licence—to notify an authorised officer of details of the protected fauna imported, and of the time of import, within the 48 hours immediately following that time, or

Clause 50	National Parks and Wildlife Regulation 2002
Part 5	Fauna protection
Division 2	Licences and certificates

- (ii) in the case of an application for an export licence—to notify the authority (if any) responsible for the protection of fauna at the place to which the protected fauna is proposed to be exported of details of the protected fauna, and of the time of intended export, within the 48 hours immediately preceding that time,
- (d) that the applicant has, within the period of 2 years immediately preceding the making of the application, been convicted of:
 - (i) an offence under a provision of Part 7 of the Act or an offence under a similar provision of the fauna protection legislation of another State or Territory, or
 - (ii) an offence under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or
 - (iii) an offence under the *Prevention of Cruelty to Animals Act 1979* or the *Exhibited Animals Protection Act 1986*.

51 Grounds for cancelling import or export licence

For the purposes of section 134 (2) of the Act, the grounds on which an import or export licence may be cancelled are as follows:

- (a) that the licensee has made a statement that the licensee knows, or ought reasonably to know, is false or misleading in, or in connection with, the application for the licence,
- (b) that the licensee has been convicted of an offence under a provision of Part 7 of the Act or an offence under a similar provision of the fauna protection legislation of another State or Territory,
- (c) that the licensee has been convicted of an offence under the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth,
- (d) that the licensee has been convicted of an offence under the *Prevention of Cruelty to Animals Act 1979* or the *Exhibited Animals Protection Act 1986*.

52 Payment of royalty

- (1) A fauna dealer (kangaroo) who deals as a wholesaler must pay to the Director-General, at times determined by the Director-General, a royalty of 80 cents for each skin or carcase of a kangaroo, wallaroo or wallaby received from the holder of a trapper's licence.

National Parks and Wildlife Regulation 2002

Clause 52

Fauna protection

Part 5

Licences and certificates

Division 2

- (2) The holder of a trapper's licence (birds) must, in accordance with the conditions of the licence, pay a royalty of \$2.50 for each bird harmed.

- (3) In this clause:

fauna dealer (kangaroo) means a person licensed under section 125 of the Act to deal in the skins of kangaroos, wallaroos or wallabies (but not in the skins of any other kind of fauna).

trapper's licence (birds) means a trapper's licence (issued under section 123 of the Act) that authorises a person to harm birds for the purpose of sale.

wholesaler means a person who deals in kangaroos, wallaroos or wallabies otherwise than by retail or as a skin dealer.

Note. Section 142 (2) of the Act provides that royalty is not payable in respect of a skin or carcase to which there has been affixed or attached (in compliance with a condition of a licence) a tag for which a fee or charge has been paid pursuant to regulations made under section 154 (e) of the Act.

53 False receipts and records

- (1) A person who is required as a condition of a licence to issue receipts must not issue any false receipt.

Maximum penalty: 30 penalty units.

- (2) A person who is required as a condition of a licence to keep records must not make a false entry in any record, or otherwise keep a false record.

Maximum penalty: 30 penalty units.

- (3) A person who is required as a condition of a licence to provide records or information to the Director-General must not provide false or misleading records or information.

Maximum penalty: 30 penalty units.

Division 3 Care and protection of fauna

54 Caging and confinement of protected fauna

- (1) A person who consigns or offers for sale any protected fauna must comply with the conditions set out in Schedule 1.

Maximum penalty: 30 penalty units.

Clause 54 National Parks and Wildlife Regulation 2002

Part 5 Fauna protection

Division 3 Care and protection of fauna

- (2) A person who keeps any protected fauna must comply with the conditions specified in clause 1 (5)–(10) of Schedule 1.

Maximum penalty: 30 penalty units.

- (3) A person must comply with any requirement of the Director-General or an officer duly authorised by the Director-General to ring, band, microchip, obtain or permit the collection of tissue or blood samples for the purpose of analysis, or otherwise mark or identify protected fauna kept in captivity by the person.

Maximum penalty: 30 penalty units.

- (4) A person must not remove or interfere with any such ring, band, microchip, mark or identification unless authorised to do so by the Director-General.

Maximum penalty: 30 penalty units.

- (5) This clause does not apply:

- (a) to birds or reptiles being transported or consigned to, or exhibited at, a show conducted or sponsored by a recognised avicultural or herpetological association, society or other organisation that adopts internationally accepted standards for display and showing, or
- (b) to sick or injured protected fauna held temporarily in strict confinement for the purpose of treatment, or
- (c) to protected fauna being transported or consigned to, or held for treatment by, a registered veterinary surgeon, or
- (d) to protected fauna being transported, consigned or kept under a licence issued under the Act for the purpose of scientific research.

55 Consignment or sale of young birds

A person must not consign or offer for sale any of the following:

- (a) a young bird that is (except in the case of a naturally flightless bird) incapable of flight unaided,
- (b) a young bird that cannot stand unaided,
- (c) a young bird that is incapable of feeding itself.

Maximum penalty: 30 penalty units.

National Parks and Wildlife Regulation 2002

Clause 56

Fauna protection

Part 5

Care and protection of fauna

Division 3

56 Native waterfowl not to be interbred with non-native waterfowl

- (1) A person must not interbreed, or allow the interbreeding of, native ducks, geese or swans that are under the person's control with ducks, geese or swans that are not native.

Maximum penalty: 30 penalty units.

- (2) In this clause:

native means native to Australia.

57 Minimum approach distances to certain marine mammals

- (1) This clause applies to all marine mammals except the following:

- (a) *Delphinus delphis* (Common Dolphin),
- (b) *Tursiops truncatus* (Bottlenose Dolphin).

- (2) For the purposes of section 112G of the Act, the following distances are prescribed in respect of a marine mammal to which this clause applies:

- (a) 30 metres, if the person approaching the mammal is a pedestrian, swimmer or diver,
- (b) 300 metres, if the person approaching the mammal:
 - (i) is in an aircraft (including a glider or hang-glider but not including a helicopter), or
 - (ii) is in or on a vessel (powered or unpowered but not including a jet ski) or a motor vehicle,
- (c) 400 metres, if the person approaching the mammal:
 - (i) is in a helicopter, or
 - (ii) is on a jet ski.

- (3) However:

- (a) if a slow speed approach is made by a vessel (other than a jet ski) from a distance of at least 300 metres, the minimum approach distance is:
 - (i) 200 metres, if the animal is a calf or accompanying a calf, and
 - (ii) 100 metres, in any other case, or
- (b) if a slow speed approach is made by a jet ski from a distance of at least 400 metres, the minimum approach distance is 300 metres.

Clause 57	National Parks and Wildlife Regulation 2002
Part 5	Fauna protection
Division 3	Care and protection of fauna

(4) The prescription of a distance under this clause does not apply to a person approaching a sick, injured or stranded marine mammal if an officer of the National Parks and Wildlife Service has given a direction as to the manner of approaching the mammal and the person is approaching the mammal in accordance with that direction.

(5) In this clause:

motor vehicle means a motor car, motor carriage, motor cycle, or other apparatus propelled on land wholly or partly by volatile spirit, steam, gas, oil or electricity.

slow speed approach means an approach at a constant, slow, no wake speed that is no faster than the speed of the mammal (or slowest mammal) being approached.

vessel includes boat, surf boat, boogie board, wind surfer, wave jumper, sail board and any other water-borne craft used or capable of being used for the conveyance of a person (including use wholly or partly submerged).

Division 4 Miscellaneous

58 Notification of possession of certain animals

For the purposes of sections 101 (5) (c) (ii) and 118B (5) (b) (ii) of the Act:

- (a) the prescribed manner of notification is by a notice in writing to the Director-General, and
- (b) the prescribed time is the period ending 7 days after the animal comes into the person's possession.

59 Prescribed substances

- (1) For the purposes of section 110 of the Act (Use of certain substances for harming fauna), the following substances are prescribed:
 - (a) the substances stated in the Poisons List (proclaimed under section 8 of the *Poisons and Therapeutic Goods Act 1966*) as in force for the time being,
 - (b) glue, gel and other adhesive substances and viscid substances.

National Parks and Wildlife Regulation 2002	Clause 59
Fauna protection	Part 5
Miscellaneous	Division 4

- (2) A person authorised to use a prescribed substance by the Director-General (or an officer of the National Parks and Wildlife Service authorised by the Director-General) is exempt from the provisions of section 110 (1) and (2) of the Act if the person uses the prescribed substance in accordance with the authorisation.
- (3) A person using taste aversion substances to deter birds is exempt from the provisions of section 110 (1) and (2) of the Act.

60 Notice of preparation of plan of management for marine mammals

For the purposes of section 112D (1) of the Act, the prescribed notice is a notification published in the Gazette.

61 Proceedings for offences—prescribed officers of the National Parks and Wildlife Service who may issue evidentiary certificates

- (1) For the purposes of section 181 (5) of the Act, the following are prescribed officers:
- Director, Policy and Science Directorate,
 - Manager, Biodiversity Research and Management Division,
 - Manager, Biodiversity Research and Management Unit,
 - Coordinator, Wildlife Licensing,
 - Chief Law Enforcement Officer of the Investigation Unit,
 - Principal Legal Officer,
 - Senior Legal Officer.
- (2) This clause applies to and in respect of matters arising under the fauna provisions of the Act only.
- (3) In this clause:
- fauna provisions of the Act* means Parts 7, 7A and 9 of the Act and, to the extent to which any other provisions of the Act relate to fauna, those other provisions.

Clause 62 National Parks and Wildlife Regulation 2002

Part 6 Exemptions in favour of Aboriginal people

Part 6 Exemptions in favour of Aboriginal people

62 Exemption: section 70

- (1) The object of this clause is to exempt Aboriginal people from the provisions of section 70 (1) of the Act that prohibit a person from harming fauna within a wildlife district, wildlife refuge, wildlife management area, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (2) Aboriginal people are exempted from the provisions of section 70 (1) of the Act to the extent to which those provisions would, but for this subclause, prohibit Aboriginal people from hunting fauna for their own domestic purposes.
- (3) The exemption does not apply to raptors, parrots or threatened species, populations and ecological communities within the meaning of the *Threatened Species Conservation Act 1995*.
- (4) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

63 Exemption: section 71

- (1) The object of this clause is to exempt Aboriginal people from the provisions of section 71 (1) of the Act that prohibit a person from picking native plants, or having native plants in the person's possession, within a wildlife refuge, wildlife management area, conservation area, wilderness area or area subject to a wilderness protection agreement.
- (2) Aboriginal people are exempted from the provisions of section 71 (1) of the Act to the extent to which those provisions would, but for this subclause, prohibit Aboriginal people from gathering or harvesting the fruit, flowers or other parts of a native plant for their own domestic purposes.
- (3) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

National Parks and Wildlife Regulation 2002

Clause 64

Exemptions in favour of Aboriginal people

Part 6

64 Exemption: section 98

(1) In this clause:

relevant provisions means:

- (a) section 98 (2) (a), which prohibits a person from harming any protected fauna, and
 - (b) so much of section 98 (2) (b) as prohibits the use of any animal, firearm, net, trap or hunting device for the purpose of harming any protected fauna.
- (2) Aboriginal people are exempted from the relevant provisions to the extent to which the relevant provisions would, but for this subclause, prohibit Aboriginal people from harming fauna for their own domestic purposes.
- (3) This clause does not apply in respect of raptors or parrots.
- (4) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

65 Exemption: section 117

- (1) The object of this clause is to exempt Aboriginal people from the provisions of section 117 (1) of the Act that prohibit a person from picking protected native plants, or having protected native plants in the person's possession.
- (2) Aboriginal people are exempted from the provisions of section 117 (1) of the Act to the extent to which those provisions would, but for this subclause, prohibit Aboriginal people from gathering or harvesting the fruit, flowers or other parts of a protected native plant for their own domestic purposes.
- (3) The exemption applies in respect of:
- (a) woody species of protected native plants only if the gathering or harvesting is done in a way that does not significantly harm the plant or interfere unreasonably with its means of propagation, and
 - (b) herbaceous species of protected native plants only if the gathering or harvesting is done in a way that does not significantly deplete the local population or interfere unreasonably with its means of propagation.

Clause 65 National Parks and Wildlife Regulation 2002

Part 6 Exemptions in favour of Aboriginal people

- (4) This clause applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

National Parks and Wildlife Regulation 2002

Clause 66

Aboriginal land

Part 7

Boards of management

Division 1

Part 7 Aboriginal land

Division 1 Boards of management

66 Definitions

In this Division:

board of management means a board of management established under Part 4A (Aboriginal land) of the Act.

member means a member of a board of management.

67 Appointment of deputies of members of boards of management

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.
- (2) The person appointed must be selected from the same category of persons specified in section 71AN (3) of the Act, and in accordance with the terms of any relevant lease, as the member for whom the person is to deputize.
- (3) In the absence of a member, the member's deputy may, if available, act in the place of the member.
- (4) While acting in the place of a member, a person has all the functions of the member and is taken to be a member.
- (5) For the purposes of this clause, a vacancy in the office of a member is taken to be an absence of the member.

68 Chairing of meetings

- (1) At the first meeting of a board of management after the commencement of this clause, the members of the board are to elect as deputy chairperson of the board a person referred to in section 71AN (3) (a) of the Act.
- (2) In the absence of the chairperson, the deputy chairperson may, if available, act in the place of the chairperson.
- (3) If both the chairperson and the deputy chairperson are absent from a meeting of a board of management, the members present are to elect

Clause 68	National Parks and Wildlife Regulation 2002
Part 7	Aboriginal land
Division 1	Boards of management

another person referred to in section 71AN (3) (a) of the Act to chair the meeting.

- (4) While acting in the place of the chairperson, the deputy chairperson or person elected under subclause (3) has all the functions of the chairperson and is taken to be the chairperson.

Division 2 Plans of management

69 Land for community development purposes

Development (by the Aboriginal Land Council, the Local Aboriginal Land Council, Aboriginal owners or the board of management for the area concerned) for the purpose of the following facilities is prescribed under section 72 (2AA) of the Act in respect of Mutawintji Historic Site, Mutawintji National Park and Mutawintji Nature Reserve if the facilities are for the use (but not necessarily the exclusive use) of Aboriginal owners:

- (a) residential housing facilities (whether for permanent or temporary accommodation),
- (b) camping facilities,
- (c) meeting facilities,
- (d) administration facilities,
- (e) tourism facilities,
- (f) recreation facilities,
- (g) cultural facilities,
- (h) cemeteries,
- (i) facilities for the following services:
 - (i) utilities (energy, water and waste management),
 - (ii) health services,
 - (iii) telecommunications,
 - (iv) roads, tracks and airstrips,
- (j) ancillary facilities.

Note. Section 72 of the *National Parks and Wildlife Act 1974* deals with plans of management. Section 72 (2AA) provides that a plan of management for lands reserved or dedicated under Part 4A (Aboriginal lands) of the Act may provide for the use of lands for any community development purpose prescribed by the regulations.

National Parks and Wildlife Regulation 2002

Clause 70

Advisory committees

Part 8

Part 8 Advisory committees

70 Application of Part

This Part applies to and in respect of an advisory committee constituted under section 24 of the Act.

71 Meetings to be held

- (1) An advisory committee must hold an annual general meeting before the end of February each year.
- (2) The first annual general meeting of an advisory committee must be held within 3 months of the constitution of the committee.
- (3) An advisory committee must also hold ordinary meetings at least once every 3 months.
- (4) A meeting (including an annual general meeting) must be held when and where convened by the chairperson or, in the chairperson's absence, by the deputy chairperson.

72 Appointment of officers

- (1) At each annual general meeting, the members must appoint a chairperson, deputy chairperson and secretary.
- (2) The chairperson is to be elected from among the members.
- (3) The deputy chairperson is to be elected from among the members.
- (4) The secretary may be elected from among the members or, with the concurrence of the Director-General, may be a person who is not a member appointed by the members.
- (5) Except as otherwise provided by the Act or this Part, a person elected or appointed as a chairperson, deputy chairperson or secretary:
 - (a) holds office until a successor is elected or appointed, and
 - (b) is eligible for re-election or re-appointment at the next annual general meeting.
- (6) An elected chairperson, deputy chairperson or secretary ceases to hold office as such if he or she ceases to be a member.
- (7) A vacancy in any office must be filled at the next meeting after the vacancy occurs.

Clause 73 National Parks and Wildlife Regulation 2002

Part 8 Advisory committees

73 Presiding member

- (1) The chairperson, or in the chairperson's absence the deputy chairperson, is to preside at the meetings of an advisory committee, but if both are absent, the members are to elect a person from among the members to preside as chairperson.
- (2) The presiding member has a deliberative vote on any matter before the meeting and, in the case of an equality of votes, a casting vote.

74 Administrative matters

- (1) The secretary must circulate to each member an agenda and associated business papers at least 7 days before any meeting of the advisory committee.
- (2) The secretary (or a member on the secretary's behalf) must keep minutes of each meeting and must supply the members with a copy of the minutes of the meeting not later than one calendar month after the date of the meeting.
- (3) The secretary of an advisory committee is responsible for the care of all business papers and correspondence.
- (4) The secretary must forward to the Director-General not later than 31 December in each year particulars of the dates of, and of members attending at, each meeting during that year.

National Parks and Wildlife Regulation 2002

Clause 75

Trustees

Part 9

Part 9 Trustees

75 Application of Part

This Part applies to and in respect of trustees appointed to trust boards for state recreation areas and regional parks under the Act.

76 Meetings to be held

- (1) The trustees must hold an annual general meeting before the end of May each year.
- (2) The trustees must also meet at least 10 times a year at intervals not exceeding 2 months or such number of times and at such intervals as the Minister determines.
- (3) A meeting must be held when and where convened by the chairperson or, in the chairperson's absence, by the deputy chairperson.

77 Special meetings

- (1) Any 2 trustees may, by notice in writing, request the chairperson to call a special meeting for a purpose specified in the notice.
- (2) On receiving such a request, the chairperson must call a special meeting to be held within 28 days after the chairperson receives the request.

78 Appointment of officers

- (1) At each annual general meeting, the trustees must appoint a chairperson, deputy chairperson, secretary, treasurer and auditor.
- (2) The chairperson and deputy chairperson are to be elected from among the members.
- (3) The secretary, treasurer and auditor may be elected from among the members or may be persons who are not members appointed by the members.
- (4) Except as otherwise provided by the Act or this Part, a person elected or appointed as chairperson, deputy chairperson, secretary, treasurer or auditor:
 - (a) holds office until a successor is elected or appointed, and
 - (b) is eligible for re-election or re-appointment at the next annual general meeting.

Clause 78 National Parks and Wildlife Regulation 2002

Part 9 Trustees

- (5) A vacancy in any office must be filled at the next meeting after the vacancy occurs.

79 Presiding member

- (1) The chairperson, or in the chairperson's absence the deputy chairperson, is to preside at meetings of the trustees, but if both are absent, the trustees are to elect a person from among their number to preside.
- (2) The person presiding at a meeting of the trustees has a deliberative vote and, in the case of an equality of votes, a casting vote.

80 Conduct of meetings

- (1) Meetings of the trustees must be conducted, as far as is practicable, in accordance with the procedures set out in the *Local Government (Meetings) Regulation 1999*.
- (2) A resolution that has been passed by the trustees must not be altered or rescinded except by a motion to that effect of which at least 7 days' written notice has been given to each trustee.

81 Committees

- (1) The trustees may appoint one or more committees to carry out any work or perform any duties that the trustees may determine.
- (2) A committee may consist of trustees, of persons who are not trustees or of both trustees and persons who are not trustees.

82 Common seal

The common seal of the trustees:

- (a) may be affixed to an instrument or a document only following a resolution to do so passed at a meeting of the trustees, and
- (b) must be affixed in the presence of a trustee and either the secretary or treasurer, each of whom must attest the fact of the affixing of the common seal by signing the instrument or document.

83 Administrative matters

- (1) The chairperson must circulate to each trustee an agenda and associated business papers at least 10 days before any meeting of the trustees.

National Parks and Wildlife Regulation 2002

Clause 83

Trustees

Part 9

-
- (2) Subclause (1) does not apply to a special meeting if:
- (a) the chairperson believes that the meeting should be held as soon as possible, and
 - (b) it is impracticable to circulate an agenda and associated business papers before the start of the meeting,
- in which case the chairperson may give notice of the meeting and of the agenda for the meeting in the manner that the chairperson considers appropriate.
- (3) The secretary must keep minutes of each meeting and is responsible to the trustees for the keeping of proper financial records in collaboration with the treasurer.
- (4) If no chairperson has been appointed or there is a vacancy in the office of chairperson, the Director-General may perform the functions of the chairperson under this Part.

84 Financial matters

- (1) All money received by the trustees must be paid into the National Parks and Wildlife Fund referred to in section 137 of the Act except money allocated to the trustees by the Minister for wages, for associated ancillary costs or for other specific purposes.
- (2) Money allocated to the trustees by the Minister under this clause must be paid into an authorised deposit-taking institution in New South Wales to the credit of an account in the name of the state recreation area or regional park for which the trustees are appointed.
- (3) Interest earned on money standing to the credit of such an account must be expended only for the purposes for which the money was allocated by the Minister under this clause.
- (4) No reallocation of money or variation of staff establishments on which an allocation under this clause is based may be made without the approval of the Minister.
- (5) Each item of expenditure must be authorised, or the payment of such an item of expenditure must be confirmed, at a duly constituted meeting of the trustees through tabling and approval of a treasurer's report relating to that item of expenditure.

Clause 84 National Parks and Wildlife Regulation 2002

Part 9 Trustees

- (6) Cheques drawn on a trustees' account kept under this clause must be signed by:
- (a) two trustees, or
 - (b) one trustee, and the secretary or treasurer to the trustees, or
 - (c) one trustee, and the manager, assistant manager or deputy manager of the state recreation area or regional park for which the trustees are appointed.
- (7) The trustees' financial year ends on 30 June each year.

National Parks and Wildlife Regulation 2002

Clause 85

Penalty notices

Part 10

Part 10 Penalty notices

85 Penalty notice offences

- (1) For the purposes of section 160 of the Act:
 - (a) each offence created by a provision specified in Column 1 of Schedule 2 is a prescribed offence, and
 - (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 2, and
 - (c) each person referred to in subclause (2) is a prescribed person.
- (2) For the purposes of section 160 of the Act, the following persons are prescribed persons for all offences referred to in Schedule 2:
 - (a) the Director-General,
 - (b) any officer or employee of the National Parks and Wildlife Service,
 - (c) any police officer,
 - (d) any officer or employee of a government department in respect of which an arrangement has been made under section 11 (1) of the Act,
 - (e) any officer, employee or servant of a statutory corporation or council, or of trustees, in respect of whom or which an arrangement has been made under section 11 (2) or (4) of the Act.

Clause 86 National Parks and Wildlife Regulation 2002

Part 11 Miscellaneous

Part 11 Miscellaneous

86 Ex-officio rangers

- (1) For the purposes of section 16 (2) of the Act, the following classes and descriptions of officers and employees of State Forests (the Forestry Commission) are prescribed:
 - (a) General Managers,
 - (b) Deputy General Managers,
 - (c) Sales and Harvesting Managers,
 - (d) Operations Managers,
 - (e) Planning Managers,
 - (f) Foresters,
 - (g) Forest Assistants,
 - (h) Foremen under the *Forestry Employees (Forestry Commission of New South Wales) Award*,
 - (i) Forest Rangers under the *Forestry Employees (Forestry Commission of New South Wales) Award*,
 - (j) Regional Ecologists,
 - (k) Scientific Officers (Research Officers, Research Scientists),
 - (l) Project Officers,
 - (m) Technical Officers.
- (2) For the purposes of section 19 (1) of the Act, an ex-officio ranger (whether a police officer, a fisheries officer within the meaning of the *Fisheries Management Act 1994* or an ex-officio ranger prescribed by subclause (1)) has the powers, authorities, duties and functions conferred or imposed on officers of the National Parks and Wildlife Service by or under sections 157 (1) and (2) and 158 of the Act.

87 Notice of preparation of plans of management

- (1) If a plan of management has been prepared for a park (other than for Jenolan Caves Reserve Trust lands), the Director-General must give the notice required by section 75 (1) of the Act by an advertisement published in the Gazette.

National Parks and Wildlife Regulation 2002

Clause 87

Miscellaneous

Part 11

-
- (2) If a plan of management has been prepared for any Jenolan Caves Reserve Trust lands, the Jenolan Caves Reserve Trust must give the notice required by section 75B (2) by an advertisement published in the Gazette.

88 Transfer of relics

For the purposes of section 85A (1) (c) of the Act, the following are prescribed:

- (a) an Aboriginal person,
- (b) an organisation representing Aboriginal people.

Note. Section 85A of the *National Parks and Wildlife Act 1974* enables the Director-General of the National Parks and Wildlife Service to dispose of relics (within the meaning of that Act) that are the property of the Crown:

- (a) by returning the relics to an Aboriginal owner or Aboriginal owners entitled to, and willing to accept possession, custody or control of the relics in accordance with Aboriginal tradition, or
- (b) by otherwise dealing with the relics in accordance with any reasonable directions of an Aboriginal owner or Aboriginal owners referred to in paragraph (a), or
- (c) if there is or are no such Aboriginal owner or Aboriginal owners—by transferring the relics to a person, or a person of a class, prescribed by the regulations for safekeeping.

89 Appeal period

- (1) For the purposes of section 90 (7) (b) of the Act, an application for consent under section 90 (1) is taken to be refused (unless the consent is earlier granted or refused) on the expiration of the period of 60 days after the date on which the application was received by the Director-General.
- (2) For the purposes of section 90 or 135 of the Act, the period within which an appeal is to be made is 28 days after the date of the refusal, cancellation or attaching of the condition or restriction against which the appeal is brought.

90 Appeals

- (1) An appeal under section 90 or 135 of the Act is to be made by delivering a written statement to the Director-General, containing:
 - (a) the appellant's name and address, and
 - (b) particulars of any application, consent, licence, certificate, condition or restriction relevant to the appeal, and

Clause 90 National Parks and Wildlife Regulation 2002

Part 11 Miscellaneous

- (c) the grounds of the appeal.
- (2) If a statement is delivered to the Director-General under this clause, the Director-General must as soon as practicable deliver the statement to the Minister.

91 Notification of site of relics

For the purposes of section 91 of the Act, the prescribed manner of notifying the Director-General of the location of a relic is by means of a written notice in a form approved by the Director-General.

92 Terms of interim protection orders

- (1) For the purposes of section 91B (3) of the Act, an interim protection order may contain terms of either or both of the following kinds:
 - (a) terms that prohibit the owner or occupier of land subject to the order from doing any one or more of the things listed in subclause (2) or from causing or permitting them to be done,
 - (b) terms that allow the owner or occupier to do any one or more of those things (or to cause or permit them to be done) only with the consent of the Minister or only subject to other conditions.
- (2) The things that may be prohibited or regulated by an interim protection order are:
 - (a) the total or partial demolition, damaging, defacing, destruction, pulling down or removal of any building, structure or work on the land,
 - (b) the damaging or despoiling of the land or any part of it,
 - (c) the carrying on of any activity on the land that would constitute the carrying out of development (within the meaning of Division 7 of Part 4 of the Act) if the land were within a conservation area, whether or not it is within such an area,
 - (d) the exhibition of any notice or advertisement on the land,
 - (e) the damaging or destruction of any tree or other vegetation on, or the removal of any tree or other vegetation from, the land,
 - (f) the carrying on (whether or not within a park) of any activity that may affect the preservation, protection or maintenance of the land or any threatened species, population or ecological community, or its habitat (within the meaning of the

National Parks and Wildlife Regulation 2002

Clause 93

Miscellaneous

Part 11

Threatened Species Conservation Act 1995), or any fauna, plant, relic or place on or within the land.

93 Interest on overdue money

The rate of interest prescribed for the purposes of section 144A (2) (a) of the Act is the rate for the time being prescribed under section 95 (1) of the *Supreme Court Act 1970* for payment of interest on a judgment debt.

94 Evidence of authority

- (1) For the purposes of sections 164 and 165 of the Act, the prescribed evidence of a person's authority is a written instrument of authority signed by the Director-General that identifies the person so authorised.
- (2) For the purposes of section 164 (1) (a) (iii) of the Act, the prescribed form of receipt is a receipt in Form 1 of Schedule 3 or in any other form that may be approved by the Director-General.

95 Disposal of property seized or delivered up

- (1) For the purposes of section 168 (1) (c) of the Act, the court making the conviction is the prescribed court.
- (2) For the purposes of section 168 (2) of the Act, if the proceedings referred to in section 168 (2) (b):
 - (a) have been dismissed—the court dismissing the proceedings is the prescribed court, or
 - (b) have not been commenced within 2 years after the seizure or delivering up of the property—the Local Court is the prescribed court.

Note. Section 168 of the *National Parks and Wildlife Act 1974* provides for the making of applications to a "court prescribed" for an order that property seized under section 164 of the Act or delivered up under section 165 of the Act be delivered to a specified person.

96 Nomination by universities of persons for appointment to Advisory Council

The nomination of a person by a university under clause 1 (3) (g) of Schedule 7 to the Act:

- (a) must contain the following information:
 - (i) the full name of the nominee,
 - (ii) the date of birth of the nominee,

Clause 96 National Parks and Wildlife Regulation 2002

Part 11 Miscellaneous

- (iii) the qualifications of the nominee and whether the nominee possesses special fitness, by reason of the nominee's work or interest, to undertake wildlife conservation, and
- (b) must reach the Minister not later than the date directed by the Minister by notice in writing to the university or by any later date that the Minister may allow, and
- (c) must be in writing, and
- (d) must be executed under the seal of the university, and
- (e) must be endorsed with or accompanied by the written consent of the nominee to the nomination.

97 Repeal and savings

- (1) The following regulations are repealed:
 - (a) the *National Parks and Wildlife (Land Management) Regulation 1995*,
 - (b) the *National Parks and Wildlife (Fauna Protection) Regulation 2001*,
 - (c) the *National Parks and Wildlife (Administration) Regulation 1995*.
- (2) Any act, matter or thing that, immediately before the repeal of the *National Parks and Wildlife (Land Management) Regulation 1995*, the *National Parks and Wildlife (Fauna Protection) Regulation 2001* or the *National Parks and Wildlife (Administration) Regulation 1995* had effect under those Regulations continues to have effect under this Regulation.

National Parks and Wildlife Regulation 2002

Caging of protected fauna

Schedule 1

Schedule 1 Caging of protected fauna

(Clause 54)

1 Conditions for caging of protected fauna

- (1) Cages used for the housing of birds offered for sale must contain a removable tray having a flat base.
- (2) Birds offered for sale in cages must be housed in cages of a box type enclosed all over (with the exception of the front, which must be wired).
- (3) Birds consigned for sale in cages must be housed in cages of a box type.
- (4) Birds must be housed in cages and aviaries so as to provide adequate ventilation (to the satisfaction of the Director-General or an officer authorised by the Director-General) with direct or indirect draughts avoided as far as reasonably possible.
- (5) Cages and aviaries used in the housing of birds must be maintained in an adequate sanitary state to the satisfaction of the Director-General or an officer authorised by the Director-General.
- (6) Cages and aviaries used in the housing of birds must contain (in addition to roosting perches) one or two perches for the purpose of steps, but one perch is sufficient for one bird.
- (7) A sufficient number of roosting perches of a size adequate for the bird or birds housed must be provided in a cage or aviary, the perches being so situated that:
 - (a) each bird has sufficient room to turn around and sit without any part of its plumage touching the cage or aviary, and
 - (b) each bird's tail does not rub the sides or bottom of the cage or aviary nor its head touch the top when it is perched, and
 - (c) drinking vessels and food receptacles in the cage or aviary will not be fouled.
- (8) Sufficient space must be provided in each cage and aviary to enable the birds in it to roost comfortably without overcrowding.

National Parks and Wildlife Regulation 2002

Schedule 1 Caging of protected fauna

- (9) Mammals such as kangaroos or wallabies, and large birds such as emus, being consigned or offered for sale in cages must be given sufficient room to enable them to turn completely around, stand erect at full height and have free movement.
- (10) Drinking vessels and food receptacles containing sufficient clean water and food to sustain the fauna in the cage or aviary must be placed in each cage and aviary.

National Parks and Wildlife Regulation 2002

Penalty notice offences

Schedule 2

Schedule 2 Penalty notice offences

(Clause 85)

Column 1	Column 2
Provision	Penalty \$
Offences under National Parks and Wildlife Regulation 2002	
Clause 4 (2) (a)	300
Clause 4 (2) (b)	300
Clause 4 (2) (c)	300
Clause 4 (2) (d)	300
Clause 4 (2) (e)	300
Clause 4 (2) (f)	300
Clause 4 (2) (g)	300
Clause 5 (2)	300
Clause 6 (1)	300
Clause 7 (1) (a)	300
Clause 7 (1) (b)	300
Clause 7 (1) (c)	60
Clause 7 (1) (d)	300
Clause 7 (1) (e)	200
Clause 7 (1) (f)	300
Clause 7 (1) (g)	300
Clause 7 (1) (h)	300
Clause 7 (1) (i)	300
Clause 7 (1) (j)	300

Page 69

National Parks and Wildlife Regulation 2002

Schedule 2 Penalty notice offences

Column 1	Column 2
Provision	Penalty \$
Clause 7 (1) (k)	200
Clause 7 (1) (l)	300
Clause 7 (1) (m)	300
Clause 7 (1) (n)	300
Clause 7 (1) (o)	300
Clause 7 (2)	300
Clause 7 (3)	300
Clause 7 (4) (a)	300
Clause 7 (4) (b)	500
Clause 8 (2)	500
Clause 8 (4)	300
Clause 9 (1) (a)	200
Clause 9 (1) (b)	200
Clause 9 (1) (c)	200
Clause 9 (1) (d)	200
Clause 10 (1)	300
Clause 10 (2)	300
Clause 10 (3)	500
Clause 10 (6)	300
Clause 11 (1) (a)	300
Clause 11 (1) (b)	300
Clause 11 (1) (c)	300
Clause 11 (1) (d)	500

Page 70

National Parks and Wildlife Regulation 2002

Penalty notice offences

Schedule 2

Column 1	Column 2
Provision	Penalty \$
Clause 11 (1) (e)	300
Clause 11 (1) (f)	300
Clause 11 (1) (g)	300
Clause 11 (1) (h)	300
Clause 11 (1) (i)	500
Clause 11 (1) (j)	500
Clause 11 (1) (k)	500
Clause 11 (1) (l)	500
Clause 11 (1) (m)	500
Clause 12 (1) (a)	500
Clause 12 (1) (b)	500
Clause 12 (1) (c)	500
Clause 12 (1) (d)	300
Clause 12 (1) (e)	500
Clause 12 (1) (f)	500
Clause 12 (1) (g)	500
Clause 13 (1) (a)	300
Clause 13 (1) (b)	300
Clause 13 (1) (c)	300
Clause 13 (2)	300
Clause 14 (1) (a)	300
Clause 14 (1) (b)	500
Clause 14 (1) (c)	500
Clause 14 (1) (d)	300

National Parks and Wildlife Regulation 2002

Schedule 2 Penalty notice offences

Column 1	Column 2
Provision	Penalty \$
Clause 15 (1)	300
Clause 15 (2) (a)	500
Clause 15 (2) (b)	500
Clause 15 (3) (a)	500
Clause 15 (3) (b)	500
Clause 15 (3) (c)	300
Clause 15 (3) (d)	300
Clause 15 (3) (e)	300
Clause 16 (1) (a)	500
Clause 16 (1) (b)	500
Clause 16 (1) (c)	500
Clause 16 (1) (d)	300
Clause 17 (1) (a)	300
Clause 17 (1) (b)	300
Clause 17 (1) (c)	300
Clause 18 (1)	300
Clause 19 (1) (a)	500
Clause 19 (1) (b)	500
Clause 19 (1) (c)	500
Clause 19 (1) (d)	500
Clause 19 (1) (e)	500
Clause 20 (1) (a)	500
Clause 20 (1) (b)	500

National Parks and Wildlife Regulation 2002

Penalty notice offences

Schedule 2

Column 1	Column 2
Provision	Penalty \$
Clause 20 (1) (c)	500
Clause 20 (1) (d)	500
Clause 21 (1) (a)	300
Clause 21 (1) (b)	300
Clause 21 (1) (c)	300
Clause 21 (1) (d)	500
Clause 21 (4)	300
Clause 22 (1)	300
Clause 23 (1)	300
Clause 23 (2) (a)	300
Clause 23 (2) (b)	500
Clause 23 (2) (c)	200
Clause 23 (2) (d) (i)	300
Clause 23 (2) (d) (ii)	300
Clause 23 (2) (d) (iii)	200
Clause 23 (2) (e)	200
Clause 23 (2) (f)	200
Clause 23 (2) (g)	300
Clause 23 (2) (h)	200
Clause 23 (2) (i)	300
Clause 23 (2) (j)	300
Clause 23 (2) (k)	300
Clause 23 (2) (l)	300

National Parks and Wildlife Regulation 2002

Schedule 2 Penalty notice offences

Column 1	Column 2
Provision	Penalty \$
Clause 24 (a)	500
Clause 24 (b)	500
Clause 24 (c)	500
Clause 24 (d)	500
Clause 24 (e)	500
Clause 25 (1)	300
Clause 25 (2)	300
Clause 27 (3)	500
Clause 27 (6)	500
Clause 28 (1)	300
Clause 28 (2)	300
Clause 28 (3) (a)	300
Clause 28 (3) (b)	300
Clause 28 (4) (a)	300
Clause 28 (4) (b)	300
Clause 28 (6)	300
Clause 29	200
Clause 33 (3)	500
Clause 36 (6)	500
Clause 37 (2)	500
Clause 38 (2)	500
Clause 39 (2)	500
Clause 44 (3)	500

Page 74

National Parks and Wildlife Regulation 2002

Penalty notice offences

Schedule 2

Column 1	Column 2
Provision	Penalty \$
Clause 53 (1)	500
Clause 53 (2)	500
Clause 53 (3)	500
Clause 54 (1)	500
Clause 54 (2)	500
Clause 54 (3)	500
Clause 54 (4)	500
Clause 55	500
Clause 56 (1)	500
Offences under National Parks and Wildlife Act 1974	
Section 45 (1) (a)	500
Section 45 (1) (b)	500
Section 56 (1) (a)	500
Section 56 (1) (b)	500
Section 56 (1) (c)	500
Section 56 (1) (d)	500
Section 56 (1) (e)	300
Section 57 (1)	300
Section 57 (2)	500
Section 58H (1) (a)	500
Section 58H (1) (b)	500
Section 58H (1) (c)	500
Section 58H (1) (d)	500

National Parks and Wildlife Regulation 2002

Schedule 2 Penalty notice offences

Column 1	Column 2
Provision	Penalty \$
Section 58H (1) (e)	300
Section 58I (1)	300
Section 58I (2)	300
Section 58Q (1) (a)	500
Section 58Q (1) (b)	500
Section 58Q (1) (c)	500
Section 58Q (1) (d)	500
Section 58Q (1) (e)	200
Section 58R (1)	300
Section 58R (2)	300
Section 70 (1) (a)	500
Section 70 (1) (b)	500
Section 70 (2) (a)	500
Section 70 (2) (b)	500
Section 70 (2) (c)	300
Section 71 (1)	300
Section 86 (a)	500
Section 86 (b)	300
Section 86 (c)	300
Section 86 (d)	300
Section 86 (e)	300
Section 91	300
Section 98 (2) (a)	300

Page 76

National Parks and Wildlife Regulation 2002

Penalty notice offences

Schedule 2

Column 1	Column 2
Provision	Penalty \$
Section 98 (2) (a1)	300
Section 98 (2) (b)	300
Section 101	300
Section 102 (2)	300
Section 103 (1)	300
Section 104 (1) (a)	500
Section 104 (1) (b)	500
Section 104 (1) (c)	500
Section 105 (a)	500
Section 105 (b)	500
Section 105 (c)	500
Section 105A (1) (a)	500
Section 105A (1) (b)	500
Section 105A (1) (c)	500
Section 106 (1)	300
Section 107	300
Section 108	300
Section 109 (1)	300
Section 109 (2)	300
Section 110 (1)	300
Section 110 (2)	300
Section 111	200
Section 117 (1)	300

National Parks and Wildlife Regulation 2002

Schedule 2 Penalty notice offences

Column 1	Column 2
Provision	Penalty \$
Section 118	300
Section 133 (4)	300
Section 157 (3) (a)	500
Section 157 (3) (b)	500
Section 158 (2) (a)	500
Section 158 (2) (b)	500

National Parks and Wildlife Regulation 2002

Form

Schedule 3

Schedule 3 Form

(Clause 95)

Form 1 Seizure Receipt

(National Parks and Wildlife Act 1974)

No.

I,
acknowledge receipt of the following
.....

Number	Description	Number	Description
--------	-------------	--------	-------------

seized by me from
of. at
time/date
under the *National Parks and Wildlife Act 1974*.

.....
Owner/Person present
.....
Authorised officer

Necropolis Regulation 2002

under the

Necropolis Act 1901

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Necropolis Act 1901*.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

Explanatory note

This Regulation replaces the *Necropolis Regulation 1996* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. This Regulation deals with the following matters:

- (a) the appointment of a secretary and other employees of the various Necropolis trusts and the Joint Committee of Necropolis Trustees, the holding of meetings and the affixing of seals to instruments,
- (b) a trust's powers in relation to the management, planning and maintenance of its portion of the Necropolis (including the reburial of remains where burial structures have collapsed),
- (c) the keeping of registers of burial places,
- (d) the issue of certificates of exclusive right of burial,
- (e) orders for burials and exhumations,
- (f) the prescription of offences in relation to the Necropolis,
- (g) the calculation of the contributions to be made to the Joint Committee of Necropolis Trustees.

This Regulation is made under the *Necropolis Act 1901*, including section 37 (the general regulation-making power).

Necropolis Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Application	3
4 Definitions	3
5 Notes	4
Part 2 Administration	
6 Officers and employees	5
7 Meetings	5
8 Common seal	5
Part 3 Management of the Necropolis	
9 Planning, conduct and maintenance of portions of the Necropolis	6
10 Refusal to grant exclusive burial rights	7
11 Register of burial places	7
12 Certificates of exclusive right of burial	7
13 Orders for burial	8
14 Hours of burial	8
15 Exhumations	8
Part 4 Offences	
16 Offences relating to entry into the Necropolis	9
17 Offences relating to travel in the Necropolis	9
18 Offences relating to the environment	9
19 Offences relating to trade and commerce	10
20 General offences	10
21 Consent of Joint Committee or trust a defence	10
Part 5 Miscellaneous	
22 Contributions to Joint Committee	11
23 Savings	12

Page 2

Necropolis Regulation 2002

Clause 1

Preliminary

Part 1

Necropolis Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Necropolis Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Necropolis Regulation 1996* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Application

- (1) This Regulation applies to the whole of the land comprising the Necropolis.
- (2) This Regulation does not affect the operation of any regulations under the *Public Health Act 1991* relating to cemeteries.

4 Definitions

In this Regulation:

appropriate fee means a fee fixed by a trust in accordance with section 17 of the Act.

burial place means a grave site, vault site, crypt site or other place for the disposition of the remains of the dead.

relevant trust means:

- (a) in relation to a portion of the Necropolis administered by a trust—the trust, or
- (b) in relation to any other portion of the Necropolis—the Joint Committee.

secretary, in relation to a trust, means the secretary of the trust.

the Act means the *Necropolis Act 1901*.

trust means a body of trustees in which is vested a portion of the Necropolis.

Clause 5 Necropolis Regulation 2002

Part 1 Preliminary

5 Notes

Notes in the text of this Regulation do not form part of this Regulation.

Necropolis Regulation 2002

Clause 6

Administration

Part 2

Part 2 Administration

6 Officers and employees

The trusts and the Joint Committee may each appoint and employ a secretary and such other officers and employees as may be necessary for the efficient conduct of their operations.

7 Meetings

Meetings of each trust and the Joint Committee are to be held not less than once in each 3 months at the places and times appointed by the trust or the Joint Committee, as the case may be.

8 Common seal

- (1) The common seal of a trust is to be kept by the secretary or, if there is no secretary, by such other person as may be appointed by the trust.
- (2) The affixing to an instrument of the common seal of a trust that is managed by a trust board is to be attested by the secretary and by a member of the trust board.
- (3) If an administrator of a trust has been appointed under the *Crown Lands Act 1989*, the common seal may be affixed and attested by the administrator alone.

Clause 9 Necropolis Regulation 2002

Part 3 Management of the Necropolis

Part 3 Management of the Necropolis

9 Planning, conduct and maintenance of portions of the Necropolis

- (1) Each relevant trust may, in relation to its portion of the Necropolis, make such provision as it considers necessary for the following:
 - (a) the setting aside of sections for different types and classes of burials,
 - (b) the establishment of standards of construction and design for monuments and structures,
 - (c) the size, multiple use and location of burial places,
 - (d) burials in vaults,
 - (e) the erection or installation of structures and the making of inscriptions,
 - (f) the carrying out of work by monumental masons,
 - (g) the qualifications required by, and the security deposits required to be lodged by, monumental masons,
 - (h) the removal, replacement and maintenance of structures,
 - (i) the placing of vases, statuettes, jars, bottles or other items of embellishment on or near graves, monuments, crypts or vaults,
 - (j) the improvement and maintenance of the portion,
 - (k) the making of arrangements for the care of burial places on an annual or other basis,
 - (l) the supply of goods and services incidental to the conduct of burials and other matters relating to the portion,
 - (m) the conduct of religious or other ceremonies of burial or commemoration.
- (2) A trust may, in relation to its portion of the Necropolis, rebury any human remains if the remains or the coffins containing the remains are situated in an above-ground burial structure and have become exposed due to the collapse of the whole or a part of the structure. Reburials may take place only after any applicable provisions of the regulations under the *Public Health Act 1991* relating to exhumations and burials have been complied with.

Necropolis Regulation 2002

Clause 10

Management of the Necropolis

Part 3

10 Refusal to grant exclusive burial rights

A trust may refuse to grant an exclusive right of burial to any person if, in its opinion, the grant would create a monopoly or encourage dealing in such rights as a business.

11 Register of burial places

- (1) Each trust must cause a register of burial places to be kept in respect of the burial places in its portion.
- (2) The register, which may be kept in electronic or written form:
 - (a) must readily identify (whether by reference to a plan or by other means) the location of each burial place, and
 - (b) must contain the name and address of the owner of any exclusive right of burial granted in relation to a burial place.
- (3) Immediately after a burial in a burial place, a trust must ensure that entries are made in the burial register, opposite the entry for that burial place, in accordance with any applicable provisions of the regulations under the *Public Health Act 1991*.
- (4) A trust may amend its register from time to time so as to remove any inaccuracies contained in it.
- (5) A trust must, on application made by any person, make available to the person a copy of any entry made in the register in relation to a burial place.
- (6) Such an application must be in the form approved by the relevant trust and must be accompanied by the appropriate fee.
- (7) The register is admissible in any proceedings as evidence of the identity of the holder of an exclusive right of burial that has been granted in respect of any particular burial site.

12 Certificates of exclusive right of burial

- (1) A trust may issue to the owner of an exclusive right of burial a certificate of exclusive right of burial in relation to the burial place concerned.
- (2) An application for such a certificate must be in the form approved by the relevant trust and accompanied by the appropriate fee.
- (3) A certificate under this clause is to be in such form as the relevant trust may from time to time determine.

Clause 13 Necropolis Regulation 2002

Part 3 Management of the Necropolis

13 Orders for burial

- (1) Burials (other than reburials carried out by the trust in accordance with this Regulation) are not to take place unless the relevant trust has issued an order for burial.
- (2) A trust may set down the procedure to be followed to obtain an order for burial.

14 Hours of burial

Burials are not to take place except at such times as the relevant trust may from time to time determine.

15 Exhumations

- (1) Exhumations are not to take place unless:
 - (a) prior written approval has been obtained from the Director-General of the Department of Health in accordance with any applicable provisions of the regulations under the *Public Health Act 1991*, and
 - (b) an order for exhumation (except in the case of an exhumation carried out by the trust for the purpose of reburial in accordance with this Regulation) has been issued by the relevant trust.
- (2) This clause does not apply if an exhumation order has been issued by a court.

Necropolis Regulation 2002

Clause 16

Offences

Part 4

Part 4 Offences

16 Offences relating to entry into the Necropolis

- (1) A person must not do any of the following:
- (a) enter or remain in the Necropolis at night, between the hours of sunset and sunrise,
 - (b) cause or permit an animal that is under the person's control to enter or remain in the Necropolis.

Maximum penalty: 10 penalty units.

- (2) Subclause (1) (b) does not prevent a person from riding a horse or from walking a dog on a leash in the Necropolis.

17 Offences relating to travel in the Necropolis

A person must not do any of the following in the Necropolis:

- (a) drive a vehicle, or ride a horse, except on a road provided for that purpose,
- (b) drive a vehicle at a speed exceeding that determined by the Joint Committee or relevant trust for the land concerned and specified by a sign erected on that land by the Joint Committee or the relevant trust,
- (c) drive a vehicle or a vehicle and trailer having an unladen weight of more than 3 tonnes,
- (d) drive a vehicle for the purpose of travelling between places outside the Necropolis,
- (e) park a motor vehicle on any burial place, verge or plantation or in a manner that is likely to impede traffic,
- (f) teach, learn or practise driving a motor vehicle.

Maximum penalty: 10 penalty units.

18 Offences relating to the environment

A person must not do any of the following:

- (a) bring into or leave in the Necropolis any rubbish, refuse, scrap metal (including any car or car part), rock, soil, sand, stone or other such substance,

Clause 18 Necropolis Regulation 2002

Part 4 Offences

- (b) remove from the Necropolis any dead timber, log or stump, whether standing or fallen,
- (c) remove from the Necropolis any rock, soil, sand, stone or other such substance,
- (d) kill, capture or in any way interfere with any animal, bird or other fauna, whether native or introduced, in the Necropolis,
- (e) plant any tree, shrub or other herbage or plant in the Necropolis.

Maximum penalty: 10 penalty units.

19 Offences relating to trade and commerce

A person must not do any of the following in the Necropolis:

- (a) engage in trade or commerce,
- (b) distribute any circular, advertisement, paper or other printed, drawn, written or photographic matter,
- (c) teach, learn or practise any trade or skill.

Maximum penalty: 10 penalty units.

20 General offences

A person must not do any of the following in the Necropolis:

- (a) bury any human remains, whether cremated or not,
- (b) open any coffin,
- (c) take part in any gathering, meeting or assembly, except for the purpose of a religious or other ceremony of burial or commemoration,
- (d) camp or reside on any land,
- (e) possess or drink any alcoholic or intoxicating beverage.

Maximum penalty: 10 penalty units.

21 Consent of Joint Committee or trust a defence

A person is not guilty of an offence under this Part if the person establishes that the act giving rise to the offence was done with the written consent of the Joint Committee or (in the case of an act done in a portion of the Necropolis administered by a trust) of the relevant trust.

Necropolis Regulation 2002

Clause 22

Miscellaneous

Part 5

Part 5 Miscellaneous

22 Contributions to Joint Committee

- (1) For the purposes of section 20B (3) (b) of the Act, the proportion payable to the Joint Committee by a trust is to be calculated in accordance with the following formula:

$$\text{proportion payable} = \frac{\text{approved amount} \times \text{interments}}{\text{total interments}}$$

where:

approved amount represents the amount approved by the Minister under section 20B of the Act in relation to the amount assessed by the Joint Committee, from time to time, as the amount it requires to enable it to exercise its functions under section 20A of the Act,

interments, in relation to a trust, represents the number of interments (and cremations) carried out during the previous financial year in the portion of the Necropolis managed by that trust,

total interments represents the total number of interments (and cremations) carried out during the previous financial year in the Necropolis.

- (2) Within 7 days after the end of each quarter, each trust must provide the Joint Committee with the number of interments and cremations carried out during that quarter in the portion of the Necropolis managed by the trust.

- (3) In this clause:

financial year means a year commencing on 1 July and ending on 30 June.

trust includes a person conducting a crematorium on the land described in the Second Schedule to the Act (if there is no trustee of that land).

Clause 23 Necropolis Regulation 2002

Part 5 Miscellaneous

23 Savings

Any act, matter or thing that, immediately before the repeal of the *Necropolis Regulation 1996*, had effect under that Regulation continues to have effect under this Regulation.

Note. The *Necropolis Regulation 1996* is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

Optical Dispensers Regulation 2002

under the

Optical Dispensers Act 1963

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Optical Dispensers Act 1963*.

CRAIG KNOWLES, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to repeal and remake, with minor changes, the provisions of the *Optical Dispensers Regulation 1997*. The new Regulation deals with the following matters:

- (a) administrative matters (such as fees and forms) relating to licences for optical dispensers (Part 2),
- (b) procedures for dealing with complaints against optical dispensers (Part 3),
- (c) other matters of a minor, consequential or ancillary nature (Parts 1 and 4).

This Regulation is made under the *Optical Dispensers Act 1963*, including section 35 (the general regulation making power) and sections 2, 21, 22 and 23.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Optical Dispensers Regulation 2002

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notes	3
5 Sale of certain optical appliances excluded from the definition of optical dispensing: section 2	3
Part 2 Licences	
6 Licences: section 22	5
7 Duplicate licences	5
8 Display of licences	5
9 Production of proof of current registration	5
10 Change of name or address	5
11 Roll fee: section 23	6
12 Restoration of name to register: section 23	6
Part 3 Complaints	
13 Complaints preferred to Board	7
14 Optical dispenser to be invited to make representations on complaint	7
15 Action by Board on complaint	7
16 Persons may be required to attend and give evidence	8
17 Miscellaneous powers of Board	8
Part 4 Miscellaneous	
18 Inspection of register: section 21	9
19 Savings provision	9
Schedule 1 Forms	10

Page 2

Optical Dispensers Regulation 2002

Clause 1

Preliminary

Part 1

Optical Dispensers Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Optical Dispensers Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Optical Dispensers Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

approved means approved by the Board.

the Act means the *Optical Dispensers Act 1963*.

(2) In this Regulation, a reference to a numbered form is a reference to a form set out in Schedule 1.

4 Notes

Notes included in this Regulation do not form part of this Regulation.

5 Sale of certain optical appliances excluded from the definition of optical dispensing: section 2

(1) The sale of hand-held magnifiers, or corrective lenses designed for use only in diving masks or swimming goggles, is taken not to be optical dispensing for the purposes of the Act.

(2) The sale of ready made spectacles:

(a) that are designed to alleviate the effects of presbyopia only, and

(b) that comprise 2 lenses of equal power, being a power of plus one dioptré or more but not exceeding plus 3.5 dioptrés,

is taken not to be optical dispensing for the purposes of the Act.

Clause 5 Optical Dispensers Regulation 2002

Part 1 Preliminary

- (3) Subclause (2) does not apply to the sale by retail of ready made spectacles unless there is attached to them a notice on which the following warning is printed in black type on a contrasting background:

WARNING

The lenses in these glasses are not prescription lenses. They are not intended as a substitute for lenses or spectacles specifically prescribed for you. If you are aware of or suspect that you have any defect of sight, you should arrange an examination by an ophthalmologist or optometrist. You should have your eyes regularly checked by an ophthalmologist or optometrist.

Optical Dispensers Regulation 2002

Clause 6

Licences

Part 2

Part 2 Licences

6 Licences: section 22

- (1) For the purposes of section 22 of the Act, the prescribed licence fee is \$90.
- (2) The fee is payable when the application for the licence is lodged but is refundable if the application is refused.

7 Duplicate licences

The holder of a licence which, in the opinion of the Board, has been lost, stolen, defaced or destroyed is entitled, on payment of a fee of \$20, to receive a duplicate licence.

8 Display of licences

The person in charge of an optical dispensing practice at any premises for a period in excess of 30 days must display the person's licence in a prominent position in the premises.

Note. A contravention of this subclause constitutes an offence under section 32 of the Act and is punishable by a penalty not exceeding the maximum amount specified in that section for a breach of the regulations.

9 Production of proof of current registration

- (1) A person who carries out optical dispensing for fee or reward must, when requested by an authorised person to do so, produce to the authorised person proof of current registration as an optical dispenser or of current approval to practise under section 22B of the Act.

Note. A contravention of this subclause constitutes an offence under section 32 of the Act and is punishable by a penalty not exceeding the maximum amount specified in that section for a breach of the regulations.

- (2) In this clause, *authorised person* means a person authorised for the time being by the Board for the purposes of this clause.

10 Change of name or address

- (1) An optical dispenser must notify the Board of any change in his or her name or address within one month after the change.

Note. A contravention of this subclause constitutes an offence under section 32 of the Act and is punishable by a penalty not exceeding the maximum amount specified in that section for a breach of the regulations.

Clause 10 Optical Dispensers Regulation 2002

Part 2 Licences

- (2) An optical dispenser who has changed his or her name is entitled, on surrendering his or her current licence, to have the new name entered in the register and a replacement licence issued in that name.
- (3) For the purposes of this clause, a reference to a change of name by a person is a reference to a change in the name under which the person carries out optical dispensing.

11 Roll fee: section 23

For the purposes of section 23 (1) of the Act, the prescribed roll fee is \$70.

12 Restoration of name to register: section 23

- (1) For the purposes of section 23 (3) of the Act:
 - (a) the prescribed fee is \$90, and
 - (b) the prescribed form is Form 1.
- (2) The Board may waive so much of the prescribed fee as it considers proper in the circumstances.

Optical Dispensers Regulation 2002

Clause 13

Complaints

Part 3

Part 3 Complaints

13 Complaints preferred to Board

A complaint concerning the misconduct of an optical dispenser, in his or her practice as an optical dispenser, may be preferred to the Board by means of a statement of the alleged misconduct lodged with the Secretary.

14 Optical dispenser to be invited to make representations on complaint

- (1) As soon as practicable after receipt of the complaint, the Secretary is to invite the optical dispenser, in a notice accompanied by a copy of the complaint, to make representations in response to the complaint within such time as is specified in the notice.
- (2) The Secretary is to forward the complaint, and any representations made, to the Board for consideration at its next ordinary meeting.

15 Action by Board on complaint

- (1) The Board, after considering the complaint and any representations by the optical dispenser, may dismiss the complaint or set down a special meeting of the Board to conduct an inquiry into the complaint.
- (2) If the optical dispenser does not appear at the inquiry, either personally or by his or her legal representative, the Board may deal with the complaint in his or her absence.
- (3) The Secretary is to give at least 14 days notice in writing of the place, date and time of the inquiry:
 - (a) to the optical dispenser, and
 - (b) to the complainant, and
 - (c) to the Board members.
- (4) The notice to the optical dispenser must state that the complaint may be dealt with in the optical dispenser's absence if he or she does not appear at the inquiry.
- (5) The notice to the complainant must be accompanied by a copy of any representations made by the optical dispenser.
- (6) The notice to the Board members must be accompanied by copies of both the complaint and any representations made by the optical dispenser.

Clause 15 Optical Dispensers Regulation 2002

Part 3 Complaints

(7) Each notice may be served personally or by post.

16 Persons may be required to attend and give evidence

- (1) The Secretary may, by notice in writing served personally or by post, require a person to appear before the Board at the inquiry for the purpose of giving evidence relevant to the inquiry.
- (2) The notice must specify the place, date and time for the person's attendance, the date to be no sooner than 7 days after the date on which the notice is served on the person.
- (3) Any member of the Board may require a person appearing before the Board at an inquiry to answer a question that is reasonably related to the purpose of the inquiry.
- (4) A person must not:
 - (a) without reasonable cause, fail to comply with a requirement under this clause to appear before the Board or answer a member's question, or
 - (b) make a statement to a member that is false or misleading in a material particular when appearing before the Board.

Note. A contravention of this subclause constitutes an offence under section 32 of the Act and is punishable by a penalty not exceeding the maximum amount specified in that section for a breach of the regulations.

17 Miscellaneous powers of Board

The Board may adjourn an inquiry at any time it thinks fit and may deal with more than one complaint against the one optical dispenser at the one inquiry.

Optical Dispensers Regulation 2002

Clause 18

Miscellaneous

Part 4

Part 4 Miscellaneous

18 Inspection of register: section 21

For the purposes of section 21 (3) of the Act, the prescribed fee to inspect the register is \$10.

19 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Optical Dispensers Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.

Optical Dispensers Regulation 2002

Schedule 1 Forms

Schedule 1 Forms

(Clause 3)

Form 1 Application for restoration to register

(Clause 12)

(Optical Dispensers Act 1963, section 23)

I, , apply for my name to be restored to the Register of Optical Dispensers of New South Wales on the following grounds:

.....
.....

I also apply for a waiver of the fee paid in relation to this application on the following grounds:

.....
.....

Signed:

Address:

.....

Date:

Petroleum (Onshore) Regulation 2002

under the

Petroleum (Onshore) Act 1991

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Petroleum (Onshore) Act 1991*.

The Hon EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

Explanatory note

The object of this Regulation is to remake the provisions of the *Petroleum (Onshore) Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation deals with the following matters:

- (a) plans and work programs for petroleum titles (Part 2),
- (b) reports to be furnished with respect to petroleum exploration operations (Part 3),
- (c) compensation to persons affected by petroleum exploration operations (Part 4),
- (d) the appointment of agents (Part 5),
- (e) the fees payable under the Act (Part 6),
- (f) rates of royalty payable on petroleum (Part 7),
- (g) other matters of a minor, consequential or ancillary nature (Parts 1 and 8).

This Regulation adopts the following codes of practice:

- (a) Code of Environmental Practice—Onshore, published by the Australian Petroleum Production and Exploration Association Limited,
- (b) *Schedule of Onshore Petroleum Exploration and Production Safety Requirements*, published by the Department of Mineral Resources.

Petroleum (Onshore) Regulation 2002

Explanatory note

This Regulation is made under the *Petroleum (Onshore) Act 1991*, including section 138 (the general regulation-making power) and sections 12, 13, 14, 23, 45D, 69G, 85, 93, 95, 101, 108, 110, 118, 119, 120, 131, 134, 137A and 138B.

Page 2

Petroleum (Onshore) Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	5
2 Commencement	5
3 Definitions and notes	5
Part 2 Petroleum titles	
4 Drawing of plans: section 13	6
5 Work programs: section 14	6
6 Progressive agendas	7
7 Details to be provided	7
8 Commencement of exploration activity	7
9 Work program to be adhered to	7
10 Variation of work program	8
11 Applications for low-impact prospecting titles: section 45D	8
12 Records of titles: section 95	8
Part 3 Reports	
13 Report on operations in accordance with agenda	10
14 Geological plans and records: section 131	10
15 Scale of plans accompanying annual record of operations: section 131	11
Part 4 Compensation	
16 Time allowed for parties to agree: section 108	12
17 Manner of assessing and determining compensation: section 110	12
18 Manner of payment	12
Part 5 Agents	
19 Agents: section 134	13

Page 3

Petroleum (Onshore) Regulation 2002

Contents

	Page
Part 6 Fees	
20 Fees	14
21 Remission or waiver	14
Part 7 Royalty	
22 Rate of royalty: section 85	15
23 Rate of royalty: Mining Act 1992 section 286	15
Part 8 Miscellaneous	
24 Non-compliance notices	17
25 Environmental practices	17
26 Safety practices	18
27 Certificates of authority: section 101	18
28 Delegation by Director-General	18
29 Penalty notices for contravention of petroleum title: section 137A	19
30 References to officers in petroleum titles: section 138B	19
31 Savings	19
Schedules	
1 Fees	20
2 Penalty notice offences	22

Petroleum (Onshore) Regulation 2002

Clause 1

Preliminary

Part 1

Petroleum (Onshore) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Petroleum (Onshore) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Petroleum (Onshore) Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions and notes

(1) In this Regulation:

fixed agenda means a fixed agenda referred to in clause 5 (3) or 6 (1) or (2).

the Act means the *Petroleum (Onshore) Act 1991*.

work program means a work program referred to in section 14 of the Act.

(2) Notes included in this Regulation do not form part of this Regulation.

Clause 4 Petroleum (Onshore) Regulation 2002

Part 2 Petroleum titles

Part 2 Petroleum titles

4 Drawing of plans: section 13

- (1) A map or plan accompanying an application for a petroleum exploration licence must be drawn on or overlay the Department of Mineral Resources New South Wales Block Identification Map Series 1 (1:1 500 000) showing blocks.
- (2) A map or plan accompanying an application for any other petroleum title, or otherwise prepared for the purposes of the Act, must be drawn on or overlay:
 - (a) the Identification Map referred to in subclause (1), if the area to which the proposed title relates is larger than one block, or
 - (b) the Department of Mineral Resources New South Wales Block Identification Map Series 3 (1:100 000) showing units, or
 - (c) a standard topographical map or maps at a scale of 1:100 000, 1:50 000 or 1:25 000 or at such larger scale as the Minister may determine for that application, showing the co-ordinates (by reference to Map Grid of Australia co-ordinates) of all points where there is a change in direction of the boundaries of the land concerned.
- (3) In this clause, *Map Grid of Australia* means a rectangular co-ordinate system using a Transverse Mercator projection with zones 6 degrees wide and based on the Geocentric Datum of Australia (within the meaning of the *Survey (Geocentric Datum of Australia) Act 1999*).

5 Work programs: section 14

- (1) The work program supporting an application for an exploration licence or assessment lease may be prepared in either of two formats.
- (2) Under one format, it may consist of a fixed agenda describing in detail the nature and extent of operations to be carried on under the licence or lease during the whole of its term.
- (3) Under the other format (the *two-part format*), it may be divided into two parts, namely:
 - (a) a fixed agenda describing in detail the nature and extent of operations to be carried on during an initial period (at least the first two years) of the term of the licence or lease, and

Petroleum (Onshore) Regulation 2002

Clause 5

Petroleum titles

Part 2

- (b) a summary of intended operations during the remainder of the term.
- (4) If prepared in the two-part format, it is a condition of the petroleum title, if granted, that the holder of the title will provide progressive agendas in accordance with clause 6.
- (5) The work program for a special prospecting authority is to be a fixed agenda describing in detail the nature and extent of operations to be carried on under the authority during the whole of its term.

6 Progressive agendas

- (1) If the work program supporting the application for a petroleum title was prepared using the two-part format, the holder of the title must, not later than 30 days before the end of the period covered by the fixed agenda supporting the application, lodge another fixed agenda of operations for the next period of two years or for the remainder of the term of the title.
- (2) In the same way, further fixed agendas must be lodged, each not later than 30 days before the end of the period covered by the last agenda, until the entire term of the petroleum title is accounted for.

7 Details to be provided

A fixed agenda must include details of:

- (a) the objectives of any proposed exploration, and
- (b) the methods of exploration proposed to be employed, and
- (c) the expenditure, estimated on a yearly basis, required by the relevant work program.

8 Commencement of exploration activity

Not later than 14 days before starting work on any exploration borehole, seismic survey or other exploration within the area of a petroleum title, the holder of the title must advise the Minister of the intention to commence it.

Maximum penalty: 100 penalty units.

9 Work program to be adhered to

Clause 10 Petroleum (Onshore) Regulation 2002

Part 2 Petroleum titles

It is a condition of every petroleum title that the holder of the title will carry out the operations, and only the operations, described in the work program, as for the time being in force, in respect of the title.

10 Variation of work program

- (1) The holder of a petroleum title who wishes to vary the work program in force in respect of the title must lodge a submission with the Minister providing adequate details of the variation proposed to be made and setting out the reasons for making it.
- (2) The Minister may approve of the variation if the Minister is satisfied that there is just and sufficient cause for making the variation and if the revised work program meets the Minister's requirements.
- (3) The variation becomes effective when the Minister signifies approval of it by a notice in writing served on the holder of the title.
- (4) The Minister's approval of a variation may also, to any extent the Minister considers necessary or convenient, vary the requirements of this Division in so far as it applies to the holder of the title concerned.

11 Applications for low-impact prospecting titles: section 45D

- (1) A low-impact prospecting title is not to be granted during the period of 4 months following service of notice of the application for the title on the representative bodies referred to in section 45D (1) (c) of the Act.
- (2) This clause extends to applications made, but not granted, before the commencement of this clause.

12 Records of titles: section 95

For the purposes of section 95 (2) of the Act, the record required to be kept:

- (a) must be kept in written form or by means of computer equipment, and
- (b) must contain the following particulars:
 - (i) the type of petroleum title and the identifying number or code allocated to it,
 - (ii) the date on which the petroleum title was first granted,
 - (iii) the name and address of each person who is a holder of the petroleum title,

Petroleum (Onshore) Regulation 2002

Clause 12

Petroleum titles

Part 2

- (iv) a description of the land over which the petroleum title is in force,
- (v) the period for which the petroleum title is to have effect,
- (vi) the current status of the petroleum title (that is, “current”, “expired” or “cancelled”),
- (vii) any interest registered under section 97 of the Act in relation to the petroleum title.

Clause 13 Petroleum (Onshore) Regulation 2002

Part 3 Reports

Part 3 Reports

13 Report on operations in accordance with agenda

- (1) Within 6 months after the completion of:
 - (a) a seismic program, or
 - (b) the drilling of an exploration borehole, or
 - (c) any activity described in the conditions of the title as a significant component of a work program,the holder of a petroleum title must forward to the Director-General, in the format specified in the conditions of the title, a report on operations carried out in the activity concerned, together with all raw and processed data and the main conclusions drawn from it.
- (2) After the end of the period covered by a fixed agenda, the holder of the title must forward to the Director-General:
 - (a) within 30 days, a summary of operations carried out during the period covered by the agenda, and
 - (b) within 6 months, a full report on operations carried out during that period.

Maximum penalty: 100 penalty units.

14 Geological plans and records: section 131

- (1) The holder of a petroleum title must, in accordance with directions issued from time to time by the Director-General, keep geological plans and records relating to work carried out in connection with the title.
- (2) For the purposes of section 131 (1) of the Act, the prescribed form is any form that shows a summary of the operations conducted during the period to which the record relates, together with details of expenditure in respect of each such operation.
- (3) The requirements of this clause are in addition to the other requirements of this Part.

Petroleum (Onshore) Regulation 2002

Clause 14

Reports

Part 3

- (4) The holder of a petroleum title who does not keep geological plans and records as required by this clause, or who does not furnish to the Minister any record required to be furnished under section 131 of the Act within the time allowed under that section, is guilty of an offence.

Maximum penalty (subclause (4)): 100 penalty units.

15 Scale of plans accompanying annual record of operations: section 131

For the purposes of section 131 (1) of the Act, the prescribed scale for any plan accompanying an annual record of operations is any of the following scales, namely, 1:25 000, 1:100 000 or 1:250 000.

Clause 16 Petroleum (Onshore) Regulation 2002

Part 4 Compensation

Part 4 Compensation

16 Time allowed for parties to agree: section 108

For the purposes of section 108 (2) of the Act, the prescribed time is 30 days after the service by either party on the other of a notice requiring an agreement as to the amount of compensation payable.

17 Manner of assessing and determining compensation: section 110

- (1) If compensation is to be assessed by the warden, 7 days' notice must be given to all persons appearing to the warden to be interested in the assessment.
- (2) Proceedings may be conducted for the purposes of the assessment in the warden's court or on the land concerned.

18 Manner of payment

- (1) The warden may order that compensation be paid into court in one amount or in instalments.
- (2) The order is to fix the time within which any such payment is required to be made.

Petroleum (Onshore) Regulation 2002

Clause 19

Agents

Part 5

Part 5 Agents

19 Agents: section 134

- (1) The following persons may appoint one or more agents for the purposes of the Act and this Regulation:
 - (a) the holder of a petroleum title,
 - (b) an applicant for a petroleum title,
 - (c) any person who owns or occupies land over which a petroleum title is in force or to which an application for a petroleum title relates.
- (2) The Director-General may refuse to deal with a person who claims to be acting as an agent unless notice of the person's appointment as an agent, and of the agent's powers and functions in relation to the Act and this Regulation, have been served on the Director-General.
- (3) The appointment of a person as an agent for the service of documents on the principal does not render invalid the service of any document otherwise than on the agent.

Clause 20 Petroleum (Onshore) Regulation 2002

Part 6 Fees

Part 6 Fees

20 Fees

- (1) The fees prescribed in Schedule 1 are payable in connection with the matters indicated in that Schedule.
- (2) Copies of or extracts from any record may be obtained from the Department on payment of such charge as the Director-General may determine.

21 Remission or waiver

The Minister may remit or waive payment of the whole or part of any fee payable under this Regulation in relation to a particular person or class of persons, but only if the Minister is satisfied that there is sufficient cause to do so.

Petroleum (Onshore) Regulation 2002

Clause 22

Royalty

Part 7

Part 7 Royalty

22 Rate of royalty: section 85

For the purposes of section 85 (2) of the Act, the prescribed annual rate of royalty is as follows:

- (a) for the first 5 years of commercial production—nil,
- (b) for the 6th, 7th, 8th and 9th years of commercial production—6%, 7%, 8% and 9%, respectively, of the value at the well-head of the petroleum,
- (c) for the 10th and subsequent years of commercial production—10% of the value at the well-head of the petroleum.

23 Rate of royalty: Mining Act 1992 section 286

- (1) For the purposes of Division 3 of Part 14 of the *Mining Act 1992*, the prescribed rate of royalty for petroleum recovered under a mining lease for coal is as follows:
 - (a) for the first 5 years of commercial production—nil,
 - (b) for the 6th, 7th, 8th and 9th years of commercial production—6%, 7%, 8% and 9%, respectively, of the value at the well head of the petroleum,
 - (c) for the 10th and subsequent years of commercial production—10% of the value at the well-head of the petroleum.
- (2) For the purposes of this clause:
 - (a) the number of years of commercial production of petroleum under a mining lease for coal over land in a single holding is to be calculated from the first year of commercial production of petroleum under that or any other mining lease for coal over that or any other land in the same holding, and
 - (b) if at any time there has been no commercial production of petroleum under a mining lease for coal over land in that holding for a period of 5 years or more, any period during which there has been commercial production of petroleum under such a lease prior to that period of 5 years is to be ignored.

Clause 23 Petroleum (Onshore) Regulation 2002

Part 7 Royalty

(3) In this clause:

holding, in relation to a mining lease for coal, means the whole of the land the subject of the lease and, if that land forms part of a colliery holding registered under the *Mining Act 1992*, includes all land within the colliery holding.

mining lease has the same meaning as it has in the *Mining Act 1992*.

Petroleum (Onshore) Regulation 2002

Clause 24

Miscellaneous

Part 8

Part 8 Miscellaneous

24 Non-compliance notices

- (1) If the Director-General is of the opinion that the holder of a petroleum title has contravened a provision of this Regulation in relation to the title, the Director-General may serve a notice (a ***non-compliance notice***) requiring the holder of the title to comply with the provision within the time limited by the notice.
- (2) It is a condition of every petroleum title that the holder of the title must comply with the terms of any non-compliance notice.
- (3) The provisions of this clause are in addition to any provision of this Regulation imposing a penalty for its contravention, and do not affect the liability of any person to pay any such penalty.

25 Environmental practices

- (1) All exploration or other activity carried out under the authority of a petroleum title is to be carried out in conformity with the *Code of Environmental Practice—Onshore* published by the Australian Petroleum Production and Exploration Association Limited in 1996, as amended from time to time.
- (2) It is a condition of every petroleum title that the holder of the title will comply with the requirements of subclause (1).
- (3) A copy of the Code, together with any amendments made to it from time to time, is to be made available at the main office of the Department of Mineral Resources in Sydney, and at such other offices as the Director-General may appoint, for inspection by any person without fee.
- (4) Copies of or extracts from the Code and any such amendments may be made or taken by any person on payment of the fee fixed by the Director-General.
- (5) To avoid doubt, this clause applies despite any disclaimer or other statement in or attached to the Code to the effect that the Code has no legal force or effect or that the Code has not been reviewed or approved by Government bodies.

Clause 26 Petroleum (Onshore) Regulation 2002

Part 8 Miscellaneous

26 Safety practices

- (1) Subject to section 128 of the Act, all exploration or other activity carried out under the authority of a petroleum title is to be carried out in conformity with the *Schedule of Onshore Petroleum Exploration and Production Safety Requirements* published by the Department of Mineral Resources in August 1992, as amended from time to time.
- (2) It is a condition of every petroleum title that the holder of the title will comply with the requirements of subclause (1).
- (3) A copy of the Schedule, together with any amendments made to it from time to time, is to be made available at the main office of the Department of Mineral Resources in Sydney, and at such other offices as the Director-General may appoint, for inspection by any person without fee.
- (4) Copies of or extracts from the Schedule and any such amendments may be made or taken by any person on payment of the fee fixed by the Director-General.

27 Certificates of authority: section 101

- (1) For the purpose of authorising a person to exercise a power conferred by Part 9 of the Act, the Director-General may issue the person with a certificate of authority.
- (2) The certificate must be signed by the Director-General (or by the Director-General's delegate, if issued under delegation) and must include the following particulars:
 - (a) a statement to the effect that it is issued under the *Petroleum (Onshore) Act 1991*,
 - (b) the name of the person to whom it is issued,
 - (c) the nature of the powers it confers.
- (3) Such a certificate is the form of evidence required for the purposes of section 101 (1) (b) of the Act.

28 Delegation by Director-General

The Director-General may delegate any of the powers, authorities, duties and functions of the Director-General (other than this power of delegation) to the holder of any office in the Department of Mineral Resources.

Petroleum (Onshore) Regulation 2002

Clause 29

Miscellaneous

Part 8

29 Penalty notices for contravention of petroleum title: section 137A

For the purposes of section 137A (2) of the Act, the prescribed penalty for an offence under section 136A of the Act that consists of a contravention of or failure to comply with a condition described in Column 2 of Schedule 2 in respect of a petroleum title referred to in Column 1 of that Schedule is the penalty specified in Column 3 of that Schedule opposite the description of the condition.

30 References to officers in petroleum titles: section 138B

Pursuant to section 138B of the Act, a reference in any petroleum title to any of the following officers is, for the purpose of the performance of a function involving rehabilitation or environmental requirements, taken to be a reference to the Minister:

District Inspector,
Inspector of Petroleum.

31 Savings

Any act, matter or thing that, immediately before the repeal of the *Petroleum (Onshore) Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.

Petroleum (Onshore) Regulation 2002

Schedule 1 Fees

Schedule 1 Fees

(Clause 20)

Matter	Fee
On application for a petroleum title (section 12)	\$1,000
On grant of a petroleum exploration licence (section 93):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
On renewal of a petroleum exploration licence (section 93):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
On grant of a petroleum assessment lease (section 93):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
On renewal of a petroleum assessment lease (section 93):	
(a) for a term of less than 3 years	\$10,000
(b) for a term of not less than 3 years	\$15,000
On grant of a petroleum production lease (section 93):	
(a) if associated with methane drainage in or over a colliery	\$5,000
(b) in any other case	\$40,000
On renewal of a petroleum production lease (section 93):	
(a) if associated with methane drainage in or over a colliery	\$5,000
(b) in any other case	\$40,000
On grant of a special prospecting authority (section 93)	\$1,000
On application for the appointment of an arbitrator under section 69G	\$180
On application for approval of a transfer of a title, for each title	\$1,000
On registration of a transfer	\$180
On lodgment of a caveat	\$250
Registration of any instrument under section 97	\$250

Petroleum (Onshore) Regulation 2002

Fees

Schedule 1

Matter	Fee
Release of information in accordance with a request under section 118	120% of the cost to the Department of making available the information to which the request relates
Inspection of cores, cuttings or samples in accordance with a request under section 119	120% of the cost to the Department of making available the cores, cuttings or samples to which the request relates
Release of information in accordance with a request under section 120	120% of the cost to the Department of making available the information to which the request relates
On application by a person on whom the rights of the registered holder of a title have devolved by operation of law to have the person's name recorded as the registered holder of the title, for each title	\$250
For noting a change of name of the registered holder of a title, for each title	\$250

Petroleum (Onshore) Regulation 2002

Schedule 2 Penalty notice offences

Schedule 2 Penalty notice offences

(Clause 29)

Column 1	Column 2	Column 3
Type of petroleum title	Nature of condition	Penalty for contravention or failure to comply
Exploration licence or assessment lease	Requirement to lodge report of exploration activity	\$5,500
Exploration licence or assessment lease	Requirement to leave exploration site in clean and tidy condition	\$5,500
Exploration licence or assessment lease	Requirement to make safe any drillholes or other excavations	\$5,500
Exploration licence or assessment lease	Requirement to comply with direction given by Inspector or Environmental Officer	\$5,500
Production lease	Requirement to lodge report	\$5,500
Production lease	Requirement to comply with direction given by Inspector or Environmental Officer	\$5,500
Production lease	Requirement to ensure operations are conducted so as to provide safety to persons and stock	\$5,500
Production lease	Requirement to maintain lease area in clean and tidy condition	\$5,500

Poisons and Therapeutic Goods Regulation 2002

under the

Poisons and Therapeutic Goods Act 1966

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Poisons and Therapeutic Goods Act 1966*.

CRAIG KNOWLES, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to repeal and remake, without any major changes in substance, the *Poisons and Therapeutic Goods Regulation 1994* under the *Poisons and Therapeutic Goods Act 1966*. That Regulation is to be repealed on 1 September 2002 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision with respect to the following matters:

- (a) the packaging, labelling, storage, prescription and supply of poisons (that is, substances included in Schedule 1, 2, 3, 5, 6 or 7 of the Poisons List) and the making of records in relation to the supply of poisons (Part 2),
- (b) the packaging, labelling, storage, prescription and supply of restricted substances (that is, substances included in Schedule 4 of the Poisons List) and the making of records in relation to the supply of restricted substances (Part 3),
- (c) the packaging, labelling, storage, prescription and supply of drugs of addiction (that is, substances included in Schedule 8 of the Poisons List) and the making of records in relation to the supply of drugs of addiction (Part 4),
- (d) the prescription of certain activities for the purpose of enabling persons engaged in those activities to supply substances by wholesale, and the regulation of wholesale dealing (Part 5),

Poisons and Therapeutic Goods Regulation 2002

Explanatory note

- (e) the preparation, handling, supply and labelling of therapeutic goods (Part 6),
- (f) the analysis and disposal of goods that have been seized under section 43 of the Act (Part 7),
- (g) the issue, suspension and cancellation of licences and authorities for the purposes of the Act (Part 8),
- (h) other matters of a formal or machinery nature (Parts 1 and 9).

This Regulation adopts the following publications:

- (a) *Therapeutic Goods Order No 20* under Part 2 of the *Therapeutic Goods Act 1989* of the Commonwealth,
- (b) the current Poisons Standard referred to in Part 5B of the *Therapeutic Goods Act 1989* of the Commonwealth,
- (c) the *Schedule of Pharmaceutical Benefits* issued by the Commonwealth Department of Health, as in force from time to time,
- (d) the Code of Practice entitled *Australian Code of Good Wholesaling Practice for Therapeutic Goods for Human Use*, published by the Commonwealth Government, as in force from time to time.

This Regulation is made under the *Poisons and Therapeutic Goods Act 1966*, including section 45C (the general power to make regulations) and various other sections referred to in the Regulation.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Poisons and Therapeutic Goods Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	12
2 Commencement	12
3 Definitions	12
4 Authorisation of nurse practitioner under section 17A of the Act	15
Part 2 Poisons (S1, S2, S3, S5, S6, S7)	
Division 1 Packaging and labelling	
5 Packaging and labelling generally	16
6 Misleading labelling of substances as poisons	16
7 Packaging of camphor and naphthalene	16
8 Schedule 3 substances supplied by dealers	17
9 Exemptions	17
Division 2 Storage	
10 Storage generally	17
11 Schedule 3 or 7 substances	17
12 Schedule 6 substances	18
Division 3 Prescriptions	
13 Unauthorised persons not to prescribe Schedule 2 or 3 substances	18
14 Certain Schedule 3 substances	19
15 Quantity and purpose of prescriptions to be appropriate	19

Page 3

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
Division 4 Supply	
16 Schedule 2 and 3 substances may be supplied by authorised persons	19
17 Schedule 3 substances to be supplied personally by pharmacists	19
18 Prescriptions for Schedule 2 or 3 substances to be endorsed	20
19 Certain Schedule 7 substances to be supplied and used only under an authority	20
20 "Particular use" poisons may only be supplied in original containers	22
21 Supply of art materials, toys, furniture etc containing poisons	22
22 Quantity and purpose of supply to be appropriate	23
Division 5 Records of supply	
23 Supply of certain Schedule 3 substances to be recorded	23
Division 6 Miscellaneous	
24 Poisons to be used or disposed of safely	23
Part 3 Restricted substances (S4)	
Division 1 Packaging and labelling	
25 Packaging and labelling generally	24
26 Misleading labelling of substances as restricted substances	24
27 Exemptions	24
Division 2 Storage	
28 Storage generally	25
29 Storage of prescribed restricted substances in hospital wards	25
30 Responsibility for storage in hospitals	26
Division 3 Prescriptions	
31 Unauthorised persons not to prescribe restricted substances	26

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
32 Prescriptions may only be issued for certain purposes	26
33 Quantity and purpose of prescriptions to be appropriate	27
34 Form of prescription	27
35 Emergency prescriptions may be given by telephone or otherwise	28
36 Authority required to prescribe certain restricted substances	28
37 Records to be kept of certain prescriptions	30
 Division 4 Supply	
 Subdivision 1 Supply on prescription	
38 Prescriptions may be filled only if in proper form	30
39 Certain prescriptions not to be filled	31
40 Prescriptions to be endorsed	32
41 Prescriptions for certain substances to be kept	32
 Subdivision 2 Supply without prescription	
42 Supply by medical practitioners, nurse practitioners, dentists and veterinary surgeons	32
43 Emergency supply by pharmacists on direction of medical practitioners, nurse practitioners, dentists or veterinary surgeons	33
44 Emergency supply by pharmacists otherwise than on direction of medical practitioners, dentists or nurse practitioners	33
45 Supply by pharmacists to medical practitioner, dentist, veterinary surgeon or nurse practitioner for emergency use	34
46 Supply by pharmacists to nursing homes of stock for emergency use	34
47 Supply by pharmacists of benzylpenicillin for use in animals	35
 Subdivision 3 Supply in hospitals	
48 Supply by pharmacists	35
49 Supply in original containers: section 10	36
 Subdivision 4 Supply generally	
50 Research drugs	36

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
51 Authority required to supply certain restricted substances	37
52 Restricted substances may be supplied by authorised persons	38
53 Quantity and purpose of supply to be appropriate	38
Division 5 Records of supply	
54 Supply on prescription to be recorded	38
55 Records to be kept of supply of restricted substances by medical practitioners, nurse practitioners, dentists and veterinary surgeons	38
56 Certain supplies of restricted substances to be separately recorded	39
Division 6 Administration	
57 Administration by persons employed at a hospital	40
58 Administration of prescribed restricted substances	41
59 Authority required to administer certain restricted substances	41
Division 7 Miscellaneous	
60 Prescribed restricted substances: sections 9, 10, 11, 16, 18 and 18A	42
61 Authorised persons: section 16 (1) (e)	43
62 Disclosure of other prescribed restricted substances obtained or prescribed	43
63 Delivery by carrier	44
64 Pentobarbitone sodium	44
65 Restricted substances to be used or disposed of safely	45
66 Loss or theft of prescribed restricted substances	45
67 Forfeiture of prescribed restricted substances	45
Part 4 Drugs of addiction (S8)	
Division 1 Packaging and labelling	
68 Packaging and labelling generally	46
69 Misleading labelling of substances as drugs of addiction	46
70 Packages to be sealed so that broken seal is readily distinguishable	46
71 Exemptions	47

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
Division 2 Storage	
72 Storage generally	47
73 Responsibility for storage in hospitals	48
74 Storage in hospital wards	48
75 Storage in pharmacies	49
Division 3 Prescriptions	
76 Unauthorised persons not to prescribe drugs of addiction	50
77 Form of prescription	50
78 Prescriptions may only be issued for certain purposes	51
79 Quantity and purpose of prescriptions to be appropriate	52
80 Emergency prescriptions may be given by telephone or otherwise	52
81 Records of prescriptions	53
82 Exceptions to section 28: prescriptions generally	53
83 Exceptions to section 28: prescriptions for amphetamines	55
Division 4 Supply	
Subdivision 1 Supply on prescription	
84 Pharmacists may supply drugs of addiction on prescription	56
85 Prescriptions may be filled only if in proper form	56
86 Certain prescriptions not to be filled	56
87 Prescriptions require verification	57
88 Prescriptions to be endorsed	58
89 Prescriptions to be kept	58
90 Supply by pharmacists of amphetamines	58
91 Records to be kept by pharmacists of methadone or buprenorphine prescriptions	59
92 Supply by pharmacists of methadone syrup or buprenorphine tablets	60
93 Exemptions relating to methadone or buprenorphine supply at pharmacies	60
94 Exceptions to section 28: supply	61
Subdivision 2 Supply without prescription	
95 Supply to be on the basis of a written order	63
96 Emergency supply by pharmacists	63
97 Supply by pharmacists for emergency purposes	64
98 Supply of amphetamines	64

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
Subdivision 3 Supply in hospitals	
99 Supply by pharmacists	65
Subdivision 4 Supply generally	
100 Unauthorised manufacture and supply of drugs of addiction prohibited	65
101 Possession of drugs of addiction by medical practitioners, dentists, veterinary surgeons and hospital pharmacists	66
102 Possession of drugs of addiction by retail pharmacists	67
103 Possession of drugs of addiction by chief nurses of private hospitals	68
104 Possession of drugs of addiction by masters of ships	68
105 Possession of hallucinogens	69
106 Authorities to possess and administer drugs of addiction	69
107 Mode of delivery	69
108 Delivery by carrier	70
109 Quantity and purpose of supply to be appropriate	71
Division 5 Records of supply	
Subdivision 1 Drug registers otherwise than for hospital wards	
110 Application of Subdivision	71
111 Drug registers to be kept	71
112 Entries in drug registers	72
113 Supply on prescription to be recorded	73
Subdivision 2 Drug registers for hospital wards	
114 Application of Subdivision	73
115 Ward registers to be kept	74
116 Entries in ward registers	74
Subdivision 3 Records generally	
117 Periodical inventory of drugs of addiction stock	75
118 Loss or destruction of registers	75
Division 6 Administration	

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
119 Administration by persons employed at a hospital	76
120 Self-administration by medical practitioners and dentists	77
Division 7 Miscellaneous	
121 Prescribed drugs of addiction: section 28	77
122 Loss or theft of drugs of addiction	78
123 Drugs of addiction not to be destroyed	78
124 Destruction of unusable drugs of addiction in public hospital wards	78
125 Destruction of unwanted drugs of addiction in a private hospital, nursing home or day procedure centre	79
Part 5 Supply by wholesale	
126 Authorised possession for supply by wholesale	81
127 Restrictions on supply by wholesale	81
128 Records of supply by wholesale	81
129 Distribution of free samples	82
130 Storage of therapeutic goods for human use	82
Part 6 Preparation, handling, supply and labelling of therapeutic goods	
Division 1 Preparation and handling of exposed substances	
131 Application of Division	83
132 Preparation and handling generally	83
133 Personal cleanliness	83
134 Spitting and smoking etc	84
135 Contact with hands	84
136 Contact with mouth	84
137 Bandages	85
138 Persons suffering from infectious diseases	85
139 Appliances, articles, fittings and surfaces	85
Division 2 Supply of therapeutic goods	
140 Premises to be free of vermin	86
141 Animals not permitted on premises	86
Division 3 Labelling of unscheduled therapeutic substances	

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
142 Labelling of unscheduled therapeutic substances	86
Part 7 Analysis and disposal of seized goods	
Division 1 Analysis of seized goods	
143 Samples for analysis	87
144 Payment for sample	87
Division 2 Disposal of seized goods	
145 Release of seized goods	88
146 Order that seized goods be forfeited	88
147 Order that expenses be paid	88
148 Storage of and interference with seized goods	89
149 Forfeiture of goods with consent	89
150 Disposal of forfeited goods	89
Part 8 Licences and authorities	
Division 1 Licences to supply Schedule 2 substances	
151 Applications for licences	90
152 Consideration of applications	90
153 Licences	91
154 Conditions of licences	91
155 Annual licence fees	91
Division 2 Licences to supply by wholesale poisons and restricted substances	
156 Applications for licences	91
157 Consideration of applications	92
158 Licences	92
159 Conditions of licences	92
160 Annual licence fees	92
Division 3 Licences to manufacture or supply drugs of addiction	
161 Applications for licences	93
162 Consideration of applications	93
163 Licences	94

Poisons and Therapeutic Goods Regulation 2002

Contents

	Page
164 Conditions of licences	94
165 Annual licence fees	94
Division 4 Authorities	
166 Authorities	95
167 Conditions of authorities	95
Division 5 Suspension and cancellation of licences and authorities	
168 Grounds for suspension or cancellation	96
169 Suspension or cancellation	97
Division 6 Modification of applied provisions of Commonwealth therapeutic goods laws	
170 Modification of applied provisions of Commonwealth therapeutic goods laws with respect to advertising: section 31 (3)	97
Part 9 Miscellaneous	
171 Director-General may restrict authorisations conferred by this Regulation	98
172 Records generally	99
173 False or misleading entries in records and registers	100
174 False or misleading applications	100
175 Service of notices	100
176 Applications for authorities under section 29	101
177 Quorum for Poisons Advisory Committee	101
178 Residential centres for persons with disabilities	101
179 Saving	102
Appendices	
A Labelling of therapeutic substances	103
B Special restricted substances	106
C Supply by wholesale	107
D Prescribed restricted substances	113

Clause 1 Poisons and Therapeutic Goods Regulation 2002

Part 1 Preliminary

Poisons and Therapeutic Goods Regulation 2002

Part 1 Preliminary

1 Name of Regulation (cf cl 1 of P&TG Reg 1994)

This Regulation is the *Poisons and Therapeutic Goods Regulation 2002*.

2 Commencement (cf cl 2 of P&TG Reg 1994)

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Poisons and Therapeutic Goods Regulation 1994* which is repealed on 1 September 2002 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions (cf cll 3 and 3A of P&TG Reg 1994)

(1) In this Regulation:

charitable organisation means an organisation or association that holds an authority under Part 2 of the *Charitable Fundraising Act 1991* or that is referred to in section 7 of that Act as an organisation or association to which that Act does not apply.

child-resistant closure means:

- (a) in the case of a can fitted with a press-on lid, a lid of the design known as “double tight” or “triple tight”, or
- (b) in any other case, a closure that is resistant to opening by children and that complies with:
 - (i) section 2 (Requirements for Reclosable Packages) of Australian Standard AS 1928—2001, *Child-resistant packages*, or
 - (ii) a design approved by any order made under section 10 of the *Therapeutic Goods Act 1989* of the Commonwealth, or
 - (iii) a design approved for the time being by the Director-General.

Commonwealth Department of Health means the Commonwealth Department of Health and Ageing.

Poisons and Therapeutic Goods Regulation 2002

Clause 3

Preliminary

Part 1

current Poisons Standard has the same meaning as it has in Part 5B of the *Therapeutic Goods Act 1989* of the Commonwealth.

day procedure centre means premises licensed as a day procedure centre under the *Private Hospitals and Day Procedure Centres Act 1988*.

dealer, in relation to a substance, means a person who supplies the substance as a manufacturer, as an importer or exporter or as a wholesale or retail dealer, and includes a medical practitioner, nurse practitioner, dentist, veterinary surgeon or pharmacist in his or her capacity as a supplier of the substance.

Director-General means the Director-General of the Department of Health.

function includes a power, authority and duty, **exercise a function** includes perform a duty, **confer a function** includes impose a duty.

hallucinogen means any of the following drugs of addiction:

- (a) etorphine,
- (b) tetrahydrocannabinol and its alkyl homologues where Schedule 8 of the Poisons List applies.

hospital means a public hospital, public institution, private hospital, nursing home, day procedure centre or residential centre for persons with disabilities.

inspector means a person authorised by the Director-General to exercise the powers conferred by section 43 of the Act.

nurse means a person who is a registered nurse within the meaning of the *Nurses Act 1991*.

nursing home means premises licensed as a nursing home under the *Nursing Homes Act 1988*.

pharmacist includes a pharmacy trainee working under the direct personal supervision of a pharmacist.

practitioner of alternative medicine means a herbalist, nutritionist, naturopath, practitioner of Chinese medicine or homoeopathic practitioner.

prescribed restricted substance means a substance listed in Appendix D.

prescription reference number means the unique reference number for the prescription recorded under clause 54 or 113.

Clause 3	Poisons and Therapeutic Goods Regulation 2002
Part 1	Preliminary

private hospital means premises licensed as a private hospital under the *Private Hospitals and Day Procedure Centres Act 1988*.

public hospital means a public hospital within the meaning of the *Health Services Act 1997*.

residential centre for persons with disabilities means an institution that is declared by clause 178 to be a residential centre for persons with disabilities for the purposes of this Regulation.

retail dealer, in relation to a substance, means a person who supplies the substance as a retailer, and not as a manufacturer, importer, exporter or wholesaler, and not as a medical practitioner, nurse practitioner, dentist, veterinary surgeon or pharmacist in his or her capacity as a supplier of the substance.

retail pharmacist means a pharmacist who is employed in premises approved under section 24A of the *Pharmacy Act 1964* as suitable for carrying on the business of a pharmacist.

retail pharmacy means premises approved under section 24A of the *Pharmacy Act 1964*.

scientifically qualified person means:

- (a) a medical practitioner, dentist or veterinary surgeon or pharmacist, or
- (b) a person who is the holder of a degree or diploma approved for the time being by the Director-General, or
- (c) a person approved for the time being by the Director-General.

seized goods means regulated goods that have been seized under section 43 of the Act.

the Act means the *Poisons and Therapeutic Goods Act 1966*.

Therapeutic Goods Order No 20 means the order of that name, as in force from time to time under Part 2 of the *Therapeutic Goods Act 1989* of the Commonwealth.

therapeutic substance means a substance that is manufactured for therapeutic use within the meaning of the current Poisons Standard.

ward of a hospital includes any theatre, laboratory or department of the hospital, other than the pharmacy department.

Poisons and Therapeutic Goods Regulation 2002

Clause 3

Preliminary

Part 1

(2) In this Regulation:

- (a) expressions that are defined in the current Poisons Standard have the meanings given to them by that Standard, and
- (b) expressions that are defined in the current Poisons Standard and that are also defined in the Act or in this Regulation have the meanings given to them by the Act or this Regulation, respectively, and
- (c) a reference to a Schedule 1, 2, 3, 4, 5, 6, 7 or 8 substance is a reference to a substance included in the correspondingly numbered Schedule of the Poisons List, and
- (d) a reference to an Appendix B substance is a reference to a substance included in Appendix B to this Regulation.

(3) Notes in the text of this Regulation do not form part of the Regulation.

4 Authorisation of nurse practitioner under section 17A of the Act (cf cl 3B of P&TG Reg 1994)

Nothing in this Regulation authorises a nurse practitioner to possess, use, supply or prescribe any poison or restricted substance otherwise than in accordance with an authorisation in force under section 17A of the Act in respect of the nurse practitioner.

Clause 5 Poisons and Therapeutic Goods Regulation 2002

Part 2 Poisons (S1, S2, S3, S5, S6, S7)

Division 1 Packaging and labelling

Part 2 Poisons (S1, S2, S3, S5, S6, S7)

Division 1 Packaging and labelling

5 Packaging and labelling generally (cf cl 4 of P&TG Reg 1994)

- (1) A dealer who supplies a poison must ensure that the poison is packaged and labelled:
 - (a) in accordance with the relevant provisions of the current Poisons Standard, and
 - (b) in the case of a poison to which *Therapeutic Goods Order No 20* applies, in accordance with that Order.
- (2) This clause does not apply to the labelling of a substance that is supplied by a medical practitioner, nurse practitioner, dentist, veterinary surgeon or pharmacist so long as the substance is supplied in a package that is labelled in accordance with the requirements of Appendix A.
- (3) A pharmacist who supplies any quantity of a Schedule 2 or 3 substance on prescription must ensure that the substance is supplied in a package that is labelled in accordance with the requirements of Appendix A instead of in accordance with the requirements of subclause (1).

Maximum penalty: 10 penalty units.

6 Misleading labelling of substances as poisons (cf cl 5 of P&TG Reg 1994)

A dealer must not supply any substance in a container that has a label that states or implies that the substance is a poison, unless the substance is a poison.

Maximum penalty: 10 penalty units.

7 Packaging of camphor and naphthalene (cf cl 6 of P&TG Reg 1994)

A dealer must ensure that any camphor or naphthalene supplied by the dealer (being camphor or naphthalene packaged in block, disc, ball or pellet form suitable for domestic use) is packaged so that, in normal use, the contents of the package cannot be ingested or touched while the package remains unbroken.

Maximum penalty: 10 penalty units.

Poisons and Therapeutic Goods Regulation 2002	Clause 8
Poisons (S1, S2, S3, S5, S6, S7)	Part 2
Packaging and labelling	Division 1

8 Schedule 3 substances supplied by dealers (cf cl 7 of P&TG Reg 1994)

- (1) A dealer must ensure that any Schedule 3 substance supplied by the dealer is labelled with the dealer's name and address.
Maximum penalty: 2 penalty units.
- (2) Subclause (1) does not apply to the supply of any Schedule 3 substance by wholesale.

9 Exemptions (cf cl 8 of P&TG Reg 1994)

- (1) The Director-General may, by order in writing, exempt any person or substance, or any class of persons or substances, from the requirements of this Division.
- (2) Such an exemption may be given unconditionally or subject to conditions.
- (3) Subject to subclause (4), any exemption in force under a law of the Commonwealth, or of another State or Territory, corresponding to this clause has the same effect as an exemption under this clause.
- (4) The Director-General may, by order published in the Gazette, declare that subclause (3) does not have effect with respect to an exemption specified in the order.

Division 2 Storage

10 Storage generally (cf cl 9 of P&TG Reg 1994)

A dealer who has possession of any poison must keep the poison:

- (a) apart from human or animal food, and
- (b) in such a way that, if its container breaks or leaks, the poison cannot mix with or contaminate any human or animal food.

Maximum penalty: 10 penalty units.

11 Schedule 3 or 7 substances (cf cl 10 of P&TG Reg 1994)

A dealer who has possession of any Schedule 3 or 7 substance must keep the substance in a room or enclosure to which the public does not have access.

Maximum penalty: 10 penalty units.

Clause 12 Poisons and Therapeutic Goods Regulation 2002

Part 2 Poisons (S1, S2, S3, S5, S6, S7)

Division 2 Storage

12 Schedule 6 substances (cf cl 11 of P&TG Reg 1994)

- (1) A dealer who has possession of any Schedule 6 substance must keep that substance:
 - (a) in a place to which the public does not have access, or
 - (b) in a place that is at least 1.2 metres above the floor and at least 1.2 metres away from any step, stairway, ramp or escalator to which the public has access.
- (2) This clause does not apply to any of the following:
 - (a) any therapeutic substance for internal use in animals,
 - (b) any substance in a container that is fitted with a child-resistant closure,
 - (c) any substance in a pressurised spray dispenser that is fitted with a cap that can be removed only by using a levering instrument applied through a slot in the cap,
 - (d) any substance in a container that has a capacity of 5 litres or more or a weight (inclusive of its contents) of 5 kilograms or more,
 - (e) any hair dye in a container that has a capacity of 50 millilitres or less,
 - (f) any cockroach bait that is enclosed in a welded plastic labyrinth.

Maximum penalty: 10 penalty units.

Division 3 Prescriptions

13 Unauthorised persons not to prescribe Schedule 2 or 3 substances (cf cl 12 of P&TG Reg 1994)

- (1) A person must not issue a prescription for a Schedule 2 or 3 substance unless authorised to do so by this clause.
- (2) A medical practitioner, nurse practitioner, dentist or veterinary surgeon may issue a prescription for a Schedule 2 or 3 substance.

Maximum penalty: 10 penalty units.

Poisons and Therapeutic Goods Regulation 2002	Clause 14
Poisons (S1, S2, S3, S5, S6, S7)	Part 2
Prescriptions	Division 3

14 Certain Schedule 3 substances (cf cl 13 of P&TG Reg 1994)

- (1) This clause applies to the following substances, but only in so far as they are Schedule 3 substances:

pseudoephedrine

- (2) A person who issues a prescription for a substance to which this clause applies must ensure that the prescription complies with Division 3 of Part 3 as if the substance were a restricted substance.

Maximum penalty: 10 penalty units.

15 Quantity and purpose of prescriptions to be appropriate (cf cl 14 of P&TG Reg 1994)

A medical practitioner, nurse practitioner, dentist or veterinary surgeon must not issue a prescription for a Schedule 2 or 3 substance in a quantity, or for a purpose, that does not accord with the recognised therapeutic standard of what is appropriate in the circumstances.

Maximum penalty: 10 penalty units.

Division 4 Supply

16 Schedule 2 and 3 substances may be supplied by authorised persons (cf cl 16 of P&TG Reg 1994)

A person who is not a medical practitioner, nurse practitioner, dentist, veterinary surgeon or pharmacist may supply a Schedule 2 or 3 substance to another person if the supplier holds a licence or authority under Part 8 to supply the substance.

17 Schedule 3 substances to be supplied personally by pharmacists (cf cl 17 of P&TG Reg 1994)

- (1) A pharmacist must not supply a Schedule 3 substance to any person unless the pharmacist:
- (a) personally hands the substance to the person, and
 - (b) gives the person an opportunity to seek advice as to the use of the substance, including advice that the person may require in respect of the dosage, frequency of administration and general toxicity of the substance.

Clause 17 Poisons and Therapeutic Goods Regulation 2002

Part 2 Poisons (S1, S2, S3, S5, S6, S7)

Division 4 Supply

- (2) This clause does not apply to the supply of any substance:
- (a) to a medical practitioner, nurse practitioner, dentist or veterinary surgeon, or
 - (b) to any other person on the prescription of a medical practitioner, nurse practitioner, dentist or veterinary surgeon.
- (3) This clause does not apply to the supply of salbutamol or terbutaline in metered aerosols for first aid purposes to a person who holds a current emergency asthma management certificate issued by an organisation approved by the Director-General for the purposes of this subclause.
- (4) This clause does not apply to the supply to the chief nurse of a nursing home of any substance in the manufacturer's original pack, in accordance with a written order signed by the chief nurse, if the Director-General has determined that the substance may be supplied for emergency use at the nursing home in accordance with the authorisation of a medical practitioner, dentist or nurse practitioner who prescribes substances to the nursing home's residents.

Maximum penalty: 10 penalty units.

18 Prescriptions for Schedule 2 or 3 substances to be endorsed (cf cl 19 of P&TG Reg 1994)

A pharmacist who supplies a Schedule 2 or 3 substance on prescription must endorse the prescription for the substance in accordance with clause 40 as if the substance were a restricted substance.

Maximum penalty: 10 penalty units.

19 Certain Schedule 7 substances to be supplied and used only under an authority (cf cl 20 of P&TG Reg 1994)

- (1) A person must not obtain or use a Schedule 7 substance unless the person holds an authority under Part 8 to obtain or use the substance.
- (2) A dealer must not supply a Schedule 7 substance to any other person unless:
 - (a) the dealer holds an authority under Part 8 to supply the substance, and
 - (b) the person being supplied holds an authority under Part 8 to obtain the substance.

Poisons and Therapeutic Goods Regulation 2002

Clause 19

Poisons (S1, S2, S3, S5, S6, S7)
SupplyPart 2
Division 4

- (3) A person being supplied with a Schedule 7 substance must surrender to the dealer the person's authority to obtain the substance.
- (4) In the case of an authority:
- (a) that authorises multiple supplies of a Schedule 7 substance, or
 - (b) that has been issued to a class of persons (as referred to in clause 166 (3)),
- it is sufficient compliance with subclause (3) if the person being supplied surrenders a copy of the authority to the dealer.
- (5) The functions of the Director-General under Part 8 with respect to an authority under this clause may be exercised by the Permanent Head of the Commonwealth Department of Health.
- Maximum penalty: 10 penalty units.
- (6) The Director-General may, by order in writing, exempt any person or substance, or any class of persons or substances, from the requirements of this clause.
- (7) Such an exemption may be given unconditionally or subject to conditions.
- (8) This clause does not apply to:
- (a) the supply by wholesale of any Schedule 7 substance, or
 - (b) the use by a person of any Schedule 7 substance that is:
 - (i) a pesticide (within the meaning of the *Pesticides Act 1999*), or
 - (ii) a stock medicine (within the meaning of the *Stock Medicines Act 1989*),
 or the supply to, or obtaining by, such a person of any such substance, or
 - (c) the use by a person in charge of an institution or facility for scientific research, instruction, analysis or study of any Schedule 7 substance for use in that institution or facility, or the supply to, or obtaining by, such a person of any such substance for use in that institution or facility, or
 - (d) the use by a person of any Schedule 7 substance (other than a highly dangerous substance) for non-domestic purposes, or the supply to, or obtaining by, a person of any such substance for use for non-domestic purposes.

Clause 19 Poisons and Therapeutic Goods Regulation 2002

Part 2 Poisons (S1, S2, S3, S5, S6, S7)

Division 4 Supply

- (9) In subclause (8) (d), *highly dangerous substance* means any of the following substances:

arsenic

cyanides

fluoroacetamide

fluoroacetic acid

hydrocyanic acid

4-hydroxybutanoic acid

strychnine

thallium

any Schedule 7 substance that is listed in Appendix C of the current Poisons Standard

20 “Particular use” poisons may only be supplied in original containers (cf cl 21 of P&TG Reg 1994)

- (1) This clause applies to any Schedule 5, 6 or 7 substance that is specified in the Poisons List as being a substance that is manufactured or supplied for a particular use.
- (2) A dealer (other than a medical practitioner, nurse practitioner, dentist, veterinary surgeon or pharmacist) who supplies a substance to which this clause applies must supply the substance, unopened, in the container in which it was received by the dealer.

Maximum penalty: 10 penalty units.

21 Supply of art materials, toys, furniture etc containing poisons (cf cl 22 of P&TG Reg 1994)

- (1) A person must not supply any pencil, crayon, finger colour, poster paint, school pastel or show card colour or other such article or substance if the article or substance contains a Schedule 2, 3, 5, 6 or 7 substance.
- (2) Subclause (1) does not apply to the supply of artists' oil colours.
- (3) A person must not supply any painted toy, furniture or other item of household goods if the paint contains a Schedule 6 or 7 substance.

Maximum penalty: 10 penalty units.

Poisons and Therapeutic Goods Regulation 2002	Clause 22
Poisons (S1, S2, S3, S5, S6, S7)	Part 2
Supply	Division 4

22 Quantity and purpose of supply to be appropriate (cf cl 23 of P&TG Reg 1994)

A medical practitioner, nurse practitioner, dentist, veterinary surgeon, pharmacist or retail dealer must not supply any poison:

- (a) in the case of a therapeutic substance, in a quantity, or for a purpose, that does not accord with the recognised therapeutic standard of what is appropriate in the circumstances, or
- (b) in any other case, for a purpose other than that stated on its container or for a purpose other than that for which it is normally used.

Maximum penalty: 10 penalty units.

Division 5 Records of supply

23 Supply of certain Schedule 3 substances to be recorded (cf cl 25 of P&TG Reg 1994)

- (1) This clause applies to the following substances, but only in so far as they are Schedule 3 substances:
pseudoephedrine
- (2) A pharmacist who supplies a substance to which this clause applies, whether on prescription or otherwise, must record details of the supply in accordance with clause 54 as if the substance were a restricted substance.

Maximum penalty: 10 penalty units.

Division 6 Miscellaneous

24 Poisons to be used or disposed of safely (cf cl 26 of P&TG Reg 1994)

A person must not use or dispose of a poison in any place or in any manner likely to constitute a risk to the public.

Maximum penalty: 10 penalty units.

Clause 25 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 1 Packaging and labelling

Part 3 Restricted substances (S4)

Division 1 Packaging and labelling

25 Packaging and labelling generally (cf cl 27 of P&TG Reg 1994)

- (1) A dealer who supplies a restricted substance must ensure that the substance is packaged and labelled:
 - (a) in accordance with the relevant provisions of the current Poisons Standard, and
 - (b) in the case of a substance to which *Therapeutic Goods Order No 20* applies, in accordance with that Order.
- (2) Despite subclause (1), a medical practitioner, dentist, veterinary surgeon or nurse practitioner who supplies a restricted substance must ensure that the substance is packaged in accordance with the requirements of that subclause but labelled in accordance with the requirements of Appendix A.
- (3) A pharmacist who supplies any quantity of a restricted substance on prescription, or in the circumstances referred to in clause 44 or 47, must ensure that the substance is supplied in a package that is labelled in accordance with the requirements of Appendix A instead of in accordance with the requirements of subclause (1).

Maximum penalty: 10 penalty units.

26 Misleading labelling of substances as restricted substances (cf cl 28 of P&TG Reg 1994)

A dealer must not supply any substance in a container that has a label that states or implies that the substance is a restricted substance, unless the substance is such a substance.

Maximum penalty: 10 penalty units.

27 Exemptions (cf cl 29 of P&TG Reg 1994)

- (1) The Director-General may, by order in writing, exempt any person or substance, or any class of persons or substances, from the requirements of this Division.

Poisons and Therapeutic Goods Regulation 2002	Clause 27
Restricted substances (S4)	Part 3
Packaging and labelling	Division 1

- (2) Such an exemption may be given unconditionally or subject to conditions.
- (3) Subject to subclause (4), any exemption in force under a law of the Commonwealth, or of another State or Territory, corresponding to this clause has the same effect as an exemption under this clause.
- (4) The Director-General may, by order published in the Gazette, declare that subclause (3) does not have effect with respect to an exemption specified in the order.

Division 2 Storage

28 **Storage generally** (cf cl 30 of P&TG Reg 1994)

A dealer who has possession of any restricted substance must keep the substance:

- (a) in a room or enclosure to which the public does not have access, and
- (b) apart from human or animal food, and
- (c) in such a way that, if its container breaks or leaks, the substance cannot mix with or contaminate any human or animal food.

Maximum penalty: 15 penalty units.

29 **Storage of prescribed restricted substances in hospital wards** (cf cl 32 of P&TG Reg 1994)

- (1) Prescribed restricted substances that are kept in a hospital ward must be stored apart from all other goods (other than drugs of addiction) in a separate room, safe, cupboard or other receptacle securely attached to a part of the premises and kept securely locked when not in immediate use.
- (2) This clause does not apply to the storage of prescribed restricted substances on an emergency trolley, anaesthetic trolley or operating theatre trolley.

Maximum penalty: 20 penalty units.

Clause 30 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 2 Storage

30 Responsibility for storage in hospitals (cf cl 33 of P&TG Reg 1994)

- (1) The chief pharmacist of a hospital is responsible for the storage of all restricted substances at the hospital other than those that have been supplied to a ward.
- (2) In the case of a hospital for which there is no pharmacist, the responsibilities of a chief pharmacist under this clause are instead the responsibilities of:
 - (a) the chief nurse of the hospital, or
 - (b) the medical superintendent of the hospital,as the chief executive officer of the hospital may determine.
- (3) The nurse in charge of a hospital ward is responsible for the storage of all restricted substances in the ward.

Division 3 Prescriptions

31 Unauthorised persons not to prescribe restricted substances (cf cl 34 of P&TG Reg 1994)

- (1) A person must not issue a prescription for a restricted substance unless authorised to do so by this clause.
- (2) A medical practitioner, nurse practitioner, dentist or veterinary surgeon may issue a prescription for a restricted substance.
Maximum penalty: 15 penalty units.

32 Prescriptions may only be issued for certain purposes (cf cl 35 of P&TG Reg 1994)

- (1) A medical practitioner must not issue a prescription for a restricted substance otherwise than for medical treatment.
- (2) A nurse practitioner must not issue a prescription for a restricted substance otherwise than in the course of practising as a nurse practitioner.
- (3) A dentist must not issue a prescription for a restricted substance otherwise than for dental treatment, and must endorse any such prescription with the words "FOR DENTAL TREATMENT ONLY".

Poisons and Therapeutic Goods Regulation 2002	Clause 32
Restricted substances (S4)	Part 3
Prescriptions	Division 3

- (4) A veterinary surgeon must not issue a prescription for a restricted substance otherwise than for veterinary treatment, and must endorse any such prescription with the words “FOR ANIMAL TREATMENT ONLY”.

Maximum penalty: 15 penalty units.

33 Quantity and purpose of prescriptions to be appropriate (cf cl 36 of P&TG Reg 1994)

A medical practitioner, nurse practitioner, dentist or veterinary surgeon must not issue a prescription for a restricted substance in a quantity, or for a purpose, that does not accord with the recognised therapeutic standard of what is appropriate in the circumstances.

Maximum penalty: 15 penalty units.

34 Form of prescription (cf cl 37 of P&TG Reg 1994)

- (1) A prescription for a restricted substance must include the following details:
- (a) the date on which it is issued,
 - (b) the name and address of the patient or (if the treatment is for an animal) the species of animal and the name and address of the animal’s owner,
 - (c) the name, strength and quantity of the substance to be supplied,
 - (d) adequate directions for use,
 - (e) the maximum number of times the substance may be supplied on the prescription,
 - (f) in the case of a prescription for an Appendix B substance, the intervals at which the substance may be supplied on the prescription,
 - (g) if the prescription is issued at a hospital, the name and designation of the person by whom it is issued and the name, address and telephone number of the hospital,
 - (h) if the prescription is issued elsewhere than at a hospital, the name and designation of the person by whom it is issued and the address and telephone number of the premises at which it is issued.

Clause 34 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 3 Prescriptions

- (2) The details referred to in subclause (1) (a)–(f) must be made out:
- (a) in the handwriting of the person by whom the prescription is issued, or
 - (b) in such other manner as may be approved for the time being by the Director-General,
- and the prescription must be signed by the person by whom it is issued.
- (3) The person by whom the prescription is issued must confirm any dose that could be regarded as being dangerous or unusual by underlining the part of the prescription that specifies the intended dose and by initialling the prescription in the margin.
- (4) A person who issues a prescription for a restricted substance must ensure that the prescription complies with the requirements of this clause.

Maximum penalty: 15 penalty units.

35 Emergency prescriptions may be given by telephone or otherwise (cf cl 38 of P&TG Reg 1994)

- (1) In an emergency, a medical practitioner, nurse practitioner, dentist or veterinary surgeon may direct the supply of a restricted substance orally, by telephone, by electronic mail or by facsimile.
- (2) A person who so directs the supply of a restricted substance:
 - (a) must immediately make out a prescription, and
 - (b) must send the prescription without delay (and in any case within 24 hours) to the person to whom the direction was given.
- (3) A person who issues a prescription under this clause must ensure that the prescription is endorsed with words that indicate the prescription has been issued in confirmation of a direction under this clause.
- (4) This clause does not apply to a direction given under clause 57.

Maximum penalty: 15 penalty units.

36 Authority required to prescribe certain restricted substances (cf cl 39 of P&TG Reg 1994)

- (1) This clause applies to the following restricted substances:
 - acitretin
 - clomiphene

Poisons and Therapeutic Goods Regulation 2002

Clause 36

Restricted substances (S4)

Part 3

Prescriptions

Division 3

cyclofenil

dinoprost

dinoprostone

etretinate

follitropin beta

isotretinoin for oral use

luteinising hormone

tretinoin for oral use

urofollitrophin (human follicle stimulating hormone)

- (2) A person must not prescribe a restricted substance to which this clause applies unless the person holds an authority under Part 8 to prescribe the substance.
- (3) This clause does not apply to the prescription of a substance:
- (a) by a veterinary surgeon, or
 - (b) by a person who is authorised by the Permanent Head of the Commonwealth Department of Health to issue a prescription for the substance.
- (4) A person who issues a prescription that authorises the supply of a substance to which this clause applies must ensure:
- (a) in the case of a prescription that is issued in accordance with an authority under Part 8 that was granted to a particular person (by means of an instrument in writing given to the person), that the prescription is endorsed with the reference number shown on the authority, or
 - (b) in any other case, that the prescription is endorsed with the words "ISSUED UNDER CLAUSE 36 OF THE POISONS AND THERAPEUTIC GOODS REGULATION 2002" or with other words that indicate that the prescription has been issued under this clause.

Maximum penalty: 15 penalty units.

Clause 37 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 3 Prescriptions

37 Records to be kept of certain prescriptions (cf cl 40 of P&TG Reg 1994)

- (1) A medical practitioner, nurse practitioner, dentist or veterinary surgeon who prescribes a prescribed restricted substance must make a record of the following particulars:
 - (a) the name, strength and quantity of the substance prescribed and the date on which it was prescribed,
 - (b) if the substance is intended for the treatment of a person, the name and address of the person to be treated,
 - (c) if the substance is intended for the treatment of an animal, the species of animal and the name and address of the animal's owner,
 - (d) the maximum number of times the substance may be supplied on the prescription,
 - (e) in the case of a prescription for an Appendix B substance, the intervals at which the substance may be supplied on the prescription,
 - (f) the directions for use, as shown on the prescription.
- (2) The record must be kept at the surgery, hospital or office of the person prescribing the substance.

Maximum penalty: 15 penalty units.

Division 4 Supply

Subdivision 1 Supply on prescription

38 Prescriptions may be filled only if in proper form (cf cl 41 of P&TG Reg 1994)

- (1) A pharmacist must not supply a restricted substance on prescription unless the prescription is in the form required by Division 3.
- (2) This clause does not prevent a pharmacist from supplying a restricted substance on prescription merely because:
 - (a) the prescription fails to specify the maximum number of times the substance may be supplied, or

Poisons and Therapeutic Goods Regulation 2002

Clause 38

Restricted substances (S4)

Part 3

Supply

Division 4

- (b) in the case of a prescription for an Appendix B substance, the prescription fails to specify the intervals at which the substance may be supplied, or
 - (c) the address shown on the prescription indicates that it has been issued by a medical practitioner, dentist or veterinary surgeon from some other State or Territory.
- (3) A pharmacist must not supply a restricted substance more than once on a prescription referred to in subclause (2) (a) or (b), regardless of how many times the prescription purports to authorise the supply of the substance.

Maximum penalty: 15 penalty units.

39 Certain prescriptions not to be filled (cf cl 42 of P&TG Reg 1994)

- (1) A pharmacist must not supply a restricted substance on prescription:
- (a) if the prescription is marked "CANCELLED", or
 - (b) if the substance has already been supplied on the prescription the maximum number of times indicated by the prescription, or
 - (c) if the interval of time that has elapsed since the substance was last supplied on the prescription is less than that indicated by the prescription as the minimum interval that must elapse between successive supplies of the substance, or
 - (d) if the prescription is illegible or defaced, or
 - (e) if the prescription appears to have been forged or fraudulently obtained, or
 - (f) if the prescription appears to have been altered otherwise than by the medical practitioner, nurse practitioner, dentist or veterinary surgeon by whom it was issued, or
 - (g) if the prescription is dated more than 12 months (or, in the case of a prescription for a prescribed restricted substance, 6 months) before the date on which the supply is requested.
- (2) Immediately on being requested to supply a prescribed restricted substance in either of the circumstances referred to in subclause (1) (e) or (f), a pharmacist must retain the prescription and cause notice of the request to be given to a police officer.

Maximum penalty: 15 penalty units.

Clause 40 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 4 Supply

40 Prescriptions to be endorsed (cf cl 43 of P&TG Reg 1994)

- (1) A pharmacist who supplies a restricted substance on prescription must (on each occasion the substance is supplied) endorse the following particulars (in ink) on the prescription:
 - (a) the date on which the substance was supplied,
 - (b) the address of the place at which the substance was supplied,
 - (c) the prescription reference number.
- (2) A person who supplies a substance on prescription must endorse (in ink) across the prescription the word "CANCELLED":
 - (a) if the maximum number of times the prescription is to be dispensed is not clearly specified, or
 - (b) if (in the case of a prescription for an Appendix B substance) the intervals at which the substance may be supplied are not clearly specified, or
 - (c) if the prescription has reached the last occasion on which it can be supplied according to the maximum number of times specified on it.

Maximum penalty: 15 penalty units.

41 Prescriptions for certain substances to be kept (cf cl 44 of P&TG Reg 1994)

- (1) A pharmacist who supplies an Appendix B substance on prescription must keep the prescription, whether or not the prescription authorises more than one supply of the substance.
- (2) Prescriptions for Appendix B substances must be kept apart from other prescriptions (other than prescriptions for drugs of addiction).

Maximum penalty: 20 penalty units.

Subdivision 2 Supply without prescription

42 Supply by medical practitioners, nurse practitioners, dentists and veterinary surgeons (cf cl 45 of P&TG Reg 1994)

- (1) A medical practitioner must not supply a restricted substance to any person otherwise than for medical treatment.

Poisons and Therapeutic Goods Regulation 2002	Clause 42
Restricted substances (S4)	Part 3
Supply	Division 4

- (2) A nurse practitioner must not supply a restricted substance to any person otherwise than in the course of practising as a nurse practitioner.
- (3) A dentist must not supply a restricted substance to any person otherwise than for dental treatment.
- (4) A veterinary surgeon must not supply a restricted substance to any person otherwise than for veterinary treatment.

Maximum penalty: 15 penalty units.

43 Emergency supply by pharmacists on direction of medical practitioners, nurse practitioners, dentists or veterinary surgeons (cf cl 46 of P&TG Reg 1994)

- (1) A pharmacist may supply a person with a restricted substance (including a prescribed restricted substance) in accordance with a direction given under clause 35.
- (2) A prescription that is subsequently sent in confirmation of the direction must be dealt with in accordance with clauses 40 and 41, and details of the supply must be recorded in accordance with clause 54, in the same way as if the restricted substance had been supplied on prescription.
- (3) If such a prescription is not received within 7 days after the substance is supplied, the pharmacist must report that fact to the Director-General.

Maximum penalty: 15 penalty units.

44 Emergency supply by pharmacists otherwise than on direction of medical practitioners, dentists or nurse practitioners (cf cl 47 of P&TG Reg 1994)

- (1) A pharmacist may supply a person with a restricted substance (other than a prescribed restricted substance) if the pharmacist is satisfied:
 - (a) that the person is undergoing treatment essential to the person's well being, and
 - (b) that the substance has previously been prescribed for the treatment, and
 - (c) that the person is in immediate need of the substance for continuation of the treatment, and

Clause 44 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 4 Supply

- (d) that, in the circumstances, it is not practicable for the person to obtain a prescription for the substance from a medical practitioner, dentist or nurse practitioner.
- (2) A restricted substance may not be supplied to any person under this clause unless:
- (a) the quantity supplied is no more than that required for 3 days' treatment, or
- (b) in the case of a liquid, aerosol, cream, ointment or anovulant tablet that is contained in a standard pack, the standard pack is the smallest standard pack in which that kind of liquid, aerosol, cream, ointment or anovulant tablet is generally available.

Maximum penalty: 15 penalty units.

45 Supply by pharmacists to medical practitioner, dentist, veterinary surgeon or nurse practitioner for emergency use (cf cl 48 of P&TG Reg 1994)

A pharmacist may supply a medical practitioner, dentist, veterinary surgeon or nurse practitioner with a restricted substance (including a prescribed restricted substance) for emergency use, but only on a written order signed and dated by the medical practitioner, dentist, veterinary surgeon or nurse practitioner.

46 Supply by pharmacists to nursing homes of stock for emergency use (cf cl 47A of P&TG Reg 1994)

- (1) A retail pharmacist may supply the chief nurse of a nursing home with a manufacturer's original pack of a relevant prescribed substance for emergency use at the nursing home in accordance with an authorisation by a medical practitioner, dentist or nurse practitioner who prescribes substances to the nursing home's residents.
- (2) A relevant prescribed substance may not be supplied under subclause (1) unless it is supplied in accordance with a written order signed by the chief nurse.

Maximum penalty: 15 penalty units.

- (3) In this clause, *relevant prescribed substance* means a restricted substance (including a prescribed restricted substance) included in a list of substances determined for the time being by the Director-General for the purposes of this clause.

Poisons and Therapeutic Goods Regulation 2002	Clause 47
Restricted substances (S4)	Part 3
Supply	Division 4

47 Supply by pharmacists of benzylpenicillin for use in animals (cf cl 67 of P&TG Reg 1994)

- (1) This clause applies to benzylpenicillin, including procaine penicillin, in preparations for use by intramuscular injection in animals.
- (2) A pharmacist may supply benzylpenicillin otherwise than on prescription to a person who satisfies the pharmacist that it is needed for the urgent treatment of an animal and that, under the circumstances, it is not practicable to obtain a prescription authorising its supply.
- (3) A pharmacist must not supply benzylpenicillin:
 - (a) to any person who is under 18 years of age, or
 - (b) to any person who is unknown to the pharmacist.
- (4) Subclause (3) (b) does not prevent a pharmacist from supplying benzylpenicillin to a person who is unknown to the pharmacist if it is supplied in the presence of a person who is known to the pharmacist and who satisfies the pharmacist that he or she knows the person being supplied.

Subdivision 3 Supply in hospitals

48 Supply by pharmacists (cf cl 49 of P&TG Reg 1994)

A pharmacist at a hospital may supply a restricted substance:

- (a) on a prescription issued in accordance with Division 3, or
- (b) on the authorisation (whether in writing, by electronic mail, by facsimile or by any other form of electronic communication approved by the Director-General) of a medical practitioner, nurse practitioner or dentist, where that authorisation is entered on a patient's medication chart, or
- (c) on the requisition (whether in writing, by electronic mail, by facsimile or by any other form of electronic communication approved by the Director-General) of a medical practitioner, a nurse practitioner, a dentist or the nurse in charge of the ward in which the substance is to be used or stored.

Clause 49 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 4 Supply

49 Supply in original containers: section 10 (cf cl 50 of P&TG Reg 1994)

- (1) A person who supplies a restricted substance to a patient in a hospital, or to an inmate in an institution, in accordance with section 10 (4) (c) of the Act must supply the substance, unopened, in the container in which it was received by the person.
- (2) This clause does not prevent the person from supplying an individual dose of the substance to the patient or inmate.

Maximum penalty: 15 penalty units.

Subdivision 4 Supply generally

50 Research drugs (cf cl 54 of P&TG Reg 1994)

- (1) This clause applies to the following substances:
 - antibodies, antigens and immunoglobulins or conjugates thereof in preparations for the diagnosis of human immunodeficiency virus infection
 - thalidomide
- (2) A dealer must not supply a substance to which this clause applies unless the person being supplied holds an authority under Part 8 to be supplied with the substance.
- (3) This clause:
 - (a) does not prohibit a dealer from supplying a substance to which this clause applies to a person who has the approval in writing of the Permanent Head of the Commonwealth Department of Health to import, buy, obtain or otherwise be supplied with the substance, and
 - (b) does not prohibit a person holding an authority under Part 8 to be supplied with a substance to which this clause applies from supplying the substance to a person under his or her general supervision, for the purpose of enabling that other person to carry out medical diagnosis, or medical or scientific research or analysis (including the conduct of clinical trials), and
 - (c) does not prohibit a medical practitioner holding an authority under Part 8 to be supplied with thalidomide from supplying thalidomide to another person for the purpose of treating that other person in accordance with the authority.

Poisons and Therapeutic Goods Regulation 2002	Clause 50
Restricted substances (S4)	Part 3
Supply	Division 4

- (4) A person being supplied with thalidomide (otherwise than as referred to in subclause (3) (c)) must surrender his or her authority to the dealer.
- (5) A dealer must keep any authority surrendered to the dealer under this clause.

Maximum penalty: 15 penalty units.

51 Authority required to supply certain restricted substances (cf cl 55 of P&TG Reg 1994)

- (1) This clause applies to the following substances:
 - acitretin
 - clomiphene
 - cyclofenil
 - dinoprost
 - dinoprostone
 - etretinate
 - follitropin beta
 - isotretinoin for oral use
 - luteinising hormone
 - tretinoin for oral use
 - urofollitrophin (human follicle stimulating hormone)
- (2) A person must not supply a substance to which this clause applies unless the person holds an authority under Part 8 to supply the substance.
- (3) This clause does not apply to the supply of a substance:
 - (a) by wholesale, or
 - (b) by a veterinary surgeon, or
 - (c) by a pharmacist on the prescription of:
 - (i) a medical practitioner holding an authority under Part 8 to prescribe the substance, or
 - (ii) a veterinary surgeon, or
 - (d) by a person who is authorised by the Permanent Head of the Commonwealth Department of Health to supply the substance.

Maximum penalty: 15 penalty units.

Clause 52 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 4 Supply

52 Restricted substances may be supplied by authorised persons (cf cl 56 of P&TG Reg 1994)

A person who is not a medical practitioner, nurse practitioner, dentist or veterinary surgeon may supply a restricted substance to another person if the person by whom the substance is supplied holds an authority under Part 8 to supply the substance.

53 Quantity and purpose of supply to be appropriate (cf cl 57 of P&TG Reg 1994)

A medical practitioner, nurse practitioner, dentist, veterinary surgeon or pharmacist must not supply any restricted substance in a quantity, or for a purpose, that does not accord with the recognised therapeutic standard of what is appropriate in the circumstances.

Maximum penalty: 15 penalty units.

Division 5 Records of supply

54 Supply on prescription to be recorded (cf cl 58 of P&TG Reg 1994)

(1) A pharmacist who supplies a restricted substance on prescription must record the following details in a manner approved by the Director-General:

- (a) the details required by clause 34 (1) to be included in the prescription,
- (b) a unique reference number for the prescription,
- (c) the date on which the substance was supplied,
- (d) the name of the person by whom the substance was supplied.

(2) A prescription for the supply of a restricted substance in a hospital need not be recorded so long as the chief pharmacist of the hospital keeps the prescription or a copy of the prescription.

Maximum penalty: 15 penalty units.

55 Records to be kept of supply of restricted substances by medical practitioners, nurse practitioners, dentists and veterinary surgeons (cf cl 59 of P&TG Reg 1994)

A medical practitioner, nurse practitioner, dentist or veterinary surgeon who supplies a restricted substance in a quantity exceeding that required for 3 days' treatment:

Poisons and Therapeutic Goods Regulation 2002	Clause 55
Restricted substances (S4)	Part 3
Records of supply	Division 5

- (a) must record the name, strength and quantity of the substance supplied and the date on which it was supplied, and
- (b) must record the name and address of the patient or (if the treatment is for an animal) the species of animal and the name and address of the animal's owner, and
- (c) must keep the record of the supply of the substance at the hospital, surgery or office of the person supplying the substance.

Maximum penalty: 15 penalty units.

56 Certain supplies of restricted substances to be separately recorded (cf cl 60 of P&TG Reg 1994)

A pharmacist who supplies a restricted substance as referred to in clause 44, or who supplies the restricted substance benzylpenicillin as referred to in clause 47, must record the following details of the supply in a manner approved by the Director-General:

- (a) a unique reference number for the supply,
- (b) the name and address of the patient or (if the treatment is for an animal) the species of animal and the name and address of the animal's owner,
- (c) the name, strength and quantity of the substance,
- (d) the directions given by the pharmacist for the use of the substance,
- (e) in the case of a restricted substance supplied as referred to in clause 44, the name and address of the medical practitioner, dentist or nurse practitioner by whom it appears to the pharmacist that the substance was last prescribed,
- (f) the date on which the substance was supplied,
- (g) the name of the person by whom the substance was supplied.

Maximum penalty: 15 penalty units.

Clause 57 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 6 Administration

Division 6 Administration

57 Administration by persons employed at a hospital (cf cl 51 of P&TG Reg 1994)

- (1) A person employed at a hospital must not administer a restricted substance to a patient in the hospital otherwise than on the direction of a medical practitioner, nurse practitioner or dentist.
- (2) Such a direction:
 - (a) must be given in writing (otherwise than by electronic mail or facsimile) or in any other manner approved by the Director-General for the purposes of this paragraph, or
 - (b) in an emergency, may be given:
 - (i) by electronic mail or by facsimile, or
 - (ii) orally, by telephone or in any other manner approved by the Director-General for the purposes of this subparagraph.
- (3) A medical practitioner, a nurse practitioner or a dentist who gives a direction under subclause (2) (b) (ii) must:
 - (a) as soon as is practicable (and in any case within the next 24 hours) either:
 - (i) sign an entry in the patient's medical history confirming that he or she has given the direction, or
 - (ii) confirm the direction by electronic mail or by facsimile, and
 - (b) attend to review the patient as soon as he or she considers it appropriate in the circumstances of the case.
- (4) If confirmation is not received within 7 days after the restricted substance is administered, the person by whom the substance was administered must report that fact to the Director-General.
- (5) A medical practitioner, a nurse practitioner or a dentist who, by electronic mail or by facsimile, gives or confirms a direction for the administration of a restricted substance to a patient must attend to review the patient as soon as he or she considers it appropriate in the circumstances of the case.

Poisons and Therapeutic Goods Regulation 2002	Clause 57
Restricted substances (S4)	Part 3
Administration	Division 6

- (6) Subclauses (3), (4) and (5) do not apply to the administration of a restricted substance to an inmate of a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) if confirmation of the direction for the administration of the substance has been given in accordance with the requirements of a protocol approved by the Director-General.

Maximum penalty: 15 penalty units.

58 Administration of prescribed restricted substances (cf cl 52 of P&TG Reg 1994)

- (1) A person must not self-administer a prescribed restricted substance, or administer a prescribed restricted substance to any other person, otherwise than:
- for the purposes of medical treatment prescribed by a medical practitioner, or
 - for the purposes of dental treatment prescribed by a dentist, or
 - for the purposes of treatment prescribed by a nurse practitioner in the course of practising as a nurse practitioner.

Maximum penalty: 20 penalty units.

- (2) For the purposes of subclause (1), it is sufficient if the treatment referred to in subclause (1) (a), (b) or (c) in relation to the self-administration of a prescribed restricted substance has been prescribed by the person by whom the substance is being self-administered.
- (3) This clause has effect for the purposes of Division 1 of Part 2 of the *Drug Misuse and Trafficking Act 1985* in relation to any prescribed restricted substance that is included in Schedule 1 to that Act.

59 Authority required to administer certain restricted substances (cf cl 53 of P&TG Reg 1994)

- (1) This clause applies to the following restricted substances:
- acitretin
 - clomiphene
 - cyclofenil
 - dinoprost
 - dinoprostone

Clause 59 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 6 Administration

etretinate

follitropin beta

isotretinoin for oral use

luteinising hormone

tretinoin for oral use

urofollitrophin (human follicle stimulating hormone)

- (2) A person must not administer a restricted substance to which this clause applies unless the person holds an authority under Part 8 to administer the substance.
- (3) This clause does not apply to:
- (a) the administration to a patient of a substance whose administration has been prescribed or directed by a medical practitioner holding an authority under Part 8 to prescribe the substance, or
 - (b) the administration of a substance to an animal by a veterinary surgeon or by a person acting under the general supervision of a veterinary surgeon.

Maximum penalty: 15 penalty units.

Division 7 Miscellaneous

60 Prescribed restricted substances: sections 9, 10, 11, 16, 18 and 18A (cf cl 62 of P&TG Reg 1994)

- (1) For the purposes of section 16 of the Act, the substances specified in Appendix D are prescribed restricted substances.
- (2) The substances specified in Appendix D are also restricted substances for the purposes of sections 9, 10, 11 and 18 of the Act, as referred to in paragraph (a) of the matter specified at the end of sections 9 (1), 10 (3), 11 (1) and 18 of the Act with respect to penalties.
- (3) For the purposes of section 18A (1) of the Act, the quantities specified in Appendix D are the prescribed quantities for the corresponding restricted substances specified in that Appendix.

Poisons and Therapeutic Goods Regulation 2002	Clause 61
Restricted substances (S4)	Part 3
Miscellaneous	Division 7

61 Authorised persons: section 16 (1) (e) (cf cl 63 of P&TG Reg 1994)

For the purposes of section 16 (1) (e) of the Act, the following persons are authorised to obtain possession of prescribed restricted substances for the purposes of their profession or employment:

- (a) the chief nurse of a hospital that does not employ a chief pharmacist,
- (b) the master of a ship, in respect of a therapeutic substance that is required by law to be carried on the ship,
- (c) the holder of a licence under Part 8 to manufacture or supply drugs of addiction,
- (d) an analyst,
- (e) a scientifically qualified person in charge of a laboratory or department, being a person who is engaged in medical or scientific research or instruction, or in quality control or analysis,
- (f) a person acting under the direct personal supervision of a person referred to in paragraph (d) or (e).

62 Disclosure of other prescribed restricted substances obtained or prescribed (cf cl 64 of P&TG Reg 1994)

- (1) A person who asks a medical practitioner, nurse practitioner or dentist:
 - (a) to supply the person with a prescribed restricted substance, or
 - (b) to give the person a prescription for a prescribed restricted substance,

must disclose to the medical practitioner, nurse practitioner or dentist the quantity of that and any other prescribed restricted substance with which the person has been supplied, or for which the person has been given prescriptions, within the last 2 months.

- (2) If the request is made on behalf of some other person, the person making the request is obliged only to furnish such information as is within that person's knowledge.

Maximum penalty: 20 penalty units.

Clause 63 Poisons and Therapeutic Goods Regulation 2002

Part 3 Restricted substances (S4)

Division 7 Miscellaneous

63 Delivery by carrier (cf cl 65 of P&TG Reg 1994)

A carrier is authorised to be in possession of a package containing a prescribed restricted substance, but for the purpose only of delivering it to the person to whom it is addressed.

64 Pentobarbitone sodium (cf cl 66 of P&TG Reg 1994)

- (1) This clause applies to pentobarbitone sodium to the extent only to which it is a restricted substance, and not to the extent to which it is a drug of addiction.
- (2) An authorised person who uses pentobarbitone sodium for the destruction of animals must ensure that the requirements of this clause are complied with.
- (3) Pentobarbitone sodium must be kept separately from all other goods in a safe, cupboard or other receptacle:
 - (a) that is securely attached to a part of the premises, and
 - (b) that is kept securely locked except when in immediate use.
- (4) An authorised person must keep a separate register of all pentobarbitone sodium that is obtained or used by the authorised person.
- (5) On the day on which an authorised person obtains or uses any pentobarbitone sodium, the authorised person must enter in the register such of the following details as are relevant to the transaction:
 - (a) the quantity that was obtained or used,
 - (b) the name and address of the person from whom it was obtained,
 - (c) the number and species of animals for which it was used,
 - (d) the total quantity held by the authorised person after the entry is made.
- (6) Each entry must be dated and signed by the authorised person.
- (7) In this clause, *authorised person* means:
 - (a) a person nominated by the council of a local government area,or

Poisons and Therapeutic Goods Regulation 2002	Clause 64
Restricted substances (S4)	Part 3
Miscellaneous	Division 7

(b) an officer of an animal welfare organisation nominated by the organisation,

being in either case a person who is authorised under section 16 (1) (d) of the Act to obtain possession of pentobarbitone sodium for the humane destruction of animals.

Maximum penalty: 20 penalty units.

65 Restricted substances to be used or disposed of safely (cf cl 68 of P&TG Reg 1994)

A person must not use or dispose of a restricted substance in any place or in any manner likely to constitute a risk to the public.

Maximum penalty: 15 penalty units.

66 Loss or theft of prescribed restricted substances (cf cl 70 of P&TG Reg 1994)

- (1) A person must immediately notify the Director-General if the person loses a prescribed restricted substance or if a prescribed restricted substance is stolen from the person.
- (2) This clause does not apply to the loss of any substance by, or the theft of any substance from, a person who has been supplied with the substance by, or on the prescription of, a medical practitioner, nurse practitioner, dentist or veterinary surgeon.

Maximum penalty: 20 penalty units.

67 Forfeiture of prescribed restricted substances (cf cl 71 of P&TG Reg 1994)

The court before which a person is convicted of the illegal possession of a prescribed restricted substance may order that the substance be forfeited to the Crown, and may further order the forfeited substance to be destroyed or otherwise disposed of as the court thinks fit.

Clause 68 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 1 Packaging and labelling

Part 4 Drugs of addiction (S8)

Division 1 Packaging and labelling

68 Packaging and labelling generally (cf cl 72 of P&TG Reg 1994)

- (1) A dealer who supplies a drug of addiction must ensure that the drug is packaged and labelled:
 - (a) in accordance with the relevant provisions of the current Poisons Standard, and
 - (b) in the case of a drug of addiction to which *Therapeutic Goods Order No 20* applies, in accordance with that Order.
- (2) Despite subclause (1), a medical practitioner, dentist or veterinary surgeon who supplies a drug of addiction must ensure that the drug is packaged in accordance with the requirements of that subclause but labelled in accordance with the requirements of Appendix A.
- (3) A pharmacist who supplies any quantity of a drug of addiction on prescription must ensure that the drug is supplied in a package that is labelled in accordance with the requirements of Appendix A instead of in accordance with the requirements of subclause (1).

Maximum penalty: 10 penalty units.

69 Misleading labelling of substances as drugs of addiction (cf cl 73 of P&TG Reg 1994)

A dealer must not supply any substance in a container that has a label that states or implies that the substance is a drug of addiction, unless the substance is such a drug.

Maximum penalty: 10 penalty units.

70 Packages to be sealed so that broken seal is readily distinguishable (cf cl 74 of P&TG Reg 1994)

- (1) A dealer who supplies any drug of addiction must ensure that the drug is packaged in such a way that:
 - (a) its container is so sealed that, when the seal is broken, it is readily distinguishable from sealed containers, and

Poisons and Therapeutic Goods Regulation 2002	Clause 70
Drugs of addiction (S8)	Part 4
Packaging and labelling	Division 1

- (b) if several containers are enclosed in a single primary pack, the primary pack is so sealed that, when the seal is broken, it is readily distinguishable from sealed primary packs.
- (2) This clause does not apply to the supply of a drug of addiction:
 - (a) by a medical practitioner, dentist or veterinary surgeon in the practice of his or her profession, or
 - (b) by a pharmacist on the prescription of a medical practitioner, dentist or veterinary surgeon, or
 - (c) by a pharmacist employed at a hospital, on the written requisition of a medical practitioner, a dentist or the nurse in charge of the ward in which the drug is to be used or stored, or
 - (d) by a nurse on the direction in writing of a medical practitioner or dentist.

Maximum penalty: 20 penalty units.

71 Exemptions (cf cl 75 of P&TG Reg 1994)

- (1) The Director-General may, by order in writing, exempt any person or substance, or any class of persons or substances, from the requirements of this Division.
- (2) Such an exemption may be given unconditionally or subject to conditions.
- (3) Subject to subclause (4), any exemption in force under a law of the Commonwealth, or of another State or Territory, corresponding to this clause has the same effect as an exemption under this clause.
- (4) The Director-General may, by order published in the Gazette, declare that subclause (3) does not have effect with respect to an exemption specified in the order.

Division 2 Storage

72 Storage generally (cf cl 76 of P&TG Reg 1994)

- (1) A person who is in possession of any drug of addiction must keep the drug in his or her possession stored apart from all other goods (other than cash or documents) in a separate room, safe, cupboard or other receptacle securely attached to a part of the premises and kept securely locked when not in immediate use.

Clause 72 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 2 Storage

- (2) A medical practitioner, dentist or veterinary surgeon is taken to comply with this clause if he or she keeps any drug of addiction (for use in an emergency only) in a bag that is in a room, or in a vehicle, kept locked when not occupied by the medical practitioner, dentist or veterinary surgeon.

Maximum penalty: 20 penalty units.

73 Responsibility for storage in hospitals (cf cl 77 of P&TG Reg 1994)

- (1) The chief pharmacist of a hospital is responsible for the storage of all drugs of addiction at a hospital other than those that have been supplied to a ward.
- (2) In the case of a hospital for which there is no pharmacist, the responsibilities of a chief pharmacist under this clause are instead the responsibilities of:
- (a) the chief nurse of the hospital, or
 - (b) the medical superintendent of the hospital,
- as the chief executive officer of the hospital may determine.
- (3) The nurse in charge of a hospital ward is responsible for the storage of all drugs of addiction in the ward.

74 Storage in hospital wards (cf cl 77A of P&TG Reg 1994)

- (1) Drugs of addiction that are kept in a hospital ward must be stored apart from all other goods (other than prescribed restricted substances) in a separate room, safe, cupboard or other receptacle securely attached to a part of the ward and kept securely locked when not in immediate use.
- (2) The nurse in charge of a hospital ward must ensure that:
- (a) the room, safe, cupboard or receptacle is kept securely locked when not in immediate use, and
 - (b) any key or other device by means of which the room, safe, cupboard or receptacle may be unlocked:
 - (i) is kept on the person of a nurse whenever it is in the ward, and is removed from the ward whenever there is no nurse in the ward, or
 - (ii) is kept in a separately locked safe to which only a nurse has access, and

Poisons and Therapeutic Goods Regulation 2002

Clause 74

Drugs of addiction (S8)

Part 4

Storage

Division 2

- (c) any code or combination that is required to unlock the room, safe, cupboard or receptacle is not divulged to any unauthorised person.

Maximum penalty: 20 penalty units.

75 Storage in pharmacies (cf cl 78 of P&TG Reg 1994)

- (1) The pharmacist for the time being in charge of a pharmacy must keep any drug of addiction stored apart from other substances or goods (other than cash or documents) in a separate safe.
- (2) Unless otherwise approved for the time being by the Director-General, such a safe must comply with the following requirements:
 - (a) it must be made of black mild steel plate at least 9 millimetres thick with continuous welding along all edges,
 - (b) it must be fitted with a door made of mild steel plate at least 9 millimetres thick, the door being flush fitting with a clearance around the door of not more than 1.5 millimetres,
 - (c) it must have a fixed locking bar, welded to the inside face of the door near the hinged edge, that engages in a rebate in the safe body when the door is closed,
 - (d) it must be fitted with a five lever key lock (or a locking mechanism providing at least equivalent security) securely fixed to the rear face of the door,
 - (e) if mounted on a brick or concrete wall or floor, it must be attached to the wall or floor by means of suitably sized expanding bolts through holes 9 millimetres in diameter drilled in the rear or bottom of the safe,
 - (f) if mounted on a timber framed wall or floor, it must be attached to the wall or floor frame by means of suitably sized coachscrews through holes 9 millimetres in diameter drilled in the rear or bottom of the safe,
 - (g) if mounted on any other kind of wall or floor, it must be attached to the wall or floor in a manner approved for the time being by the Director-General.
- (3) The pharmacist must ensure that:
 - (a) the safe is kept securely locked when not in immediate use, and
 - (b) any key or other device by means of which the safe may be unlocked:

Clause 75 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 2 Storage

- (i) is kept on the person of a pharmacist whenever it is on the same premises as the safe, and is removed from the premises whenever there is no pharmacist at those premises, or
 - (ii) is kept in a separately locked safe to which only a pharmacist has access, and
 - (c) any code or combination that is required to unlock the safe is not divulged to any unauthorised person.
- (4) This clause applies to a hospital pharmacy as well as to a retail pharmacy.
- Maximum penalty: 20 penalty units.

Division 3 Prescriptions

76 Unauthorised persons not to prescribe drugs of addiction (cf cl 79 of P&TG Reg 1994)

- (1) A person must not issue a prescription for a drug of addiction unless authorised to do so by this clause.
 - (2) A medical practitioner, dentist or veterinary surgeon may issue a prescription for a drug of addiction.
- Maximum penalty: 20 penalty units.

77 Form of prescription (cf cl 82 of P&TG Reg 1994)

- (1) A person who issues a prescription for a drug of addiction must ensure that the prescription includes the following details:
 - (a) the date on which it is issued,
 - (b) the name and address of the patient or (if the treatment is for an animal) the species of animal and the name and address of the animal's owner,
 - (c) the name, strength and quantity (expressed in both words and figures) of the drug to be supplied,
 - (d) adequate directions for use,
 - (e) the maximum number of times the drug may be supplied on the prescription,

Poisons and Therapeutic Goods Regulation 2002

Clause 77

Drugs of addiction (S8)

Part 4

Prescriptions

Division 3

- (f) the intervals at which the drug may be supplied on the prescription,
 - (g) if the prescription is issued at a hospital, the name and designation of the person by whom it is issued and the name, address and telephone number of the hospital,
 - (h) if the prescription is issued elsewhere than at a hospital, the name and designation of the person by whom it is issued and the address and telephone number of the premises at which it is issued.
- (2) The details referred to in subclause (1) (a)–(f) must be made out:
- (a) in the handwriting of the person by whom the prescription is issued, or
 - (b) in such other manner as may be approved for the time being by the Director-General,
- and the prescription must be signed by the person by whom it is issued.
- (3) The person by whom the prescription is issued must confirm any dose that could be regarded as being dangerous or unusual by underlining the part of the prescription that specifies the intended dose and by initialling the prescription in the margin.
- (4) A person must not issue a prescription that includes:
- (a) more than one preparation containing a drug of addiction, or
 - (b) both a preparation containing a drug of addiction and another preparation.

Maximum penalty: 20 penalty units.

78 Prescriptions may only be issued for certain purposes (cf cl 80 of P&TG Reg 1994)

- (1) A medical practitioner must not issue a prescription for a drug of addiction otherwise than for medical treatment.
- (2) A dentist must not issue a prescription for a drug of addiction otherwise than for the dental treatment (for a period not exceeding one month's continuous treatment) of a patient and must endorse any such prescription with the words "FOR DENTAL TREATMENT ONLY".
- (3) If the patient is in a hospital, the dentist may issue a prescription for any drug of addiction.

Clause 78 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 3 Prescriptions

- (4) If the patient is not in a hospital, the dentist may issue a prescription only:
- (a) for pentazocine, or
 - (b) for any drug of addiction included in the list of preparations that may be prescribed by participating dental practitioners for dental treatment only set out in the *Schedule of Pharmaceutical Benefits* issued by the Commonwealth Department of Health, as that Schedule is in force from time to time.
- (5) A veterinary surgeon must not issue a prescription for a drug of addiction otherwise than for veterinary treatment, and must endorse any such prescription with the words "FOR ANIMAL TREATMENT ONLY".

Maximum penalty: 20 penalty units.

79 Quantity and purpose of prescriptions to be appropriate (cf cl 81 of P&TG Reg 1994)

A medical practitioner, dentist or veterinary surgeon must not issue a prescription for a drug of addiction in a quantity, or for a purpose, that does not accord with the recognised therapeutic standard of what is appropriate in the circumstances.

Maximum penalty: 20 penalty units.

80 Emergency prescriptions may be given by telephone or otherwise (cf cl 83 of P&TG Reg 1994)

- (1) In an emergency, a medical practitioner, dentist or veterinary surgeon may direct the supply of a drug of addiction orally, by telephone, by electronic mail or by facsimile.
- (2) A person who so directs the supply of a drug of addiction:
 - (a) must immediately make out a prescription, and
 - (b) must send the prescription without delay (and in any case within 24 hours) to the person to whom the direction was given.
- (3) A person who issues a prescription under this clause must ensure that the prescription is endorsed with words that indicate the prescription has been issued in confirmation of a direction under this clause.
- (4) This clause does not apply to a direction given under clause 119.

Maximum penalty: 20 penalty units.

Poisons and Therapeutic Goods Regulation 2002

Clause 81

Drugs of addiction (S8)

Part 4

Prescriptions

Division 3

81 Records of prescriptions (cf cl 84 of P&TG Reg 1994)

- (1) A medical practitioner, dentist or veterinary surgeon who prescribes a drug of addiction must make a record of the following particulars:
 - (a) the name, strength and quantity of the drug prescribed and the date on which it was prescribed,
 - (b) if the drug is intended for the treatment of a person, the name and address of the person to be treated,
 - (c) if the drug is intended for the treatment of an animal, the species of animal and the name and address of the animal's owner,
 - (d) the maximum number of times the drug may be supplied on the prescription,
 - (e) the intervals at which the substance may be supplied on the prescription,
 - (f) the directions for use, as shown on the prescription.
- (2) The record must be kept at the surgery, hospital or office of the person prescribing the substance.

Maximum penalty: 20 penalty units.

82 Exceptions to section 28: prescriptions generally (cf cl 86 of P&TG Reg 1994)

- (1) A medical practitioner is authorised to issue a prescription for a drug of addiction for a person without an authority under section 29 of the Act if:
 - (a) the medical practitioner is of the opinion that the person requires the use of the drug in the course of treatment as an in-patient in a public or private hospital, and
 - (b) the prescription is for a course of treatment for a period of not more than 14 days following the person's admission as an in-patient.
- (2) A medical practitioner is authorised to issue a prescription for a drug of addiction for a person for continuous therapeutic use by that person for a period of up to 12 months without an authority under section 29 of the Act if:
 - (a) the medical practitioner is of the opinion that the person requires the drug for the relief of pain associated with cancer, and

Clause 82 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 3 Prescriptions

- (b) a medical practitioner (whether or not the medical practitioner referred to in paragraph (a)) whose qualifications in the diagnosis and treatment of cancer are recognised by the National Specialist Qualification Advisory Committee of Australia, or who is approved by the Director-General for the purposes of this paragraph, has made the diagnosis of cancer, and
- (c) either the medical practitioner referred to in paragraph (a) or a medical practitioner referred to in paragraph (b) has estimated the person's life expectancy to be 12 months or less.
- (3) Subclause (2) does not authorise a medical practitioner to prescribe the following drugs of addiction in the circumstances referred to in that subclause:
- dextromoramide (all forms)
- fentanyl (all forms, except transdermal patches)
- pethidine (parenteral forms only)
- (4) A medical practitioner is authorised to prescribe methadone or buprenorphine for the treatment of a person without an authority under section 29 of the Act if:
- (a) the medical practitioner is an approved prescriber, and
- (b) at the time the prescription is issued the person is, or at some time during the preceding 21 days was, an inmate in a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), and
- (c) the prescription is for methadone or buprenorphine in oral dosage form for use by the person as a course of treatment:
- (i) while an inmate, or
- (ii) during a period of not more than 21 days after release, and
- (d) immediately before the person became an inmate, a medical practitioner had an authority under section 29 of the Act to prescribe methadone or buprenorphine for the person, or supply methadone or buprenorphine to the person, and
- (e) the prescription is issued for the purpose of continuing the treatment that the person was receiving or was about to receive immediately before the person became an inmate.

Poisons and Therapeutic Goods Regulation 2002

Clause 82

Drugs of addiction (S8)

Part 4

Prescriptions

Division 3

- (5) A medical practitioner is authorised to issue a prescription for a drug of addiction for a person without an authority under section 29 of the Act if:
- (a) the person is the subject of such an authority, and
 - (b) the medical practitioner is practising at the same premises as the holder of that authority, and
 - (c) the prescription is issued in accordance with any conditions to which that authority is subject.

83 Exceptions to section 28: prescriptions for amphetamines (cf cl 85 of P&TG Reg 1994)

- (1) This clause applies to the following substances:
- amphetamine
 - dexamphetamine
 - methylamphetamine
 - methylphenidate
 - phendimetrazine
 - phenmetrazine
- (2) A medical practitioner is authorised to issue a prescription for dexamphetamine or methylphenidate for a person without an authority under section 29 of the Act:
- (a) for the purpose of testing the suitability of the person to undergo a course of medical treatment involving the use of such a substance, or
 - (b) for the purpose of treating the person for attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD),
- so long as the medical practitioner holds an authority under Part 8 to prescribe such a substance.
- (3) A dentist or veterinary surgeon must not issue a prescription for a substance to which this clause applies.
- Maximum penalty: 20 penalty units.

Clause 84 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

Division 4 Supply

Subdivision 1 Supply on prescription

84 Pharmacists may supply drugs of addiction on prescription (cf cl 87 of P&TG Reg 1994)

A pharmacist may supply a drug of addiction on prescription.

Maximum penalty: 20 penalty units.

85 Prescriptions may be filled only if in proper form (cf cl 88 of P&TG Reg 1994)

- (1) A pharmacist must not supply a drug of addiction on prescription unless the prescription is in the form required by Division 3.
- (2) This clause does not prevent a pharmacist from supplying a drug of addiction on prescription merely because the prescription fails to specify the maximum number of times, or the intervals at which, the drug may be supplied.
- (3) A pharmacist must not supply a drug of addiction more than once on a prescription referred to in subclause (2), regardless of how many times the prescription purports to authorise the supply of the drug.

Maximum penalty: 20 penalty units.

86 Certain prescriptions not to be filled (cf cl 89 of P&TG Reg 1994)

- (1) A pharmacist must not supply a drug of addiction on prescription:
 - (a) if the prescription is marked “CANCELLED”, or
 - (b) if the drug has already been supplied on the prescription the maximum number of times indicated by the prescription, or
 - (c) if the interval of time that has elapsed since the drug was last supplied on the prescription is less than that indicated by the prescription as the minimum interval that must elapse between successive supplies of the drug, or
 - (d) if the prescription is illegible or defaced, or
 - (e) if the prescription is dated more than 6 months before the date on which the supply is being requested, or

Poisons and Therapeutic Goods Regulation 2002

Clause 86

Drugs of addiction (S8)

Part 4

Supply

Division 4

- (f) if the prescription appears to have been forged or fraudulently obtained, or
 - (g) if the prescription appears to have been altered otherwise than by the medical practitioner, dentist or veterinary surgeon by whom it was issued, or
 - (h) if notice of an order prohibiting the person by whom the prescription was issued from issuing such a prescription has been published in the Gazette, unless the prescription contains a direction for the supply of the drug more than once and it appears that the drug has been supplied on the basis of the prescription at least once before the notice was published.
- (2) Immediately on being requested to supply a drug of addiction in any of the circumstances referred to in subclause (1) (f), (g) or (h), a pharmacist must retain the prescription and cause notice of the request to be given to a police officer.
- Maximum penalty: 15 penalty units.
- (3) A pharmacist must not supply a drug of addiction on a prescription that includes:
- (a) more than one preparation containing a drug of addiction, or
 - (b) both a preparation containing a drug of addiction and another preparation.
- Maximum penalty: 20 penalty units.

87 Prescriptions require verification (cf cl 90 of P&TG Reg 1994)

- (1) A pharmacist must not supply a drug of addiction on prescription unless he or she:
- (a) is familiar with the handwriting of the person who issued the prescription, or
 - (b) knows the person for whom the drug is prescribed, or
 - (c) has verified that the person who is purported to have issued the prescription has actually issued the prescription.
- (2) This clause does not prevent a pharmacist who is otherwise authorised to supply drugs of addiction from supplying a drug of addiction on prescription in a quantity sufficient for no more than 2 days' treatment.
- Maximum penalty: 20 penalty units.

Clause 88 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

88 Prescriptions to be endorsed (cf cl 91 of P&TG Reg 1994)

- (1) A person who supplies a drug of addiction on prescription must (on each occasion the drug is supplied) endorse the following particulars (in ink) on the prescription:
 - (a) the date on which the drug was supplied,
 - (b) the address of the place at which the drug was supplied,
 - (c) the prescription reference number.
- (2) A person who supplies a drug of addiction on prescription must endorse (in ink) across the prescription the word "CANCELLED":
 - (a) if the maximum number of times the prescription is to be dispensed is not clearly specified, or
 - (b) if the intervals at which the drug may be supplied are not clearly specified, or
 - (c) if the prescription has reached the last occasion on which it can be supplied according to the maximum number of times specified on it.

Maximum penalty: 20 penalty units.

89 Prescriptions to be kept (cf cl 92 of P&TG Reg 1994)

- (1) A pharmacist who supplies a drug of addiction on prescription must keep the prescription, whether or not the prescription authorises more than one supply of the drug.
- (2) Prescriptions for drugs of addiction must be kept apart from other prescriptions (other than prescriptions for Appendix B substances).

Maximum penalty: 20 penalty units.

90 Supply by pharmacists of amphetamines (cf cl 93 of P&TG Reg 1994)

- (1) This clause applies to the following substances:
 - amphetamine
 - dexamphetamine
 - methylamphetamine
 - methylphenidate
 - phendimetrazine
 - phenmetrazine

Poisons and Therapeutic Goods Regulation 2002	Clause 90
Drugs of addiction (S8)	Part 4
Supply	Division 4

- (2) A pharmacist must not supply such a substance on prescription unless the reference number of the authority to issue the prescription (whether given under section 29 of the Act or Part 8 of this Regulation) is shown on the prescription.

91 Records to be kept by pharmacists of methadone or buprenorphine prescriptions (cf cl 93A of P&TG Reg 1994)

- (1) A pharmacist at a retail pharmacy who supplies any person with methadone syrup or buprenorphine tablets on a prescription for the treatment of drug dependence must keep a record of the supply in accordance with this clause.

Maximum penalty: 20 penalty units.

- (2) A record under this clause must contain the following particulars:
- (a) the name of the person to whom the supply was made,
 - (b) the number of the prescription on which the supply was made,
 - (c) the name of the person who gave the prescription,
 - (d) the amount of methadone syrup or buprenorphine tablets supplied,
 - (e) the date on which the supply occurred,
 - (f) if the whole or part of the methadone syrup or buprenorphine tablets was supplied for consumption on a different day to that on which it was supplied, the day or days on which it is to be consumed and the amount to be consumed on that day or on each of those days.
- (3) Records made under this clause in relation to a particular pharmacy are to be made in writing in a book in which all such records for the pharmacy are kept.
- (4) The Director-General may from time to time approve the keeping of records under this clause in any other form.
- (5) A record made under this clause must be kept for at least 2 years from the date on which it is made.

Clause 92 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

92 Supply by pharmacists of methadone syrup or buprenorphine tablets
(cf cl 93B of P&TG Reg 1994)

- (1) A pharmacist at a retail pharmacy must not, on any particular day, supply any person with methadone syrup or buprenorphine tablets on a prescription for the treatment of drug dependence if that supply would result in more than 50 persons having been supplied with methadone syrup or buprenorphine tablets on prescription at that pharmacy on that day.

Maximum penalty: 20 penalty units.

- (2) For the purposes of subclause (1), if an amount of methadone syrup or buprenorphine tablets is or are supplied for consumption on a day other than the day on which it is supplied, the supply of that amount is taken to have occurred on the day on which the amount is to be consumed.
- (3) Subclause (1) does not apply to the supply of methadone syrup or buprenorphine tablets at a pharmacy in accordance with:
- (a) an exemption granted under clause 93, or
 - (b) a licence issued under Division 2 of Part 8.

93 Exemptions relating to methadone or buprenorphine supply at pharmacies (cf cl 93C of P&TG Reg 1994)

- (1) The owner of a pharmacy may apply in writing to the Director-General for an exemption from clause 92 (1) in relation to the pharmacy.
- (2) The Director-General may require the owner of the pharmacy to furnish such information as is necessary to enable the Director-General to determine the application.
- (3) The Director-General may, by notice in writing served on the owner of the pharmacy, grant the exemption or refuse to grant the exemption.
- (4) An exemption is subject to such conditions as may be specified in the notice referred to in subclause (3) and to such further conditions as the Director-General may from time to time notify in writing to the holder of the exemption.
- (5) The Director-General may from time to time vary or revoke any condition of an exemption by notice in writing served on the holder of the exemption.

Poisons and Therapeutic Goods Regulation 2002

Clause 93

Drugs of addiction (S8)

Part 4

Supply

Division 4

- (6) An exemption remains in force until:
 - (a) the expiry date (if any) specified in the exemption, or
 - (b) it is surrendered or cancelled,whichever occurs first.
- (7) The Director-General may, if the Director-General sees fit, suspend or cancel an exemption by notice in writing served on the holder of the exemption.
- (8) An exemption has no effect during any period of suspension.
- (9) For the removal of doubt, an exemption is not a licence or authority for the purposes of this Regulation.

94 Exceptions to section 28: supply (cf cl 94 of P&TG Reg 1994)

- (1) A medical practitioner is authorised to supply a drug of addiction for a person without an authority under section 29 of the Act if:
 - (a) the medical practitioner is of the opinion that the person requires the use of the drug in the course of treatment as an in-patient in a public or private hospital, and
 - (b) the supply is for a course of treatment for a period of not more than 14 days following the person's admission as an in-patient.
- (2) A medical practitioner is authorised to supply a drug of addiction for a person, for continuous therapeutic use by that person for a period of up to 12 months, without an authority under section 29 of the Act if:
 - (a) the medical practitioner is of the opinion that the person requires the drug for the relief of pain associated with cancer, and
 - (b) a medical practitioner (whether or not the medical practitioner referred to in paragraph (a)) whose qualifications in the diagnosis and treatment of cancer are recognised by the National Specialist Qualification Advisory Committee of Australia, or who is approved by the Director-General for the purposes of this paragraph, has made the diagnosis of cancer, and
 - (c) either the medical practitioner referred to in paragraph (a) or a medical practitioner referred to in paragraph (b) has estimated the person's life expectancy to be 12 months or less.

Clause 94 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

- (3) Subclause (2) does not authorise a medical practitioner to supply the following drugs of addiction in the circumstances referred to in that subclause:

dextromoramide (all forms)

fentanyl (all forms, except transdermal patches)

pethidine (parenteral forms only)

- (4) A medical practitioner is authorised to supply methadone or buprenorphine to a person without an authority under section 29 of the Act if:

- (a) the medical practitioner is an approved prescriber, and
- (b) the person is an inmate in a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*), and
- (c) the methadone or buprenorphine is supplied in oral dosage form for use by the person as a course of treatment while an inmate, and
- (d) immediately before the person became an inmate, a medical practitioner had an authority under section 29 of the Act to prescribe methadone or buprenorphine for the person, or supply methadone or buprenorphine to the person, and
- (e) the methadone or buprenorphine is supplied for the purpose of continuing the treatment that the person was receiving or was about to receive immediately before the person became an inmate.

- (5) A medical practitioner is authorised to supply a drug of addiction to a person without an authority under section 29 of the Act if:

- (a) the person is the subject of such an authority, and
- (b) the medical practitioner is practising at the same premises as the holder of that authority, and
- (c) the supply is in accordance with any conditions to which that authority is subject.

Poisons and Therapeutic Goods Regulation 2002	Clause 95
Drugs of addiction (S8)	Part 4
Supply	Division 4

Subdivision 2 Supply without prescription

95 Supply to be on the basis of a written order (cf cl 95 of P&TG Reg 1994)

- (1) A person who is authorised to supply drugs of addiction (whether by this Division or by an authority or licence under Part 8) may supply a drug of addiction:
 - (a) to any person who is authorised to have possession of such a drug of addiction, or
 - (b) to any other person if the other person is in possession of a certificate, signed by a person so authorised, to the effect that the other person is authorised to obtain the drug of addiction on behalf of the person so authorised.
- (2) A supplier may supply drugs of addiction under this clause on the basis of a written order signed by a person so authorised or on the basis of an order received from such a person by telephone, electronic mail or facsimile.
- (3) A person who orders a drug of addiction by telephone, electronic mail or facsimile must, within 24 hours after doing so, send written confirmation of the order to the supplier.
- (4) If a supplier who supplies a drug of addiction on the basis of an order received by telephone, electronic mail or facsimile does not receive written confirmation of the order within 7 days after the drug was supplied, the supplier must report that fact to the Director-General.
- (5) A person who supplies a drug of addiction in accordance with this clause must keep and cancel the relevant order and (if the drug is supplied as referred to in subclause (1) (b)) the relevant certificate.

Maximum penalty: 20 penalty units.

96 Emergency supply by pharmacists (cf cl 96 of P&TG Reg 1994)

- (1) A pharmacist may supply a person with a drug of addiction in accordance with a direction given under clause 80.
- (2) A pharmacist who supplies a drug of addiction in accordance with this clause:
 - (a) must keep and cancel the prescription that is subsequently sent in confirmation of the direction, or

Clause 96 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

- (b) if such a prescription is not received within 7 days after the drug is supplied, must report that fact to the Director-General.

Maximum penalty: 20 penalty units.

97 Supply by pharmacists for emergency purposes (cf cl 97 of P&TG Reg 1994)

A pharmacist may supply a medical practitioner, dentist or veterinary surgeon with a drug of addiction for emergency use, but only on a written order signed and dated by the medical practitioner, dentist or veterinary surgeon.

98 Supply of amphetamines (cf cl 98 of P&TG Reg 1994)

- (1) This clause applies to the following substances:
- amphetamine
 - dexamphetamine
 - methylamphetamine
 - methylphenidate
 - phendimetrazine
 - phenmetrazine
- (2) A medical practitioner does not require an authority under section 29 of the Act to supply dexamphetamine or methylphenidate to a person for the purpose of testing the suitability of the person to undergo a course of medical treatment involving the use of such a substance so long as the medical practitioner holds an authority under Part 8 to supply such a substance.
- (3) A dentist or veterinary surgeon is not authorised to supply any substance to which this clause applies.
- (4) This clause does not prevent a veterinary surgeon from supplying methylphenidate in solid dosage form to a person for the treatment of an animal.

Poisons and Therapeutic Goods Regulation 2002	Clause 99
Drugs of addiction (S8)	Part 4
Supply	Division 4

Subdivision 3 Supply in hospitals

99 Supply by pharmacists (cf cl 99 of P&TG Reg 1994)

- (1) A pharmacist employed at a hospital may supply a drug of addiction from the pharmacy department of the hospital:
 - (a) on a prescription issued in accordance with Division 3, or
 - (b) on the authorisation (whether in writing, by electronic mail, by facsimile or by any other form of electronic communication approved by the Director-General) of a medical practitioner or dentist, where that authorisation is entered on a patient's medication chart, or
 - (c) on the requisition (whether in writing, by electronic mail, by facsimile or by any other form of electronic communication approved by the Director-General) of a medical practitioner or dentist or of the nurse in charge of the ward in which the drug is to be used or stored.
- (2) The person delivering a drug of addiction to a ward from the pharmacy department of the hospital must obtain a receipt, dated and signed, from the person to whom the drug is delivered.

Maximum penalty: 20 penalty units.

Subdivision 4 Supply generally

100 Unauthorised manufacture and supply of drugs of addiction prohibited (cf cl 102 of P&TG Reg 1994)

- (1) A person must not manufacture or supply a drug of addiction unless the person is authorised to do so by this Division or by an authority or licence under Part 8.
- (2) This Division does not authorise a person to manufacture or supply drugs of addiction in contravention of any prohibition or restriction to which the person is otherwise subject.

Maximum penalty: 20 penalty units.

Clause 101 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

101 Possession of drugs of addiction by medical practitioners, dentists, veterinary surgeons and hospital pharmacists (cf cl 103 of P&TG Reg 1994)

- (1) The following persons are authorised to have possession of, and to supply, drugs of addiction:
- (a) a medical practitioner, dentist or veterinary surgeon,
 - (b) the chief pharmacist of, and any pharmacist employed in dispensing medicines at, any public hospital or other public institution,
 - (c) the chief nurse of a hospital in which a pharmacist is not employed,
 - (d) the nurse in charge of a ward in a public hospital,
 - (e) a nurse who is approved for the time being by the Director-General for the purposes of this clause, or who belongs to a class of nurses so approved,
 - (f) any other nurse, but for the purpose only of administering doses of such drugs to individual patients in a hospital,
 - (g) a person:
 - (i) who is employed by the Ambulance Service of New South Wales as an ambulance officer or as an air ambulance flight nurse, and
 - (ii) who is approved for the time being by the Ambulance Service of New South Wales for the purposes of this clause.
- (2) The following persons are authorised to have possession of (but not to supply) drugs of addiction:
- (a) a person in charge of a laboratory used for the purpose of analysis, research or instruction, being a person who is approved for the time being by the Director-General for the purposes of this clause,
 - (b) an analyst,
 - (c) a person acting under the direct personal supervision of a person referred to in paragraph (a) or (b).
- (3) This clause authorises a person referred to in subclause (1) or (2) to have possession of, or to supply, drugs of addiction for the purpose only of the lawful practice of the person's profession or occupation.

Poisons and Therapeutic Goods Regulation 2002

Clause 101

Drugs of addiction (S8)

Part 4

Supply

Division 4

- (4) This clause does not authorise any person to have possession of, or to supply, hallucinogens.
- (5) This clause does not authorise a dentist or veterinary surgeon to have possession of, or to supply, any of the following substances:
- amphetamine
 - dexamphetamine
 - methylamphetamine
 - methylphenidate (other than methylphenidate in solid dosage form)
 - phendimetrazine
 - phenmetrazine

102 Possession of drugs of addiction by retail pharmacists (cf cl 104 of P&TG Reg 1994)

- (1) A retail pharmacist is authorised:
- (a) to have possession of drugs of addiction, and
 - (b) to manufacture drugs of addiction and any preparation, admixture or extract of a drug of addiction, and
 - (c) to supply a drug of addiction:
 - (i) to a person who has a prescription for the drug, or
 - (ii) to the chief nurse of a private hospital or nursing home,
 but only if he or she does so at the premises of, and in the course of carrying on the business of, the pharmacy.
- (2) A retail pharmacist must not supply a drug of addiction to the chief nurse of a private hospital or nursing home unless the drug is supplied in accordance with a written order signed by the chief nurse.
- (3) The chief nurse must not sign an order for any quantity of a drug of addiction if the quantity of that drug that will be in the possession of the chief nurse as a result of the order being filled will be in excess of the maximum quantity allowed by clause 103.
- (4) This clause does not authorise a retail pharmacist to have possession of, or to manufacture or supply, hallucinogens.
- Maximum penalty: 20 penalty units.

Clause 103 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

103 Possession of drugs of addiction by chief nurses of private hospitals
(cf cl 105 of P&TG Reg 1994)

- (1) The chief nurse of a private hospital or nursing home is authorised to have possession of the following drugs of addiction in the following quantities:
 - (a) no more than 5 ampoules, each of 1 millilitre or less, of morphine sulfate, at a concentration of 30 milligrams or less of morphine sulfate per millilitre,
 - (b) no more than 5 ampoules, each of 2 millilitres or less, of pethidine hydrochloride, at a concentration of 50 milligrams or less of pethidine hydrochloride per millilitre.
- (2) The chief nurse must not allow any such drug of addiction to be used otherwise than for administration to a patient in accordance with the directions of a medical practitioner or dentist.
- (3) This clause does not limit the power of a chief nurse to have possession of drugs of addiction, or to supply drugs of addiction to patients, in accordance with a licence under Part 8.

Maximum penalty: 20 penalty units.

104 Possession of drugs of addiction by masters of ships (cf cl 106 of P&TG Reg 1994)

- (1) The master of a ship is authorised to have possession of drugs of addiction that are required by law to be carried on the ship.
- (2) A pharmacist may supply drugs of addiction to the master of a ship if the pharmacist is authorised to do so by an authority under Part 8.
- (3) A person must not supply a drug of addiction to the master of a ship unless the person receives:
 - (a) a written order for the drug (in duplicate) signed by the master of the ship, and
 - (b) a written statement (in duplicate) signed by the master of the ship, being a statement to the effect that the drug is required by law to be carried on the ship, and
 - (c) a certificate, issued by the ship's agent in New South Wales, to the effect that the signatures appearing on the order and statement are those of the master of the ship.

Poisons and Therapeutic Goods Regulation 2002	Clause 104
Drugs of addiction (S8)	Part 4
Supply	Division 4

- (4) A person who supplies a drug of addiction in accordance with this clause:
- (a) must keep and cancel the relevant order and statement, and
 - (b) must cancel the duplicate copies of the order and statement and forward them to the Director-General, together with the certificate issued by the ship's agent, within 24 hours.
- (5) This clause does not authorise the master of a ship to have possession of, or to supply, hallucinogens.
- Maximum penalty: 20 penalty units.

105 Possession of hallucinogens (cf cl 107 of P&TG Reg 1994)

A person must not obtain possession of a hallucinogen unless the person is authorised to do so by an authority or licence under Part 8.

Maximum penalty: 20 penalty units.

106 Authorities to possess and administer drugs of addiction (cf cl 108 of P&TG Reg 1994)

- (1) The following persons are authorised to have possession of drugs of addiction, but only if authorised to do so by an authority under Part 8:
- (a) a person in an isolated locality,
 - (b) a person in charge of a first aid post,
 - (c) a person representing an organisation established for search and rescue,
 - (d) any other person the Minister may from time to time approve.
- (2) A person who is so authorised to have possession of a drug of addiction is also authorised to administer the drug to another person in an emergency.

107 Mode of delivery (cf cl 109 of P&TG Reg 1994)

- (1) A person who supplies drugs of addiction must do so personally, by registered mail or by carrier.
- (2) A person who supplies a drug of addiction personally:
- (a) must deliver it to the person being supplied at the premises of the supplier or at the premises of the person being supplied, and
 - (b) must obtain a receipt, dated and signed, from the person to whom it is delivered.

Clause 107 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 4 Supply

- (3) A person who supplies a drug of addiction by registered mail must obtain and keep written evidence of postage of the drug.
- (4) A person who supplies a drug of addiction by carrier must obtain and keep written evidence of the consignment of the drug.
- (5) A person who supplies a drug of addiction must not deliver a drug of addiction by carrier otherwise than under an arrangement under which the carrier undertakes:
 - (a) to obtain a receipt, dated and signed, from the person to whom the drug is delivered, and
 - (b) to deliver the receipt to the supplier.

Maximum penalty: 20 penalty units.

108 Delivery by carrier (cf cl 110 of P&TG Reg 1994)

- (1) A carrier is authorised to be in possession of a package containing a drug of addiction, but for the purpose only of delivering it to the person to whom it is addressed.
- (2) A dealer (other than a medical practitioner, dentist, veterinary surgeon or pharmacist) who supplies a drug of addiction by post or by carrier must ensure that:
 - (a) the drug is contained in a package that has at least one opaque covering, and
 - (b) no other goods are contained in the package, and
 - (c) the package contains a document:
 - (i) listing the contents of the package, and
 - (ii) bearing the words "SCHEDULE EIGHT—CHECK CAREFULLY" in bold face sans serif capital letters with a letter height of at least 12.5 millimetres, and
 - (d) the outside of the package does not indicate that it contains a drug of addiction, and
 - (e) the package is properly addressed to the person to whom the drug is being supplied.
- (3) This clause does not prevent a dealer from supplying a drug of addiction by means of a separately wrapped inner package within an outer package containing other goods so long as:
 - (a) a document listing the contents of the inner package is contained in the inner package, and

Poisons and Therapeutic Goods Regulation 2002	Clause 108
Drugs of addiction (S8)	Part 4
Supply	Division 4

- (b) the inner package is marked with the words “SCHEDULE EIGHT—CHECK CAREFULLY” in bold face sans serif capital letters with a letter height of at least 12.5 millimetres, and
- (c) the outside of the outer package does not indicate that it contains a drug of addiction, and
- (d) the outer package is properly addressed to the person to whom the drug is being supplied.

Maximum penalty: 20 penalty units.

109 Quantity and purpose of supply to be appropriate (cf cl 111 of P&TG Reg 1994)

A medical practitioner, dentist, veterinary surgeon or pharmacist must not supply any drug of addiction in a quantity, or for a purpose, that does not accord with the recognised therapeutic standard of what is appropriate in the circumstances.

Maximum penalty: 20 penalty units.

Division 5 Records of supply

Subdivision 1 Drug registers otherwise than for hospital wards

110 Application of Subdivision (cf cl 112 of P&TG Reg 1994)

This Subdivision applies to drugs of addiction that are kept at any place (including the pharmacy of a hospital) for the purposes of manufacture, supply, research or testing, but does not apply to drugs of addiction that are kept in a hospital ward or that are in the possession of a carrier for the purpose of their being delivered to the persons to whom they are addressed.

111 Drug registers to be kept (cf cl 113 of P&TG Reg 1994)

- (1) A person who has possession of drugs of addiction at any place must keep a separate register (a *drug register*) at that place.
- (2) A drug register is to be in the form of a book whose pages:
 - (a) are consecutively numbered, and

Clause 111 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 5 Records of supply

- (b) are so bound that they cannot be removed or replaced without trace, and
 - (c) contain provision for the inclusion of the particulars required to be entered in it.
- (3) Separate pages of the register must be used for each drug of addiction, and for each form and strength of the drug.
- (4) The Director-General may from time to time approve the keeping of a drug register in any other form.

Maximum penalty: 20 penalty units.

112 Entries in drug registers (cf cl 114 of P&TG Reg 1994)

- (1) On the day on which a person manufactures, receives, supplies, administers or uses a drug of addiction at any place, the person must enter in the drug register for that place such of the following details as are relevant to the transaction:
- (a) the quantity of the drug manufactured, received, supplied, administered or used,
 - (b) the name and address of the person to, from or by whom the drug was manufactured, received, supplied, administered or used,
 - (c) in the case of a drug that has been administered to an animal or supplied for the treatment of an animal, the species of animal and the name and address of the animal's owner,
 - (d) in the case of a drug that is supplied or administered on prescription:
 - (i) the prescription reference number, and
 - (ii) the name of the medical practitioner, dentist or veterinary surgeon by whom the prescription was issued,
 - (e) in the case of a drug that has been administered to a patient, the name of the medical practitioner or dentist by whom, or under whose direct personal supervision, the drug was administered,
 - (f) in the case of a drug that has been administered to an animal, the name of the veterinary surgeon by whom, or under whose direct personal supervision, the drug was administered,

Poisons and Therapeutic Goods Regulation 2002	Clause 112
Drugs of addiction (S8)	Part 4
Records of supply	Division 5

- (g) in the case of a drug that has been administered by a person authorised to do so by an authority under Part 8, details of the circumstances requiring administration of the drug,
 - (h) in the case of a drug that has been used by a person who is in charge of a laboratory, or is an analyst, the purpose for which the drug was used,
 - (i) the quantity of drugs of addiction of that kind held at that place after the transaction takes place.
- (2) Each entry in a drug register must be dated and signed by the person by whom it is made.

Maximum penalty: 20 penalty units.

113 Supply on prescription to be recorded (cf cl 115 of P&TG Reg 1994)

- (1) A pharmacist who supplies a drug of addiction on prescription must record the following details in a manner approved by the Director-General:
- (a) the details required by clause 77 (1) to be included in the prescription,
 - (b) a unique reference number for the prescription,
 - (c) the date on which the substance was supplied,
 - (d) the name of the person by whom the substance was supplied.
- (2) A prescription for the supply of a drug of addiction in a hospital need not be recorded so long as the chief pharmacist of the hospital keeps the prescription or a copy of the prescription.

Maximum penalty: 20 penalty units.

Subdivision 2 Drug registers for hospital wards

114 Application of Subdivision (cf cl 116 of P&TG Reg 1994)

This Subdivision applies to drugs of addiction that are kept in a hospital ward, but does not apply to drugs of addiction that are kept in a pharmacy at the hospital.

Clause 115 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 5 Records of supply

115 Ward registers to be kept (cf cl 117 of P&TG Reg 1994)

- (1) The nurse in charge of a hospital ward must keep a register of drugs of addiction (a *ward register*) in that ward.
- (2) A ward register is to be in the form of a book whose pages:
 - (a) are consecutively numbered, and
 - (b) are so bound that they cannot be removed or replaced without trace, and
 - (c) contain provision for the inclusion of the particulars required to be entered in it.
- (3) Separate pages of the register must be used for each drug of addiction, and for each form and strength of the drug.
- (4) The Director-General may from time to time approve the keeping of a ward register in any other form.

Maximum penalty: 20 penalty units.

116 Entries in ward registers (cf cl 118 of P&TG Reg 1994)

- (1) On the day on which a person receives, supplies or administers a drug of addiction in any ward, the person must enter in the ward register such of the following details as are relevant to the transaction:
 - (a) the quantity of the drug received, supplied or administered,
 - (b) the time of day when the drug was received, supplied or administered,
 - (c) in the case of a drug that is supplied or administered to a patient:
 - (i) the name of the patient to whom the drug was supplied or administered, and
 - (ii) the name of the person by whom the supply or administration of the drug was prescribed or directed,
 - (d) the quantity of drugs of addiction of that kind held in the ward after the transaction takes place.
- (2) The entry must be dated and signed by the person by whom it is made and countersigned:
 - (a) in the case of an entry relating to the receipt of a drug of addiction, by a person who witnessed its receipt, or

Poisons and Therapeutic Goods Regulation 2002	Clause 116
Drugs of addiction (S8)	Part 4
Records of supply	Division 5

- (b) in the case of an entry relating to the supply or administration of a drug of addiction:
 - (i) by the person who supervised or directed its supply or administration, or
 - (ii) by a person who witnessed its supply or administration.

Maximum penalty: 20 penalty units.

Subdivision 3 Records generally

117 Periodical inventory of drugs of addiction stock (cf cl 119 of P&TG Reg 1994)

- (1) The person responsible for maintaining a drug register (including a ward register) at any place:
 - (a) must, during the prescribed periods, make an accurate inventory of all drugs of addiction at that place, and
 - (b) must endorse the relevant drug register, immediately under the last entry for each drug of addiction, with the quantity of each drug of addiction actually held and the date on which the inventory was made, and
 - (c) must sign each entry.
- (2) The prescribed periods for the purposes of subclause (1) (a) are:
 - (a) March and September each year, or
 - (b) if the Director-General determines some other periods, either generally or in specified circumstances, the periods so determined.
- (3) A person who assumes control for a period of one month or more over any place at which drugs of addiction are held must, immediately on assuming control, make an inventory and endorse the drug register as if the inventory were an inventory made under this clause.

Maximum penalty: 20 penalty units.

118 Loss or destruction of registers (cf cl 120 of P&TG Reg 1994)

Immediately after a drug register (including a ward register) is lost or destroyed, the person responsible for keeping the register:

- (a) must give written notice to the Director-General of that fact and of the circumstances of the loss or destruction, and

Clause 118 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 5 Records of supply

- (b) must make an accurate inventory of all drugs of addiction held at the premises concerned and enter, in a new drug register, the particulars of the drugs so held.

Maximum penalty: 20 penalty units.

Division 6 Administration

119 Administration by persons employed at a hospital (cf cl 100 of P&TG Reg 1994)

- (1) A person employed at a hospital must not administer a drug of addiction to a patient in the hospital otherwise than on the direction of a medical practitioner or dentist.
- (2) Such a direction:
 - (a) must be given in writing (otherwise than by electronic mail or facsimile) or in any other manner approved by the Director-General for the purposes of this paragraph, or
 - (b) in an emergency, may be given:
 - (i) by electronic mail or by facsimile, or
 - (ii) orally, by telephone or in any other manner approved by the Director-General for the purposes of this subparagraph.
- (3) A medical practitioner or a dentist who gives a direction under subclause (2) (b) (ii) must:
 - (a) as soon as is practicable (and in any case within the next 24 hours) either:
 - (i) sign an entry in the patient's medical history confirming that he or she has given the direction, or
 - (ii) confirm the direction by electronic mail or by facsimile, and
 - (b) attend to review the patient as soon as he or she considers it appropriate in the circumstances of the case.
- (4) If confirmation is not received within 7 days after the drug of addiction is administered, the person by whom the drug was administered must report that fact to the Director-General.

Poisons and Therapeutic Goods Regulation 2002	Clause 119
Drugs of addiction (S8)	Part 4
Administration	Division 6

- (5) A medical practitioner or a dentist who, by electronic mail or by facsimile, gives or confirms a direction for the administration of a drug of addiction to a patient must also attend to review the patient as soon as he or she considers it appropriate in the circumstances of the case.
- (6) Subclauses (3), (4) and (5) do not apply to the administration of a drug of addiction to an inmate of a correctional centre (within the meaning of the *Crimes (Administration of Sentences) Act 1999*) if confirmation of the direction for the administration of the substance has been given in accordance with the requirements of a protocol approved by the Director-General.

Maximum penalty: 20 penalty units.

120 Self-administration by medical practitioners and dentists (cf cl 101 of P&TG Reg 1994)

- (1) For the purposes of Division 1 of Part 2 of the *Drug Misuse and Trafficking Act 1985*:
- a medical practitioner is authorised to self-administer a drug of addiction, but only if the medical practitioner does so for the purposes of medical treatment, and
 - a dentist is authorised to self-administer a drug of addiction, but only if the dentist does so for the purposes of dental treatment.
- (2) Subclause (1) does not authorise a medical practitioner or dentist to self-administer a drug of addiction for more than 7 days.
- (3) However, a medical practitioner may self-administer a drug of addiction for more than 7 days if the medical practitioner does so in accordance with an authority issued under section 29 of the Act.

Division 7 Miscellaneous

121 Prescribed drugs of addiction: section 28 (cf cl 121 of P&TG Reg 1994)

For the purposes of section 28 (c) of the Act, the following substances are prescribed drugs of addiction:

amphetamine
dexamphetamine
methamphetamine

Clause 121 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 7 Miscellaneous

methylphenidate

phendimetrazine

phenmetrazine

122 Loss or theft of drugs of addiction (cf cl 122 of P&TG Reg 1994)

A person who is authorised to be in possession of drugs of addiction must immediately notify the Director-General if the person loses a drug of addiction or if a drug of addiction is stolen from him or her.

Maximum penalty: 20 penalty units.

123 Drugs of addiction not to be destroyed (cf cl 123 of P&TG Reg 1994)

- (1) A person who is authorised to be in possession of a drug of addiction must not wilfully destroy the drug or allow the drug to be destroyed.
- (2) This clause does not apply to the destruction of a drug of addiction carried out:
 - (a) by or under the direct personal supervision of a police officer or an inspector or by or under the direct personal supervision of a person authorised, whether generally or in a particular case, by an authority under Part 8 held by the person, or
 - (b) by or under the direct personal supervision of a person who is in charge of a laboratory, or who is an analyst, but only if the destruction is carried out in accordance with an authority under Part 8 held by the person, or
 - (c) by a person to whom the drug has been supplied by, or in accordance with the prescription of, a medical practitioner, dentist or veterinary surgeon, or
 - (d) in accordance with clause 124 or 125.

Maximum penalty: 20 penalty units.

124 Destruction of unusable drugs of addiction in public hospital wards (cf cl 124 of P&TG Reg 1994)

- (1) The nurse in charge of a ward in a public hospital having responsibility for a drug of addiction that becomes unusable must immediately notify the chief pharmacist of the hospital of the fact and of the circumstances under which the drug became unusable.

Poisons and Therapeutic Goods Regulation 2002

Clause 124

Drugs of addiction (S8)

Part 4

Miscellaneous

Division 7

- (2) A pharmacist employed in a public hospital:
- (a) may (but only in the presence of a nurse) destroy the drug of addiction, and
 - (b) in that event, must record the fact of the destruction of the drug in the ward register.
- (3) The entry must be dated and signed by the pharmacist and countersigned by the nurse who witnessed the destruction of the drug.
- (4) In the case of a public hospital for which there is no pharmacist, the functions of a chief pharmacist or pharmacist under this clause are instead the functions of:
- (a) the chief nurse of the hospital, or
 - (b) the medical superintendent of the hospital,
- as the chief executive officer of the hospital may determine.
- Maximum penalty: 20 penalty units.

125 Destruction of unwanted drugs of addiction in a private hospital, nursing home or day procedure centre (cf cl 124A of P&TG Reg 1994)

- (1) A retail pharmacist who is engaged in the supply of restricted substances or drugs of addiction:
- (a) to a private hospital, nursing home or day procedure centre, or
 - (b) to a patient in a private hospital, nursing home or day procedure centre,
- is authorised to destroy any unwanted drug of addiction on the premises of that private hospital, nursing home or day procedure centre.
- (2) Subclause (1) applies only where the drug is destroyed in the presence of:
- (a) where the private hospital, nursing home or day procedure centre is the holder of a licence under Division 2 of Part 8, the person who is named on the licence as being responsible for the storage of drugs of addiction, or
 - (b) in any other case, the chief nurse of the private hospital, nursing home or day procedure centre.

Clause 125 Poisons and Therapeutic Goods Regulation 2002

Part 4 Drugs of addiction (S8)

Division 7 Miscellaneous

- (3) A pharmacist who destroys a drug of addiction in accordance with this clause:
- (a) must record the fact of the destruction of the drug by an entry in the drug register maintained by the private hospital, nursing home or day procedure centre, and
 - (b) must ensure that the entry is dated and signed by the pharmacist, and is countersigned by a person who witnessed the destruction of the drug.

Maximum penalty: 20 penalty units.

Poisons and Therapeutic Goods Regulation 2002

Clause 126

Supply by wholesale

Part 5

Part 5 Supply by wholesale

126 **Authorised possession for supply by wholesale** (cf cl 125 of P&TG Reg 1994)

- (1) For the purposes of paragraph (d) of the definition of *supply by wholesale* in section 4 (1) of the Act, each person who is authorised by a provision of Appendix C to be in possession of a substance or goods is authorised to be supplied with wholesale quantities of the substance or goods.
- (2) If the relevant provision of Appendix C includes a maximum concentration or strength in relation to a particular substance, the authority to be supplied with wholesale quantities of the substance extends only to substances in a concentration or strength not exceeding that maximum.

127 **Restrictions on supply by wholesale** (cf cl 126 of P&TG Reg 1994)

A person must not supply by wholesale any Schedule 2, 3 or 4 substance that is for therapeutic use:

- (a) to any person in another State or Territory, unless the person being supplied with the substance is authorised by a law of that State or Territory to obtain or supply the substance, or
- (b) to any person outside Australia, unless the person supplying the substance is authorised to do so by a law of the Commonwealth.

Maximum penalty: 15 penalty units.

128 **Records of supply by wholesale** (cf cl 127 of P&TG Reg 1994)

- (1) A person who supplies by wholesale any regulated goods must issue an invoice to the person being supplied and must keep a copy of the invoice.
- (2) Each invoice must show:
 - (a) the date of the supply, and
 - (b) the name and address of the person being supplied, and
 - (c) the name, strength and quantity of the substance supplied.

Maximum penalty: 20 penalty units.

Clause 129 Poisons and Therapeutic Goods Regulation 2002

Part 5 Supply by wholesale

129 Distribution of free samples (cf cl 128 of P&TG Reg 1994)

Any person:

- (a) who is engaged in the manufacture, or supply by wholesale, of any poison or restricted substance for therapeutic use, or
- (b) who is acting as an agent of a person so engaged,

must not supply any such poison or restricted substance by way of distribution of free samples otherwise than in a manner approved for the time being by the Director-General.

Maximum penalty: 20 penalty units.

130 Storage of therapeutic goods for human use (cf cl 128A of P&TG Reg 1994)

- (1) A person who is engaged in the supply by wholesale of therapeutic goods for human use must ensure that the recommendations and requirements of the Wholesaling Code of Practice are complied with.

Maximum penalty: 20 penalty units.

- (2) In this clause, *Wholesaling Code of Practice* means the Code of Practice entitled *Australian Code of Good Wholesaling Practice for Therapeutic Goods for Human Use*, published by the Commonwealth Government, as in force from time to time.

Poisons and Therapeutic Goods Regulation 2002	Clause 131
Preparation, handling, supply and labelling of therapeutic goods	Part 6
Preparation and handling of exposed substances	Division 1

Part 6 Preparation, handling, supply and labelling of therapeutic goods

Division 1 Preparation and handling of exposed substances

131 Application of Division (cf cl 136A of P&TG Reg 1994)

This Division applies to all therapeutic goods, and all substances used in the preparation of therapeutic goods, that are unpackaged or otherwise susceptible to contamination (in this Division referred to as *exposed substances*).

132 Preparation and handling generally (cf cl 136B of P&TG Reg 1994)

A medical practitioner, nurse practitioner, dentist, veterinary surgeon, pharmacist or practitioner of alternative medicine must ensure that:

- (a) all exposed substances that are prepared or handled on his or her business premises are free from any contamination and from anything that is likely to render them harmful or to have an adverse effect on their efficacy, and
- (b) all persons that he or she employs in the preparation or handling of exposed substances comply with the requirements of this Division.

Maximum penalty: 20 penalty units.

133 Personal cleanliness (cf cl 136C of P&TG Reg 1994)

A person who is involved in the preparation or handling of exposed substances:

- (a) must be clean and must wear clean clothing, and
- (b) must clean his or her hands (by means of soap or detergent and water or by some other suitable cleaning process) before starting work and before resuming work after using the toilet.

Maximum penalty: 10 penalty units.

Clause 134	Poisons and Therapeutic Goods Regulation 2002
Part 6	Preparation, handling, supply and labelling of therapeutic goods
Division 1	Preparation and handling of exposed substances

134 Spitting and smoking etc (cf cl 136D of P&TG Reg 1994)

A person who is involved in the preparation or handling of exposed substances, or who is in a place that is used for preparing or handling exposed substances, must not:

- (a) urinate, defecate or spit, or
- (b) use, smoke or chew tobacco or any other similar substance, or
- (c) sit, walk, stand or lie on any surface used for the purpose of preparing or handling exposed substances.

Maximum penalty: 10 penalty units.

135 Contact with hands (cf cl 136E of P&TG Reg 1994)

A person who is involved in the preparation or handling of exposed substances:

- (a) must not have any unnecessary human contact with any such substance, and
- (b) must not handle any such substance with his or her fingers, but must use a suitable implement to do so, and
- (c) must not touch his or her mouth, eye, ear, nose or scalp while handling any such substance, and
- (d) must not wipe his or her hands otherwise than with a clean towel, and
- (e) must not place, so that it can come into contact with any such substance, any ticket, label or other article that is unclean or liable to contaminate any such substance or that has been in contact with the person's mouth, and
- (f) must not place in his or her pockets any implement used in preparing or handling any such substance.

Maximum penalty: 10 penalty units.

136 Contact with mouth (cf cl 136F of P&TG Reg 1994)

A person who is involved in the preparation or handling of exposed substances must not apply to his or her mouth any implement used for preparing or handling any such substance.

Maximum penalty: 10 penalty units.

Poisons and Therapeutic Goods Regulation 2002	Clause 137
Preparation, handling, supply and labelling of therapeutic goods	Part 6
Preparation and handling of exposed substances	Division 1

137 Bandages (cf cl 136G of P&TG Reg 1994)

A person who is wearing an unclean bandage or a medicated or absorbent bandage must not prepare or handle exposed substances, or use any appliance, article or fitting for preparing or handling exposed substances, unless the bandage is protected and covered with a waterproof covering.

Maximum penalty: 10 penalty units.

138 Persons suffering from infectious diseases (cf cl 136H of P&TG Reg 1994)

- (1) A person who is suffering from an infectious disease, or who has any exposed cut, sore, wound or skin eruption, must not prepare or handle exposed substances, or use any appliance, article or fitting for preparing or handling exposed substances.

Maximum penalty: 10 penalty units.

- (2) This clause does not apply to an activity carried out by a person if the Director-General has certified in writing that the person may carry out that activity and the person complies with any conditions contained in the certificate.

139 Appliances, articles, fittings and surfaces (cf cl 136I of P&TG Reg 1994)

- (1) A person who is involved in the preparation or handling of exposed substances must not use any appliance, article or fitting for preparing or handling any such substance unless the appliance, article or fitting:
- (a) is designed and constructed so as to be easily cleaned, and
 - (b) is kept clean.

Maximum penalty: 10 penalty units.

- (2) A person who is involved in the preparation or handling of exposed substances must not cause or allow any such substance to come into contact with any surface used for preparing or handling any such substance unless the surface:

- (a) is designed and constructed so as to be easily cleaned, and
- (b) is kept clean.

Maximum penalty: 10 penalty units.

Clause 140	Poisons and Therapeutic Goods Regulation 2002
Part 6	Preparation, handling, supply and labelling of therapeutic goods
Division 2	Supply of therapeutic goods

Division 2 Supply of therapeutic goods

140 Premises to be free of vermin (cf cl 136J of P&TG Reg 1994)

A person must not use any premises for preparing, handling or supplying therapeutic goods unless the premises are clean and free from vermin.

Maximum penalty: 10 penalty units.

141 Animals not permitted on premises (cf cl 136K of P&TG Reg 1994)

- (1) A person who uses any premises for preparing, handling or supplying therapeutic goods must not cause or permit any animal or bird to be in those premises.

Maximum penalty: 10 penalty units.

- (2) This clause does not apply to the premises of a veterinary surgeon.

Division 3 Labelling of unscheduled therapeutic substances

142 Labelling of unscheduled therapeutic substances (cf cl 136L of P&TG Reg 1994)

- (1) This clause applies to all therapeutic goods that are not therapeutic devices and are not included in a Schedule of the Poisons List (in this clause referred to as *unscheduled therapeutic substances*).
- (2) A medical practitioner, nurse practitioner, dentist, veterinary surgeon, pharmacist or practitioner of alternative medicine must ensure that any unscheduled therapeutic substances that are supplied from his or her business premises for therapeutic use are labelled in accordance with the requirements of Appendix A.

Maximum penalty: 10 penalty units.

- (3) This clause does not apply to the supply of a substance by a person referred to in subclause (2) if:
 - (a) the substance is supplied, unopened, in the container in which it was received by the person, and
 - (b) the container is labelled in accordance with the requirements of the Commonwealth therapeutic goods laws.

Poisons and Therapeutic Goods Regulation 2002

Clause 143

Analysis and disposal of seized goods

Part 7

Analysis of seized goods

Division 1

Part 7 Analysis and disposal of seized goods

Division 1 Analysis of seized goods

143 Samples for analysis (cf cl 136M of P&TG Reg 1994)

- (1) An inspector who seizes a portion or sample of regulated goods for analysis:
 - (a) must immediately notify the person from whom the portion or sample was taken of the inspector's intention to submit it for analysis, and
 - (b) must divide the portion or sample into 3 parts and properly fasten and seal each part or (if that is impracticable) properly fasten and seal the whole portion or sample.
- (2) If the portion or sample is divided into 3 parts, the inspector:
 - (a) must return one part to the person from whom it was taken, and
 - (b) must forward another part for analysis, and
 - (c) must retain the remaining part.
- (3) If the portion or sample is not divided into 3 parts, the inspector must forward the whole of it for analysis.
- (4) For the purposes of this clause, a portion or sample is properly fastened and sealed if:
 - (a) it is put into a container, and
 - (b) the container is marked with the name and address of the person from whom it was taken, and
 - (c) the container is fastened and sealed so as to prevent the container from being opened, or the name and address being removed, without the seal's being broken.

144 Payment for sample (cf cl 136N of P&TG Reg 1994)

Payment for a portion or sample of regulated goods that is seized for analysis is to be made by the State, at current market value:

- (a) to the person from whom those goods were taken, or
- (b) if the person was not the owner of those goods, to the owner.

Clause 145 Poisons and Therapeutic Goods Regulation 2002

Part 7 Analysis and disposal of seized goods

Division 2 Disposal of seized goods

Division 2 Disposal of seized goods

145 Release of seized goods (cf cl 136O of P&TG Reg 1994)

- (1) Seized goods are to be released at the end of the period of 6 months after they were seized unless, before the end of that period, a Magistrate makes an order under this Division directing them to be forfeited to the State.
- (2) This clause does not prevent seized goods from being released before the expiration of that period.
- (3) Seized goods may be released:
 - (a) by or at the direction of the inspector who seized them or by or at the direction of the Director-General, and
 - (b) to the owner of the goods or the person in whose possession, care, custody or control they were at the time of the seizure.
- (4) This clause does not require the release of any goods that have been damaged or destroyed in the course of analysis.
- (5) A Magistrate may, in any particular case, extend the period referred to in subclause (1).

146 Order that seized goods be forfeited (cf cl 136P of P&TG Reg 1994)

- (1) A Magistrate may order that seized goods specified in the order be forfeited to the State on the expiration of any period so specified.
- (2) Such an order does not have effect in respect of any goods that have been released under this Division.
- (3) Before a Magistrate makes an order under this clause, the Magistrate may require such notice as he or she thinks fit to be given to such persons as he or she considers appropriate.

147 Order that expenses be paid (cf cl 136Q of P&TG Reg 1994)

- (1) A Magistrate may order that a person from whom goods have been seized under section 43 of the Act (being a person who has been convicted of an offence in connection with those goods) must pay to the Director-General such amount (not exceeding \$500) as the Magistrate considers appropriate to cover the reasonable costs of:

Poisons and Therapeutic Goods Regulation 2002	Clause 147
Analysis and disposal of seized goods	Part 7
Disposal of seized goods	Division 2

- (a) seizing the goods, and
 - (b) dealing with them under this Division, and
 - (c) conducting any analysis for which they have been submitted.
- (2) Before a Magistrate makes an order under this clause, the Magistrate may require such notice as he or she thinks fit to be given to such persons as he or she considers appropriate.
- (3) An order under this clause operates as an order under the *Local Courts (Civil Claims) Act 1970*, and is enforceable as such an order under the provisions of that Act.

148 Storage of and interference with seized goods (cf cl 136R of P&TG Reg 1994)

- (1) Subject to any direction of the Director-General, seized goods may be kept or stored:
- (a) at the premises at which they were seized, or
 - (b) at such other place as the inspector who seized them considers appropriate.
- (2) A person must not remove, alter or interfere in any way with seized goods without the authority of an inspector or the Director-General.
- Maximum penalty: 20 penalty units.

149 Forfeiture of goods with consent (cf cl 136S of P&TG Reg 1994)

If the owner of seized goods or the person in whose possession, care, custody or control they were at the time of their seizure consents in writing to their forfeiture, the goods are, by virtue of that consent, forfeited to the State.

150 Disposal of forfeited goods (cf cl 136T of P&TG Reg 1994)

Any goods forfeited under this Division may be disposed of in such manner as the Director-General may direct, either generally or in any particular case or class of cases.

Clause 151 Poisons and Therapeutic Goods Regulation 2002

Part 8 Licences and authorities

Division 1 Licences to supply Schedule 2 substances

Part 8 Licences and authorities

Division 1 Licences to supply Schedule 2 substances

151 Applications for licences (cf cl 137 of P&TG Reg 1994)

- (1) Any person who conducts, or proposes to conduct, a retail shop may apply for a licence to supply Schedule 2 substances from the shop.
- (2) The application:
 - (a) must be in the form approved by the Director-General, and
 - (b) must be accompanied by an application fee of \$55, and
 - (c) must be lodged with the Director-General.
- (3) The Director-General may require an applicant to furnish such further information as is necessary to enable the Director-General to determine the application.

152 Consideration of applications (cf cl 138 of P&TG Reg 1994)

- (1) After considering an application under this Division, the Director-General may issue the licence for which the application is made or may refuse the application.
- (2) In particular, the Director-General may refuse an application if of the opinion that the applicant is not a fit and proper person to hold the licence for which the application is made.
- (3) A licence may not be issued or renewed unless:
 - (a) in the case of premises the subject of an existing licence issued before 7 April 1989 that is in force, the Director-General is satisfied that the premises to which the application relates are at least 6.5 kilometres (measured along the shortest practicable route) from the premises of the nearest retail pharmacist, or
 - (b) in any other case, the Director-General is satisfied that the premises to which the application relates are at least 20 kilometres (measured along the shortest practicable route) from the premises of the nearest retail pharmacist.
- (4) The application fee is to be refunded if the application is refused.

Poisons and Therapeutic Goods Regulation 2002	Clause 153
Licences and authorities	Part 8
Licences to supply Schedule 2 substances	Division 1

153 Licences (cf cl 139 of P&TG Reg 1994)

- (1) A licence is to be in the form for the time being approved by the Director-General.
- (2) A licence remains in force until suspended, cancelled or surrendered.
- (3) A licence is not transferable.

154 Conditions of licences (cf cl 140 of P&TG Reg 1994)

- (1) A licence is subject to such conditions as the Director-General may endorse on the licence and to such further conditions as the Director-General may from time to time impose by order in writing served on the holder of the licence.
- (2) The Director-General may from time to time vary or revoke any condition of a licence by means of a further order in writing served on the holder of the licence.
- (3) A licence is ineffective unless its conditions are complied with.

155 Annual licence fees (cf cl 141 of P&TG Reg 1994)

The holder of a licence under this Division must, on or before 31 March in each year following that in which the licence was issued, pay to the Director-General an annual licence fee of \$55.

Division 2 Licences to supply by wholesale poisons and restricted substances

156 Applications for licences (cf cl 141A of P&TG Reg 1994)

- (1) Any person may apply to the Director-General for a licence to supply by wholesale any poisons or restricted substances.
- (2) The application:
 - (a) must be in the form approved by the Director-General, and
 - (b) must be accompanied by the relevant application fee, and
 - (c) must be lodged with the Director-General.
- (3) The relevant application fee is:
 - (a) \$50, in the case of an application by a public institution, or
 - (b) \$335, in any other case.

Clause 156	Poisons and Therapeutic Goods Regulation 2002
Part 8	Licences and authorities
Division 2	Licences to supply by wholesale poisons and restricted substances

- (4) The Director-General may require an applicant to furnish such further information as is necessary to enable the Director-General to determine the application.

157 Consideration of applications (cf cl 141B of P&TG Reg 1994)

- (1) After considering an application under this Division, the Director-General may issue the licence for which the application is made or may refuse the application.
- (2) In particular, the Director-General may refuse an application if of the opinion that the applicant is not a fit and proper person to hold the licence for which the application is made.
- (3) A licence may not be issued unless the Director-General is satisfied that the premises to which the application relates are appropriate for the supply of the poisons or restricted substances concerned.
- (4) The application fee is to be refunded if the application is refused.

158 Licences (cf cl 141C of P&TG Reg 1994)

- (1) A licence is to be in a form for the time being approved by the Director-General.
- (2) A licence remains in force until suspended, cancelled or surrendered.
- (3) A licence is not transferable.

159 Conditions of licences (cf cl 141D of P&TG Reg 1994)

- (1) A licence is subject to such conditions as the Director-General may from time to time impose by order in writing served on the holder of the licence.
- (2) The Director-General may from time to time vary or revoke any condition of a licence by means of a further order in writing served on the holder of the licence.
- (3) A licence is ineffective unless its conditions are complied with.

160 Annual licence fees (cf cl 141E of P&TG Reg 1994)

The holder of a licence under this Division must, on or before 30 September in each year following that in which the licence was issued, pay to the Director-General an annual licence fee of:

Poisons and Therapeutic Goods Regulation 2002	Clause 160
Licences and authorities	Part 8
Licences to supply by wholesale poisons and restricted substances	Division 2

- (a) \$50, if the holder is a public institution, or
- (b) \$335, in any other case.

Division 3 Licences to manufacture or supply drugs of addiction

161 Applications for licences (cf cl 142 of P&TG Reg 1994)

- (1) Any person may apply to the Director-General for a licence to manufacture drugs of addiction at, or to supply drugs of addiction from, any premises.
- (2) The application:
 - (a) must be in the form approved by the Director-General, and
 - (b) must be accompanied by the relevant application fee, and
 - (c) must be lodged with the Director-General.
- (3) The relevant application fee for a licence to manufacture drugs of addiction is:
 - (a) \$50, in the case of an application by a public institution, or
 - (b) \$450, in any other case.
- (4) The relevant application fee for a licence to supply drugs of addiction is:
 - (a) \$10, in the case of an application by a charitable organisation, or
 - (b) \$50, in the case of an application by a public institution (other than a charitable organisation), or
 - (c) \$225, in any other case.
- (5) The Director-General may require an applicant to furnish such further information as is necessary to enable the Director-General to determine the application.

162 Consideration of applications (cf cl 143 of P&TG Reg 1994)

- (1) After considering an application under this Division, the Director-General may issue the licence for which the application is made or may refuse the application.

Clause 162	Poisons and Therapeutic Goods Regulation 2002
Part 8	Licences and authorities
Division 3	Licences to manufacture or supply drugs of addiction

- (2) In particular, the Director-General may refuse an application if of the opinion that the applicant is not a fit and proper person to hold the licence for which the application is made.
- (3) A licence may not be issued unless the Director-General is satisfied that the premises to which the application relates are appropriate for the manufacture or supply of drugs of addiction.
- (4) The application fee is to be refunded if the application is refused.

163 Licences (cf cl 144 of P&TG Reg 1994)

- (1) A licence is to be in the form for the time being approved by the Director-General.
- (2) A licence to manufacture drugs of addiction authorises the manufacturer to supply drugs that are manufactured under the licence, subject to the conditions of the licence.
- (3) A licence remains in force until suspended, cancelled or surrendered.
- (4) A licence is not transferable.

164 Conditions of licences (cf cl 145 of P&TG Reg 1994)

- (1) A licence is subject to such conditions as the Director-General may endorse on the licence and to such further conditions as the Director-General may from time to time impose by order in writing served on the holder of the licence.
- (2) The Director-General may from time to time vary or revoke any condition of a licence by means of a further order in writing served on the holder of the licence.
- (3) A licence is ineffective unless its conditions are complied with.

165 Annual licence fees (cf cl 146 of P&TG Reg 1994)

- (1) The holder of a licence to manufacture drugs of addiction must, on or before 30 September in each year following that in which the licence was issued, pay to the Director-General an annual licence fee of:
 - (a) \$50, if the holder is a public institution, or
 - (b) \$450, in any other case.
- (2) The holder of a licence to supply drugs of addiction must, on or before 30 September in each year following that in which the licence was issued, pay to the Director-General an annual licence fee of:

Poisons and Therapeutic Goods Regulation 2002	Clause 165
Licences and authorities	Part 8
Licences to manufacture or supply drugs of addiction	Division 3

- (a) \$10, if the holder is a charitable organisation, or
- (b) \$50, if the holder is a public institution (other than a charitable organisation), or
- (c) \$225, in any other case.

Division 4 Authorities

166 Authorities (cf cl 147 of P&TG Reg 1994)

- (1) The Director-General may issue authorities for the purposes of the Act and this Regulation.
- (2) The Director-General may require a person seeking an authority to furnish such information as is necessary to enable the Director-General to determine the issuing of the authority.
- (3) An authority may be issued to a particular person (by means of an instrument in writing given to the person) or to a specified class of persons (by means of an instrument published in a manner approved by the Director-General).
- (4) In particular, the Director-General may refuse to issue an authority to a person if of the opinion that the person is not a fit and proper person to hold the authority.
- (5) An authority that is issued to a particular person remains in force until it is suspended, cancelled or surrendered.
- (6) An authority that is issued to a particular person is not transferable.
- (7) In this Regulation, a reference to a person who holds an authority under this Part includes a reference to a person who belongs to a class of persons specified in an instrument referred to in subclause (3).

167 Conditions of authorities (cf cl 148 of P&TG Reg 1994)

- (1) The exercise of the functions conferred on a person by an authority is subject to such conditions as the Director-General may specify in the instrument by which the authority is issued and to such further conditions as the Director-General may from time to time impose by order in writing served on that person.
- (2) The Director-General may from time to time vary or revoke any condition of an authority by means of a further order in writing served on the holder of the authority.

Clause 167 Poisons and Therapeutic Goods Regulation 2002

Part 8 Licences and authorities

Division 4 Authorities

- (3) An authority is ineffective unless its conditions are complied with.

Division 5 Suspension and cancellation of licences and authorities

168 Grounds for suspension or cancellation (cf cl 149 of P&TG Reg 1994)

- (1) The Director-General must suspend or cancel a licence or authority in the event of one or more of the following:
- (a) the holder of the licence or authority requests or agrees in writing to the suspension or cancellation of the licence or authority,
 - (b) the holder of the licence or authority is convicted of a serious offence against the *Drug Misuse and Trafficking Act 1985* or any regulation in force under that Act,
 - (c) the Director-General forms the opinion that the holder of the licence or authority is no longer a fit and proper person to hold the licence or authority,
 - (d) in the case of a licence or authority to supply methadone or buprenorphine, the Director-General forms the opinion that the supply of methadone has a significant adverse effect on the amenity of the area in which the premises from which it is being supplied are situated.
- (2) The Director-General may, at the Director-General's discretion, suspend or cancel a licence or authority on any one or more of the following grounds:
- (a) the holder of the licence or authority contravenes any condition of the licence or authority,
 - (b) the holder of the licence or authority is convicted of an offence against the Act or this Regulation, or of an offence (not being a serious offence) against the *Drug Misuse and Trafficking Act 1985* or any regulation in force under that Act,
 - (c) an order is made under section 10 (1) of the *Crimes (Sentencing Procedure) Act 1999* relating to the holder of the licence or authority in respect of an offence against the Act or this Regulation, or an offence against the *Drug Misuse and Trafficking Act 1985* or any regulation in force under that Act,
 - (d) the annual fee for the licence is not duly paid.

Poisons and Therapeutic Goods Regulation 2002	Clause 168
Licences and authorities	Part 8
Suspension and cancellation of licences and authorities	Division 5

- (3) In this clause, *serious offence* means an offence that is punishable by imprisonment for life or for a term of 5 years or more.

169 Suspension or cancellation (cf cl 150 of P&TG Reg 1994)

- (1) Before suspending or cancelling a licence or authority (otherwise than at the request of its holder), the Director-General:
- (a) must cause written notice of the proposed suspension or cancellation, and of the grounds for the proposed suspension or cancellation, to be served on the holder of the licence or authority, and
 - (b) must give the holder of the licence or authority a reasonable opportunity to make representations with respect to the proposed suspension or cancellation, and
 - (c) must take any such representations into consideration.
- (2) Suspension or cancellation of a licence or authority takes effect on the date on which written notice of the suspension or cancellation is served on its holder or on such later date as is specified in the notice.
- (3) The Director-General may, by a further notice in writing served on the holder of a licence or authority that is suspended, revoke the suspension or vary the period of the suspension.

Division 6 Modification of applied provisions of Commonwealth therapeutic goods laws

170 Modification of applied provisions of Commonwealth therapeutic goods laws with respect to advertising: section 31 (3) (cf cl 150B of P&TG Reg 1994)

- (1) This clause applies to circumstances to which the *Therapeutic Goods Act 1989* of the Commonwealth applies by reason of section 31 of the *Poisons and Therapeutic Goods Act 1966*.
- (2) Part 2 of the *Therapeutic Goods Regulations* of the Commonwealth is modified in its application to circumstances to which this clause applies to the extent that the Director-General may, by order in writing, exempt any person or substance, or any class of persons or substances, from the requirements of that Part.
- (3) Such an exemption may be given unconditionally or subject to conditions.

Clause 171 Poisons and Therapeutic Goods Regulation 2002

Part 9 Miscellaneous

Part 9 Miscellaneous

171 Director-General may restrict authorisations conferred by this Regulation (cf cl 151 of P&TG Reg 1994)

- (1) The Director-General may, by order in writing served on any person, prohibit or restrict the person from doing anything authorised by this Regulation.
- (2) Such an order may be made on any one or more of the following grounds:
 - (a) the person requests or agrees in writing to the making of the order,
 - (b) the person is convicted of an offence against the Act or this Regulation, or of an offence against the *Drug Misuse and Trafficking Act 1985* or any regulation in force under that Act, or an order is made against the person under section 10 (1) of the *Crimes (Sentencing Procedure) Act 1999* in respect of such an offence,
 - (c) the person has, in the opinion of the Director-General, failed to comply with any restriction imposed on the person by an order under this clause,
 - (d) the person is, in the opinion of the Director-General, a person whose authorisation to do that thing should be withdrawn for the purpose of protecting the life, or the physical or mental health, of that or any other person (whether or not any other such person is identifiable).
- (3) An order that restricts a person as referred to in subclause (1):
 - (a) may be made unconditionally or subject to conditions, and
 - (b) may apply generally or be limited in its application by reference to specified exceptions or factors, and
 - (c) may apply differently according to different factors of a specified kind.
- (4) An order under this clause must specify the grounds on which it is made including, if it is made on the grounds referred to in subclause (2) (c), the reasons for its withdrawal on those grounds.

Poisons and Therapeutic Goods Regulation 2002

Clause 171

Miscellaneous

Part 9

- (5) An order under this clause takes effect:
 - (a) in the case of an order made on the grounds referred to in subclause (2) (d), when the order is served on the person against whom it is made, or
 - (b) in any other case, the date specified in the order in that regard.
- (6) Except in the case of an order that is made on the ground referred to in subclause (2) (a), the date referred to in subclause (5) (b) must be a date occurring not less than 14 days after the date on which the order is served on the person against whom it is made.
- (7) On making an order that prohibits a person from doing all of the things authorised by Part 2, 3, 4 or 5 of this Regulation, or by any two or more of those Parts, the Director-General is to cause notice of:
 - (a) the name of the person, and
 - (b) the terms of the order, and
 - (c) the date on which the order took effect,to be published in the Gazette.
- (8) A person must not contravene any order in force under this clause.

172 Records generally (cf cl 153 of P&TG Reg 1994)

- (1) Except to the extent to which this Regulation otherwise provides, all documents required to be kept under this Regulation:
 - (a) must be kept in the form of legible instruments written indelibly in English, or
 - (b) must be kept in some other manner from which a legible instrument written indelibly in English is readily reproducible.
- (2) A record required to be made of the manufacture, receipt, supply, administration or use of any substance at or from any premises must be kept at those premises.
- (3) A person who is required by this Regulation to keep any document or make any record must keep it for at least 2 years, running from the latest date on which:
 - (a) any entry was made in the document or record, or

Clause 172 Poisons and Therapeutic Goods Regulation 2002

Part 9 Miscellaneous

- (b) any substance was manufactured, received, supplied, administered or used in accordance with, or on the authority of, the document or record,

and must make it available for inspection on demand by a police officer or an inspector.

Maximum penalty: 20 penalty units.

173 False or misleading entries in records and registers (cf cl 154 of P&TG Reg 1994)

- (1) A person who is required by this Regulation to keep any record or register must not make any entry in the record or register that the person knows to be false or misleading in a material particular.
- (2) A person must not make any alterations, obliterations or cancellations in a register required by this Regulation, but may correct any mistake in any entry by making a marginal note or footnote and by initialling and dating it.

Maximum penalty: 20 penalty units.

174 False or misleading applications (cf cl 155 of P&TG Reg 1994)

A person must not, in or in connection with an application under this Regulation, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

175 Service of notices (cf cl 156 of P&TG Reg 1994)

A notice referred to in this Regulation may be served on a person:

- (a) by delivering it to the person personally, or
- (b) by leaving it at the person's place of residence last known to the Director-General with someone who apparently resides there, or
- (c) by leaving it at the person's place of business or employment last known to the Director-General with someone who is apparently employed there, or
- (d) by posting it to the person in an envelope addressed to the person at the place of his or her residence, business or employment last known to the Director-General.

Poisons and Therapeutic Goods Regulation 2002

Clause 176

Miscellaneous

Part 9

176 Applications for authorities under section 29 (cf cl 157 of P&TG Reg 1994)

- (1) For the purposes of section 29 (1) (b) of the Act, the prescribed form of application for an authority to prescribe a drug of addiction under section 28 of the Act is a form:
 - (a) that identifies the name and specialisation (if any) of the applicant, together with the applicant's address, prescriber number and telephone and facsimile numbers, and
 - (b) that indicates the name, strength and dosage form of the drug of addiction, together with the dosage and frequency at which the drug is to be administered, and
 - (c) that identifies the name and address of the patient to whom the drug of addiction is to be administered, together with a diagnosis of the medical condition that the drug is intended to treat, and
 - (d) that indicates whether or not the applicant believes the patient to be a drug dependent person (that is, a person who has acquired, as a result of repeated administration of a drug of addiction or a prohibited drug within the meaning of the *Drug Misuse and Trafficking Act 1985*, an overpowering desire for the continued administration of such a drug), and
 - (e) that is dated and signed by the applicant.
- (2) Before determining such an application, the Director-General may require the applicant to furnish such further information as the Director-General may require in relation to the application.

177 Quorum for Poisons Advisory Committee (cf cl 158 of P&TG Reg 1994)

The quorum for a meeting of the Advisory Committee referred to in clause 2 of Schedule 2 to the Act is 9.

178 Residential centres for persons with disabilities

The following institutions are declared to be residential centres for persons with disabilities for the purposes of this Regulation:

The Stockton Centre, Stockton

Clause 179 Poisons and Therapeutic Goods Regulation 2002

Part 9 Miscellaneous

179 Saving (cf cl 159 of P&TG Reg 1994)

Any act, matter or thing that, immediately before the repeal of the *Poisons and Therapeutic Goods Regulation 1994*, had effect under that Regulation is taken to have effect under this Regulation.

Poisons and Therapeutic Goods Regulation 2002

Labelling of therapeutic substances

Appendix A

Appendix A Labelling of therapeutic substances

(Clauses 5, 25, 68 and 142)

Note. Although this Appendix refers to labels “on” a container, the information required by this Appendix may be shown by tags, brands, marks or statements in writing on the container itself (rather than on something affixed or attached to the container). See the definition of *Label* in section 4 (1) of the Act.

1 General

- (1) All details, words and other information that a label on a container of a therapeutic substance must carry must be in the English language (although it may also be in another language).
- (2) All symbols, numbers and words on a label must be in durable characters.
- (3) The label on a container of a therapeutic substance must contain the following details:
 - (a) the name and address of the dealer supplying the substance,
 - (b) the approved name of the substance and its proprietary name (unless it is a preparation compounded in accordance with the dealer’s own formula),
 - (c) adequate directions for use,
 - (d) the words “KEEP OUT OF REACH OF CHILDREN” in red on a white background,
 - (e) if the substance is intended for external use only, the word “POISON”, or the words “FOR EXTERNAL USE ONLY”, in red on a white background,
 - (f) if the substance is intended for the treatment of a person, the name of the person,
 - (g) if the substance is intended for the treatment of an animal, the species of animal and the name of the animal’s owner,
 - (h) if the substance is supplied in the circumstances referred to in clause 44 or 47, the words “EMERGENCY SUPPLY”.

2 Additional labelling requirements for certain substances

- (1) The label on a container of a therapeutic substance that is supplied on prescription must also bear:
 - (a) the prescription reference number, and

Page 103

Poisons and Therapeutic Goods Regulation 2002

Appendix A Labelling of therapeutic substances

- (b) the date on which the prescription was supplied (unless that date is clear from the prescription reference number), and
 - (c) the directions for use set out in the prescription.
- (2) The label on a container of a restricted substance that is supplied in the circumstances referred to in clause 44 or 47 must also bear:
- (a) the unique reference number recorded under clause 56 with respect to the supply, and
 - (b) the date on which the substance was supplied, and
 - (c) the directions given by the pharmacist for the use of the substance.

3 Warning: therapeutic substances for internal use

The label on a container of a therapeutic substance specified in Appendix F to the current Poisons Standard (being a therapeutic substance that is intended for internal use) must bear the warning specified in that Appendix in respect of that substance.

The label on a container of a therapeutic substance specified in Appendix K to the current Poisons Standard (being a therapeutic substance that is supplied on prescription and is intended for internal use in humans) must bear Warning Statement 39, 40 or 90 specified in Part 1 of Appendix F to that Standard. The warning must be immediately preceded by a symbol in the form of an open equilateral triangle at least 4.5 millimetres high in bold print, coloured red.

4 Warning: quinine

The label on a container of quinine must bear the words “WARNING—MAY BE FATAL TO CHILDREN”.

5 Warning: other substances

- (1) This clause applies to the following substances:
- amphetamine
 - chlorphentermine
 - dexamphetamine
 - diethylpropion
 - ephedrine

Poisons and Therapeutic Goods Regulation 2002

Labelling of therapeutic substances

Appendix A

methylphenidate

phentermine

propylhexedrine

- (2) The label on a container of such a substance (being a substance that is represented as being for oral use by a person other than a child under 16) must bear the words “THIS MEDICATION (MEDICINE) MAY AFFECT MENTAL ALERTNESS OR CO-ORDINATION OR BOTH. IF AFFECTED, DO NOT DRIVE A MOTOR VEHICLE OR OPERATE MACHINERY”.
- (3) The warning must be immediately preceded by a symbol in the form of an open equilateral triangle at least 4.5 millimetres high in bold print, coloured red.

Poisons and Therapeutic Goods Regulation 2002

Appendix B Special restricted substances

Appendix B Special restricted substances

(Clauses 3, 34, 37, 38, 40, 41, 89)

Amylobarbitone when included in Schedule 4 of the Poisons List
Anabolic and androgenic steroidal agents included in Schedule 4 of the
Poisons List, except when referred to elsewhere in this Appendix
Drostanolone
Ethyloestrenol
Fluoxymesterone
Mesterolone
Methandienone
Methandriol
Methenolone
Methylandrostanolone
Methyltestosterone
Mibolerone
Nandrolone
Norethandrolone
Oxandrolone
Oxymesterone
Oxymetholone in preparations for therapeutic use
Pentobarbitone when included in Schedule 4 of the Poisons List
Stanolone
Stanozolol
Testosterone except when included in Schedule 6 of the Poisons List

Poisons and Therapeutic Goods Regulation 2002

Supply by wholesale

Appendix C

Appendix C Supply by wholesale

(Clause 126)

1 Medical superintendents of hospitals

The medical superintendent of a hospital is authorised to be in possession of any Schedule 2, 3 or 4 substance.

2 Persons licensed to manufacture or supply drugs of addiction

The holder of a licence under Part 8 to manufacture or supply drugs of addiction is authorised to be in possession of any Schedule 2, 3 or 4 substance.

3 Scientifically qualified persons

A scientifically qualified person in charge of a laboratory or department is authorised to be in possession of any Schedule 2, 3 or 4 substance for use in the conduct of medical or scientific research or instruction or the conduct of quality control or analysis.

4 Masters of ships

The master of a ship is authorised to be in possession of any Schedule 2, 3 or 4 substance that is required by law to be carried on the ship.

5 Miscellaneous trades and industries

A person who is engaged in any of the following activities is authorised to be in possession of any Schedule 2 or 3 substance for use in connection with that activity:

- (a) jewellery manufacture,
- (b) electroplating,
- (c) paint manufacture,
- (d) ferrous hardening,
- (e) commercial pest control,
- (f) mining gold or other precious metals,
- (g) refining non-ferrous metals.

Poisons and Therapeutic Goods Regulation 2002

Appendix C Supply by wholesale

6 Optometrists

A person who holds a certificate under Part 4A of the *Optometrists Act 1930* is authorised to be in possession of any substance referred to in the Table to this clause so long as the substance is in the form of eyedrops containing not more than the maximum concentration set out in that Table opposite that substance.

Table

Substance	Maximum concentration
Adrenaline	0.1 per cent
Amethocaine hydrochloride	0.5 per cent
Cyclopentolate hydrochloride	1 per cent
Ephedrine hydrochloride	5 per cent
Homatropine hydrobromide	2 per cent
Oxybuprocaine hydrochloride	0.4 per cent
Physostigmine hydrochloride	0.5 per cent
Pilocarpine hydrochloride	2 per cent
Pilocarpine nitrate	2 per cent
Proxymetacaine hydrochloride	0.5 per cent
Tetrahydrozoline	0.05 per cent
Tropicamide	1 per cent

7 Podiatrists

A registered podiatrist (within the meaning of the *Podiatrists Act 1989*) is authorised to be in possession of synthetic cocaine substitutes (prepared for parenteral use) for use in connection with podiatry.

8 Dental therapists

- (1) A dental therapist is authorised to be in possession of the following substances for use in connection with dental therapy:
- benzocaine

Poisons and Therapeutic Goods Regulation 2002

Supply by wholesale

Appendix C

lignocaine

mepivacaine

prilocaine

procaine

tetracycline (in preparations for treatment of dental pulp)

triamcinolone (in preparations for treatment of dental pulp)

- (2) In this clause, *dental therapist* means a person who has such training, and performs such part of the practice of dentistry, as is prescribed under section 57 (4) (c) of the *Dentists Act 1989*.

9 Emergency medical treatment by ambulance officers

A person:

- (a) who is employed by the Ambulance Service of New South Wales as an ambulance officer or as an air ambulance flight nurse, and
- (b) who is approved for the time being by the Ambulance Service of New South Wales for the purposes of this clause,

is authorised to be in possession of such Schedule 2, 3 or 4 substances as are approved by the Ambulance Service of New South Wales for use by such persons in the carrying out of emergency medical treatment.

10 Emergency medical treatment of divers

A person:

- (a) who is a dive medical technician within the Police Service, and
- (b) whose duties include the carrying out (under the supervision of a medical practitioner who is qualified in underwater medicine) of emergency medical treatment on divers,

is authorised to be in possession of any substance referred to in the Table to this clause so long as the substance complies with the requirements as to form and strength set out in that Table opposite that substance.

Poisons and Therapeutic Goods Regulation 2002

Appendix C Supply by wholesale

Table

Substance	Form	Strength
adrenaline	ampoule	not more than 0.01 per cent
amoxicillin with clavulanic acid	tablet	not more than 500 milligrams (amoxicillin) and 125 milligrams (clavulanic acid)
atropine	ampoule	not more than 600 micrograms per ampoule
dexamethasone with framycetin and gramicidin	ear drops	not more than 500 micrograms (dexamethasone), 5 milligrams (framycetin) and 50 micrograms (gramicidin)
diazepam	ampoule	not more than 10 milligrams per ampoule
diclofenac	tablet	not more than 50 milligrams
frusemide	ampoule	not more than 20 milligrams per ampoule
heparin	ampoule	not more than 25,000 units per 5 millilitres
lignocaine	ampoule	not more than 1 per cent
lignocaine with chlorhexidine	ampoule	not more than 2 per cent
metronidazole	tablet	not more than 200 milligrams
naloxone	ampoule	not more than 400 micrograms per ampoule
piroxicam	gel	not more than 0.5 per cent
prochlorperazine	ampoule	not more than 12.5 milligrams per ampoule
prochlorperazine	tablet	not more than 5 milligrams
trimethoprim with sulfamethoxazole	tablet	not more than 160 milligrams (trimethoprim) and 800 milligrams (sulfamethoxazole)

Poisons and Therapeutic Goods Regulation 2002

Supply by wholesale

Appendix C

11 Industrial first aid

A person who is in control of an industrial first aid post is authorised to be in possession of any Schedule 2 substance in connection with the carrying out of industrial first aid.

12 Registered nurses involved in vaccination programs

A person who is a registered nurse and who is employed in connection with a vaccination program carried out in a public institution or place of work is authorised to be in possession of vaccines for use in humans.

13 Ski rescue

A ski patroller who holds a valid first aid certificate issued by the Australian Ski Patrol Association for use in ski patrol duties is authorised to be in possession of methoxyflurane, nitrous oxide and trichloroethylene for use in connection with the carrying out of ski rescues.

14 Bee keeping

A person:

- (a) who is registered as a beekeeper under the *Apiaries Act 1985*, and
- (b) who holds a written authority (issued by the Director-General of the Department of Agriculture) recommending the use, by that person, of that substance for that purpose,

is authorised to be in possession of oxytetracycline in the form of a stock medicine registered under the *Stock Medicines Act 1989* for use in the treatment or prevention of European Foulbrood disease in bees.

15 Animal feedstuff production

- (1) A person who is authorised under this Regulation to obtain a Schedule 2, 3 or 4 substance is authorised to be in possession of the substance for use in connection with the commercial production of animal feedstuffs or feedstuff premixes.
- (2) In this clause, a reference to an animal feedstuff or feedstuff premix is a reference to a feedstuff or feedstuff premix containing a Schedule 2, 3 or 4 substance at such a level, or in such a form:

Poisons and Therapeutic Goods Regulation 2002

Appendix C Supply by wholesale

- (a) that Schedule 6 to the Poisons List applies to the substance, or
- (b) that the substance is not a poison.

16 First aid in mines

A person is authorised to be in possession of nitrous oxide for use in connection with the carrying out of first aid at a mine if:

- (a) in the case of a coal or shale mine, the person is appointed in accordance with the regulations under the *Coal Mines Regulation Act 1982* to be in charge of a first aid room at the mine or as a first aid attendant at the mine, or
- (b) in the case of any other mine, the person is employed in accordance with the rules under the *Mines Inspection Act 1901* to provide first aid treatment at the mine.

17 General first aid

A person who holds a current occupational first-aid certificate approved by the WorkCover Authority in accordance with the regulations under the *Occupational Health and Safety Act 2000* is authorised to be in possession of methoxyflurane and nitrous oxide in connection with the carrying out of first aid.

18 Asthma first aid

A person who holds a current emergency asthma management certificate issued by an organisation approved by the Director-General for the purposes of clause 17 (3) of this Regulation is authorised to be in possession of salbutamol or terbutaline in metered aerosols in connection with the carrying out of first aid.

Poisons and Therapeutic Goods Regulation 2002

Prescribed restricted substances

Appendix D

Appendix D Prescribed restricted substances

(Clause 60)

Substance	Prescribed quantity
Alprazolam	0.25 gram
Amylobarbitone when included in Schedule 4 of the Poisons List	50.0 grams
Anabolic and androgenic steroidal agents included in Schedule 4 of the Poisons List, except when referred to elsewhere in this Appendix	5.0 grams
Androisoxazole	5.0 grams
Barbiturates included in Schedule 4 of the Poisons List, except when referred to elsewhere in this Appendix	50.0 grams
Benzodiazepine derivatives included in Schedule 4 of the Poisons List, except when referred to elsewhere in this Appendix	0.5 gram
Benzphetamine	5.0 grams
Bolandiol	5.0 grams
Bolasterone	5.0 grams
Boldenone	2.5 grams
Bolmantalate	5.0 grams
Bromazepam	5.0 grams
Calusterone	30.0 grams
Cathine	5.0 grams
Chlorandrostenolone	5.0 grams
Chlordiazepoxide	5.0 grams
Chloroxydienone	5.0 grams
Chloroxymesterone	5.0 grams
Clobazam	2.5 grams

Poisons and Therapeutic Goods Regulation 2002

Appendix D Prescribed restricted substances

Substance	Prescribed quantity
Clonazepam	0.5 gram
Clorazepate	3.0 grams
Clostebol	2.0 grams
Dextropropoxyphene when included in Schedule 4 of the Poisons List	15.0 grams
Diazepam	2.5 grams
Diethylpropion	5.0 grams
Dihydrolone	5.0 grams
Dimethandrostanolone	5.0 grams
Dimethazine	5.0 grams
Doxapram	2.0 grams
Drostanolone	2.0 grams
Ephedrine	5.0 grams
Ethchlorvynol	50.0 grams
Ethinamate	50.0 grams
Ethyldienolone	5.0 grams
Ethyloestrenol	1.0 gram
Fencamfamin	1.0 gram
Fenproporex	1.0 gram
Fluoxymesterone	2.0 grams
Flurazepam	10.0 grams
Formebolone	1.0 gram
Formyldienolone	1.0 gram
Furazabol	0.5 gram

Poisons and Therapeutic Goods Regulation 2002

Prescribed restricted substances

Appendix D

Substance	Prescribed quantity
Glutethimide	50.0 grams
Hydroxystenozol	5.0 grams
Ketamine	2.0 grams
Lorazepam	1.0 gram
Mazindol	0.5 gram
Medazepam	2.5 grams
Mefenorex	5.0 grams
Meprobamate	100.0 grams
Mesabolone	5.0 grams
Mestanolone	5.0 grams
Mesterolone	10.0 grams
Methandienone	1.0 gram
Methandriol	20.0 grams
Methenolone	2.0 grams
Methylandrostanolone	5.0 grams
Methylclostebol	5.0 grams
Methylphenobarbitone	50.0 grams
Methyltestosterone	20.0 grams
Methyltrienolone	5.0 grams
Methyprylone	40.0 grams
Mibolerone	0.01 gram
Midazolam	0.5 gram
Nalbuphine	0.5 gram
Nandrolone	1.0 gram

Poisons and Therapeutic Goods Regulation 2002

Appendix D Prescribed restricted substances

Substance	Prescribed quantity
Nitrazepam	1.0 gram
Norandrostenolone	1.0 gram
Norbolethone	5.0 grams
Norethandrolone	4.0 grams
Normethandrone	0.5 gram
Oxabolone	0.5 gram
Oxandrolone	1.0 gram
Oxazepam	10.0 grams
Oxymesterone	4.0 grams
Oxymetholone	40.0 grams
Paraldehyde	250 millilitres
Pentobarbitone when included in Schedule 4 of the Poisons List	50.0 grams
Phenobarbitone	50.0 grams
Phentermine	10.0 grams
Pipradrol except in compounded preparations containing 0.01 per cent or less of pipradrol	1.0 gram
Prasterone	1.0 gram
Prazepam	2.5 grams
Propylhexedrine	5.0 grams
Pseudoephedrine when included in Schedule 4 of the Poisons List	20.0 grams
Pyrovalerone	1.0 gram
Quinbolone	3.0 grams
Silandrone	5.0 grams
Stanolone	10.0 grams

Poisons and Therapeutic Goods Regulation 2002

Prescribed restricted substances

Appendix D

Substance	Prescribed quantity
Stanozolol	2.0 grams
Stenbolone	5.0 grams
Temazepam	5.0 grams
Testolactone	100.0 grams
Testosterone except when included in Schedule 6 of the Poisons List	20.0 grams
Thiomesterone	5.0 grams
Trenbolone except when included in Schedule 6 of the Poisons List	5.0 grams
Trestolone	5.0 grams
Triazolam	0.05 gram
Zolazepam	2.5 grams

Ports Corporatisation and Waterways Management Regulation 2002

under the

Ports Corporatisation and Waterways Management Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Ports Corporatisation and Arts and Waterways Management Act 1995*.

CARL SCULLY, M.P.,
Minister for Transport

Explanatory note

The object of this Regulation is to remake the *Ports Corporatisation and Waterways Management Regulation 1997* without substantial alteration to the substance of that Regulation but with certain additional material (clause 6). The *Ports Corporatisation and Waterways Management Regulation 1997* will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

The new Regulation does the following:

- (a) it exempts certain vessels from liability for those charges by exempting them from Division 2 (Navigation service charges) of Part 5 (Port charges) of the *Ports Corporatisation and Waterways Management Act 1995* (clause 6),
- (b) it establishes general principles of a technical nature for the calculation of port charges (such as the method by which the gross tonnage of a vessel is to be ascertained) (clauses 7–10),
- (c) it requires the owner of a vessel or other person liable to pay a port charge to ensure that certain information or documentation is furnished to a relevant port authority in connection with port charges (clauses 11–18),

Ports Corporatisation and Waterways Management Regulation 2002

Explanatory note

- (d) it provides a description of the boundaries of certain ports for the purposes of the *marine legislation* as defined in the *Ports Corporatisation and Waterways Management Act 1995* (clause 19 and Schedule 1).

This Regulation also contains provisions of a formal or ancillary nature (clauses 1–5 and 20).

This Regulation adopts a publication by reference (see clause 10).

This Regulation is made under the *Ports Corporatisation and Waterways Management Act 1995* and, in particular, under sections 76 (which is a regulation-making power relating to port charges) and 110 (the general regulation-making power).

Ports Corporatisation and Waterways Management Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	5
2 Commencement	5
3 Definition	5
4 Notes	5
Part 2 Port charges	
Division 1 Preliminary	
5 Definitions	6
6 Exemption from navigation service charges for certain vessels	7
Division 2 General principles for calculation of charges	
7 Rates per tonne	7
8 Goods in bulk	7
9 Rounding off	7
10 Gross tonnage	8
Division 3 Furnishing of particulars	
11 Navigation service charge—particulars to be furnished	8
12 Pilotage charge—particulars to be furnished	9
13 Port cargo access charge—particulars of vessel and operations	9
14 Site occupation—particulars to be furnished	10
15 Wharfage charge—particulars to be furnished	11
16 Manifest for goods discharged from vessel	12
17 Manifest for goods loaded on vessel	13
18 Berthing charge—particulars to be furnished	14

Page 3

Ports Corporatisation and Waterways Management Regulation 2002

Contents

	Page
Part 3 Port boundaries	
19 Boundaries of ports	16
Part 4 General	
20 Saving	17
Schedule 1 Description of port boundaries	18

Ports Corporatisation and Waterways Management Regulation 2002 Clause 1

Preliminary Part 1

Ports Corporatisation and Waterways Management Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Ports Corporatisation and Waterways Management Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Ports Corporatisation and Waterways Management Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

In this Regulation:

the Act means the *Ports Corporatisation and Waterways Management Act 1995*.

4 Notes

Notes included in this Regulation do not form part of this Regulation.

Clause 5 Ports Corporatisation and Waterways Management Regulation 2002

Part 2 Port charges

Division 1 Preliminary

Part 2 Port charges

Division 1 Preliminary

5 Definitions

(1) In this Part:

charge means a charge under Part 5 of the Act.

container means an article of transport equipment (other than a vessel) that:

- (a) is of a permanent character and accordingly is strong enough to be suitable for repeated use, and
- (b) is specially designed or adapted to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading.

officer of a relevant port authority means:

- (a) if the relevant port authority is the Minister—a delegate of the Minister, or an officer of such a delegate, appointed by the Minister or the delegate (as the case requires) as an officer for the purposes of this Part, or
- (b) if the relevant port authority is a Port Corporation—an officer of the Port Corporation appointed by the Port Corporation as an officer for the purposes of this Part.

owner has the same meaning as in section 48 of the Act.

voyage number, in relation to a vessel, means the number allocated to the vessel in respect of a particular sailing.

working day, in relation to a port, means that part of the day (not being a Saturday, Sunday or public holiday) during which work is normally carried on in the port.

(2) Other words and expressions in this Part have the same meanings as they have in Part 5 of the Act.

Ports Corporatisation and Waterways Management Regulation 2002	Clause 6
Port charges	Part 2
Preliminary	Division 1

6 Exemption from navigation service charges for certain vessels

(1) A vessel that:

- (a) leaves the port of Sydney Harbour and, without leaving the territorial sea of Australia or entering another port, enters the port of Botany Bay, or
- (b) leaves the port of Botany Bay and, without leaving the territorial sea of Australia or entering another port, enters the port of Sydney Harbour,

is exempt from Division 2 (Navigation service charges) of Part 5 (Port charges) of the Act in respect of the second port entered.

(2) In this clause:

territorial sea of Australia means the territorial sea of Australia within the limits referred to in section 4 (1) of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth.

Division 2 General principles for calculation of charges

7 Rates per tonne

If the amount of any charge is to be calculated at a rate per tonne, that calculation may, at the discretion of the relevant port authority, be made on the basis that 1 tonne is equivalent to:

- (a) a mass of 1,000 kilograms, or
- (b) a volume of 1 cubic metre or 1 kilolitre.

8 Goods in bulk

If, in the terms by which any charge is fixed, reference is made to goods of any specified description being in bulk, the reference is to be construed (unless provision is made to the contrary) as a reference to goods of that description that have been loaded on to or discharged from a vessel at a designated port by means of a pipeline, conveyor, mechanical shovel or bucket.

9 Rounding off

For the purpose of calculating a charge that is to be determined by reference to stated units of measurement (whether of weight or volume) of any goods, the measurement of those goods is the lowest

Clause 9	Ports Corporatisation and Waterways Management Regulation 2002
Part 2	Port charges
Division 2	General principles for calculation of charges

whole number of those units that the actual weight or volume of those goods does not exceed.

10 Gross tonnage

- (1) For the purposes of calculating any charge, the gross tonnage of a vessel is the gross tonnage of the vessel as stated on the International Tonnage Certificate (1969) for the vessel issued in accordance with the *International Convention on Tonnage Measurement of Ships 1969*.
- (2) If no such certificate has been issued in respect of the vessel, the gross tonnage of the vessel is to be calculated by the relevant port authority in accordance with the formula set out in the document known as MSC Circular 653 (entitled *MSC/Circ. 653*) issued by the International Maritime Organization.

Note. Copies of MSC Circular 653 are available from the Australian Maritime Safety Authority.

Division 3 Furnishing of particulars

11 Navigation service charge—particulars to be furnished

The owner of a vessel in respect of which a navigation service charge is payable must, at the request of the relevant port authority, furnish the relevant port authority with the following particulars:

- (a) the owner's name and address,
- (b) the name, identifying particulars and relevant voyage number of the vessel,
- (c) the gross tonnage of the vessel,
- (d) the port in respect of which the navigation service charge is payable,
- (e) the date on which, the time at which, and the purpose for which, the vessel entered the port,
- (f) such other information with respect to payment of the navigation service charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

Ports Corporatisation and Waterways Management Regulation 2002	Clause 12
Port charges	Part 2
Furnishing of particulars	Division 3

12 Pilotage charge—particulars to be furnished

The owner of a vessel in respect of which a pilotage charge is payable must, at the request of the relevant port authority, furnish the relevant port authority with the following particulars:

- (a) the owner's name and address,
- (b) the name, identifying particulars and relevant voyage number of the vessel,
- (c) the gross tonnage of the vessel,
- (d) the pilotage port in respect of which the pilotage charge is payable,
- (e) the time, date and nature of the pilotage of the vessel in respect of which the pilotage charge is payable,
- (f) such other information with respect to payment of the pilotage charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

13 Port cargo access charge—particulars of vessel and operations

A person liable to pay a port cargo access charge must, at the time the person makes the payment, furnish to the relevant port authority the following particulars:

- (a) the name and address of the person making the payment,
- (b) the name of the vessel from or on to which the cargo has been or is to be discharged or loaded, and the site at which the discharge or loading took place or is to take place,
- (c) a description of the cargo,
- (d) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed (whether or not those receptacles are carried in a container), and the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the cargo,
- (e) if the cargo is carried in a container, the identifying marks and number on the container,
- (f) the mass and volume (expressed in cubic metres or in kilolitres) of the cargo,
- (g) the number of each bill of lading that is to be or has been issued in respect of the cargo,

Clause 13 Ports Corporatisation and Waterways Management Regulation 2002

Part 2 Port charges

Division 3 Furnishing of particulars

- (h) such other information with respect to payment of the port cargo access charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

14 Site occupation—particulars to be furnished

- (1) The occupier of the site in respect of which a site occupation charge is payable must, at the time of reservation of the site or at such other time as the relevant port authority may require, furnish to the relevant port authority the following particulars:

- (a) the type of site sought,
- (b) the name of the vessel,
- (c) the name and address of the owner of the vessel,
- (d) the date and time the site will be required,
- (e) the general nature of any cargo to be transferred,
- (f) the expected duration for which the site will be required,
- (g) the intended daily hours of work.

Maximum penalty: 20 penalty units.

- (2) The occupier of the site in respect of which a site occupation charge is payable must, within 24 hours of vacating the site, furnish to the relevant port authority details of the times when the occupation of the site commenced and finished.

Maximum penalty: 20 penalty units.

- (3) The site occupation charge is to be calculated by reference to the amount of time for which the site was occupied.

- (4) For the purposes of subclause (2):

- (a) occupation of a site commences at the time when:
 - (i) the first cargo arrives at the site for loading onto the vessel, or
 - (ii) the vessel arrives at the site,whichever first occurs, and

Ports Corporatisation and Waterways Management Regulation 2002	Clause 14
Port charges	Part 2
Furnishing of particulars	Division 3

- (b) occupation of a site finishes at the time when:
 - (i) the last cargo discharged by the vessel is removed from the site, or
 - (ii) the vessel leaves the site,
 whichever last occurs.

15 Wharfage charge—particulars to be furnished

- (1) A person liable to pay a wharfage charge must, at the time the person makes the payment, furnish to the relevant port authority the following particulars:
 - (a) the name and address of the person making the payment,
 - (b) the name of the vessel from or on to which the cargo has been or is to be discharged or loaded, and the site at which the discharge or loading took place or is to take place,
 - (c) a description of the cargo,
 - (d) the nature and number of the packages, cases or other receptacles in which the cargo is enclosed (whether or not those receptacles are carried in a container), and the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the cargo,
 - (e) if the cargo is carried in a container, the identifying marks and number on the container,
 - (f) the mass and volume (expressed in cubic metres or in kilolitres) of the cargo,
 - (g) the number of each bill of lading that is to be or has been issued in respect of the cargo,
 - (h) such other information with respect to payment of the wharfage charge as the relevant port authority reasonably requests.

Maximum penalty: 20 penalty units.

- (2) An officer of a relevant port authority may require the owner of any goods in respect of which a wharfage charge is payable:
 - (a) to produce to that officer any document in respect of a matter relevant to the payment of that charge, or
 - (b) to make those goods available for inspection by the officer.

Clause 15 Ports Corporatisation and Waterways Management Regulation 2002

Part 2 Port charges

Division 3 Furnishing of particulars

- (3) The owner of any goods who does not comply with any such requirement is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) Subclause (3) does not apply if the documents or goods, at the time their production or availability was required, were not in the owner's possession or under the owner's control.

16 Manifest for goods discharged from vessel

- (1) This clause applies to a vessel only if a wharfage charge or port cargo access charge is payable in respect of the vessel.

- (2) If a vessel to which this clause applies is to discharge goods in a designated port, a manifest of all the goods concerned must be given to the relevant port authority within the time specified in subclause (4).

- (3) If a manifest is not given as required by subclause (2), both the owner of the vessel and any person who is appointed or authorised to act as an agent of the owner in respect of that vessel in the port concerned is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) The manifest must be given:

- (a) for the designated ports of Sydney Harbour and Botany Bay—by the end of the third working day after the vessel enters the port, and
- (b) for the designated ports of Newcastle, Port Kembla, Yamba and Eden—by the end of the first working day after the vessel leaves the port.

- (5) The particulars required to be included in the manifest are as follows:

- (a) the name of the vessel, the relevant voyage number and the berth at which the goods are to be, or were, discharged,
- (b) the place (or places) at which the goods (or respective goods) were first loaded for carriage by sea to the designated port,
- (c) the description of the goods, the nature and number of the packages, cases or other receptacles in which they were enclosed (whether or not those receptacles were carried in a container), the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the goods and the name and address of the consignee of the goods,

Ports Corporatisation and Waterways Management Regulation 2002	Clause 16
Port charges	Part 2
Furnishing of particulars	Division 3

- (d) the number of each bill of lading issued in respect of the goods,
 - (e) the mass and volume (expressed in cubic metres or in kilolitres) of the goods,
 - (f) if the goods were carried in a container, the identifying marks and number of the container,
 - (g) such other information with respect to the goods as the relevant port authority reasonably requests.
- (6) If the vessel is a cargo vessel and no such goods are discharged from the vessel in the designated port, the owner of the vessel must ensure that the relevant port authority is given notice of that fact by the end of the first working day after the vessel leaves the designated port.

Maximum penalty: 20 penalty units.

17 Manifest for goods loaded on vessel

- (1) This clause applies to a vessel only if a wharfage charge or port cargo access charge is payable in respect of the vessel.
- (2) If a vessel to which this clause applies loads goods in a designated port, a manifest of all goods so loaded must be given to the relevant port authority within the time specified in subclause (4).
- (3) If a manifest is not given as required by subclause (2), both the owner of the vessel and any person who is appointed or authorised to act as an agent of the owner in respect of that vessel in the port concerned is guilty of an offence.

Maximum penalty: 20 penalty units.

- (4) The manifest must be given:
 - (a) for the designated ports of Sydney Harbour and Botany Bay—by the end of the eighth working day after the vessel leaves the port, and
 - (b) for the designated ports of Newcastle, Port Kembla, Yamba and Eden—by the end of the first working day after the vessel leaves the port.
- (5) The particulars required to be included in the manifest are as follows:
 - (a) the name of the vessel, the relevant voyage number and the berth at which the goods were loaded,
 - (b) the destination (or destinations) to which the goods (or respective goods) are ultimately to be carried by sea,

Clause 17 Ports Corporatisation and Waterways Management Regulation 2002

Part 2 Port charges

Division 3 Furnishing of particulars

- (c) the description of the goods, the nature and number of the packages, cases or other receptacles in which they are enclosed (whether or not those receptacles are carried in a container), the identifying marks and numbers of those receptacles as shown on each bill of lading in respect of the goods and the name and address of the consignor of the goods,
 - (d) the number of each bill of lading issued in respect of the goods,
 - (e) the mass and volume (expressed in cubic metres or in kilolitres) of the goods,
 - (f) if the goods are carried in a container, the identifying marks and number of the container,
 - (g) such other information with respect to the goods as the relevant port authority reasonably requests.
- (6) If the vessel is a cargo vessel and no such goods have been loaded in the designated port, the owner of the vessel must ensure that notice is given to the relevant port authority of that fact by the end of the first working day after the vessel leaves the designated port.

Maximum penalty: 20 penalty units.

18 Berthing charge—particulars to be furnished

- (1) The owner of a vessel in respect of which berthing charges are payable must, within 24 hours of those charges first becoming payable due to the berthing of the vessel at a wharf, dolphin or buoy, furnish to the relevant port authority in triplicate the following particulars:
- (a) the owner's name and address,
 - (b) the name of the vessel,
 - (c) the wharf, dolphin or buoy at which the charges first became payable,
 - (d) the gross tonnage of the vessel,
 - (e) in the case of a fishing vessel, the length of the vessel,
 - (f) in the case of a ferry, the number of passengers the vessel is authorised by law to carry or, if that ferry is a vehicular ferry, a statement of that fact,
 - (g) the time and date of the berthing of the vessel at the wharf, dolphin or buoy.

Maximum penalty: 10 penalty units.

Ports Corporatisation and Waterways Management Regulation 2002	Clause 18
Port charges	Part 2
Furnishing of particulars	Division 3

- (2) The owner of such a vessel must, within 24 hours after berthing charges have ceased to be payable in respect of that vessel, inform the relevant port authority in writing of that fact.

Maximum penalty: 10 penalty units.

Clause 19 Ports Corporatisation and Waterways Management Regulation 2002

Part 3 Port boundaries

Part 3 Port boundaries

19 Boundaries of ports

For the purposes of section 105 of the Act, the boundaries of a port named in Schedule 1 are as described in that Schedule beneath the name of the port concerned.

Note. Section 105 of the Act enables the regulations to describe the boundaries of any port or area of water. If the regulations do so, a reference in the marine legislation to that port or area of water is a reference to that port or area of water with boundaries as so described.

Ports Corporatisation and Waterways Management Regulation 2002

Clause 20

General

Part 4

Part 4 General

20 Saving

Any act, matter or thing that, immediately before the repeal of the *Ports Corporatisation and Waterways Management Regulation 1997*, had effect under that Regulation is taken to have effect under this Regulation.

Ports Corporatisation and Waterways Management Regulation 2002

Schedule 1 Description of port boundaries

Schedule 1 Description of port boundaries

(Clause 19)

1 Botany Bay

The waters of Botany Bay and of all bays, rivers and their tributaries connected or leading to Botany Bay bounded by mean high water mark and by, as upstream boundaries, the eastern side of the Endeavour Bridge in Cooks River and the eastern side of the Captain Cook Bridge in Georges River together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 4 sea miles having as its centre the navigation light at Henry Head.

2 Clarence River (Yamba)

The waters of the main channel of the Clarence River, Iluka Bay and Yamba Channel bounded by mean high water mark and by, as upstream boundaries, the eastern side of Harwood Bridge in the main channel and, in Yamba Channel, a line drawn from the southernmost point of Freeburn Island to the easternmost point of Rabbit Island and from there produced south-westerly to the opposite shore and by, as seaward boundary, a line drawn between the eastern extremity of the northern breakwater at the entrance to the Clarence River and the eastern extremity of the southern breakwater at that entrance.

3 Eden

The waters of Twofold Bay bounded by mean high water mark (but excluding all rivers and their tributaries connected or leading to Twofold Bay) and by, as seaward boundary, a line drawn between the southernmost point of Worang Head and the northernmost point of Red Point.

Ports Corporatisation and Waterways Management Regulation 2002

Description of port boundaries

Schedule 1

4 Newcastle Harbour

The waters of Newcastle Harbour and of all bays, rivers and their tributaries connected or leading to Newcastle Harbour (but excluding Fullerton Cove) bounded by mean high water mark and by, as upstream boundary, the eastern side of the Hexham Bridge together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 3 sea miles having as its centre the navigation light at Nobbys Head.

5 Port Kembla

The waters of Port Kembla Inner and Outer Harbours bounded by mean high water mark together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 2.5 sea miles having as its centre the navigation light on the outer extremity of the eastern breakwater at the entrance to the Outer Harbour.

6 Sydney Harbour

The waters of Sydney Harbour and of all tidal bays, rivers and their tributaries connected or leading to Sydney Harbour bounded by mean high water mark together with that part of the South Pacific Ocean below mean high water mark enclosed by the arc of a circle of radius 4 sea miles having as its centre the navigation light at Hornby Lighthouse.

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LEGISLATION

Regulations – *continued*



New South Wales

Partnership Amendment (Fees) Regulation 2002

under the

Partnership Act 1892

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Partnership Act 1892*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to increase certain fees payable under the *Partnership Act 1892* in line with increases in the Consumer Price Index. Those fees that were last adjusted on 11 August 2001 (the fees in items 1, 2 and 6 of the accompanying table) are increased by approximately 3.2% and those fees that were last adjusted on 4 August 2000 (the fees in items 3 and 5) are increased by approximately 6.61%.

This Regulation is made under section 81 (2) of the *Partnership Act 1892*, which provides for the making of regulations prescribing fees.

Clause 1 Partnership Amendment (Fees) Regulation 2002

Partnership Amendment (Fees) Regulation 2002

under the

Partnership Act 1892

1 Name of Regulation

This is the *Partnership Amendment (Fees) Regulation 2002*.

2 Amendment of Partnership Regulation 2002

The *Partnership Regulation 2002* is amended as set out in Schedule 1.

Partnership Amendment (Fees) Regulation 2002

Amendment

Schedule 1

Schedule 1 Amendment

(Clause 2)

Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Fees

(Clause 7)

- | | | |
|----|---|---|
| 1. | Fee to accompany a statement under section 54 (1) of the Act (application for registration of limited partnership) | \$670 |
| 2. | Fee to accompany a statement under section 56 (1) of the Act (notification of change in relation to registered particulars of limited partnership) | \$31 for up to 10 changes, plus \$1 for each additional change |
| 3. | Fee for inspection of Register of Limited Partnerships under section 57 (3) of the Act | \$13 per limited partnership inspected, plus \$1 per page for printed copy of any particulars relating to the partnership |
| 4. | Fee for issue under section 58 (1) of the Act of certificate as to formation and composition of limited partnership on registration or change in composition of partnership | Nil |
| 5. | Fee for issue under section 58 (2) of the Act, on application, of certificate as to formation and composition of limited partnership | \$13, plus \$1 per page for each page in excess of 5 pages |
| 6. | Fee for issue under section 58 (2) of the Act of certificate as to any other particulars recorded in the Register | \$25, plus \$1 per page for each page other than the first page |

Protection of the Environment Operations (Clean Air) Regulation 2002

under the

Protection of the Environment Operations Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Protection of the Environment Operations Act 1997*.

BOB DEBUS, M.P.,
Minister for the Environment

Explanatory note

This Regulation replaces the *Clean Air (Domestic Solid Fuel Heaters) Regulation 1997* and the *Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997* which are repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

Part 1 of the Regulation contains preliminary provisions.

Part 2 of the Regulation applies to certain solid fuel burning appliances for domestic use (referred to as *heaters*). That Part:

- (a) prohibits heaters from being sold unless they are marked in accordance with a specified Standard and there is a relevant certificate of compliance in force that has been issued by a body approved by the Environment Protection Authority, and
- (b) prohibits a person from altering certain aspects of a heater of a particular model for which a certificate of compliance is in force, or from marking on a heater that it complies with a specified Standard if there is no relevant certificate of compliance in force.

Protection of the Environment Operations (Clean Air) Regulation 2002

Explanatory note

Part 3 of the Regulation:

- (a) specifies what is to be taken to be the emission of excessive air impurities from a motor vehicle for the purposes of the *Protection of the Environment Operations Act 1997*, and
- (b) makes the owner of a motor vehicle guilty of an offence if the motor vehicle emits excessive air impurities while being used, and
- (c) prescribes certain devices as anti-pollution devices for the purposes of the *Protection of the Environment Operations Act 1997*, and
- (d) requires certain motor vehicles to be fitted with specified anti-pollution devices, and
- (e) requires certain motor vehicles to be maintained in a specified manner, and
- (f) makes the owner of a motor vehicle guilty of an offence if the motor vehicle is used without having fitted any required anti-pollution device, and
- (g) makes the owner of a motor vehicle guilty of an offence if the motor vehicle is used and has not been serviced, maintained or adjusted as required, and
- (h) makes the owner of a motor vehicle guilty of an offence if the motor vehicle is used and any anti-pollution device fitted to it has been removed, or adjusted so as to cause excessive air impurities to be emitted, and
- (i) prescribes the form of labels that may be affixed to defective motor vehicles by authorised officers under the *Protection of the Environment Operations Act 1997*, and
- (j) prescribes requirements in relation to the transfer of petrol into a motor vehicle's fuel tank.

Part 4 of the Regulation contains savings and transitional provisions and gives effect to Schedule 2 which amends the *Protection of the Environment Operations (Penalty Notices) Regulation 1999* to enable penalty notices to be issued for the offences referred to in Part 3 of the Regulation.

Reference is made in the Regulation to:

- (a) the document entitled "AS/NZS 4013: 1999, *Domestic solid fuel burning appliances—Method for determination of flue gas emission*" published by Standards Australia, and
- (b) *Australian Design Rules*, being national standards under the *Motor Vehicle Standards Act 1989* of the Commonwealth and, in particular, to *Australian Design Rule 80/01*, and

Protection of the Environment Operations (Clean Air) Regulation 2002

Explanatory note

- (c) the *Approved Methods Publication*, being the document entitled “Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales” prepared by the Environment Protection Authority and published in the Gazette.

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 323 (the general regulation-making power), various other sections referred to in the Regulation and clauses 4, 6A, 6B and 15 of Schedule 2.

Protection of the Environment Operations (Clean Air) Regulation 2002

Contents

Contents

		Page
Part 1	Preliminary	
	1 Name of Regulation	6
	2 Commencement	6
	3 Definitions and notes	6
Part 2	Domestic solid fuel heaters	
	4 Interpretation and application of Part	7
	5 Requirement for certificates of compliance	8
	6 Interference with heaters	8
Part 3	Motor vehicles and motor vehicle fuels	
	Division 1 Interpretation	
	7 Definitions	9
	Division 2 Air impurities	
	8 Definition of excessive air impurities: section 154	10
	9 Motor vehicles emitting excessive air impurities	11
	Division 3 Prescribed anti-pollution devices	
	10 Prescribed anti-pollution devices: section 154	11
	11 Fitting of certain anti-pollution devices to be compulsory: sections 156 and 161 and clause 15	12
	12 Automatic exemption of certain vehicles from clause 11	13
	13 EPA may exempt rural table-top trucks from clause 11	13

Page 4

Protection of the Environment Operations (Clean Air) Regulation 2002

Contents

Division 4	Use and maintenance of motor vehicles	
14	Maintenance of vehicles: section 159 and clause 16	14
15	Use of motor vehicle without prescribed anti-pollution device prohibited	14
16	Maintenance, service and adjustment of motor vehicles	15
17	Removal or adjustment of anti-pollution devices	16
18	Notices to repair motor vehicles: section 161	17
Division 5	Petrol	
19	Transfer of petrol into fuel tanks of motor vehicles	17
Part 4	Miscellaneous	
20	Savings relating to domestic solid fuel heaters	18
21	Savings relating to motor vehicles and motor vehicle fuels	18
22	Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999	18
Schedules		
1	Forms	19
2	Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999	21

Clause 1 Protection of the Environment Operations (Clean Air) Regulation 2002

Part 1 Preliminary

Protection of the Environment Operations (Clean Air) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (Clean Air) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Clean Air (Domestic Solid Fuel Heaters) Regulation 1997* and the *Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997* which are repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions and notes

(1) In this Regulation:

the Act means the *Protection of the Environment Operations Act 1997*.

(2) Notes included in this Regulation do not form part of this Regulation.

Protection of the Environment Operations (Clean Air) Regulation 2002	Clause 4
Domestic solid fuel heaters	Part 2

Part 2 Domestic solid fuel heaters

4 Interpretation and application of Part

(1) In this Part:

central heating appliance has the meaning given to it in Standard 4013.

certificate of compliance means a certificate issued by a body approved by the EPA, being a certificate certifying that all heaters of a particular model comply with Standard 4013.

certificate of exemption means a certificate issued by a body approved by the EPA, being a certificate exempting all heaters of a particular model from compliance with Standard 4013.

heater—see subclause (2).

model of heater means a particular design of heater made by a particular manufacturer.

sell—see the Dictionary to the Act.

Standard 4013 means the document entitled “AS/NZS 4013:1999, *Domestic solid fuel burning appliances—Method for determination of flue gas emission*”, published by Standards Australia and as in force from time to time.

(2) This Part applies to any solid fuel burning appliance that is designed, manufactured or adapted for domestic use (referred to in this Part as a *heater*).

(3) This Part applies to the wholesale and retail sale of heaters, other than heaters of the following kind:

- (a) any masonry appliance built on site,
- (b) any central heating appliance,
- (c) any cooking stove appliance as defined in Standard 4013,
- (d) any appliance intended for use solely for heating water,
- (e) any appliance intended for use solely for distributing heat through ducts.

Clause 5 Protection of the Environment Operations (Clean Air) Regulation 2002

Part 2 Domestic solid fuel heaters

5 Requirement for certificates of compliance

- (1) A person must not sell a heater to any other person unless:
 - (a) the heater is marked in accordance with Standard 4013, and
 - (b) a certificate of compliance is in force in relation to heaters of the same model as that heater, and
 - (c) in the case of a sale to a person whose business includes the wholesale or retail sale of heaters, a copy of the certificate is given to the purchaser.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (2) Subclause (1) (c) does not require a copy of a certificate to be given to a person to whom a copy of the certificate has previously been given.
- (3) This clause does not apply to a heater of a model for which a certificate of exemption is in force.

6 Interference with heaters

- (1) A person must not:
 - (a) alter the structure, exhaust system or inlet air system of any heater of a model to which a certificate of compliance or certificate of exemption relates, or
 - (b) mark on a heater that it complies with Standard 4013 if the heater is not of a model that is the subject of a certificate of compliance.

Maximum penalty: 200 penalty units in the case of a corporation, or 100 penalty units in the case of an individual.

- (2) This clause extends to any person who causes or permits the doing of a thing that is prohibited under this clause.
- (3) Nothing in this clause makes it an offence for a person to carry out any repair work on any heater (including repairs or alterations in accordance with a notice under section 96 of the Act).

Protection of the Environment Operations (Clean Air) Regulation 2002	Clause 7
Motor vehicles and motor vehicle fuels	Part 3
Interpretation	Division 1

Part 3 Motor vehicles and motor vehicle fuels

Division 1 Interpretation

7 Definitions

In this Part:

ADR or **Australian Design Rule** means a national standard under the *Motor Vehicle Standards Act 1989* of the Commonwealth as in force from time to time.

Approved Methods Publication means the document entitled "Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales" prepared by the EPA and published in the Gazette, as in force from time to time.

diesel engine means an engine that is designed to operate on automotive diesel fuel.

goods vehicle means a motor vehicle constructed primarily for the carriage of goods, but does not include a special purpose motor vehicle.

manufacturer's gross vehicle mass, in relation to a vehicle, means the maximum loaded mass of the vehicle:

- (a) specified by the manufacturer, or
- (b) specified by the Roads and Traffic Authority in circumstances in which:
 - (i) the manufacturer is unknown, or
 - (ii) the manufacturer has failed to specify a maximum loaded mass for the vehicle, or
 - (iii) the manufacturer has specified a maximum loaded mass for the vehicle, but the vehicle has been modified to the extent that the manufacturer's specification is no longer appropriate for the vehicle.

motor bus means a passenger vehicle that seats more than 9 adult persons (including the driver).

motor cycle includes a motor tricycle and a motor cycle combination.

passenger vehicle means a motor vehicle constructed primarily for the carriage of persons, but does not include a motor cycle.

Clause 7	Protection of the Environment Operations (Clean Air) Regulation 2002
Part 3	Motor vehicles and motor vehicle fuels
Division 1	Interpretation

petrol has the same meaning as in section 154 (1) of the Act.

registered, in relation to a motor vehicle, means registered under the *Road Transport (Vehicle Registration) Act 1997*.

spark-ignition engine means an engine that is designed to operate on petrol, liquefied petroleum gas or compressed natural gas, being an engine that has its air-fuel mixture ignited by means of an electrical spark.

special purpose motor vehicle means a fork lift truck or motor vehicle constructed principally for off-road agricultural use or for use in road or building site construction work, and includes:

- (a) a tractor, harvester, header, thresher, swather, baler, cuber, loader, digger, bulldozer, excavator, grader, scraper and roller, and
- (b) a mobile crane the engine of which is used for the purpose of both lifting loads and propelling the vehicle,

but does not include any vehicle constructed on a chassis of a type normally used in the construction of a goods vehicle.

Test Method, together with a number, means a test method of that number prescribed by the Approved Methods Publication.

Division 2 **Air impurities**

8 **Definition of excessive air impurities: section 154**

- (1) This clause applies to motor vehicles propelled by a spark-ignition or diesel engine.
- (2) A motor vehicle emits excessive air impurities as referred to in section 154 (2) (a) of the Act if, when in operation, it emits air impurities in excess of such a standard of concentration that air impurities are visible for a continuous period of more than 10 seconds when determined in accordance with Test Method 31.
- (3) A motor vehicle emits excessive air impurities as referred to in section 154 (2) (b) of the Act if, when tested in accordance with Test Method 31, it emits air impurities in excess of an amount per test that results in air impurities being visible for a continuous period of more than 10 seconds.

Protection of the Environment Operations (Clean Air) Regulation 2002	Clause 9
Motor vehicles and motor vehicle fuels	Part 3
Air impurities	Division 2

9 Motor vehicles emitting excessive air impurities

- (1) An owner of a motor vehicle is guilty of an offence if the vehicle emits excessive air impurities while being used.
Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.
- (2) It is a defence to a prosecution for an offence under this clause if the owner proves that the motor vehicle was at the time of the commission of the offence a stolen motor vehicle or a motor vehicle illegally taken or used.
- (3) It is a defence to a prosecution for an offence under this clause if the defendant proves that the motor vehicle:
 - (a) was constructed or has been modified solely for use in motor racing or off-road motor sport, and
 - (b) was not registrable under the *Road Transport (Vehicle Registration) Act 1997*.
- (4) For the purposes of this clause, a motor vehicle *emits excessive air impurities* if it emits air impurities in the circumstances described in section 154 (2) of the Act.

Division 3 Prescribed anti-pollution devices

10 Prescribed anti-pollution devices: section 154

For the purposes of the definition of *prescribed anti-pollution device* in section 154 (1) of the Act, each of the following devices is prescribed as a device that is designed or intended to minimise air pollution caused by motor vehicles:

- (a) an *evaporative emission control system*, that is, a system of devices and equipment that is designed to trap the evaporative emissions from a motor vehicle's fuel tank and fuel supply system and so restrict their release to the atmosphere,
- (b) a *fuel supply system*, that is, a system of devices and equipment that is designed:
 - (i) to convey fuel to a direct injection engine, or
 - (ii) to convey fuel to an engine's air intake system, to mix the fuel with air and to convey the mixture of fuel and air into the engine,

Clause 10	Protection of the Environment Operations (Clean Air) Regulation 2002
Part 3	Motor vehicles and motor vehicle fuels
Division 3	Prescribed anti-pollution devices

- (c) an *engine ignition system*, that is, a system of devices and equipment that is designed to ignite the fuel, or the mixture of fuel and air, in a motor vehicle's engine,
- (d) an *engine management system*, that is, a system of devices and equipment that is designed to control the operation of a motor vehicle's fuel supply system and engine ignition system,
- (e) a *smoke-limiting throttle control system*, that is, a system of devices and equipment that is designed to limit the maximum rate at which fuel can go into a diesel-engined motor vehicle and so reduce the amount of smoke emitted by the motor vehicle while it is being accelerated,
- (f) an *exhaust gas recirculation system*, that is, a system of devices and equipment that is designed to convey exhaust gases from a spark ignition engine to the engine's air intake system for the purpose of reducing the amount of oxygen in the mixture of air and fuel going into the engine and so reducing the amount of oxides of nitrogen emitted by the engine,
- (g) a *catalytic converter system*, that is, a system of devices and equipment that is designed to induce a catalytic reaction between the various exhaust gases that are emitted from a motor vehicle's engine and so reduce the emission of air impurities by the motor vehicle,
- (h) a *complying exhaust pipe*, that is, an exhaust pipe that complies with the requirements of clause 11.

11 Fitting of certain anti-pollution devices to be compulsory: sections 156 and 161 and clause 15

A motor vehicle that is propelled by a diesel engine and that has a manufacturer's gross vehicle mass of more than 4.5 tonnes must be fitted with:

- (a) in the case of a motor vehicle for which, as at the date of its manufacture, an Australian Design Rule prescribed requirements with respect to the exhaust pipe to be fitted to it, a vertical exhaust pipe that complies with those requirements, or
- (b) in any other case, an exhaust pipe:
 - (i) that terminates 150 millimetres or more above the highest part of the vehicle's cab, and

Protection of the Environment Operations (Clean Air) Regulation 2002	Clause 11
Motor vehicles and motor vehicle fuels	Part 3
Prescribed anti-pollution devices	Division 3

- (ii) whose exhaust vent is directed upwards (within 30 degrees of the vertical) and away from the nearside of the vehicle.

12 Automatic exemption of certain vehicles from clause 11

- (1) Clause 11 does not apply to:
 - (a) any motor vehicle that is registered outside New South Wales, or
 - (b) any motor vehicle that is sold in New South Wales for delivery outside New South Wales.
- (2) Clause 11 does not apply to the following motor vehicles sold or registered in New South Wales:
 - (a) a motor vehicle that was manufactured before 1 January 1976,
 - (b) a motor vehicle that was ordered from the manufacturer before 1 July 1974,
 - (c) a motor bus that was manufactured before 1 January 1977,
 - (d) a special purpose motor vehicle,
 - (e) a motor vehicle used exclusively for the control of bush fires,
 - (f) a motor vehicle fitted with hydraulically operated elevating work platforms,
 - (g) a motor vehicle used exclusively to fuel aircraft,
 - (h) a motor vehicle having a diesel engine of a type certified in writing by the EPA as not requiring an exhaust pipe of the kind referred to in clause 11,
 - (i) a motor vehicle manufactured before 1 January 2007 of a model certified in writing by the EPA as complying with ADR 80/01,
 - (j) a motor vehicle manufactured on or after 1 January 2007 in compliance with ADR 80/01.

13 EPA may exempt rural table-top trucks from clause 11

- (1) On application by the owner of a motor vehicle, the EPA may, by instrument in writing, exempt the vehicle from the operation of clause 11 if satisfied that the vehicle:
 - (a) is a rigid table-top truck, and

Clause 13	Protection of the Environment Operations (Clean Air) Regulation 2002
Part 3	Motor vehicles and motor vehicle fuels
Division 3	Prescribed anti-pollution devices

- (b) is used predominantly to transport hay or other flammable farm produce, and
 - (c) is usually garaged on a farm.
- (2) An application for such an exemption must be in the approved form and must be accompanied by a fee of \$50.
 - (3) An exemption under this clause may be granted unconditionally or subject to conditions.
 - (4) An exemption under this clause applies only while the motor vehicle to which it relates is owned by the person in whose name the exemption was granted.
 - (5) A person who, in relation to any application under this clause, wilfully makes any statement or furnishes any information that is false or misleading in a material respect is guilty of an offence.
Maximum penalty: 100 penalty units in the case of a corporation, or 10 penalty units in the case of an individual.
 - (6) Clause 11 does not apply to a vehicle to which an exemption under this clause relates, but only so long as any conditions to which the exemption is subject are complied with.
 - (7) On payment of a fee of \$25, the EPA may issue a replacement instrument of exemption if it is satisfied that the instrument it replaces has been lost or destroyed.

Division 4 Use and maintenance of motor vehicles

14 Maintenance of vehicles: section 159 and clause 16

For the purposes of section 159 of the Act and clause 16, a motor vehicle to which clause 11 applies must be maintained so that the exhaust pipe of the vehicle is free of holes (other than holes necessary for the effective operation of the exhaust system).

15 Use of motor vehicle without prescribed anti-pollution device prohibited

- (1) An owner of a motor vehicle who uses the motor vehicle, or causes or allows it to be used, is guilty of an offence if:
 - (a) this Regulation requires motor vehicles of the class to which it belongs to be fitted with a prescribed anti-pollution device, and

Protection of the Environment Operations (Clean Air) Regulation 2002	Clause 15
Motor vehicles and motor vehicle fuels	Part 3
Use and maintenance of motor vehicles	Division 4

- (b) the vehicle is not fitted in the prescribed manner with such a device.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence under this clause if the defendant proves that, at the time the offence was committed:
 - (a) the defendant had reasonable grounds to believe, and did believe, that the motor vehicle was fitted with every prescribed anti-pollution device required by this Regulation to be fitted to the motor vehicle, and
 - (b) the defendant took all reasonable steps to ensure that every such device was fitted in the prescribed manner.
- (3) It is a defence to a prosecution for an offence under this clause if the defendant proves that the motor vehicle:
 - (a) was constructed or has been modified solely for use in motor racing or off-road motor sport, and
 - (b) was not registrable under the *Road Transport (Vehicle Registration) Act 1997*.
- (4) In this clause, *prescribed anti-pollution device* has the same meaning as in section 154 of the Act.

16 Maintenance, service and adjustment of motor vehicles

- (1) An owner of a motor vehicle who uses the motor vehicle, or causes or allows it to be used, is guilty of an offence if:
 - (a) this Regulation requires motor vehicles of the class to which it belongs to be serviced, maintained, or adjusted in a specified manner, and
 - (b) the vehicle has not been serviced, maintained or adjusted in that manner.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence under this clause if the defendant proves that the defendant took all reasonable steps to ensure that the motor vehicle was serviced, maintained or adjusted as required by this Regulation.

Clause 17	Protection of the Environment Operations (Clean Air) Regulation 2002
Part 3	Motor vehicles and motor vehicle fuels
Division 4	Use and maintenance of motor vehicles

17 Removal or adjustment of anti-pollution devices

- (1) The owner of a motor vehicle who uses the motor vehicle, or causes or allows it to be used, is guilty of an offence if:
- (a) an anti-pollution device had been fitted to the motor vehicle, and
 - (b) at the time of that use the device had been:
 - (i) removed, disconnected or impaired, or
 - (ii) adjusted or modified and the adjustment or modification results in the emission of excessive air impurities by the motor vehicle.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) It is a defence to a prosecution for an offence under this clause if the defendant proves:
- (a) that the removal, disconnection, impairment, adjustment or modification was done:
 - (i) in order to service, repair or replace the anti-pollution device or to improve its efficiency with respect to minimising air pollution, or
 - (ii) in order to facilitate the use of a motor vehicle for motor racing or off-road motor sport (being a motor vehicle that immediately before that removal or other action was not registrable under the *Road Transport (Vehicle Registration) Act 1997*) and that the vehicle is to be used in that condition only in the competition itself, or
 - (b) that, at the time the offence was committed:
 - (i) the defendant had reasonable grounds to believe, and did believe, that any anti-pollution device that had been fitted to the motor vehicle continued to be fitted to the motor vehicle, and
 - (ii) the defendant took all reasonable steps to ensure that the device was properly maintained.
- (3) For the purposes of this clause, a motor vehicle *emits excessive air impurities* if it emits air impurities in the circumstances described in section 154 (2) of the Act.

Protection of the Environment Operations (Clean Air) Regulation 2002	Clause 17
Motor vehicles and motor vehicle fuels	Part 3
Use and maintenance of motor vehicles	Division 4

- (4) In this clause, *anti-pollution device* means a prescribed anti-pollution device within the meaning of section 154 of the Act or any other device that is designed to minimise air pollution.

18 Notices to repair motor vehicles: section 161

For the purposes of section 161 (5) and (7) of the Act, the prescribed label is a label in or to the effect of Form 1 in Schedule 1.

Division 5 Petrol

19 Transfer of petrol into fuel tanks of motor vehicles

- (1) This clause applies to all premises from which petrol is sold to the public.
- (2) The occupier of premises to which this clause applies must not, at those premises:
- transfer any petrol into a motor vehicle's fuel tank, or
 - cause or allow any petrol to be transferred into a motor vehicle's fuel tank,

except by means of a petrol delivery hose whose nozzle is fitted with an automatic over-fill protection device.

Maximum penalty: 40 penalty units.

- (3) A person must not, at premises to which this clause applies, transfer petrol into the fuel tank of a motor vehicle by means of a petrol delivery hose unless the nozzle of the hose is inserted as far as it will go into the fuel tank's fill-pipe.

Maximum penalty: 8 penalty units.

- (4) In this clause, *automatic over-fill protection device* means a device:
- that immediately cuts off the flow of petrol into the fuel tank when the tip of the nozzle becomes immersed in petrol, and
 - that is properly installed and efficiently maintained.

Clause 20 Protection of the Environment Operations (Clean Air) Regulation 2002

Part 4 Miscellaneous

Part 4 Miscellaneous

20 Savings relating to domestic solid fuel heaters

- (1) Subject to subclause (2), any act, matter or thing that, immediately before the repeal of the *Clean Air (Domestic Solid Fuel Heaters) Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.
- (2) A certificate of compliance or certificate of exemption issued under the *Clean Air (Domestic Solid Fuel Heaters) Regulation 1997* and in force immediately before the repeal of that Regulation is taken to be a certificate of compliance or certificate of exemption (as the case requires) for the purposes of Part 2 of this Regulation until 1 September 2003.

21 Savings relating to motor vehicles and motor vehicle fuels

- (1) Any act, matter or thing that, immediately before the repeal of the *Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Without limiting the generality of subclause (1), any exemption or certificate issued under a provision of the *Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997* and in force immediately before the repeal of that Regulation is taken to have been issued under the corresponding provision of this Regulation and is subject to the same terms and conditions on which it was issued.

22 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999

The *Protection of the Environment Operations (Penalty Notices) Regulation 1999* is amended as set out in Schedule 2.

Protection of the Environment Operations (Clean Air) Regulation 2002

Forms

Schedule 1

Schedule 1 Forms

(Clause 18)

Form 1

[Front of label]

DEFECTIVE VEHICLE

This vehicle is in a defective condition and must not be used after the date shown on the back of this label unless the repairs, reconnections or readjustments shown on the back of the label have been properly effected and the defective vehicle notice given in relation to this vehicle has been cleared.

You must not use this vehicle or allow it to be used while that notice is in force. PENALTY UP TO \$6,600. However, it is not an offence to drive the vehicle to or from a place of repair or inspection.

This label must not be removed or interfered with except by an authorised officer of the Environment Protection Authority or with the authority of such an officer. PENALTY UP TO \$6,600.

Failure to comply with the defective vehicle notice may result in this vehicle's registration under the *Road Transport (Vehicle Registration) Act 1997* being suspended or cancelled.

[Back of label]

Defect Notice No:

Registration/Chassis/Engine No of vehicle:

Date for completion of repairs, reconnections or readjustments:

The following repairs, reconnections or readjustments must be carried out:

.....
.....
.....

Protection of the Environment Operations (Clean Air) Regulation 2002

Schedule 1 Forms

After the above repairs, reconnections or readjustments have been carried out, this vehicle must be inspected by an authorised officer of the Environment Protection Authority in order for this label to be removed. Inspection may be arranged by telephoning the following number between 9 am and 4 pm Monday to Friday:

Issued on:

Signature of authorised officer:

Protection of the Environment Operations (Clean Air) Regulation 2002

Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999 Schedule 2

Schedule 2 Amendment of Protection of the Environment Operations (Penalty Notices) Regulation 1999

(Clause 22)

Schedule 1 Penalty notice offences

Omit all the matter relating to the *Clean Air (Motor Vehicles and Motor Vehicle Fuels) Regulation 1997*.

Insert instead:

Protection of the Environment Operations (Clean Air) Regulation 2002

Column 1	Column 2	Column 3	Column 4
Provision of Regulation	Officer	Penalty for individuals (and corporations where no penalty in Column 4)	Penalty for corporations
Clause 9 (1)	2	\$200	\$400
Clause 15 (1): in relation to a failure to have a vertical exhaust pipe fitted so that the exhaust vent is directed away from the nearside of the vehicle	2	\$200	
Clause 15 (1): in any other case	2	\$300	
Clause 16 (1)	2	\$300	
Clause 17 (1)	2	\$300	
Clause 19 (2)	2	\$300	
Clause 19 (3)	2	\$300	

Public Health (Disposal of Bodies) Regulation 2002

under the

Public Health Act 1991

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Health Act 1991*.

CRAIG KNOWLES, M.P.,
Minister for Health

Explanatory note

The object of this Regulation is to remake, with some revision, Part 5 of the *Public Health Regulation 1991*. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation deals with the handling of bodies for cremation and burial, the exhumation of bodies and the registration of mortuaries and crematories.

This Regulation is made under the *Public Health Act 1991*, including section 82 (the general regulation-making power).

Public Health (Disposal of Bodies) Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definitions	4
4 Notes	6
Part 2 Facilities	
5 Premises for handling of bodies	7
6 Facilities of body preparation rooms	7
7 Waste disposal	8
8 Vehicles	8
Part 3 Handling of bodies	
9 Retention of bodies by a person who is not a funeral director	10
10 Retention of bodies by a funeral director	10
11 Embalming of bodies	11
12 Invasive body preparation procedures	11
13 Bodies to be placed in body bags	11
14 Protective clothing	12
15 Removal of bodies from body bags	13
16 Body viewing	13
17 48 hours' holding	14
18 Register of bodies prepared in a mortuary	14
19 Bodies to be placed in coffins	14
20 Burial of bodies	15
21 Bagging of bodies for freighting	15
22 Burials in certain areas prohibited	15
23 Burials in vaults	16
24 Register of burials	16
Part 4 Exhumations	
25 Exhumation of remains without approval prohibited	18
26 Application to exhume remains	18

Page 2

Public Health (Disposal of Bodies) Regulation 2002

Contents

	27	Approval to exhume remains	18
	28	Exhumations not to take place without officer present	19
Part 5		Crematories	
	29	Cleanliness	20
	30	Closing of crematories	20
Part 6		Cremation	
	31	No refusal to cremate	21
	32	One body at a time	21
	33	Cremation within 4 hours	21
	34	No cremation against dead person's wishes	21
	35	No cremation without documentation	21
	36	Cremation application: dead persons other than still-born children	22
	37	Cremation application: still-born children	22
	38	Cremation certificate	23
	39	Medical referee's cremation permit: dead persons who are not still-born children	23
	40	Coroner's cremation permit	24
	41	Medical referee's permit: still-born children	24
	42	Medical referees	25
	43	Ashes	25
	44	Register of cremations	25
	45	Keeping of register and documents	26
	46	Fee for approval of equipment for a crematory	26
Part 7		Register of mortuaries and crematories	
	47	Register of mortuaries and crematories	27
	48	Notification of details of mortuaries and crematories	27
Part 8		General	
	49	Inspection	28
	50	Public access to registers	28
	51	Guidelines as defence	28
	52	Saving	29

Clause 1 Public Health (Disposal of Bodies) Regulation 2002

Part 1 Preliminary

Public Health (Disposal of Bodies) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Health (Disposal of Bodies) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces Part 5 of the *Public Health Regulation 1991* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

attending practitioner, in relation to a dead person, means a medical practitioner who attended the person immediately before, or during the illness terminating in, the death of the person.

body means a body of a dead person.

body preparation room means that part of a mortuary that is used for the preparation of bodies for burial or cremation.

burial includes putting in a vault.

cemetery authority means the person or body of persons (including a council) by whom the cemetery's operations are directed.

chief executive officer, in relation to a hospital, has the same meaning as it has in Division 2 of Part 7 of the Act.

coroner means a person who exercises or performs the functions of a coroner in accordance with the *Coroners Act 1980*.

cremation authority, in relation to a crematory, means the person or body of persons by whom the crematory's operations are directed.

dead person includes a still-born child.

death certificate means a certificate given by a medical practitioner as to the cause of death.

Public Health (Disposal of Bodies) Regulation 2002

Clause 3

Preliminary

Part 1

disinfectant means a hospital grade disinfectant as defined in clause 2 of the *Therapeutic Goods Regulations 1990* of the Commonwealth.

embalming means the process of preserving a body by means of the removal of body fluids and arterially injecting the body with embalming fluids, or other means approved by the Director-General.

exhumation means the removal of the remains of a dead person from a grave or vault but does not include the removal of remains from a vault in a cemetery for immediate transfer to another vault in the same cemetery.

funeral director means a person (other than the operator of a mortuary transport service) who, in the conduct of the person's business, engages, for the purpose of burial, cremation or transport, in the collection, transport, storage, preparation or embalming of bodies or engages in the conduct of exhumations.

holding room means a room that includes refrigerated body storage facilities for at least 2 adult bodies but does not include a body preparation room.

hospital has the same meaning as it has in Division 2 of Part 7 of the Act.

List A disease means any one or more of the following conditions:

Creutzfeldt-Jakob disease

Hepatitis C

Human immunodeficiency virus infection (HIV infection).

List B disease means any one or more of the following diseases:

Diphtheria

Plague

Respiratory anthrax

Smallpox

Tuberculosis

Any viral haemorrhagic fever (including Lassa, Marburg, Ebola and Congo-Crimean fevers).

medical referee means a person qualified or appointed under clause 42 to be a medical referee.

Clause 3 Public Health (Disposal of Bodies) Regulation 2002

Part 1 Preliminary

mortuary means that part of premises that is used, or intended to be used, for the preparation or storage of bodies before their burial or cremation.

mortuary transport service means a service that, for fee, gain or reward, transports bodies for funeral directors.

nearest surviving relative means:

- (a) in relation to a still-born child—a parent, or sibling at or above the age of 16 years, of the child, and
- (b) in relation to a dead person who is not a still-born child—the spouse of the dead person, a person with whom the dead person had a de facto relationship (within the meaning of the *Property (Relationships) Act 1984*) immediately before death, a parent of the dead person, a child at or above the age of 16 years of the dead person or any relative of the dead person who was residing with the dead person when he or she died.

refrigerated body storage facility means a storage facility for bodies maintained at between 1 and 5 degrees Celsius.

the Act means the *Public Health Act 1991*.

- (2) A reference in this Regulation to a publication is a reference to the publication as in force for the time being.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

Public Health (Disposal of Bodies) Regulation 2002

Clause 5

Facilities

Part 2

Part 2 Facilities

5 Premises for handling of bodies

- (1) A person must not, without the approval of the Director-General, use any premises other than a mortuary approved under the *Local Government Act 1993* for the embalming, or other preparation, of bodies for burial or cremation or for the placing of bodies in coffins for burial or cremation.
- (2) A person must not, without the approval of the Director-General, use any premises other than a holding room or a mortuary for the storage of bodies for burial or cremation.
- (3) A person must not store a body in a vehicle except during the transport of the body or with the approval of the Director-General.
- (4) A person must not use a holding room for any purpose other than the storage of bodies.
- (5) A person must not, without the approval of the Director-General, use the facilities of a hospital for the purpose of the business of a funeral director or of the operator of a mortuary transport service except for the removal of bodies of persons who died in the hospital.
- (6) The Director-General may give approval:
 - (a) under subclause (1), (2) or (3)—either generally or in a particular case, or
 - (b) under subclause (5)—in a particular case.Maximum penalty: 15 penalty units.

6 Facilities of body preparation rooms

- (1) A person must not use a body preparation room unless it has the following:
 - (a) a vehicle reception area adjacent to it and so designed that the transfer of uncoffined bodies from area to room and room to area is screened from public view,
 - (b) at least one hand wash basin, with an adequate supply of hot and cold water and fitted with elbow operated, foot operated or hands-free taps,

Clause 6 Public Health (Disposal of Bodies) Regulation 2002

Part 2 Facilities

- (c) sufficient slabs, tables and other fittings for the preparation of bodies for burial or cremation constructed of smooth impervious material and so designed as to facilitate draining and their cleaning,
 - (d) refrigerated body storage facilities big enough for 2 adult bodies,
 - (e) one or more impervious containers, each fitted with an elbow operated or foot operated close-fitting cover or lid, for the reception and storage of all solid wastes arising from the preparation of bodies and for the reception and storage of all screenings from floor drains.
- (2) A person must not use the refrigerated body storage facilities in a body preparation room or holding room except to store bodies.
- Maximum penalty: 15 penalty units.

7 Waste disposal

A person must not dispose of any solid waste arising from the preparation of bodies for burial or cremation except as contaminated waste in a manner approved by the Director-General.

Maximum penalty: 10 penalty units.

8 Vehicles

- (1) A funeral director must, for use in connection with the funeral director's business, provide:
 - (a) at least 1 hearse, and
 - (b) at least 1 body-collection vehicle.
- (2) Subclause (1) (b) is satisfied if a funeral director causes the bodies that the funeral director conveys to be transported by a mortuary transport service or public vehicle operated by a carrier of freight.
- (3) A funeral director or the operator of a mortuary transport service must not use for the transport of bodies the part of a vehicle that is used by the funeral director or service for other purposes.
- (4) A funeral director or the operator of a mortuary transport service must not use for any other purpose the part of a vehicle that is used by the funeral director or service for the transport of bodies.

Public Health (Disposal of Bodies) Regulation 2002

Clause 8

Facilities

Part 2

- (5) If part of a vehicle has been used to transport a body, a person must not use, or permit the use of, that part for the transport of another body until it has been cleaned of any exudates from the first body.
- (6) A person must not dispose of a vehicle that that person has used for the transport of a body unless the vehicle has been cleaned since that use to remove any body exudates.
- (7) A person must not transport an unembalmed body unless:
 - (a) during that transport, the body is refrigerated so that it is exposed continuously to a temperature of less than 10 degrees Celsius, or
 - (b) the duration of the transport is 8 hours or less and the person has reason to believe that transporting the body without refrigeration will not prejudice public health or amenity.

Maximum penalty: 5 penalty units.

Clause 9 Public Health (Disposal of Bodies) Regulation 2002

Part 3 Handling of bodies

Part 3 Handling of bodies

9 Retention of bodies by a person who is not a funeral director

- (1) A person who is not a funeral director must not retain a body if more than 5 days have passed since death.
- (2) The Director-General may approve, in a particular case, of a body being retained for a longer time than that permitted by this clause, subject to any conditions that the Director-General considers appropriate.
- (3) Subclause (1) does not apply to a body that has been removed to premises licensed under the *Anatomy Act 1977* or that is the subject of an inquest under the *Coroners Act 1980*.

Maximum penalty: 20 penalty units.

10 Retention of bodies by a funeral director

- (1) A funeral director must not retain a body other than in a mortuary or holding room.
- (2) A funeral director who retains a body in a mortuary for more than 48 hours must ensure that the body is kept in a refrigerated body storage facility within the mortuary.
- (3) However, a funeral director may cause the body to be removed from a refrigerated body storage facility:
 - (a) to another part of the mortuary, for a maximum of 8 hours a day for the purposes of preparing the body for burial or cremation, embalming the body or viewing of the body by mourners, or
 - (b) for the purpose of transporting the body for burial, interment or cremation, or
 - (c) for the purpose of transporting the body to another mortuary.
- (4) A funeral director must not retain a body, other than a body that has been embalmed, for more than 7 working days after the issue of a death certificate, a burial permit issued by a coroner or a cremation permit issued by a coroner in relation to the body.
- (5) The Director-General may approve, in a particular case, of a body being retained for a longer time than that permitted by this clause,

Public Health (Disposal of Bodies) Regulation 2002

Clause 10

Handling of bodies

Part 3

subject to any conditions that the Director-General considers appropriate.

Maximum penalty: 20 penalty units.

11 Embalming of bodies

- (1) A person must not embalm a body unless that person has a certificate of proficiency of, or equivalent to, Certificate IV standard, issued by an institute approved by the Director-General.
- (2) A person must not embalm a body that the person has reason to believe is infected with a List B disease.

Maximum penalty: 20 penalty units.

12 Invasive body preparation procedures

- (1) A person must not carry out a procedure on a body infected with a List A disease in which the dermis is pierced or cut unless the person has completed a training course, or a series of training courses, in mortuary practice, infection control procedures and occupational health and safety, being a course or course approved by the Director-General.

Maximum penalty: 15 penalty units.

- (2) This clause has effect on and from 1 March 2003.

13 Bodies to be placed in body bags

- (1) A person must not remove the body of a dead person from a place unless:
 - (a) the body has been placed and secured in a bag approved by the Director-General or a wrapping so approved in such a manner as to prevent the leakage of any body exudate or substance, and
 - (b) the name of, or an identification of, the dead person is clearly and indelibly written on the top outer surface of the bag or wrapping, and
 - (c) if subclause (3) or (4) applies—that subclause has also been complied with.

Maximum penalty: 15 penalty units.

- (2) The body bag or wrapping referred to in subclause (1):
 - (a) is to be made of low density polyethylene film of not less than 150 micrometres in thickness, and

Clause 13 Public Health (Disposal of Bodies) Regulation 2002

Part 3 Handling of bodies

- (b) if the bag is used for enclosing the body of an adult it is to be (when flat) not less than 2.4 metres in length and 1 metre in width, or if for enclosing the body of a child, not less than 1.5 metres in length, and
 - (c) if a wrapping is used for enclosing the body of an adult it is to be (when opened and flat) not less than 2.4 metres in length and 2 metres in width, or if for enclosing the body of a child, not less than 1.5 metres in length.
- (3) If a person has reason to believe that a body is infected with a List A disease, the person must ensure that the bag or wrapping referred to in subclause (1) (a), and any bag or wrapping used to replace that bag or wrapping, is clearly and indelibly marked with the words “INFECTIOUS DISEASE—LIST A—HANDLE WITH CARE”.
- (4) If a person has reason to believe that a body is infected with a List B disease, the person must ensure that the bag or wrapping referred to in subclause (1) (a), and any bag or wrapping used to replace that bag or wrapping, is clearly and indelibly marked with the words “INFECTIOUS DISEASE—LIST B—HANDLE WITH CARE”.
- (5) The person responsible for complying with this clause is:
- (a) if the body is at a hospital—the chief executive officer, or
 - (b) if the body is at any other premises or place—the funeral director or other person removing the body.

14 Protective clothing

- (1) A person engaged in placing in a plastic bag or wrapping a body that the person has reason to believe is infected with an infectious disease must wear:
- (a) a clean protective outer garment such as a gown, overalls or jumpsuit, and
 - (b) a clean pair of disposable gloves, and
 - (c) a disposable mask and appropriate eye protection.
- (2) The person who wears those items must ensure that they are placed, immediately after use, in a clean plastic bag and then laundered as soon as practicable or, if disposable, disposed of as soon as practicable as contaminated waste.

Maximum penalty: 5 penalty units.

Public Health (Disposal of Bodies) Regulation 2002

Clause 15

Handling of bodies

Part 3

15 Removal of bodies from body bags

- (1) A funeral director may remove from a body bag a body that the funeral director has no reason to believe is infected with a List A disease or a List B disease for the purpose of:
 - (a) embalming the body, or
 - (b) preparing the body for viewing, transport, burial or cremation, or
 - (c) transferring the body to a coffin.
- (2) A funeral director may remove from a body bag a body that the funeral director has reason to believe is infected with a List A disease for the purpose of:
 - (a) preparing the body for viewing, transport, burial or cremation, or
 - (b) transferring the body to a coffin.
- (3) After a funeral director has embalmed or prepared a body, the funeral director must place it in a coffin or in a new body bag approved by the Director-General.

Maximum penalty: 10 penalty units.
- (4) A person must not remove from a body bag required under clause 13 (4) a body that the person has reason to believe is infected with a List B disease.

Maximum penalty: 10 penalty units.

16 Body viewing

- (1) A funeral director may make a body available for viewing by mourners.
- (2) However, a funeral director must not make available for viewing a body infected with a List B disease or a body that the funeral director has reason to believe is infected with a List B disease.

Maximum penalty: 10 penalty units.
- (3) A funeral director who makes an unembalmed body available for viewing:
 - (a) must not remove the body from refrigeration for a period longer than is necessary for making it available for viewing, and

Clause 16 Public Health (Disposal of Bodies) Regulation 2002

Part 3 Handling of bodies

- (b) unless the body is to be buried or cremated immediately, must replace the body under refrigeration after the viewing, and
- (c) must not allow the body to remain unrefrigerated for a period exceeding 8 hours in any day.

Maximum penalty: 5 penalty units.

17 48 hours' holding

- (1) A person must not keep a body in a holding room for more than 48 hours.
- (2) A person who keeps a body in a holding room and who has reason to believe that not refrigerating the body will prejudice public health or amenity must put the body in the refrigerated body storage facility of the holding room.

Maximum penalty: 15 penalty units.

18 Register of bodies prepared in a mortuary

- (1) A person who operates a mortuary must maintain a register of all bodies prepared in the mortuary.
- (2) The person must make an entry in the register relating to each body immediately after the body is prepared.
- (3) Each entry must include the following:
 - (a) the name, age and last address of the person whose body was prepared,
 - (b) the date of the person's death,
 - (c) the date the body was received,
 - (d) the date the body was removed from the mortuary,
 - (e) the name of the cemetery or crematory to which, or the person to whom, the body was delivered.

Maximum penalty: 10 penalty units.

19 Bodies to be placed in coffins

Unless otherwise approved by the Director-General generally or in a particular case, a person must not bury or cremate a body unless:

- (a) the body has been placed in a coffin, and

Public Health (Disposal of Bodies) Regulation 2002

Clause 19

Handling of bodies

Part 3

(b) the lid of the coffin has been securely sealed.

Maximum penalty: 10 penalty units.

20 Burial of bodies

Unless otherwise approved by the Director-General in a particular case, a person who buries a body contained in a coffin must place the coffin so that its upper surface is not less than 900 millimetres below the natural surface level of the soil where it is buried.

Maximum penalty: 5 penalty units.

21 Bagging of bodies for freighting

- (1) A person must not use, or agree to the use of, a vehicle (other than a hearse or body collection vehicle) for transporting a body that the person has reason to believe is infected with an infectious disease without informing the owner or driver of the vehicle that the body is so infected.
- (2) A funeral director must, before despatching a body by a carrier other than a funeral director or the operator of a mortuary transport service:
 - (a) comply with the procedure in clause 13 (4) in relation to the body as if the funeral director has reason to believe the body is infected with a List B disease, and
 - (b) enclose the body in a watertight coffin.

Maximum penalty: 10 penalty units.

22 Burials in certain areas prohibited

- (1) A person must not place a body in any grave or vault unless that grave or vault is located:
 - (a) in a public cemetery, or
 - (b) in a private cemetery or other place approved for that purpose by a local authority, or
 - (c) on private land, where the area of landholding is 5 hectares or more and the location has been approved for that purpose by a local authority.

Clause 22 Public Health (Disposal of Bodies) Regulation 2002

Part 3 Handling of bodies

- (2) A person must not bury a body in or on any land if to do so would make likely the contamination of a drinking water supply or a domestic water supply.

Maximum penalty: 10 penalty units.

23 Burials in vaults

- (1) A person must not place a body in a vault unless:
- (a) the body has been embalmed, then hermetically enclosed with material approved by the Director-General without any viewing panel in the enclosure and the body and enclosure placed in a coffin and the lid secured in position, or
 - (b) the conditions approved in relation to the body under subclause (2) are met.

Maximum penalty: 5 penalty units.

- (2) The Director-General may, generally or in a particular case, approve other conditions under which a body may be placed in a vault.

24 Register of burials

- (1) A cemetery authority must maintain a register of all burials carried out in the cemetery the operations of which it directs.
- (2) The cemetery authority must make in the register an entry relating to each burial immediately after the burial has been carried out.
- (3) Each entry must include the following:
- (a) the name, age and last address of the person whose body or remains have been buried,
 - (b) the date of the person's death,
 - (c) the date of the burial,
 - (d) the section and allotment where the burial has been made,
 - (e) the name of the person (if any) who continues to hold any right of burial in that allotment,
 - (f) the name of the funeral director who transported the body to the cemetery,
 - (g) the fees paid to the cemetery authority for the burial.

Public Health (Disposal of Bodies) Regulation 2002

Clause 24

Handling of bodies

Part 3

- (4) If a cemetery authority ceases to exist, the person who was its last chief executive officer must ensure that the register is sent to the Director-General or otherwise disposed of as the Director-General may direct.

Maximum penalty: 10 penalty units.

Clause 25 Public Health (Disposal of Bodies) Regulation 2002

Part 4 Exhumations

Part 4 Exhumations

25 Exhumation of remains without approval prohibited

A person must not exhume the remains of a body unless the exhumation of those remains has been:

- (a) ordered by a coroner, or
- (b) approved by the Director-General.

Maximum penalty: 10 penalty units.

26 Application to exhume remains

- (1) An application for approval to exhume the remains of the body of a dead person may be made to the Director-General by:
 - (a) an executor of the estate of the dead person, or
 - (b) the nearest surviving relative of the dead person, or
 - (c) if there is no such executor or relative available to make the application—a person who, in the opinion of the Director-General, is a proper person in all the circumstances to make the application.
- (2) Such an application is to be made to the Director-General in the approved form and is to be accompanied by:
 - (a) a certified copy of the death certificate relating to the dead person, and
 - (b) a statutory declaration as to the relationship of the applicant to the dead person and the dead person's wishes, if any, regarding the disposal of his or her body (so far as any such wishes are known to the applicant), and
 - (c) an application fee of \$245.

27 Approval to exhume remains

- (1) The Director-General may:
 - (a) grant an approval to exhume the remains of a body, subject to such conditions as may be specified in the approval, or
 - (b) refuse the application.

Public Health (Disposal of Bodies) Regulation 2002

Clause 27

Exhumations

Part 4

- (2) An approval granted under this clause lapses at the expiration of 3 months after the date of the approval or within any longer time agreed to by the Director-General.

28 Exhumations not to take place without officer present

- (1) A person must not proceed with an exhumation unless an officer of the Department of Health or an environmental health officer (whether an officer of the Department of Health or otherwise) is present at the exhumation.
- (2) A person must not proceed with an exhumation if an officer of the Department of Health, or an environmental health officer, present has ordered the exhumation to stop.

Maximum penalty: 10 penalty units.

Clause 29 Public Health (Disposal of Bodies) Regulation 2002

Part 5 Crematories

Part 5 Crematories

29 Cleanliness

A cremation authority must keep a crematory whose operations it directs clean, tidy and in good working order.

Maximum penalty: 5 penalty units.

30 Closing of crematories

- (1) The Minister may, on giving 28 days' notice in writing to a cremation authority, order the closing of a crematory whose operations are directed by the authority.
- (2) A cremation authority must not direct or permit the operation of a crematory the subject of an order under this clause after the expiration of the 28-day period until the order is revoked by the Minister.
- (3) Except where an order has been given pursuant to subclause (1), a cremation authority must, not less than 28 days before temporarily or permanently closing a crematory whose operations it directs:
 - (a) forward to the Minister notice of the intended closure, and
 - (b) publish a notice giving details of the intended closure in a newspaper circulating in the district where the crematory is located, and
 - (c) prominently display a copy of the notice at the entrance of the crematory.
- (4) A person must not re-open a crematory closed by a cremation authority without the approval of the Minister.

Maximum penalty: 20 penalty units.

Public Health (Disposal of Bodies) Regulation 2002

Clause 31

Cremation

Part 6

Part 6 Cremation

31 No refusal to cremate

A cremation authority must not, without lawful excuse, refuse to accept a body for cremation.

Maximum penalty: 10 penalty units.

32 One body at a time

A person must not cremate more than one body in the same crematory retort at any one time, except with the approval of the Director-General.

Maximum penalty: 10 penalty units.

33 Cremation within 4 hours

A cremation authority must commence cremating a body within 4 hours of the delivery of the body to the crematory, unless it places the body in a holding room.

Maximum penalty: 5 penalty units.

34 No cremation against dead person's wishes

A person must not cremate the body of a dead person if informed that the latter has left a written direction that his or her body was not to be cremated or that it was to be disposed of by some other means.

Maximum penalty: 10 penalty units.

35 No cremation without documentation

- (1) A person must not cremate the remains of a body that has not been identified.
- (2) A cremation authority must not cremate the body of a dead person who is not a still-born child unless the authority has in its possession:
 - (a) an application for cremation under clause 36, and
 - (b) except where a cremation permit has been issued by a coroner under clause 40—a cremation certificate issued under clause 38, and
 - (c) a cremation permit issued under clause 39 or 40.

Clause 35 Public Health (Disposal of Bodies) Regulation 2002

Part 6 Cremation

- (3) A cremation authority must not cremate a still-born child unless the authority has in its possession:
- (a) an application for cremation under clause 37, and
 - (b) a cremation permit issued under clause 41.

Maximum penalty: 20 penalty units.

36 Cremation application: dead persons other than still-born children

- (1) An application for cremation of a dead person who is not a still-born child is to be made in the approved form to a medical referee or coroner.
- (2) The form may require any information contained in the form to be supported by a statutory declaration.
- (3) The application may be made by:
 - (a) an executor of the estate of the dead person, or
 - (b) a nearest surviving relative of the dead person, or
 - (c) where there is no such executor or relative available to make the application—a person who, in the opinion of the medical referee or coroner, is a proper person in all the circumstances to make the application.

37 Cremation application: still-born children

- (1) An application for cremation of a still-born child is to be made in the approved form to a medical referee.
- (2) The form may require any information contained in the form to be supported by a statutory declaration.
- (3) The application may be made by:
 - (a) a nearest surviving relative of the child, or
 - (b) where there is no such relative available to make the application—a person who, in the opinion of the medical referee, is a proper person in all the circumstances to make the application.

Public Health (Disposal of Bodies) Regulation 2002

Clause 38

Cremation

Part 6

38 Cremation certificate

- (1) An attending practitioner may issue a cremation certificate for the body of a dead person:
 - (a) if the certificate is in the approved form, and
 - (b) if the practitioner is able to certify definitely the cause of death of the person, and
 - (c) if the person is not one whose death is examinable under the *Coroners Act 1980* by a coroner.
- (2) A medical practitioner expert in anatomical pathology may issue a cremation certificate for the body of a dead person:
 - (a) if the certificate is in the approved form, and
 - (b) if the practitioner has carried out a post-mortem examination of the body, and
 - (c) if the person is not one whose death is examinable under the *Coroners Act 1980* by a coroner.
- (3) A cremation certificate issued for the body of a dead person by a person registered as a medical practitioner in another State or Territory, under legislation of that State or Territory regulating the cremation of bodies, is taken to have been issued under this clause.

39 Medical referee's cremation permit: dead persons who are not still-born children

- (1) A medical referee who receives:
 - (a) an application for cremation of the body of a dead person made under clause 36, and
 - (b) a cremation certificate issued under clause 38 for the body,may issue a cremation permit for the body in the approved form.
- (2) However, a medical referee must not issue a cremation permit for the body of a dead person if:
 - (a) the death of the person is examinable under the *Coroners Act 1980* by a coroner, or
 - (b) the person left a written direction that his or her body was not to be cremated or that it was to be disposed of by some other means, or

Clause 39 Public Health (Disposal of Bodies) Regulation 2002

Part 6 Cremation

- (c) the medical referee has not made an external examination of the body, or
- (d) the medical referee is not satisfied that the identity of the body has been correctly disclosed in the application for cremation or in the cremation certificate, or
- (e) the medical referee is not satisfied that the cause of death has been correctly disclosed in the cremation certificate, or
- (f) the application for cremation or the cremation certificate appears to the medical referee to be otherwise incorrect or incomplete, or
- (g) the same medical referee issued a cremation certificate in respect of the body.

40 Coroner's cremation permit

- (1) A coroner who receives an application for cremation of the body of a person whose death is examinable under the *Coroners Act 1980* by the coroner may issue a cremation permit in the approved form.
- (2) However, a coroner must not issue a cremation permit for the body of a dead person if:
 - (a) the person left a written direction that his or her body was not to be cremated or that it was to be disposed of by some other means, or
 - (b) the application for cremation appears to the coroner to be incorrect or incomplete.
- (3) A cremation permit issued for the body of a dead person by a person who exercises or performs the functions of a coroner in another State or Territory, under legislation of that State or Territory regulating the cremation of bodies, is taken to have been issued under this clause.

41 Medical referee's permit: still-born children

- (1) A medical referee who receives an application made under clause 37 for cremation of the body of a still-born child may issue a cremation permit in the approved form.

Public Health (Disposal of Bodies) Regulation 2002

Clause 41

Cremation

Part 6

- (2) However, a medical referee must not issue a cremation permit for the body of a still-born child unless:
- (a) the child has been certified to be still-born by a medical practitioner who was in attendance at the delivery of the child, or
 - (b) the medical referee is satisfied, after such inquiries as the medical referee thinks necessary, that the child was still-born.

42 Medical referees

A person may perform the functions of a medical referee under this Part if the person is:

- (a) a medical officer of health, or
- (b) a medical superintendent of a public hospital (within the meaning of the *Health Services Act 1997*), or
- (c) a medical practitioner who has been appointed by the Director-General as a medical referee for the purposes of clauses 39 and 41.

43 Ashes

- (1) After cremating the body of a dead person, a cremation authority must, in accordance with the reasonable written directions of the person (or with the reasonable directions of the applicant for the cremation):
- (a) give the ashes to the applicant, or
 - (b) dispose of the ashes in a burial ground or in land adjoining the crematory reserved for the burial of ashes, or
 - (c) otherwise retain or dispose of the ashes.
- (2) If ashes are, in accordance with subclause (1), to be given by a cremation authority to the applicant, and the applicant does not take them within a reasonable time, the cremation authority must give 14 days' notice to the applicant of its intention to dispose of the ashes before it does dispose of them.

Maximum penalty: 10 penalty units.

44 Register of cremations

- (1) A cremation authority must maintain in the approved form a register of all cremations carried out by it.

Clause 44 Public Health (Disposal of Bodies) Regulation 2002

Part 6 Cremation

- (2) A cremation authority must make in the register an entry relating to each cremation immediately after the cremation has taken place, except that it must enter details relating to the disposal of ashes as soon as the ashes have been disposed of.

Maximum penalty: 10 penalty units.

45 Keeping of register and documents

- (1) A cremation authority must keep all applications, certificates, permits and other documents relating to any cremation carried out by it and mark them with a number corresponding to the number in the register referred to in clause 44, and file them.
- (2) The documents referred to in subclause (1) (but not the register of cremations or any part of it) may be destroyed by the cremation authority after the expiration of 15 years from the date of the cremation to which they relate.
- (3) When a crematory is closed, its cremation authority must send all registers and documents relating to the cremations that have taken place there to the Director-General or otherwise dispose of them as the Director-General may direct.

Maximum penalty: 20 penalty units.

46 Fee for approval of equipment for a crematory

- (1) A fee of \$495 is payable when an application is made for the purposes of section 52 of the Act.
- (2) A fee of \$245 is payable when an application is made for the variation of an approval given for the purposes of section 52 of the Act.

Public Health (Disposal of Bodies) Regulation 2002

Clause 47

Register of mortuaries and crematories

Part 7

Part 7 Register of mortuaries and crematories

47 Register of mortuaries and crematories

The Department is to maintain a register of mortuaries and crematories.

48 Notification of details of mortuaries and crematories

(1) A person who operates a mortuary or crematory must notify the Department of the following matters for inclusion on the register:

- (a) the name and location of the mortuary or crematory,
- (b) the name and address of the person who operates the mortuary or crematory,
- (c) the telephone number of the mortuary or crematory or of the person who operates the mortuary or crematory,
- (d) in the case of a mortuary—the name and address of any funeral director that has access to the mortuary.

(2) A notification must be accompanied by:

- (a) in the case of a mortuary—a copy of the approval under section 68 of the *Local Government Act 1993* in relation to the mortuary, and
- (b) a fee of \$50.

Maximum penalty: 20 penalty units.

(3) If any of the details notified in relation to a mortuary or crematory change, the person who operates the mortuary or crematory must notify the Department of that change, within 28 days after the change. No fee is payable in relation to the notification.

Maximum penalty: 20 penalty units.

(4) This clause has effect on and from 1 January 2003.

Clause 49 Public Health (Disposal of Bodies) Regulation 2002

Part 8 General

Part 8 General

49 Inspection

- (1) An environmental health officer may enter and inspect a mortuary or premises that the officer has reason to suspect are mortuaries.
- (2) An environmental health officer may enter a crematory and inspect any equipment or apparatus at the crematory.
- (3) An environmental health officer may enter a cemetery and inspect any part of the cemetery.
- (4) An environmental health officer may inspect any register or other record or document at a mortuary, crematory or cemetery and take copies of or extracts from the register, record or document.
- (5) An environmental health officer may enter any premises used by a mortuary transport service and may inspect any records, equipment or apparatus used by the mortuary transport service.

50 Public access to registers

- (1) A cemetery authority must allow members of the public to inspect the register of burials maintained by the authority.
- (2) A cremation authority must allow members of the public to inspect the register of cremations maintained by the authority.
- (3) An authority must do so:
 - (a) without charge to the public, and
 - (b) during the normal business hours of the authority.
- (4) An authority must also provide copies of entries in the register maintained by it on request by members of the public, but may charge them the reasonable cost of providing the copies.

51 Guidelines as defence

It is a defence to a prosecution for an offence against this Regulation if the defendant satisfies the court that the act or omission constituting the offence was done in compliance with any guidelines published by the Department of Health.

Public Health (Disposal of Bodies) Regulation 2002

Clause 52

General

Part 8

52 Saving

Anything done or omitted under Part 5 of the *Public Health Regulation 1991* is taken to have been done or omitted under this Regulation.

Public Health (General) Regulation 2002

under the

Public Health Act 1991

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Health Act 1991*.

CRAIG KNOWLES, M.P.,
Minister for Health

Explanatory note

This Regulation deals with the following matters:

- (a) the provision of information to patients in relation to sexually transmissible medical conditions (clause 5),
- (b) the keeping of records in relation to scheduled medical conditions and the notification of test results in relation to certain scheduled medical conditions (clauses 6–13),
- (c) the control of vaccine preventable diseases (clauses 14–17),
- (d) other miscellaneous and technical matters.

The Regulation replaces, without any changes in substance, the provisions of Parts 2, 2A and 7 of the *Public Health Regulation 1991*. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

Public Health (General) Regulation 1999

Explanatory note

This Regulation is made under the *Public Health Act 1991*, including section 82 (the general regulation-making power).

Clauses 1–13, 18–20, 24 and 25 of this Regulation comprise matters of a machinery nature.

Public Health (General) Regulation 1999

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	5
2 Commencement	5
3 Definitions	5
4 Notes	5
Part 2 Sexually transmissible medical conditions	
5 Information to patients	6
Part 3 Scheduled medical conditions	
6 Records of scheduled medical conditions	7
7 Period for keeping of records	7
8 Notification of test results—prescribed tests	8
9 Notification of test results—time limit for providing information	8
10 Protection of identity—exceptions	8
11 Notification of death from scheduled medical condition	8
12 Advice to Category 2 or 3 patients	9
13 Advice to Category 2, 3 or 4 contacts	9
Part 4 Control of vaccine preventable diseases	
14 Classes of children to which Part 3A of the Act applies	10
15 Additional child care facilities for the purposes of Part 3A of the Act	10
16 Period for which immunisation certificates and register entries are to be retained	10
17 Responsibilities of directors of child care centres with respect to immunisation	10
Part 5 Miscellaneous	
18 Public authorities to notify public health risks	12
19 Particulars of notifiable diseases	12
20 Disclosure of information—lawful excuse	12

Page 3

Public Health (General) Regulation 1999

Contents

21	Vermin	13
22	Sleeping rooms	13
23	Anthrax	14
24	Approvals by Director-General	14
25	Guidelines and codes	14
26	Savings	14

Schedules		
1	Perinatal deaths: particulars	15
2	Sudden infant death syndrome: particulars	16

Public Health (General) Regulation 2002

Clause 1

Preliminary

Part 1

Public Health (General) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Health (General) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces Parts 2, 2A and 7 of the *Public Health Regulation 1991* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

Department means the Department of Health.

the Act means the *Public Health Act 1991*.

(2) A reference in this Regulation to a publication is a reference to the publication as in force for the time being.

4 Notes

Notes in the text of this Regulation do not form part of this Regulation.

Clause 5 Public Health (General) Regulation 2002

Part 2 Sexually transmissible medical conditions

Part 2 Sexually transmissible medical conditions

5 Information to patients

For the purposes of section 12 (1) of the Act, a medical practitioner is required in relation to a sexually transmissible medical condition to provide information to the patient on such of the following matters as are relevant in a particular case:

- (a) means of minimising the risk of infecting other people,
- (b) public health implications of the condition,
- (c) any responsibilities under section 11 of the Act, including any precautions considered reasonable,
- (d) responsibilities under section 13 of the Act,
- (e) diagnosis and prognosis,
- (f) treatment options.

Public Health (General) Regulation 2002

Clause 6

Scheduled medical conditions

Part 3

Part 3 Scheduled medical conditions

6 Records of scheduled medical conditions

For the purposes of section 14 (2) (a) of the Act, the following particulars are required to be recorded in relation to the scheduled medical condition indicated:

- (a) in relation to birth—the particulars required for the completion of the “NSW Midwives Data Collection Form” published by the Department,
- (b) in relation to perinatal death—the particulars in Schedule 1,
- (c) in relation to sudden infant death syndrome—the particulars in Schedule 2,
- (d) in relation to all Category 2 medical conditions (including AIDS)—the particulars required for the completion of the “Doctor/Hospital Notification Form” published by the Department,
- (e) in relation to AIDS—the particulars required for the completion of the “AIDS Notification Form” published by the Department,
- (f) in relation to a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria in a child under the age of 1 year or pregnancy with a child having a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria—the particulars required for the completion of the “NSW Birth Defects Register Notification of Birth Defect Form” or the “NSW Birth Defects Register Notification of Pregnancy with a Baby Affected by Congenital Malformation Form”, as applicable, both published by the Department.

7 Period for keeping of records

For the purposes of section 14 (2) (b) of the Act, the prescribed period is, where the person about whom the particulars have been recorded:

- (a) was 18 years of age or over—10 years, or
- (b) was less than 18 years of age—10 years starting on the person’s eighteenth birthday, or
- (c) was still-born—10 years starting on the date of birth, or

Clause 7 Public Health (General) Regulation 2002

Part 3 Scheduled medical conditions

- (d) died before turning 18—10 years starting on the date of the person's death.

8 Notification of test results—prescribed tests

For the purposes of section 16 (1) (a) of the Act, any diagnostic test on the following substances, or any constituent of the following substances, is a prescribed test:

- (a) human blood,
- (b) human cells,
- (c) human tissue,
- (d) other bodily substances.

9 Notification of test results—time limit for providing information

For the purposes of section 16 (4) of the Act, the prescribed period is 72 hours from the time when the person requested to carry out the test has asked the medical practitioner concerned to provide the relevant information.

10 Protection of identity—exceptions

- (1) For the purposes of section 17 (1) (b) of the Act, the prescribed exception exists when the patient:
- (a) is receiving hospital services or other health services provided by a public hospital, or
 - (b) is a patient within the meaning of the *Private Hospitals and Day Procedure Centres Act 1988*, or
 - (c) consents to the disclosure of his or her name and address in the communication.
- (2) For the purposes of section 17 (3) (e) of the Act, information may be disclosed by a person to the Director-General if the person has reasonable grounds to believe that failure to provide the information could place the health of the public at risk.

11 Notification of death from scheduled medical condition

For the purposes of section 20 (c) of the Act, the prescribed additional particulars are:

- (a) the date of birth and the sex of the deceased, and

Public Health (General) Regulation 2002

Clause 11

Scheduled medical conditions

Part 3

- (b) the date, place and cause of death, and
- (c) the address of the person who certified the cause of death.

12 Advice to Category 2 or 3 patients

The Director-General, or a registered medical practitioner authorised under this clause by the Director-General, may notify a person suffering from a Category 2 or 3 medical condition of measures to be taken, and activities to be avoided, in order to minimise the danger of passing the medical condition to another person.

13 Advice to Category 2, 3 or 4 contacts

The Director-General may notify a person who the Director-General believes may have been in contact with a person suffering from a Category 2, 3 or 4 medical condition of measures to be taken, and activities to be avoided, in order to minimise the danger of the first person contracting the condition or passing it to a third person.

Clause 14 Public Health (General) Regulation 2002

Part 4 Control of vaccine preventable diseases

Part 4 Control of vaccine preventable diseases

14 Classes of children to which Part 3A of the Act applies

For the purposes of Part 3A of the Act, the following classes of children are prescribed:

- (a) children who enrol, or have enrolled, for attendance at a kindergarten class in a school after 1 January 1994,
- (b) children who enrol, or have enrolled, for attendance at a child care facility after that date.

15 Additional child care facilities for the purposes of Part 3A of the Act

For the purposes of Part 3A of the Act, the following are declared to be child care facilities:

- (a) a playgroup affiliated to the Playgroup Association of N.S.W. Incorporated,
- (b) a child care service for pre-school children to which Division 1 of Part 3 of the *Children (Care and Protection) Act 1987* would apply but for the fact that the service is provided at the premises of a government school or non-government school.

16 Period for which immunisation certificates and register entries are to be retained

- (1) For the purposes of section 42B (5) of the Act, the period for which a principal of a school must retain an immunisation certificate is 2 years from the date on which the child concerned has ceased to attend the school, unless the principal is earlier required to forward the certificate under section 42B (2) of the Act.
- (2) For the purposes of section 42C (5) of the Act, the period for which a director of a child care facility must retain an entry in the register to be kept by the director is 2 years from the date on which the child concerned has ceased to attend the facility.

17 Responsibilities of directors of child care centres with respect to immunisation

- (1) For the purposes of section 42C (1) of the Act, a subsequent occasion is whenever the child concerned reaches the age, designated by the Director-General for a specified vaccine preventable disease, at which

Public Health (General) Regulation 2002

Clause 17

Control of vaccine preventable diseases

Part 4

it is appropriate for a child to be immunised or further immunised against that disease.

- (2) On designating a subsequent occasion for the purposes of section 42C (1) of the Act, the Director-General must notify the designation to the directors of all child care facilities likely to be affected by it. The notification may be by such means as the Director-General considers appropriate.

Clause 18 Public Health (General) Regulation 2002

Part 5 Miscellaneous

Part 5 Miscellaneous

18 Public authorities to notify public health risks

If a public authority considers, on reasonable grounds, that a situation has arisen in which the health of the public is, or is likely to be, at risk, the public authority is to notify the Medical Officer of Health of the district in which the area for which the public authority is responsible is located.

19 Particulars of notifiable diseases

For the purposes of section 69 of the Act, a chief executive officer of a hospital is to provide the Director-General:

- (a) concerning persons suffering from cancer—with the particulars required for the completion of the “Cancer Notification Form” published by the New South Wales State Cancer Council, or
- (b) concerning children under the age of 1 year who have a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria or persons who are or were pregnant with a child having a congenital malformation, cystic fibrosis, hypothyroidism, thalassaemia major or phenylketonuria—with the particulars required for the completion of the “NSW Birth Defects Register Notification of Birth Defect Form” or the “NSW Birth Defects Register Notification of Pregnancy with a Baby Affected by Congenital Malformation Form”, as applicable, both published by the Department, or
- (c) concerning persons who have any other notifiable disease—with the particulars required for the completion of the “Doctor/Hospital Notification Form” published by the Department.

20 Disclosure of information—lawful excuse

For the purposes of section 75 (2) (e) of the Act, circumstances in which it is a lawful excuse to disclose information include circumstances where the Chief Health Officer, Department of Health,

Public Health (General) Regulation 2002

Clause 20

Miscellaneous

Part 5

has approved (with or without conditions) the disclosure to a specified person or class of persons of information consisting of epidemiological data of a specified kind and the disclosure is in accordance with that approval.

21 Vermin

An occupier of premises must take reasonable measures to keep the premises free from fleas, other disease-carrying insects, rats and mice (except any such animals kept as pets).

Maximum penalty: 20 penalty units.

22 Sleeping rooms

- (1) The occupier of premises must not allow any room or cubicle within the premises to be used for the purposes of sleeping accommodation unless:
 - (a) the room or cubicle has a floor area of 5.5 square metres or more for each person sleeping in it (in the case of long-term sleeping accommodation) or 2 square metres or more for each person sleeping in it (in any other case), or
 - (b) the room or cubicle has been exempted by the Minister under subclause (2) and complies with any conditions attached to the exemption, or
 - (c) the premises are private domestic premises.Maximum penalty: 5 penalty units.
- (2) The Minister may, by order in writing, exempt an occupier in relation to any room or cubicle from the requirements of subclause (1), either conditionally or unconditionally, if satisfied that the exemption will not result in any adverse effect on the health of persons sleeping in the room or cubicle.
- (3) In this clause, a reference to long-term sleeping accommodation is a reference to accommodation that is in fact provided to the same person or persons for a period of more than 28 consecutive days, or that is the subject of an agreement for its provision to the same person or persons for a period of more than 28 consecutive days.

Clause 23 Public Health (General) Regulation 2002

Part 5 Miscellaneous

23 Anthrax

A person must not sell, offer for sale, consign, transmit, deliver for sale, use in any manufacturing process, or receive for the purposes of business any hide, portion of a hide, hair or wool of any animal which is suffering, or which has died, from anthrax.

Maximum penalty: 20 penalty units.

24 Approvals by Director-General

- (1) An application for an approval by the Director-General under this Regulation is to be accompanied by such information relevant to the application as is required by the Director-General.
- (2) An approval given by the Director-General for the purposes of this Regulation:
 - (a) may be given subject to conditions specified in the instrument giving the approval, and
 - (b) does not operate, or ceases to operate, if there is a failure to comply with any such conditions.

25 Guidelines and codes

A copy of any guideline, or code of practice, published by the Department and referred to in this Regulation is to be made available by the Department (on the payment of such reasonable charge (if any) as the Director-General determines) to any member of the public who requests it.

26 Savings

Anything done or omitted under Part 2, 2A or 7 of the *Public Health Regulation 1991* is taken to have been done or omitted under this Regulation.

Public Health (General) Regulation 2002

Perinatal deaths: particulars

Schedule 1

Schedule 1 Perinatal deaths: particulars

(Clause 6 (b))

1 Particulars

- (1) Full name of mother of deceased infant.
- (2) Usual residential address of mother at time of birth of deceased infant.
- (3) Date of birth of mother.
- (4) Date of first day of mother's last menstrual period (if known) and estimated gestational age of deceased infant at time of birth.
- (5) Date of birth of infant.
- (6) Vital status at time of birth: liveborn or stillborn.
- (7) Date of death (if liveborn).
- (8) Name of hospital of birth, or address of place of birth (if not a hospital).
- (9) For liveborn infant, name of hospital where death occurred, or address of place of death (if not a hospital).
- (10) Sex of infant.
- (11) Plurality: single or multiple birth.
- (12) If multiple birth: total number of infants at that birth.
- (13) If multiple birth: the number of the deceased infant in the birth order.
- (14) Birth weight in grams.
- (15) Cause of death, as recorded on Medical Certificate of Cause of Perinatal Death.

Public Health (General) Regulation 2002

Schedule 2 Sudden infant death syndrome: particulars

Schedule 2 Sudden infant death syndrome: particulars

(Clause 6 (c))

1 Particulars

- (1) Full name of mother of deceased infant.
- (2) Usual residential address of mother at time of birth of infant.
- (3) Date of birth of mother.
- (4) Full name of infant.
- (5) Date of birth of infant.
- (6) Name of hospital of birth, or address of place of birth (if not a hospital).
- (7) Sex of infant.
- (8) Usual residential address of infant.
- (9) Address of place at which infant was found deceased or moribund.
- (10) Date of death of infant.

Public Lotteries Regulation 2002

under the

Public Lotteries Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Lotteries Act 1996*.

J. RICHARD FACE, M.P.,
Minister for Gaming and Racing

Explanatory note

The object of this Regulation is to remake the *Public Lotteries Regulation 1996*. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation:

- (a) provides for the disposal of certain unclaimed public lottery prizes and of certain money in prize funds, and
- (b) provides for an entrant in a public lottery to request anonymity, and
- (c) makes provision for responsible practices in the conduct of public lotteries, and
- (d) prescribes certain people as key employees in relation to Keno, and
- (e) prescribes the changes of circumstances in relation to licensees for public lotteries that need to be notified to the Minister, and
- (f) prescribes certain contracts in relation to games of Keno as exempt contracts, and
- (g) prescribes the fee for the review of a controlled contract, and
- (h) makes other miscellaneous provisions.

Public Lotteries Regulation 2002

Explanatory note

This Regulation is made under section 83 (the general regulation-making power) and section 83A (Responsible conduct of gambling activities) of the *Public Lotteries Act 1996*.

Page 2

Public Lotteries Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definition	4
Part 2 Prizes	
4 Unclaimed public lottery prizes	5
5 Disposal of certain money in prize fund if licence not in force	5
6 Publicity concerning prizewinners	5
Part 3 Responsible gambling practices	
7 Approval of English and other community language player information brochures	6
8 Provision of player information brochures	6
9 Provision of player information brochures in community languages	7
10 Gambling information and warnings	7
11 Counselling signage—notice to be displayed	9
12 Advertising of public lotteries	9
13 Payment of prize money by cheque or electronic funds transfer	11
14 Gambling inducements	12
Part 4 Miscellaneous	
15 Key employees (Keno)	13
16 Notification of change of circumstances in relation to licensees	13
17 Exempt contracts (Keno)	14
18 Review of controlled contracts	15
19 Construction of certain references	15
Schedule 1 Change of circumstances to be notified	16

Page 3

Clause 1 Public Lotteries Regulation 2002

Part 1 Preliminary

Public Lotteries Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Public Lotteries Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Public Lotteries Regulation 1996* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

(1) In this Regulation:

the Act means the *Public Lotteries Act 1996*.

(2) Notes included in this Regulation are explanatory notes and do not form part of this Regulation.

Public Lotteries Regulation 2002

Clause 4

Prizes

Part 2

Part 2 Prizes

4 Unclaimed public lottery prizes

- (1) In this clause, *unclaimed prize* means a prize that remains unclaimed by the prizewinner for a period of one year after the date on which the public lottery to which the prize relates is last conducted.
- (2) An unclaimed prize won in a public lottery may be disposed of by the licensee who conducted the public lottery in a manner and for a purpose approved by the Minister for the benefit of subscribers to public lotteries conducted by the licensee, or, in the case of an unclaimed Keno prize, for any other purpose approved of by the Minister.
- (3) The disposal of an unclaimed prize under this clause does not affect a prizewinner's entitlement to the prize.

5 Disposal of certain money in prize fund if licence not in force

The Minister may, with the approval of the Treasurer, distribute money to which section 27 (10) of the Act refers for the benefit of subscribers to public lotteries generally, by payment to the Consolidated Fund or for such other purposes as the Minister determines.

6 Publicity concerning prizewinners

For the purposes of section 38 (2) of the Act, an entrant in a public lottery may request anonymity:

- (a) by having the request for anonymity recorded by the licensee in accordance with the rules of the public lottery, or
- (b) by indicating to the licensee (or an employee of the licensee) when claiming a prize that the person does not want his or her identity published.

Clause 7 Public Lotteries Regulation 2002

Part 3 Responsible gambling practices

Part 3 Responsible gambling practices

7 Approval of English and other community language player information brochures

- (1) In this clause, *player information* means the following:
 - (a) information concerning the chances of winning a major prize in a public lottery,
 - (b) the G-line (NSW) helpline phone number operated under contractual arrangements made by the Department of Gaming and Racing.
- (2) The Minister may approve one or more pamphlets or brochures containing player information in the English language (a *player information brochure*).
- (3) The Minister may approve one or more pamphlets or brochures containing advice in the Arabic, Croatian, Chinese, Greek, Italian, Korean, Macedonian, Maltese, Serbian, Spanish, Turkish and Vietnamese languages that:
 - (a) indicates the substance of the player information contained in a player information brochure, and
 - (b) advises that the information will be supplied by the licensee or an agent of the licensee in the relevant language on request.
- (4) A pamphlet or brochure approved under subclause (3) may be combined with the player information brochure to which it relates.
- (5) The Minister may approve one or more pamphlets or brochures (a *community language player information brochure*) containing player information in the Arabic, Croatian, Chinese, Greek, Italian, Korean, Macedonian, Maltese, Serbian, Spanish, Turkish and Vietnamese languages.
- (6) The Minister may vary or withdraw any approval given under this clause.

8 Provision of player information brochures

- (1) A licensee must:
 - (a) as soon as practicable after the requirements of subclause (2) first apply in relation to an agent of the licensee, provide to the agent sufficient copies of the player information brochures

Public Lotteries Regulation 2002

Clause 8

Responsible gambling practices

Part 3

approved by the Minister under clause 7 (2) to enable the agent to comply with those requirements, and

- (b) provide further copies of the brochures to an agent of the licensee in accordance with a request by the agent.

Maximum penalty: 50 penalty units.

- (2) An agent of a licensee must ensure that:

- (a) copies of at least one type of player information brochure approved by the Minister under clause 7 (2) are made available at each point of sale (under the control of the agent) for tickets or entries in, or subscriptions to, each public lottery conducted by the licensee, and
- (b) those copies are displayed in such a manner and in such a place that it would be reasonable to expect that a person purchasing a ticket or entry in, or subscribing to, such a lottery at that point of sale would be alerted to their presence.

Maximum penalty: 50 penalty units.

9 Provision of player information brochures in community languages

- (1) A person may request a licensee or agent of a licensee to supply a community language player information brochure approved under clause 7 (5) in one of the languages specified in that subclause.
- (2) A licensee or agent of a licensee must supply a brochure in accordance with a request made under subclause (1) as soon as practicable after being requested to do so.

Maximum penalty: 50 penalty units.

10 Gambling information and warnings

- (1) A licensee must ensure that each printed entry form (however described) and ticket in a public lottery conducted by the licensee contains the following:

Is gambling a problem for you? CALL G-line (NSW) counselling service 1800 633 635

Maximum penalty: 50 penalty units.

- (2) Subclause (1) does not apply to instant lottery tickets (commonly known as “scratchies”).

Clause 10 Public Lotteries Regulation 2002

Part 3 Responsible gambling practices

- (3) A licensee must ensure that any written material provided by the licensee to explain to the public how to enter a public lottery contains:
- (a) an explanation of the chances of winning a major prize in the public lottery or, if there are different prize divisions in the public lottery, an explanation in relation to each of those divisions of the chances of winning a prize in that division, and
 - (b) the following:

Is gambling a problem for you? CALL G-line (NSW) counselling service 1800 633 635

Maximum penalty: 50 penalty units.

- (4) Subclauses (1) and (3) do not apply to any printed entry form, ticket or written material supplied to the licensee concerned under a contract or arrangement entered into before 9 November 2001.
- (5) A licensee or agent of a licensee must not extend the duration of any contract or arrangement entered into before 9 November 2001 for the supply of entry forms or tickets that do not contain the matter required by subclause (1).

Maximum penalty: 50 penalty units.

- (6) A licensee or agent of a licensee must not extend the duration of any contract or arrangement entered into before 9 November 2001 for the supply of written material referred to in subclause (3) that does not contain the matter required by that subclause.

Maximum penalty: 50 penalty units.

- (7) A licensee must include the following information on any website used by the licensee to promote or provide information about a public lottery conducted by the licensee:
- (a) the information contained in a player information brochure approved by the Minister under clause 7 (2),
 - (b) an explanation of the chances of winning a major prize in the public lottery or, if there are different prize divisions in the public lottery, an explanation in relation to each of those divisions of the chances of winning a prize in that division.

Maximum penalty: 50 penalty units.

Public Lotteries Regulation 2002

Clause 11

Responsible gambling practices

Part 3

11 Counselling signage—notice to be displayed

- (1) A licensee must:
- (a) as soon as practicable after the requirements of subclause (2) first apply in relation to an agent of the licensee, provide to the agent sufficient copies of a notice that complies with this clause to enable the agent to comply with those requirements, and
 - (b) provide further copies of the notice in accordance with a request by an agent of the licensee.

Maximum penalty: 50 penalty units.

- (2) An agent of a licensee must:
- (a) display a notice that complies with this clause at each point of sale (under the control of the agent) for tickets or entries in, or subscriptions to, each public lottery conducted by the licensee, or in the vicinity of each such point of sale, and
 - (b) display each such notice in such a manner that it would be reasonable to expect that a person in the vicinity of the point of sale in relation to which the notice is displayed would be alerted to its contents.

Maximum penalty: 50 penalty units.

- (3) The notice must contain the following:
Is gambling a problem for you? CALL G-line (NSW) counselling service 1800 633 635
- (4) Subclause (3) does not prevent a notice under this clause containing other information.
- (5) The notice must be at least 42 centimetres by 29.5 centimetres in size, and the matter contained in the notice must be in letters and figures of not less than 0.6 centimetres in height.

12 Advertising of public lotteries

- (1) The requirements of subclauses (2) and (3) are prescribed as requirements for the purposes of section 39 (1) (b) of the Act.

Note. Section 39 of the Act makes it an offence for a licensee or other person to publish, or cause to be published, any public lottery advertising that is false, misleading or deceptive or is in contravention of a requirement of the regulations. The maximum penalty for the offence is 50 penalty units.

Clause 12 Public Lotteries Regulation 2002

Part 3 Responsible gambling practices

- (2) A licensee or agent of a licensee must not publish, or cause to be published, any public lottery advertising that:
- (a) encourages a breach of the law, or
 - (b) depicts children, or
 - (c) suggests that winning will be a definite outcome of participating in a public lottery, or
 - (d) suggests that entering a public lottery will definitely improve a person's financial prospects, or
 - (e) is not conducted in accordance with decency, dignity and good taste and in accordance with the Commercial Television Industry Code of Practice as in force at the time the public lottery advertising is published.
- (3) A licensee or agent of a licensee must ensure that any public lottery advertising in writing published or caused to be published, by the licensee or agent in a newspaper, magazine, poster or other printed document contains the following:
- Is gambling a problem for you? CALL G-line (NSW) counselling service 1800 633 635
- (4) Subclauses (2) and (3) do not apply to the publication of any public lottery advertising under a contract or arrangement entered into before 9 November 2001.
- (5) A licensee or agent of a licensee must not enter into or extend the duration of any contract or arrangement for the publication of public lottery advertising that does any of the things referred to in subclause (2) (a)–(e).
- Maximum penalty: 50 penalty units.
- (6) In this clause:
- public lottery advertising** means advertising that is directly related to the conduct of a public lottery.
- publish** includes disseminate in any way, whether by oral, visual, written or other means (for example, dissemination by means of cinema, video, radio or television).

Public Lotteries Regulation 2002

Clause 13

Responsible gambling practices

Part 3

13 Payment of prize money by cheque or electronic funds transfer

- (1) If in a game of keno the prize money payable to a person at the end of a customer session exceeds \$1,000, the licensee or agent of the licensee responsible for paying the prize money:
- (a) if the person so requests, must pay the total prize money by means of:
 - (i) a crossed cheque payable to the person, or
 - (ii) an electronic funds transfer to an account nominated by the person (if those means are available), and
 - (b) must pay so much of the total prize money as exceeds \$1,000 by means of:
 - (i) a crossed cheque payable to the person, or
 - (ii) if the person so requests and those means are available, by means of electronic funds transfer to an account nominated by the person.

Maximum penalty: 50 penalty units.

- (2) If in a public lottery (other than a game of keno) the total prize money payable to a person exceeds \$1,000, the licensee or agent of the licensee responsible for paying the prize money must pay the total prize money by means of:
- (a) a crossed cheque payable to the person, or
 - (b) if the person so requests, by means of electronic funds transfer to an account nominated by the person.

Maximum penalty: 50 penalty units.

- (3) In this clause:

customer session means the period of time starting when a subscriber:

- (a) makes an entry in a game of Keno, or
- (b) checks a receipt ticket in a game of Keno, or
- (c) cancels an entry into a game of Keno,

and ending when the End Customer terminal key is activated.

crossed cheque means a cheque crossed as referred to in section 53 of the *Cheques Act 1986* of the Commonwealth as in force on 1 March 2002.

Clause 13 Public Lotteries Regulation 2002

Part 3 Responsible gambling practices

total prize money means the total amount of money payable to a person as a result of the person winning money in respect of a single entry in a public lottery (whether or not that entry relates to one, or more than one, game in the public lottery).

14 Gambling inducements

- (1) A licensee or agent of a licensee, or an employee of a licensee or agent of a licensee, must not offer or supply any free or discounted liquor as an inducement to participate, or to participate frequently, in any public lottery conducted by the licensee.

Maximum penalty: 50 penalty units.

- (2) In subclause (1), *liquor* has the same meaning as in the *Liquor Act 1982*.

Public Lotteries Regulation 2002

Clause 15

Miscellaneous

Part 4

Part 4 Miscellaneous

15 Key employees (Keno)

- (1) Any person who is concerned in any of the following ways in the conduct of games of Keno by a Keno licensee is a key employee for the purposes of paragraph (c) of the definition of *key employee* in section 4 (1) of the Act:
 - (a) involvement, on behalf of the licensee, in the development or operation of any computer systems in relation to those games,
 - (b) involvement, on behalf of the licensee, in the financial or accounting aspects of the conduct of those games.
- (2) Any of the following persons who are concerned or engaged in the conduct of games of Keno by a Keno licensee are also key employees for the purposes of paragraph (c) of the definition of *key employee* in section 4 (1) of the Act:
 - (a) any person who is employed by or on behalf of Jupiters Gaming (NSW) Pty Limited in the capacity of, or who performs the duties of, general manager, systems manager, sales and marketing manager, contracts and distribution manager, operations manager or financial controller of that company,
 - (b) any person who is employed by or on behalf of Club Gaming Systems (Holdings) Pty Ltd in the capacity of, or who performs the duties of, sales executive or training manager of that company,
 - (c) any person involved, on behalf of Club Gaming Systems (Holdings) Pty Ltd, in the development or operation of any computer systems in relation to games of Keno conducted by a licensee,
 - (d) any person involved, on behalf of Club Gaming Systems (Holdings) Pty Ltd, in the financial or accounting aspects of the conduct of such games.

16 Notification of change of circumstances in relation to licensees

- (1) The kinds of changes set out in Schedule 1 are prescribed for the purposes of section 52 of the Act in relation to licensees for public lotteries.

Clause 16 Public Lotteries Regulation 2002

Part 4 Miscellaneous

- (2) The particulars to be notified under section 52 of the Act in relation to each kind of change are as set out in Schedule 1 in respect of that kind of change.

17 Exempt contracts (Keno)

The class of instruments comprising the following agreements and arrangements is prescribed, in relation to games of Keno, for the purposes of paragraph (b) of the definition of *exempt contract* in section 62 of the Act:

- (a) the Secured Facility Agreement entered into on 30 October 1991, the Secured Facility Agreement entered into on 19 November 1992, and the Secured Facility Agreement entered into on 18 February 1994, between Club Gaming Systems (Holdings) Pty Ltd, Club Gaming Systems Pty Ltd and the State Bank of New South Wales Ltd,
- (b) the deed of charge entered into on 30 October 1991 between Club Gaming Systems (Holdings) Pty Ltd and the State Bank of New South Wales Ltd,
- (c) the deed of charge entered into on 30 October 1991 between Club Gaming Systems Pty Ltd and the State Bank of New South Wales Ltd,
- (d) the deed of subordination and priority entered into on 30 October 1991, the deed of subordination and priority and the deed of consent entered into on 19 November 1992, and the deed of subordination and priority and the deed of consent entered into on 18 February 1994, between Club Gaming Systems (Holdings) Pty Ltd, Club Gaming Systems Pty Ltd, AWA Ltd and the State Bank of New South Wales Ltd,
- (e) the Clubkeno Holdings Pty Ltd deed of consent entered into on 30 October 1991, the Clubkeno Holdings Pty Ltd deed of consent entered into on 19 November 1992, and the Clubkeno Holdings Pty Ltd deed of consent entered into on 18 February 1994, between Clubkeno Holdings Pty Ltd, Club Gaming Systems (Holdings) Pty Ltd, Club Gaming Systems Pty Ltd and the State Bank of New South Wales Ltd,
- (f) the power of attorney made by Clubkeno Holdings Pty Ltd on 30 October 1991,

Public Lotteries Regulation 2002

Clause 17

Miscellaneous

Part 4

- (g) the AWA Ltd deed of consent entered into on 30 October 1991, the AWA Ltd undertaking and deed of consent entered into on 19 November 1992, and the AWA Ltd undertaking and deed of consent entered into on 18 February 1994, between AWA Ltd, Club Gaming Systems Pty Ltd and the State Bank of New South Wales Ltd.

18 Review of controlled contracts

For the purposes of section 63 (3) of the Act, \$2,000 is prescribed as the fee for the review of each controlled contract.

19 Construction of certain references

- (1) A reference in an Act (other than the *Public Lotteries Act 1996*), in any instrument made under an Act or in any other document to a repealed Act or Regulation, or to rules made under a repealed Act, is to be read:
- (a) as including a reference to the *Public Lotteries Act 1996*, the regulations and rules made under that Act and any instrument (including a licence) issued under that Act (as applicable) unless it relates to a matter that continues, by reason of the operation of Schedule 2 to that Act, to be dealt with by a repealed Act or Regulation or rules made under a repealed Act, or
 - (b) if it relates to such a matter as a reference to the applicable repealed Act or Regulation or rules made under the applicable repealed Act.
- (2) In this clause, ***repealed Act or Regulation*** means an Act or Regulation repealed by section 84 of the *Public Lotteries Act 1996*.

Public Lotteries Regulation 2002

Schedule 1 Change of circumstances to be notified

Schedule 1 Change of circumstances to be notified

(Clause 16)

Kinds of change	Particulars to be notified
Any change in the name of the licensee, the licensee's principal business address or postal address, e-mail address, website address, telephone number or facsimile number.	Particulars of those matters as changed.
Any change in the membership of the board of directors of the licensee.	Particulars of the name, address and date of birth of any new director.
Any change in the name or address of any member of the board of directors of the licensee.	Particulars of the new name or address of the director.
The licensee commencing to remunerate an employee of the licensee at a remuneration level of \$150,000 per year or more, whether as salary or remuneration package.	Particulars of the name, address and date of birth of the employee.
Any change in the information entered in the register of members of the licensee.	Particulars of the change, including any addition to or deletion from that information.
Any change in the proportion of the paid up capital of the licensee in which a person holds a beneficial interest and any acquisition by a person of a beneficial interest in the paid up capital of the licensee.	Particulars of the name and address of the person and the proportion of the paid up capital in which the person holds a beneficial interest as changed or acquired.
Any change in the nominal or paid up capital of the licensee.	Particulars of the nominal or paid up capital as changed.
Any change in the objectives or main activities of the licensee.	Particulars of those objectives or main activities as changed.
Any change in any direct or indirect financial interests held by the licensee in any business or enterprise, including the acquisition or disposal of such an interest.	Particulars of the interest both before and after the change.

Public Lotteries Regulation 2002

Change of circumstances to be notified

Schedule 1

Kinds of change	Particulars to be notified
Any other business or enterprise commencing to have the same registered office as the licensee.	Particulars of the name of the other business or enterprise and the activities in which it engages.
The licensee commencing to carry on any other business or enterprise at any place or the appointment of a person to carry on any other business or enterprise on the licensee's behalf.	Particulars of the address of the place and the business or enterprise carried on there or the name of the person appointed and the business or enterprise to be carried on by the person on the licensee's behalf.
The commencement, settlement, discontinuance or finalisation of civil or criminal proceedings to which the licensee is a party.	Particulars of the nature of the proceedings, the names and addresses of the other parties to civil proceedings, the date of commencement, settlement, discontinuance or finalisation and the terms of settlement (unless terms of settlement are prohibited from being disclosed) or the result of finalisation.
The obtaining of judgment against the licensee, the creation of any charge over any property of the licensee or repossession of any property of the licensee.	Particulars of the terms of the judgment or charge or the reasons for and circumstances of the repossession, and a description of any property affected.
Any amendment under any law of the Commonwealth of an assessment relating to the licensee under taxation legislation of the Commonwealth.	Particulars of the amendment.
Any change in the key employees employed by or on behalf of the licensee.	Particulars of the name and address of a person who becomes or ceases to be a key employee and the date that occurs.
The commencement, settlement, discontinuance or finalisation of civil or criminal proceedings to which a key employee of the licensee is a party and of which the licensee is aware.	Particulars of the nature of the proceedings, the names and addresses of the other parties to the proceedings, the date of commencement, settlement, discontinuance or finalisation and the terms of settlement (unless terms of settlement are prohibited from being disclosed) or the result of finalisation.
Each increase of more than \$500,000 in the debts of the licensee.	Particulars of to whom the debt is owed, the amount of the debt as increased, the amount of the increase and the reason for the increase.

Public Lotteries Regulation 2002

Schedule 1 Change of circumstances to be notified

Kinds of change	Particulars to be notified
Any failure by the licensee to make due payments under a loan or other financing arrangement.	Particulars of the loan or financing arrangement, the amount due and unpaid and the reason for the failure to pay.
The commencement of the winding up of the licensee or the placement of the licensee under official management.	Particulars of the date on which the winding up or official management commenced.
The licensee entering into a compromise or scheme of arrangement with the licensee's creditors.	Particulars of the date on which it was entered into and the terms of the compromise or scheme.
The appointment of a receiver or manager, whether by the Supreme Court or otherwise, in respect of the property of the licensee.	Particulars of the date and terms of the appointment.



New South Wales

Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Royal Botanic Gardens and Domain Trust) Regulation 2002

under the

Road Transport (Safety and Traffic Management) Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Road Transport (Safety and Traffic Management) Act 1999*.

CARL SCULLY, M.P.,
Minister for Roads

Explanatory note

The object of this Regulation is to declare the Royal Botanic Gardens and Domain Trust a **declared organisation** within the meaning of the *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999 (the Regulation)* and to specify its area of operations. As a result, the Royal Botanic Gardens and Domain Trust will be a **parking authority** within the meaning of the Regulation and will be empowered to establish and operate pay parking schemes (under Part 4 of the Regulation) and to issue parking permits (under Part 6 of the Regulation) in relation to its area of operations.

This Regulation is made under the *Road Transport (Safety and Traffic Management) Act 1999*, including section 71 (the general regulation-making power) and clause 2 of Schedule 1.

Clause 1 Road Transport (Safety and Traffic Management) (Road Rules)
Amendment (Royal Botanic Gardens and Domain Trust) Regulation 2002

Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Royal Botanic Gardens and Domain Trust) Regulation 2002

under the

Road Transport (Safety and Traffic Management) Act 1999

1 Name of Regulation

This Regulation is the *Road Transport (Safety and Traffic Management) (Road Rules) Amendment (Royal Botanic Gardens and Domain Trust) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

3 Amendment of Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999

The *Road Transport (Safety and Traffic Management) (Road Rules) Regulation 1999* is amended by inserting the following in alphabetical order of organisations in Schedule 3:

Royal Botanic Gardens and Domain Trust	The Royal Botanic Gardens and The Domain (being those parts of the Trust lands, within the meaning of the <i>Royal Botanic Gardens and Domain Trust Act 1980</i> , that are described in Parts 1 and 2 of Schedule 2 to that Act, and including Art Gallery Road, Mrs Macquaries Road and Hospital Road).
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Rural Fires Regulation 2002

under the

Rural Fires Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Rural Fires Act 1997*.

BOB DEBUS, M.P.,
Minister for Emergency Services

Explanatory note

This Regulation (the *new Regulation*) replaces the *Rural Fires Regulation 1997* (the *old Regulation*) which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. The new Regulation restates with some modifications the provisions of the old Regulation and contains new provisions relating to bush fire prone land and bush fire hazard reduction (as a result of recent amendments made to the *Rural Fires Act 1997* by the *Rural Fires and Environmental Assessment Legislation Amendment Act 2002*). The new Regulation includes provisions relating to the following:

- (a) the constitution and membership of rural fire brigades,
- (b) the discipline of officers and members of rural fire brigades and groups of rural fire brigades and removal from membership,
- (c) the constitution, membership and procedure of Bush Fire Management Committees,
- (d) fire prevention,
- (e) the giving of notices required under the Act,
- (f) the identification of members of the Service and bravery and other awards,
- (g) voluntary work that may be undertaken by rural fire brigades,
- (h) the conditions of fire permits,

Rural Fires Regulation 2002

Explanatory note

- (i) the formal requirements for applications for bush fire safety authorities and bush fires hazard reduction certificates,
- (j) the issue of penalty notices.

This Regulation refers to the following publications:

- (a) the Australian Standard entitled AS 1019—2000, *Internal combustion engines—Spark emission control devices*, published by Standards Australia on 1 August 2000,
- (b) the document entitled *Planning for Bushfire Protection*, ISBN 0 9585987 8 9, prepared by Planning & Environment Services, NSW Rural Fire Service in co-operation with the Department of Planning, and dated December 2001.

This Regulation is made under the *Rural Fires Act 1997*, including section 135 (the general power to make regulations) and the sections referred to in this Regulation.

Rural Fires Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	6
2 Commencement	6
3 Definitions	6
4 Notes	7
Part 2 Rural fire brigades and groups of rural fire brigades	
5 Constitution for rural fire brigade	8
6 Membership of rural fire brigades	8
7 Probationary membership	8
8 Removal from membership	9
9 Appeals relating to membership	10
10 Disciplinary action	10
11 Appeals concerning disciplinary action	11
12 Incident reports	11
13 Period for compliance with notice to form rural fire brigades	11
Part 3 Bush Fire Management Committees	
14 Constitution of Bush Fire Management Committees	12
15 Eligibility for membership of Bush Fire Management Committees	12
16 Functions of Bush Fire Management Committees	13
17 Procedure for meetings of Bush Fire Management Committees	14
18 Chairperson	14
19 Executive Officer	14
Part 4 Fire prevention	
Division 1 General	
20 Burning to demolish buildings	16

Page 3

Rural Fires Regulation 2002

Contents

21	Burning to destroy sawmill waste material	16
22	Use of spark arresters	17
23	Other safety requirements	17
24	Roadside fire protection	18
Division 2 Bush fire danger periods		
25	Application of Division	18
26	Lighting fires for cooking etc	19
27	Burning garbage and refuse	19
28	Lighting fires to produce charcoal etc	19
29	Offence to light, use or carry tobacco product	20
Part 5 Notices		
30	Public notice of draft bush fire risk management plans	21
31	Destruction of notices	21
32	Bush fire hazard reduction work required by local authorities	21
33	Bush fire hazard reduction work in default of compliance with notice	21
34	Notice of intention to burn off or burn firebreak	22
35	Notice of issue of fire permit	22
36	Notice to public authority not to light fires during a bush fire danger period	22
37	Notices of fire prohibition in specified zones	23
38	Persons to whom notice of bush fire hazard reduction work must be given	23
39	Giving of notices	23
Part 6 Miscellaneous		
40	Use of apparel, emblems and insignia	26
41	Bravery and other awards	26
42	Voluntary work by rural fire brigades	26
43	Reduction of fire hazards on managed land	27
44	Conditions of fire permit	27
45	Section 100A definition of "excluded land"	28
46	Application for bush fire safety authority	28
47	Application for bush fire hazard reduction certificate	29
48	Penalty notices	30
49	Savings provision	31

Rural Fires Regulation 2002

Contents

Schedules

1	Fire prohibition zones	32
2	Penalty notice offences	35

Clause 1 Rural Fires Regulation 2002

Part 1 Preliminary

Rural Fires Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Rural Fires Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Rural Fires Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

In this Regulation:

appropriate appeal authority means:

- (a) if the responsible authority concerned is a local authority—the Commissioner, or
- (b) if the responsible authority concerned is the Commissioner—the Minister.

appropriate authority—see section 85 of the Act.

appropriate disciplinary authority means:

- (a) in the case of a disciplinary action against an officer of a rural fire brigade or group of rural fire brigades for a rural fire district—the fire control officer for the district, or
- (b) in the case of a disciplinary action against a member (other than an officer) of a rural fire brigade or group of rural fire brigades—the officer in charge of the rural fire brigade or group of rural fire brigades, or
- (c) if the constitution of a rural fire brigade provides for disciplinary action to be taken against an officer or member by a panel of persons constituted in accordance with the constitution—a panel so constituted.

brigade register means the register for a rural fire brigade required to be kept under section 20 of the Act.

Rural Fires Regulation 2002

Clause 3

Preliminary

Part 1

combustible matter—see the Dictionary at the end of the Act.

forestry land means land dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *Forestry Act 1916*, or in respect of which the Forestry Commission has obtained the benefit of a forestry right as referred to in section 11 (1) (m) (iia) of that Act.

light a fire—see section 85 of the Act.

motorised machine includes any vehicle or machine (including a steam-powered machine) that is operated by means of an internal combustion engine or other fuel burning engine.

NPWS land means land dedicated or reserved, or acquired for the purpose of dedication or reservation, under the *National Parks and Wildlife Act 1974*.

responsible authority, in relation to a rural fire brigade for a rural fire district, means:

- (a) if the brigade is formed by a local authority under section 15 (1) of the Act—the local authority, or
- (b) if the brigade is jointly formed by two or more local authorities under section 15 (2) of the Act—the local authority nominated by an agreement in writing by the local authorities forming the brigade as the responsible authority, or
- (c) if the brigade is formed by the Commissioner—the Commissioner.

Service Standards—see the Dictionary at the end of the Act.

steam-powered machine means any machine that is operated by means of an engine that burns wood, coal or coke.

the Act means the *Rural Fires Act 1997*.

4 Notes

Notes included in this Regulation do not form part of this Regulation.

Clause 5 Rural Fires Regulation 2002

Part 2 Rural fire brigades and groups of rural fire brigades

Part 2 Rural fire brigades and groups of rural fire brigades

5 Constitution for rural fire brigade

- (1) The constitution for a rural fire brigade is to be in a form approved by the responsible authority and is to make provision for the following matters:
 - (a) the council or other governing body (however described) of the brigade and its office bearers,
 - (b) the name of the brigade,
 - (c) the classification of members of the brigade other than officers,
 - (d) arrangements for meetings of the brigade,
 - (e) the voting rights of members of the brigade,
 - (f) the conduct of fundraising appeals by the brigade and the application of any money or benefit received in the course of such an appeal.
- (2) The members of a rural fire brigade are to review the constitution for the brigade annually to determine whether it should be amended. In determining whether the constitution should be amended, the members are to take into consideration any relevant Service Standards.

6 Membership of rural fire brigades

A person is eligible to be listed on the brigade register if the person:

- (a) complies with the procedures (if any) for attaining membership set out in the constitution for the rural fire brigade, and
- (b) satisfies the requirements (if any) for attaining membership of a rural fire brigade determined by the responsible authority.

Note. Under section 20 of the Act, the persons listed on the register for a rural fire brigade required to be kept under that section are the members of the brigade.

7 Probationary membership

- (1) Unless the responsible authority otherwise determines, membership of a rural fire brigade is initially to be for a probationary period of 6 months.

Rural Fires Regulation 2002

Clause 7

Rural fire brigades and groups of rural fire brigades

Part 2

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- (2) The responsible authority may remove a person's name from the brigade register if, at the end of the period, the person:
- (a) has not achieved a satisfactory level of competency required by the Service Standards, or
 - (b) does not satisfy any requirements for the confirmation of membership set out in the constitution of the brigade.

8 Removal from membership

- (1) The responsible authority must remove the name of a person from the brigade register if the person:
- (a) has died, or
 - (b) applies in writing to have his or her name removed from the brigade register.
- (2) The responsible authority may remove the name of a person from the brigade register if the person:
- (a) is found guilty of a breach of discipline under clause 10, or
 - (b) becomes a mentally incapacitated person, or
 - (c) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (d) in the opinion of the responsible authority, is no longer a fit and proper person to be a member of the rural fire brigade.
- (3) Without limiting the generality of subclause (2) (d), the responsible authority may form an opinion that a person is no longer a fit and proper person to be a member of the rural fire brigade if:
- (a) the person is listed on the brigade register but has ceased to be an active member for a period of 12 months or more, or
 - (b) the person has not paid his or her annual subscription in accordance with the brigade's constitution.
- (4) The responsible authority is to give notice to a person before removing the person's name from the brigade register under subclause (2) (b), (c) or (d).
- (5) The removal takes effect, subject to clause 9 (3), 21 days after the notice is given.

Clause 9	Rural Fires Regulation 2002
Part 2	Rural fire brigades and groups of rural fire brigades

9 Appeals relating to membership

- (1) If the responsible authority refuses to list a person's name on the brigade register or decides to remove the person's name from the register under clause 8 (2) (b), (c) or (d) the person may, within 21 days of being notified of the decision, appeal in writing to the appropriate appeal authority.
- (2) After hearing the appeal, the appropriate appeal authority may:
 - (a) confirm the decision to refuse to list the person's name on the brigade register or remove it from the register, or
 - (b) order the responsible authority to list the person's name on the brigade register.
- (3) The removal of a person's name that is the subject of an appeal does not take effect until the appeal is either withdrawn or finally determined by the appropriate appeal authority.

10 Disciplinary action

- (1) An officer or member of a rural fire brigade or group of rural fire brigades is guilty of a breach of discipline if the officer or member:
 - (a) contravenes the Act or a provision of this Regulation, or
 - (b) is negligent, careless, inefficient or incompetent in the discharge of his or her duties, or
 - (c) fails to follow Service Standards.
- (2) An appropriate disciplinary authority may take disciplinary action against an officer or member of a rural fire brigade or group of rural fire brigades if:
 - (a) an alleged breach of discipline is dealt with in accordance with the procedure set out in the Service Standards and notice has been given in accordance with clause 11 (1), and
 - (b) the officer or member concerned is found to have committed the breach.
- (3) The appropriate disciplinary authority may take the following disciplinary action:
 - (a) reprimand the officer or member,
 - (b) suspend the officer or member from service with the rural fire brigade or group of rural fire brigades for a specified period,

Rural Fires Regulation 2002

Clause 10

Rural fire brigades and groups of rural fire brigades

Part 2

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- (c) recommend to the responsible authority that the responsible authority:
 - (i) demote the officer or member, or
 - (ii) disqualify the officer or member from holding rank in the brigade or group, or
 - (iii) remove the officer's or member's name from the brigade register.

11 Appeals concerning disciplinary action

- (1) Before taking disciplinary action under clause 10, the appropriate disciplinary authority must investigate the alleged breach of discipline and give the officer or member at least 14 days notice in writing of the findings of the investigation and of the disciplinary action that the appropriate disciplinary authority proposes to take in respect of the officer or member.
- (2) The officer or member may, within 14 days of receiving the notice, appeal to the responsible authority against the findings of the appropriate disciplinary authority, or against any disciplinary action that the appropriate disciplinary authority proposes to take.
- (3) On an appeal, the responsible authority:
 - (a) may confirm the decision of the appropriate disciplinary authority, or
 - (b) may recommend that no action, or that other disciplinary action, be taken against the officer or member.

12 Incident reports

- (1) When a rural fire brigade attends a fire or other incident or emergency, the officer in charge of that brigade must ensure that the fire control officer is furnished with a report on the incident.
- (2) A report must:
 - (a) be furnished to the fire control officer within the time required by the Service Standards, and
 - (b) include any matters required to be covered in such a report by the Service Standards.

13 Period for compliance with notice to form rural fire brigades

For the purposes of section 15 (4) of the Act, the prescribed period is 3 months after the request to form a rural fire brigade is made.

Clause 14 Rural Fires Regulation 2002

Part 3 Bush Fire Management Committees

Part 3 Bush Fire Management Committees

14 Constitution of Bush Fire Management Committees

A Bush Fire Management Committee is not to be incorporated and is not to become a committee of a council under the *Local Government Act 1993*.

15 Eligibility for membership of Bush Fire Management Committees

Unless the Bush Fire Co-ordinating Committee determines otherwise, the following persons are to be invited to become members of a Bush Fire Management Committee:

- (a) a person nominated by each local authority whose area comprises land in the Bush Fire Management Committee's area, being (in the case of a local authority that is a council) the Mayor or a councillor of the council,
- (b) a person nominated by each of the following organisations as being in charge of its affairs in the Bush Fire Management Committee's area:
 - (i) the Roads and Traffic Authority,
 - (ii) the Department of Land and Water Conservation,
 - (iii) the New South Wales Fire Brigades,
 - (iv) NSW Police,
 - (v) each distribution network service provider listed in Schedule 3 to the *Electricity Supply Act 1995* having a distribution district comprising land in the Bush Fire Management Committee's area,
 - (vi) each rural lands protection board established for any rural lands protection district comprising land in the Bush Fire Management Committee's area,
 - (vii) the State Rail Authority,
 - (viii) Rail Access Corporation,
- (c) a person or persons nominated by the National Parks and Wildlife Service as being in charge of its affairs in the Bush Fire Management Committee's area,
- (d) a person or persons nominated by the Forestry Commission of New South Wales as being in charge of its affairs in the Bush Fire Management Committee's area,

Rural Fires Regulation 2002

Clause 15

Bush Fire Management Committees

Part 3

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- (e) a person nominated by each local authority for the Bush Fire Management Committee's area as having responsibilities for the performance of the local authority's functions respecting the environment,
 - (f) a person nominated by the Nature Conservation Council of New South Wales,
 - (g) not more than 2 persons chosen by rural fire brigades operating in the area,
 - (h) a rural land holder nominated by the NSW Farmers Association or, if the Association does not nominate a rural land holder, by the local authority for the area,
 - (i) a person nominated by each Local Aboriginal Land Council for any Local Aboriginal Land Council area comprising land located in the Bush Fire Management Committee's area,
 - (j) any other person or persons approved by the Bush Fire Co-ordinating Committee.

16 Functions of Bush Fire Management Committees

- (1) A Bush Fire Management Committee must, at the request of the Bush Fire Co-ordinating Committee:
 - (a) assist the Bush Fire Co-ordinating Committee in the performance of its functions under section 48 of the Act, and
 - (b) assist the Bush Fire Co-ordinating Committee in the performance of its functions under sections 60 (2) and 63 (4) of the Act.
- (2) A Bush Fire Management Committee may draw to the attention of:
 - (a) the Bush Fire Co-ordinating Committee, or
 - (b) the Commissioner, or
 - (c) a public authority exercising its functions in the Bush Fire Management Committee's area,any matter it considers relevant to the protection of land, life, property or the environment in that area from the impact of bush fires.
- (3) A Bush Fire Management Committee has no power to conduct or take part in fire fighting or fire prevention operations authorised by the Act, this Regulation or any other Act or statutory instrument.

Clause 17 Rural Fires Regulation 2002

Part 3 Bush Fire Management Committees

17 Procedure for meetings of Bush Fire Management Committees

- (1) A Bush Fire Management Committee is to meet in such manner and at such times as the Bush Fire Co-ordinating Committee may determine.
- (2) The procedure for the calling of the meetings and the conduct of business of a Bush Fire Management Committee is, subject to any rules made by the Bush Fire Co-ordinating Committee, to be as determined by the Bush Fire Management Committee.

18 Chairperson

- (1) At its first meeting, a Bush Fire Management Committee is to elect one of its members (not being its Executive Officer and not being a member referred to in clause 15 (b), (c), (d) or (e)) to be Chairperson of the Committee.
- (2) The Chairperson (or in the absence of the Chairperson, another member elected to chair the meeting by the members present) is to preside at a meeting of the Bush Fire Management Committee.
- (3) On the expiration of the term of office of the Chairperson or if the Chairperson ceases to be a member of the Bush Fire Management Committee or resigns office as Chairperson, the Bush Fire Management Committee is to elect one of its other members (not being its Executive Officer and not being a member referred to in clause 15 (b), (c), (d) or (e)) to be Chairperson of the Committee.
- (4) A Chairperson elected under this clause holds office as Chairperson, subject to any rules made by the Bush Fire Co-ordinating Committee, for a period of 12 months but is eligible (if otherwise qualified) for re-election.

19 Executive Officer

- (1) Each Bush Fire Management Committee is to have an Executive Officer.
- (2) The Executive Officer of a Bush Fire Management Committee is a member of the Committee.
- (3) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (1) of the Act is to be the fire control officer for the Bush Fire Management Committee's area.

Rural Fires Regulation 2002

Clause 19

Bush Fire Management Committees

Part 3

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- (4) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (1A) of the Act is to be a member of NSW Fire Brigades nominated as Executive Officer by the Commissioner of NSW Fire Brigades.
 - (5) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (2) of the Act is to be a member of the Service nominated as Executive Officer by the Commissioner.
 - (6) The Executive Officer of a Bush Fire Management Committee constituted under section 50 (3) of the Act:
 - (a) for groups of rural fire districts, is to be a fire control officer nominated as Executive Officer by the Commissioner, and
 - (b) for groups of fire districts, is to be a member of NSW Fire Brigades nominated as Executive Officer by the Commissioner of NSW Fire Brigades.
 - (7) The Commissioner may revoke a nomination made for the purposes of subclause (5) or (6).

Clause 20 Rural Fires Regulation 2002

Part 4 Fire prevention

Division 1 General

Part 4 Fire prevention

Division 1 General

20 Burning to demolish buildings

A person must not light a fire on land for or in connection with:

- (a) the demolition of a building, or
- (b) the destruction of old building materials, or
- (c) any like purpose,

except in accordance with the conditions set out in a permit obtained from the appropriate authority for the area.

Maximum penalty: 20 penalty units.

21 Burning to destroy sawmill waste material

- (1) A person must not light a fire to destroy sawmill waste material unless the fire is lit:

- (a) in an incinerator designed to prevent the escape of sparks and burning material, or
- (b) on ground enclosed by a fence of galvanised iron or other fire resistant material not less than 1.8 metres high so that the top of the waste to be burned is not less than 600 millimetres below the level of the top of the fence, or
- (c) in a pit dug for the purpose so that the top of the waste to be burned is not less than 600 millimetres below the top of the edge of the pit, or
- (d) in accordance with the conditions set out in a permit issued by the appropriate authority.

Maximum penalty: 20 penalty units.

- (2) A person who lights a fire in accordance with the conditions set out in subclause (1) (b) or (c) must ensure that the ground within 9 metres of any part of the fence or edge of the pit is cleared of combustible matter

Rural Fires Regulation 2002

Clause 21

Fire prevention

Part 4

General

Division 1

and that at least 2 knapsack spray pumps each of 16 litre minimum capacity and a supply of not less than 450 litres of water are readily available for use on the fire.

Maximum penalty: 20 penalty units.

22 Use of spark arresters

- (1) A person must not (in connection with any agricultural, pastoral, railway or other land use) drive or use any steam-powered machine unless:
- (a) the smoke box is fitted with a spark arrester constructed of a mesh not exceeding 3.2 millimetres, and
 - (b) the fire box is fitted with a tray constructed in such a manner as to prevent the escape from the fire box of any sparks or burning material, and
 - (c) the spark arrester and tray are maintained in a good and serviceable condition and comply with AS 1019—2000.

Maximum penalty: 20 penalty units.

- (2) In this clause:

AS 1019—2000 means the Australian Standard entitled AS 1019—2000, *Internal combustion engines—Spark emission control devices*, published by Standards Australia on 1 August 2000.

23 Other safety requirements

- (1) A person must not (in connection with any agricultural, pastoral or other land use) drive or use in any grass, crop or stubble land any motorised machine unless:
- (a) the machine is constructed so that any heated areas will not come into contact with combustible matter, and
 - (b) the machine is maintained in a good and serviceable condition so as to prevent the outbreak of fire.

Maximum penalty: 20 penalty units.

- (2) A person must not (in connection with any agricultural, pastoral or other land use):
- (a) drive or use in any grass, crop or stubble land a motorised machine on which it is practicable to carry prescribed fire safety equipment, or

Clause 23 Rural Fires Regulation 2002

Part 4 Fire prevention

Division 1 General

- (b) carry out welding operations or use explosives or an angle grinder or any other implement that is likely to generate sparks, unless the person carries on the machine, or has in the vicinity, prescribed fire safety equipment and that equipment is maintained in a serviceable condition.

Maximum penalty: 20 penalty units.

- (3) In this clause:

prescribed fire safety equipment means:

- (a) a knapsack spray pump of 16 litre minimum capacity filled with water, or
- (b) a fire extinguisher (liquid type) of 9 litre minimum capacity, or
- (c) a dry powder type extinguisher of 0.9 kg minimum capacity.

24 Roadside fire protection

- (1) A prescribed authority may, for the purposes of bush fire hazard reduction work:
- (a) light a fire on a road, or on the verge of a road, and
- (b) while the fire is burning, prohibit, direct or regulate the movement of persons, vehicles or animals along a road.
- (2) Subclause (1) authorises a prescribed authority to light a fire on land comprising a road or the verge of a road only if to do so is consistent with any bush fire management plan applying to the land.
- (3) In this clause:
- prescribed authority* means a public authority that has the care, control or management of a road, or of roadside vegetation.

Division 2 Bush fire danger periods

25 Application of Division

This Division applies during bush fire danger periods.

Rural Fires Regulation 2002

Clause 26

Fire prevention

Part 4

Bush fire danger periods

Division 2

26 Lighting fires for cooking etc

A person must not light a fire in the open to cook, heat or prepare meals or to boil water or for any like purpose unless the fire is lit at a site surrounded by ground that is clear of all combustible matter for a distance of at least 2 metres.

Maximum penalty: 20 penalty units.

27 Burning garbage and refuse

- (1) A person must not light a fire to destroy garbage or refuse at a garbage depot unless the site of the fire is surrounded by ground that is clear of all combustible matter for a distance of at least 30 metres.

Maximum penalty: 20 penalty units.

- (2) A person must not light a fire to destroy household garbage or refuse otherwise than at a garbage depot unless the fire is lit:

- (a) in an incinerator designed to prevent the escape of sparks and burning material, or
- (b) in accordance with the conditions set out in a permit issued by the appropriate authority,

and, in any case, unless the site of the fire is surrounded by ground that is clear of all combustible matter for a distance of at least 5 metres.

Maximum penalty: 20 penalty units.

- (3) Nothing in subclause (1) or (2) affects the operation of any law that prohibits or regulates the lighting of fires.

28 Lighting fires to produce charcoal etc

- (1) A person must not light a fire for or in connection with:

- (a) charcoal production, or
- (b) the distillation of eucalyptus or other oils,

except at a site that is surrounded by ground that is clear of all combustible matter for a distance of at least 30 metres.

Maximum penalty: 20 penalty units.

- (2) A person must not light a fire to burn waste products resulting from the activities referred to in subclause (1) unless:

- (a) all conditions set out in a permit obtained from the appropriate authority for the area are complied with, and

Clause 28 Rural Fires Regulation 2002

Part 4 Fire prevention

Division 2 Bush fire danger periods

- (b) the fire is lit at least 30 metres from the site of any other fire lit in connection with the distillation of eucalyptus or other oils.

Maximum penalty: 20 penalty units.

- (3) In this clause, a reference to *combustible matter* does not include a reference to any timber to be reduced to charcoal, any charcoal so produced, any material used for the distillation of eucalyptus or other oils or any building or fence.

29 Offence to light, use or carry tobacco product

- (1) A person must not, without lawful authority:
- (a) light any tobacco product, match or other material, or
 - (b) use or carry any lighted tobacco product, match or other material,
- within 15 metres of any stack of grain, hay, corn or straw or any standing crop, dry grass or stubble field.
- Maximum penalty: 50 penalty units.
- (2) A person must not, without lawful authority, leave or deposit a lighted tobacco product, match or any incandescent material on any land, or on any bridge, wharf, pontoon or similar structure.
- Maximum penalty: 50 penalty units.

Rural Fires Regulation 2002

Clause 30

Notices

Part 5

Part 5 Notices

30 Public notice of draft bush fire risk management plans

- (1) The period of public exhibition of a draft bush fire risk management plan must not be less than 42 days, during which submissions may be made to the Bush Fire Management Committee or Commissioner, as the case requires.
- (2) The Bush Fire Management Committee or Commissioner must, in accordance with the public notice of a draft bush fire risk management plan, exhibit the draft plan together with any other matter that the Committee or Commissioner considers appropriate or necessary to better enable the draft plan and its implications to be understood.

31 Destruction of notices

A person who, without lawful authority, destroys, defaces or removes any notice displayed under the Act or this Regulation or under the authority of the Minister, the Commissioner, the Bush Fire Co-ordinating Committee or any public authority in pursuance of the Act is guilty of an offence.

Maximum penalty: 5 penalty units.

32 Bush fire hazard reduction work required by local authorities

For the purposes of section 69 (2) of the Act, a local authority that by a bush fire hazard reduction notice requires the occupier or owner of any land to burn fire breaks or combustible matter or other material on land that is within 8 kilometres (or such other distance as may be specified in a bush fire management plan applying to the land) of NPWS land or forestry land, must, within 24 hours after the notice has been given, send a copy of the bush fire hazard reduction notice to an officer of the National Parks and Wildlife Service or Forestry Commission responsible for the NPWS land or forestry land.

33 Bush fire hazard reduction work in default of compliance with notice

If any employees or agents of a local authority or any officers or members of a fire brigade or rural fire brigade are authorised under section 70 of the Act to enter any land and light any fire on land that is within 8 kilometres (or such other distance as may be specified in a bush fire management plan applying to the land) of NPWS land or

Clause 33 Rural Fires Regulation 2002

Part 5 Notices

forestry land, a notification in writing stating the time at which or the period within which such fire is to be lit must, at least 24 hours before the land is to be entered, be sent by the local authority, officer or member to an officer of the National Parks and Wildlife Service or Forestry Commission responsible for the NPWS land or forestry land.

34 Notice of intention to burn off or burn firebreak

- (1) For the purposes of section 86 of the Act, the prescribed notice is a written or oral notice that includes particulars of the location, purpose, period and time of the fire proposed to be lit.
- (2) The notice must be given to each of the persons referred to in subclause (3) at least 24 hours before the fire is lit.
- (3) For the purposes of section 86 of the Act, the prescribed persons are:
 - (a) the occupiers (or, if there are no occupiers, the owners) of all land contiguous to, or that is separated merely by a lane, road or waterway (whether fenced or unfenced) from, the land on which the fire is to be lit, and
 - (b) if the land on which the fire is to be lit is in a rural fire district, the fire control officer for the district, and
 - (c) if the land on which the fire is to be lit is in a fire district, the officer in charge of the fire station that is nearest to the land.

35 Notice of issue of fire permit

For the purposes of section 94 of the Act, an appropriate authority who issues a fire permit to light a fire on land within 8 kilometres (or such other distance as may be specified in a bush fire management plan applying to the land) of NPWS land or forestry land must, within 24 hours of issuing the fire permit, give notice to an officer of the National Parks and Wildlife Service or Forestry Commission responsible for the NPWS land or forestry land.

36 Notice to public authority not to light fires during a bush fire danger period

- (1) For the purposes of section 95 (2) (a) of the Act, a notice in writing to a public authority that contains or has attached to it a copy of the relevant determination must be given at least 24 hours before the period specified in the notice begins.

Rural Fires Regulation 2002

Clause 36

Notices

Part 5

- (2) The notice is to be given:
- (a) by serving a copy of the notice on an officer or employee of the public authority whom the public authority has notified to the local authority as being authorised to receive the notice, or
 - (b) by sending a copy of the notice to the head office of the public authority by post, lettergram, telex, email, facsimile transmission or document exchange facility.

37 Notices of fire prohibition in specified zones

- (1) Each weather forecast district referred to in Schedule 1 (comprising the administrative areas and divisions listed in relation to each such district) is a zone for the purposes of any notification or direction under section 99 of the Act.
- (2) For the purposes of any such notification or direction, the boundaries of any such area or division are those current when the notification is published or the direction is given.

38 Persons to whom notice of bush fire hazard reduction work must be given

- (1) For the purposes of section 100F (6) (c) of the Act, the following are prescribed persons to whom notice of bush fire hazard reduction work must be given:

If the bush fire hazard reduction work is to be carried out on land in a fire district, the officer in charge of the fire station that is nearest to the land on which the work is to be carried out.

- (2) For the purposes of section 100G (1) (c) of the Act, the following are prescribed persons to whom notice of bush fire hazard reduction work must be given:

If the bush fire hazard reduction work is to be carried out on land in a fire district, the officer in charge of the fire station that is nearest to the land on which the work is to be carried out.

39 Giving of notices

- (1) For the purposes of section 130 of the Act, a notice or direction required by or under the Act to be served on a person may be served as follows (except as otherwise expressly provided by the Act or this Regulation):
 - (a) by delivering the notice to the person personally,

Clause 39 Rural Fires Regulation 2002

Part 5 Notices

- (b) by delivering the notice at or on the premises at which the person to be served lives or carries on business, and leaving it with any person apparently above the age of 14 years resident or employed at the premises,
 - (c) by posting the notice by prepaid letter addressed to the last known place of residence or business or post office box of the person to be served,
 - (d) by facsimile transmission to a number specified by the person (on correspondence or otherwise) as a number to which facsimile transmissions to that person may be sent,
 - (e) by email to an email address specified by the person (on correspondence or otherwise) as an address to which emails to that person may be sent,
 - (f) by fixing the notice on any conspicuous part of the land, building or premises owned or occupied by the person,
 - (g) in the case of an offence involving a vehicle, by attaching the notice to the vehicle,
 - (h) if the person to be served maintains a box at a document exchange established in New South Wales, by depositing the notice in that box or leaving it at another such exchange for transmission to the first mentioned exchange for deposit in that box.
- (2) If a notice is deposited in a box, or left at a document exchange, service of the notice is, until the contrary is proved, taken to be effected 2 days after the day on which the notice is so deposited or left.
- (3) In addition to the means of service prescribed by subclause (1):
- (a) in any case where the person to be served is, or after inquiry appears to be, absent from New South Wales, the service may be on the agent of the person by any of the means prescribed by subclause (1) (a), (b), (d) or (e), and
 - (b) in any case where the land, building or premises are unoccupied and the owner or the owner's address or place of residence is not known to the person seeking to serve the notice, the service may be by advertisement in the approved form published in a newspaper circulating in the district in which the land, building or premises are situated.

Rural Fires Regulation 2002

Clause 39

Notices

Part 5

- (4) The notice may be addressed by the description of “occupier” or “owner” of the land, building or premises (naming or otherwise sufficiently indicating the same) in respect of which the notice is served, and without further name or description.
- (5) The notice may be wholly printed, wholly written or partly printed and partly written.
- (6) If a notice has been served by any of the means prescribed by this clause, all inquiries required under this clause are taken to have been made, and the service is conclusive evidence of them.
- (7) For the purposes of this clause, a justice of the peace is authorised to take and receive an affidavit, whether any matter to which the affidavit relates is or is not pending in any court.

Clause 40 Rural Fires Regulation 2002

Part 6 Miscellaneous

Part 6 Miscellaneous

40 Use of apparel, emblems and insignia

- (1) A person who is not a member of the Service must not, without the approval of the Commissioner (which approval may be given unconditionally or subject to conditions determined by the Commissioner), wear a uniform or other apparel in circumstances where to do so could lead to reasonable belief that he or she is a member of the Service.

Maximum penalty: 20 penalty units.

- (2) A person must not, without the approval of the Commissioner (which approval may be given unconditionally or subject to conditions determined by the Commissioner):
- (a) use or display an official emblem of the Service, or
 - (b) sell, hire, lend or otherwise surrender possession of an insignia of the Service to a person who is not a member of the Service.

Maximum penalty: 20 penalty units.

41 Bravery and other awards

The Commissioner is to keep a register of the names of each member of the Service who is given a commendation or award for long service, bravery or other forms of meritorious service and details of the commendation or award.

42 Voluntary work by rural fire brigades

- (1) For the purposes of section 33 of the Act, a function of a public authority is a prescribed function if:
- (a) it is a function described in subclause (2), and
 - (b) in the case of a function described in subclause (2) (c)—it is exercised in accordance with an agreement between the fire control officer for the rural fire district in which the rural fire brigade concerned operates and the Commissioner of NSW Fire Brigades or between the Commissioner of the NSW Rural Fire Service and the Commissioner of NSW Fire Brigades.

Rural Fires Regulation 2002

Clause 42

Miscellaneous

Part 6

(2) The functions referred to in subclause (1) (a) are:

- (a) in the case of any public authority—a function that may be exercised by the public authority under the *State Emergency and Rescue Management Act 1989*, and
- (b) in the case of a public authority—a function that may be exercised by the public authority in relation to the prevention and suppression of bush fires and other fires, and
- (c) in the case of the Commissioner of NSW Fire Brigades—a function of the Commissioner in relation to hazardous materials and like matters, and
- (d) in the case of NSW Police—traffic control by a police officer.

43 Reduction of fire hazards on managed land

The following is prescribed as managed land for the purposes of paragraph (e) of the definition of *managed land* in the Dictionary at the end of the Act in the application of the definition to section 65 of the Act:

- (a) land dedicated for a public purpose and owned by a local authority or vested in, or under the control of, a local authority as trustee,
- (b) community land under the *Local Government Act 1993*,
- (c) a road vested in a local authority,
- (d) a freeway or motorway.

44 Conditions of fire permit

For the purposes of section 92 of the Act, the following conditions are prescribed as conditions of a fire permit:

- (a) unless the fire permit provides otherwise—at least one person must be present at the site of the fire from the time it is lit until such time as it is extinguished,
- (b) a fire may be lit on land only if to do so is consistent with any bush fire risk management plan applying to the land,
- (c) a fire may be lit on land only in accordance with any direction given to the holder of the permit by the appropriate authority.

Clause 45 Rural Fires Regulation 2002

Part 6 Miscellaneous

45 Section 100A definition of “excluded land”

The following is prescribed as excluded land for the purposes of paragraph (c) of the definition of *excluded land* in section 100A (1) of the Act:

Land declared by the Minister for the Environment under section 47 of the *Threatened Species Conservation Act 1995* to be the critical habitat of an endangered species, population or ecological community.

Land within Lord Howe Island.

46 Application for bush fire safety authority

- (1) For the purposes of section 100B (4) of the Act, an application for a bush fire safety authority must be in writing and include the following:
- (a) a description (including the address) of the property on which the development the subject of the application is to be carried out,
 - (b) a classification of the vegetation on and surrounding the property (out to a distance of 140 metres from the boundaries of the property) in accordance with the system for classification of vegetation contained in *Planning for Bushfire Protection*,
 - (c) an assessment of the slope of the land on and surrounding the property (out to a distance of 100 metres from the boundaries of the property),
 - (d) identification of any significant environmental features on the property,
 - (e) the details of any threatened species, population or ecological community identified under the *Threatened Species Conservation Act 1995* that is known to the applicant to exist on the property,
 - (f) the details and location of any Aboriginal relic (being a relic within the meaning of the *National Parks and Wildlife Act 1974*) or Aboriginal place (within the meaning of that Act) that is known to the applicant to be situated on the property,
 - (g) a bush fire assessment for the proposed development (including the methodology used in the assessment) that addresses the following matters:
 - (i) the extent to which the development is to provide for setbacks, including asset protection zones,

Rural Fires Regulation 2002

Clause 46

Miscellaneous

Part 6

-
- (ii) the siting and adequacy of water supplies for fire fighting,
 - (iii) the capacity of public roads in the vicinity to handle increased volumes of traffic in the event of a bush fire emergency,
 - (iv) whether or not public roads in the vicinity that link with the fire trail network have two-way access,
 - (v) the adequacy of arrangements for access to and egress from the development site for the purposes of an emergency response,
 - (vi) the adequacy of bush fire maintenance plans and fire emergency procedures for the development site,
 - (vii) the construction standards to be used for building elements in the development,
 - (viii) the adequacy of sprinkler systems and other fire protection measures to be incorporated into the development,
- (h) an assessment of the extent to which the proposed development conforms with or deviates from the specifications set out in Chapter 4 (Bushfire provisions—development stage) of *Planning for Bushfire Protection*.
- (2) In this clause, a reference to *Planning for Bushfire Protection* is a reference to the document so entitled, ISBN 0 9585987 8 9, prepared by Planning & Environment Services, NSW Rural Fire Service in co-operation with the Department of Planning, dated December 2001.

47 Application for bush fire hazard reduction certificate

For the purposes of section 100F (1) of the Act, an application for a bush fire hazard reduction certificate must be in writing and include the following:

- (a) a description (including the address) of the property on which the development the subject of the application is to be carried out,
- (b) the purpose or purposes for which the certificate is required,
- (c) details of the means by which, the time within which, and the places where, the proposed bush fire hazard reduction work the subject of the application is to be carried out,
- (d) details of any provision of the following that applies to the property and that relates to bush fire hazard reduction work:

Clause 47 Rural Fires Regulation 2002

Part 6 Miscellaneous

- (i) any conservation agreement entered into under Division 12 of Part 4 of the *National Parks and Wildlife Act 1974*,
 - (ii) any property agreement entered into under Part 5 of the *Native Vegetation Conservation Act 1997*,
 - (iii) any Trust agreement entered into under Part 3 of the *Nature Conservation Trust Act 2001*,
 - (iv) any property management plan approved by the Director-General of National Parks and Wildlife under section 91 of the *Threatened Species Conservation Act 1995*,
- (e) the details of any threatened species, population or ecological community identified under the *Threatened Species Conservation Act 1995* that is known to the applicant to exist on the property,
- (f) the details and location of any Aboriginal relic (being a relic within the meaning of the *National Parks and Wildlife Act 1974*) or Aboriginal place (within the meaning of that Act) that is known to the applicant to be situated on the property,
- (g) the written consent to the proposed bush fire hazard reduction work of the owner or occupier of the land concerned.

48 Penalty notices

- (1) For the purposes of section 131 (6) of the Act:
- (a) each offence created by a provision specified in Column 1 of Schedule 2 is declared to be a penalty notice offence, and
 - (b) the prescribed penalty for such an offence is the amount specified in Column 2 of Schedule 2.
- (2) For the purposes of section 131 (9) of the Act, the following are authorised officers in relation to all penalty notice offences:
- (a) a police officer,
 - (b) a person authorised by a local authority for the purposes of this paragraph.

Rural Fires Regulation 2002

Clause 49

Miscellaneous

Part 6

49 Savings provision

Any act, matter or thing that, immediately before the repeal of the *Rural Fires Regulation 1997* had effect under that Regulation, is taken to have effect under this Regulation (but only to the extent that it is not inconsistent with this Regulation and the acts, matters or things done under this Regulation).

Rural Fires Regulation 2002

Schedule 1 Fire prohibition zones

Schedule 1 Fire prohibition zones

(Clause 37)

Upper Western Weather Forecast District

City of Broken Hill,

Local government areas of Bourke, Brewarrina, Central Darling, Cobar, Walgett,
That part of the Western Division north of the Barrier Highway.

Lower Western Weather Forecast District

City of Broken Hill,

Local government areas of Balranald, Carrathool, Central Darling, Cobar,
Wentworth,

That part of the Western Division south of the Barrier Highway.

Riverina Weather Forecast District

Cities of Albury, Wagga Wagga,

Local government areas of Berrigan, Bland, Carrathool, Conargo, Coolamon,
Corowa, Culcairn, Deniliquin, Griffith, Hay, Hume, Jerilderie, Lachlan, Leeton,
Lockhart, Murray, Murrumbidgee, Narrandera, Temora, Urana, Wakool,
Windouran.

South West Slopes Weather Forecast District

Cities of Albury, Wagga Wagga,

Local government areas of Bland, Boorowa, Cootamundra, Gundagai, Harden,
Holbrook, Hume, Junee, Temora, Tumbarumba, Tumut, Weddin, Yass, Young.

Southern Tablelands Weather Forecast District

Cities of Goulburn, Queanbeyan,

Local government areas of Bombala, Boorowa, Cooma-Monaro, Crookwell,
Gunning, Mulwaree, Snowy River, Tallaganda, Yarrowlunla, Yass.

South Coast Weather Forecast District

City of Shoalhaven,

Local government areas of Bega Valley, Eurobodalla, Tallaganda.

Rural Fires Regulation 2002

Fire prohibition zones

Schedule 1

Illawarra Weather Forecast District

Cities of Shoalhaven, Wollongong,

Local government areas of Kiama, Shellharbour, Wingecarribee, Wollondilly.

Central West Plains Weather Forecast District

Local government areas of Bland, Bogan, Coonamble, Forbes, Gilgandra, Lachlan, Narromine, Parkes, Walgett, Warren, Weddin.

Central West Slopes Weather Forecast District

City of Dubbo,

Local government areas of Cabonne, Coolah, Coonabarabran, Cowra, Forbes, Gilgandra, Parkes, Weddin, Wellington.

Central Tablelands Weather Forecast District

Cities of Bathurst, Blue Mountains, Goulburn, Greater Lithgow, Hawkesbury, Orange,

Local government areas of Blayney, Cowra, Crookwell, Evans, Merriwa, Mudgee, Mulwaree, Oberon, Rylstone, Wellington, Wollondilly.

North West Plains Weather Forecast District

Local government areas of Coonabarabran, Moree Plains, Narrabri, Walgett, Yallaro.

North West Slopes Weather Forecast District

City of Tamworth,

Local government areas of Barraba, Bingara, Coonabarabran, Gunnedah, Inverell, Manilla, Murrurundi, Narrabri, Nundle, Parry, Quirindi, Yallaro.

Northern Tablelands Weather Forecast District

Local government areas of Copmanhurst, Armidale Dumaresq, Glen Innes, Guyra, Inverell, Kyogle, Pristine Waters, Severn, Tenterfield, Uralla, Walcha.

Northern Rivers Weather Forecast District

Cities of Grafton, Lismore,

Local government areas of Ballina, Byron, Copmanhurst, Kyogle, Maclean, Pristine Waters, Richmond Valley, Tweed.

Rural Fires Regulation 2002

Schedule 1 Fire prohibition zones

Mid North Coast Weather Forecast District

City of Greater Taree,

Local government areas of Bellingen, Coffs Harbour, Gloucester, Great Lakes, Hastings, Kempsey, Nambucca, Pristine Waters.

Hunter Weather Forecast District

Cities of Gosford, Cessnock, Hawkesbury, Lake Macquarie, Maitland, Newcastle,

Local government areas of Dungog, Great Lakes, Merriwa, Murrurundi, Muswellbrook, Port Stephens, Scone, Singleton, Wyong.

Metropolitan Weather Forecast District

Cities of Bankstown, Blacktown, Botany Bay, Campbelltown, Canada Bay, Canterbury, Fairfield, Hawkesbury, Holroyd, Hurstville, Liverpool, Parramatta, Penrith, Randwick, Rockdale, Ryde, South Sydney, Sydney, Willoughby,

Local government areas of Ashfield, Auburn, Baulkham Hills, Burwood, Camden, Hornsby, Hunters Hill, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Manly, Marrickville, Mosman, North Sydney, Pittwater, Strathfield, Sutherland, Warringah, Waverley, Woollahra.

Rural Fires Regulation 2002

Penalty notice offences

Schedule 2

Schedule 2 Penalty notice offences

(Clause 48)

Part 1 Offences under Rural Fires Act 1997

Column 1	Column 2
Provision	Penalty \$
Section 64	220
Section 66 (7)	220
Section 86 (1) (a)	550
Section 86 (1) (b)	550
Section 86 (1A)	550
Section 87	550
Section 88	550
Section 92 (2)	550
Section 99 (6)	550
Section 100 (2)	550
Section 132 (3)	220

Rural Fires Regulation 2002

Schedule 2 Penalty notice offences

Part 2 Offences under Rural Fires Regulation 2002

Column 1	Column 2
Provision	Penalty \$
Clause 20	330
Clause 21 (1)	330
Clause 21 (2)	330
Clause 22	330
Clause 23 (1)	330
Clause 23 (2) (a)	330
Clause 23 (2) (b)	330
Clause 26	330
Clause 27 (1)	330
Clause 27 (2)	330
Clause 28 (1) (a)	330
Clause 28 (1) (b)	330
Clause 28 (2)	330
Clause 29 (1) (a)	330
Clause 29 (1) (b)	330
Clause 29 (2)	330

Shops (Trading) Regulation 2002

under the

Shops and Industries Act 1962

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Shops and Industries Act 1962*.

JOHN DELLA BOSCA, M.L.C.,
Minister for Industrial Relations

Explanatory note

The object of this Regulation is to remake, without substantial alteration, the *Shops (Trading Hours) Regulation 1997*. That Regulation will be repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation:

- (a) prescribes the trades that are, for the purposes of Part 4 (Restriction of hours of trade or work in certain industries) of the *Shops and Industries Act 1962*, taken to be those usually carried on in specified classes of shops (clause 5 and Schedule 1), and
- (b) classifies all shops other than scheduled shops as *general shops* for the purposes of the definition of that term in section 78 of the Act (clause 6), and
- (c) prescribes the manner in which an application for exemption from any or all of the provisions of Division 3 (Opening and closing hours of shops and warehouses) of Part 4 of the Act, and of the regulations made for the purposes of that Division, may be made and the fee that must accompany the application (clause 7), and
- (d) prescribes the way in which certain goods may be partitioned off from each other in mixed shops (clause 8), and

Shops (Trading) Regulation 2002

Explanatory note

(e) provides for technical matters (clauses 1–4 and 9).

This Regulation is made under the *Shops and Industries Act 1962* and, in particular, under sections 78 (1), 78A (2), 82 (1) (a) and 102 (the general regulation-making power relating to Part 4 of the Act).

Shops (Trading) Regulation 2002

Contents

Contents

	Page
1 Name of Regulation	4
2 Commencement	4
3 Definition	4
4 Notes	4
5 Trades taken to be usually carried on in certain shops	4
6 General shops	5
7 Exemption from Division 3 of Part 4 of the Act	5
8 Partitioning off of goods in mixed shops	5
9 Savings	5
Schedule 1 Trades taken to be usually carried on in certain shops	7

Clause 1 Shops (Trading) Regulation 2002

Shops (Trading) Regulation 2002

1 Name of Regulation

This Regulation is the *Shops (Trading) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Shops (Trading Hours) Regulation 1997* which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definition

In this Regulation:

the Act means the *Shops and Industries Act 1962*.

4 Notes

Notes included in this Regulation do not form part of this Regulation.

5 Trades taken to be usually carried on in certain shops

For the purposes of Part 4 of the Act:

- (a) the trade that consists primarily of the hiring out of pre-recorded video cassettes, video tapes and DVDs is taken to be the trade usually carried on in the class of shops known as video shops, and
- (b) in respect of each class of shops specified in Schedule 1, the trade that consists primarily of the sale of goods of a kind specified in that Schedule in respect of that class of shops is taken to be the trade usually carried on in that class of shops, and
- (c) no trade other than a trade specified in this clause or in Schedule 1 in respect of a particular class of shops is to be taken to be a trade usually carried on in the class of shops concerned.

6 General shops

For the purposes of the definition of *general shop* in section 78 (1) of the Act, all shops (other than scheduled shops) are classified as general shops.

7 Exemption from Division 3 of Part 4 of the Act

- (1) An application under section 78A (1) of the Act:
 - (a) must be in writing, and
 - (b) must specify whether the exemption is sought:
 - (i) from all of the provisions of Division 3 of Part 4 of the Act and of the provisions of the regulations made for the purposes of that Division, or
 - (ii) from such provisions only of that Division or of those regulations as are specified in the application, and
 - (c) must specify the grounds on which the exemption is sought.
- (2) The fee to accompany an application under section 78A (1) of the Act is \$100.

8 Partitioning off of goods in mixed shops

- (1) For the purposes of section 82 of the Act, the prescribed manner of partitioning off goods is by enclosing the goods behind a partition that is constructed from strong and durable materials and is of sufficient height to prevent access from the part of the shop that is kept open.
- (2) The Director-General may from time to time approve materials for use in the construction of partitioning, and the dimensions of partitions to be used, for the purposes of this clause.
- (3) A partition that is constructed from approved materials and is of approved dimensions is taken to comply with the requirements of subclause (1).

9 Savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Shops (Trading Hours) Regulation 1997*, had effect under that Regulation continues to have effect under this Regulation.

Clause 9 Shops (Trading) Regulation 2002

- (2) In any award, agreement, order or determination in force under the *Industrial Relations Act 1996* immediately before the commencement of this Regulation, a reference to a class of shops referred to in:
- (a) Schedule 2 to the *Shops (Registration and Opening and Closing Hours) Regulations*, or
 - (b) Schedule 1 to the *Shops (Trading Hours) Regulation 1992*, or
 - (c) Schedule 1 to the *Shops (Trading Hours) Regulation 1997*,
- continues to be a reference to the class of shops so referred to as if those Regulations had not been repealed.

Shops (Trading) Regulation 2002

Trades taken to be usually carried on in certain shops

Schedule 1

Schedule 1 Trades taken to be usually carried on in certain shops

(Clause 5)

Classes of shops	Kinds of goods
Audio shops	Records, compact discs or blank or pre-recorded audio cassettes or audio tapes
Book shops	Books, periodicals or magazines, whether or not sold in conjunction with the sale of stationery requisites
Chemists' shops	Drugs, chemicals, medicines or other pharmaceutical goods, where sold by a registered pharmacist under the <i>Pharmacy Act 1964</i>
Confectioners' shops	Confectionery
Cooked food shops, being:	
(a) cake and pastry shops	Cakes, pastries or pies
(b) cooked provision shops	Cooked or other processed meats, poultry or preserves
(c) refreshment shops	Light refreshments, milk, soft drinks, hot beverages or confectionery
(d) restaurants	Meals, snacks or hot or cold beverages, where sold for consumption on the premises
(e) take-away food shops	Meals, snacks or hot or cold beverages, where sold for consumption elsewhere than on the premises
Fish shops	Cooked or uncooked fish or shellfish
Flower shops	Cut flowers, plants, seeds, seedlings, wreaths, bouquets or other floral emblems
Fruit and vegetable shops	Fresh fruit or vegetables
Garden plant shops	Garden plants or shrubs, seeds, garden equipment or associated products

Shops (Trading) Regulation 2002

Schedule 1 Trades taken to be usually carried on in certain shops

Classes of shops	Kinds of goods
General shops	Any goods other than those prescribed in respect of: (a) video shops (as referred to in clause 5 (a)), or (b) any other class of shops specified in this Schedule
Newsagencies	Newspapers, periodicals and magazines, whether or not sold in conjunction with the sale of books, stationery, cards, educational requisites or souvenirs
Pet shops	Live animals, birds, reptiles, fish, pet food or pet accessories
Souvenir shops	Souvenirs and gift items
Tobacconists' shops	Tobacco, cigarettes or cigars, whether or not sold in conjunction with the sale of pipes or other smoking requisites or accessories
Vehicle service shops	Motor spirit, motor oil or vehicle accessories
Vehicle shops	Cars, trucks, motorcycles, boats, caravans or trailers, whether or not sold in conjunction with the sale of accessories or parts



New South Wales

Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment (Blood Service) Regulation 2002

under the

Superannuation Administration Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Superannuation Administration Act 1996*.

MICHAEL EGAN, M.L.C.,
Treasurer

Explanatory note

The object of this Regulation is to provide for the transfer of certain employees who are currently members of the State Superannuation Scheme, the State Authorities Superannuation Scheme, the State Authorities Non-contributory Superannuation Scheme and the First State Superannuation Scheme to the Local Government Superannuation Scheme. The employees are to be transferred into Divisions of the Local Government Superannuation Scheme having equivalent benefits and rights to the schemes from which they are transferred. This results from the transfer of certain employees of Australian Red Cross Blood Service to a non-government body.

This Regulation is made under the *Superannuation Administration Act 1996*, including sections 128A, 128B and 129 (the general regulation-making power).

Clause 1 Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment (Blood Service) Regulation 2002

Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment (Blood Service) Regulation 2002

under the

Superannuation Administration Act 1996

1 Name of Regulation

This Regulation is the *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment (Blood Service) Regulation 2002*.

2 Amendment of Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997

The *Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Regulation 1997* is amended as set out in Schedule 1.

Superannuation Administration (Local Government Superannuation Scheme Transitional Provisions) Amendment (Blood Service) Regulation 2002

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 2)

[1] Clause 3 Definitions

Insert “or Australian Red Cross Blood Service” after “Murrumbidgee Irrigation Limited” in paragraph (c) (iii) of the definition of *transfer day*.

[2] Clause 12A Definition

Insert after paragraph (c) in the definition of *employee*:

- (d) a person who was an employee of Australian Red Cross Blood Service immediately before 1 September 2002.

[3] Schedule 1 Transferred employers

Insert at the end of the Schedule:

Australian Red Cross Blood Service

Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002

under the

Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

JOHN DELLA BOSCA, M.L.C.,
Special Minister of State

Explanatory note

The object of this Regulation is to provide for the following matters:

- (a) persons who are emergency service workers and rescue association workers,
- (b) activities that are authorised activities in relation to emergency service workers and rescue association workers,
- (c) the circumstances in which emergency service workers injured outside New South Wales (but within the Commonwealth of Australia) are covered by workers compensation provisions under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*,
- (d) activities that are associated operations or works in relation to fighting bushfires.

This Regulation replaces the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 1995*, which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002

Explanatory Note

This Regulation is substantially the same as the repealed Regulation. This Regulation differs from the repealed Regulation in that:

- (a) the definition of *authorised activities* for certain rescue association workers has been expanded to include activities relating to assistance at accidents, ski patrols and other safety patrols and recovery of bodies, and
- (b) the application of certain provisions of the *Workplace Injury Management and Workers Compensation Act 1998* recently inserted in that Act is modified.

The Regulation is made under the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*, including sections 8, 15, 23, 25, 29 and 32 (1A), and section 34 (the general regulation making power).

Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	4
2 Commencement	4
3 Definitions and notes	4
Part 2 Emergency service and rescue association workers	
4 Additional persons prescribed as emergency service workers	5
5 Emergency service workers—authorised activities	5
6 Additional persons prescribed as rescue association workers	5
7 Rescue association workers—authorised activities	6
8 Emergency service workers covered outside the State	6
9 Notice of injury and making of claims	7
Part 3 Bush fire fighters	
10 Associated operation or work—fund-raising activities	8
11 Notice of injury and making of claims	8
Part 4 Miscellaneous	
12 Application of provisions relating to medical examinations and disputes	9
13 Saving	9

Page 3

Clause 1 Workers Compensation (Bush Fire, Emergency and Rescue Services)
Regulation 2002

Part 1 Preliminary

Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. The *Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 1995* is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions and notes

(1) In this Regulation:

fire control officer has the same meaning as in the *Rural Fires Act 1997*.

the Act means the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987*.

(2) Notes in the text of this Regulation do not form part of this Regulation.

Workers Compensation (Bush Fire, Emergency and Rescue Services)
Regulation 2002

Clause 4

Emergency service and rescue association workers

Part 2

Part 2 Emergency service and rescue association workers

4 Additional persons prescribed as emergency service workers

The following persons are prescribed for the purposes of Part 3 of the Act as being emergency service workers:

- (a) a member of an S.E.S unit under the *State Emergency Service Act 1989*,
- (b) persons who are genuine members of organisations affiliated with the State Emergency Service under the approval of the Director-General of the State Emergency Service.

5 Emergency service workers—authorised activities

For the purposes of paragraph (a) of the definition of *authorised activity* in section 23 of the Act, the following are authorised activities in relation to emergency service workers if they are duly authorised under the *State Emergency Service Act 1989* or the *State Emergency and Rescue Management Act 1989*, or the regulations under those Acts, and are carried out without remuneration or reward, voluntarily and without obligation:

- (a) relief assistance and other operations in relation to any emergency as defined in section 4 of the *State Emergency and Rescue Management Act 1989*,
- (b) activities carried out under section 8 of the *State Emergency Service Act 1989*,
- (c) training and preparatory activities genuinely related to those operations or activities,
- (d) fund-raising.

6 Additional persons prescribed as rescue association workers

Duly registered or accepted members of a rescue squad or other organisation affiliated with the New South Wales Volunteer Rescue Association are prescribed for the purposes of Part 3 of the Act as being rescue association workers.

Clause 7	Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002
Part 2	Emergency service and rescue association workers

7 Rescue association workers—authorised activities

For the purposes of paragraph (b) of the definition of *authorised activity* in section 23 of the Act, the following are authorised activities in relation to rescue association workers if they are carried out without remuneration or reward, voluntarily and without obligation:

- (a) in relation to executive members of the New South Wales Volunteer Rescue Association—meetings and other activities genuinely related to the business of that Association,
- (b) in relation to surf life savers—surf life-saving operations, training and preparatory activities genuinely related to those operations and fund-raising, being activities duly authorised under arrangements approved by Surf Life Saving New South Wales Incorporated,
- (c) in relation to the persons referred to in clause 6—assistance at accidents, ski patrol operations and other safety patrol operations, search and rescue operations, recovery of bodies, training and preparatory activities genuinely related to those operations and fund-raising, being activities duly authorised under arrangements approved by the New South Wales Volunteer Rescue Association,
- (d) in relation to persons deemed to be rescue association workers as referred to in paragraph (c) of the definition of *rescue association worker* in section 23 of the Act—any activity which, in the opinion of the Authority, is or is similar to an activity referred to in paragraph (a) or (b).

8 Emergency service workers covered outside the State

Pursuant to section 25 of the Act, Part 3 of the Act applies to and in respect of injury sustained within the Commonwealth and its Territories but outside New South Wales by emergency service workers:

- (a) while carrying out operations as members of S.E.S. units pursuant to arrangements under section 23 (Arrangements for inter-state co-operation in emergencies) of the *State Emergency Service Act 1989*, or

Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002

Clause 8

Emergency service and rescue association workers

Part 2

-
- (b) while carrying out operations as members of accredited rescue units under arrangements made under section 58 (Arrangements for inter-State co-operation in rescue) of the *State Emergency and Rescue Management Act 1989*.

9 Notice of injury and making of claims

For the purposes of section 29 (2) of the Act, the requirements of Division 1 of Part 3 of Chapter 7 of the 1998 Act do not apply to the giving of notice of injury or damage to property or the making of claims for compensation under Part 3 of the Act.

Clause 10	Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 2002
Part 3	Bush fire fighters

Part 3 Bush fire fighters

10 Associated operation or work—fund-raising activities

For the purposes of section 8 (1) (c) of the Act, fund-raising for a rural fire brigade by an official fire fighter that is authorised by a fire control officer is an associated operation or work if that fund-raising is carried out voluntarily and without remuneration or reward.

11 Notice of injury and making of claims

For the purposes of section 15 (2) of the Act, the requirements of Division 1 of Part 3 of Chapter 7 of the 1998 Act do not apply to the giving of notice of injury or damage to property or the making of claims for compensation under Part 2 of the Act.

Workers Compensation (Bush Fire, Emergency and Rescue Services)
Regulation 2002

Clause 12

Miscellaneous

Part 4

Part 4 Miscellaneous

12 Application of provisions relating to medical examinations and disputes

For the purposes of section 32 (1A) of the Act, Division 7 of Part 2 of Chapter 4 of the 1998 Act is modified by omitting section 118A.

13 Saving

Any act, matter or thing that, immediately before the repeal of the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Regulation 1995*, had effect under that Regulation is taken to have effect under this Regulation.

Workplace Injury Management and Workers Compensation Regulation 2002

under the

Workplace Injury Management and Workers Compensation Act
1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Workplace Injury Management and Workers Compensation Act 1998*.

JOHN DELLA BOSCA, M.L.C.,
Special Minister of State

Explanatory note

The object of this Regulation is to provide for the following matters:

- (a) modification of certain provisions of the *Workplace Injury Management and Workers Compensation Act 1998* as they apply to self-insurers,
- (b) requirements with respect to the establishment and notification of return-to-work programs,
- (c) requirements with respect to the engagement of return-to-work co-ordinators and the functions of those co-ordinators,
- (d) offences for failure to comply with certain provisions of this Regulation and Chapter 3 (Workplace injury management) of the *Workplace Injury Management and Workers Compensation Act 1998*,
- (e) the accreditation of rehabilitation providers,
- (f) penalty notices and penalty amounts for offences under this Regulation.

Workplace Injury Management and Workers Compensation Regulation 2002

Explanatory note

The Regulation replaces the *Workers Compensation (Workplace Injury Management) Regulation 1995*, which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*. This Regulation is substantially the same as the repealed Regulation.

The Regulation also repeals the *Workplace Injury Management and Workers Compensation Regulation 1999*. That Regulation, which exempts certain insurers from a requirement as to calculation of risk premiums, became obsolete when the uncommenced provisions of the *Workplace Injury Management and Workers Compensation Act 1998* for underwriting of the workers compensation scheme by private insurance arrangements were repealed in 2001.

The Regulation is made under the *Workplace Injury Management and Workers Compensation Act 1998*, including section 248 (the general regulation-making power) and Chapter 3.

Workplace Injury Management and Workers Compensation Regulation 2002

Contents

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	5
2 Commencement	5
3 Definitions	5
Part 2 Modification of provisions applying to self-insurers	
4 Interpretation	7
5 References to “insurer”	7
6 Modification of exceptions for self-insurers	8
7 Preparation of injury management plan	8
8 Self-insurer’s licence	9
Part 3 Offences against Chapter 3 of the 1998 Act	
9 Employer must give early notification of significant workplace injury	10
Part 4 Return-to-work programs	
10 Time within which program to be established	11
11 Offence—failure to establish program	11
12 Standard return-to-work programs for category 2 employers	11
13 Program to comply with guidelines etc	12
14 Guidelines for programs—directions	12
15 Nomination in programs of accredited providers of rehabilitation services	12
16 Offence—failure to display or notify program	12
17 Notification etc of program by category 2 employer	13
18 Category 1 employers must have return-to-work co-ordinator	13
19 Functions of return-to-work co-ordinators	13
20 Shared return-to-work programs	14

Workplace Injury Management and Workers Compensation Regulation 2002

Contents

Part 5	Accreditation of rehabilitation providers	
21	Application for certificate of accreditation	15
22	Determination of application	15
23	Form of certificate of accreditation	16
24	Conditions of certificate	17
25	Amendment of certificate	17
26	Notice of refusal	18
27	Duration of certificates	19
28	Surrender of certificates	19
29	Duplicate certificates	19
30	Register of certificates	19
31	False or misleading statements	20
32	Cancellation or suspension of certificate	20
33	False claim of accreditation	21
Part 6	Miscellaneous	
34	Penalty notice offences	22
35	Exemptions	22
36	Savings and transitional provisions	23
37	Repeal	23
Schedule 1	Penalty notice offences	24

Workplace Injury Management and Workers Compensation Regulation 2002	Clause 1
Preliminary	Part 1

Workplace Injury Management and Workers Compensation Regulation 2002

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Workplace Injury Management and Workers Compensation Regulation 2002*.

2 Commencement

This Regulation commences on 1 September 2002.

Note. This Regulation replaces the *Workers Compensation (Workplace Injury Management) Regulation 1995*, which is repealed on 1 September 2002 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

accreditation means accreditation as a provider of rehabilitation services.

category 1 employer means:

- (a) an employer insured under a policy of insurance to which the insurance premiums order for the time being in force applies and whose basic tariff premium (within the meaning of that order) for that policy would exceed \$50,000, if the period of insurance to which the premium relates were 12 months, or
- (b) an employer insured under more than one policy of insurance to which the insurance premiums order for the time being in force applies and whose combined basic tariff premiums (within the meaning of that order) for those policies would exceed \$50,000, if the period of insurance to which each premium relates were 12 months, or
- (c) an employer who is self-insured, or
- (d) an employer who is insured with a specialised insurer and who employs more than 20 workers.

Clause 3	Workplace Injury Management and Workers Compensation Regulation 2002
Part 1	Preliminary

category 2 employer means an employer who is not a category 1 employer.

guidelines means the guidelines under section 52 (2) (a) of the 1998 Act.

return-to-work program means a return-to-work program established under section 52 of the 1998 Act with respect to policies and procedures (consistent with the injury management plan of the employer's insurer) for the rehabilitation (and, if necessary, vocational re-education) of any injured workers of the employer.

standards for rehabilitation providers means standards relating to the provision of rehabilitation services approved by the Authority.

the 1987 Act means the *Workers Compensation Act 1987*.

the 1998 Act means the *Workplace Injury Management and Workers Compensation Act 1998*.

- (2) Notes in the text of this Regulation do not form part of this Regulation.

Workplace Injury Management and Workers Compensation Regulation 2002 Clause 4

Modification of provisions applying to self-insurers Part 2

Part 2 Modification of provisions applying to self-insurers

4 Interpretation

- (1) When one or more subsidiaries of the holder of a licence as a self-insurer under the 1987 Act is endorsed on the licence, each of those endorsed subsidiaries and the licence holder are **group self-insurers** for the purposes of this Part.
- (2) The holder of a licence as a group self-insurer may for the purposes of this Part, by notice in writing to the Authority from time to time, designate any one or more of the group self-insurers covered by the licence as **designated insurer** for some or all of the group self-insurers. The licence holder can designate itself as a designated insurer.
- (3) Except where otherwise expressly provided, this Part provides for the modification of provisions of Chapter 3 of the 1998 Act in their application to the following self-insurers:
 - (a) a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme,
 - (b) a group self-insurer for whom there is a designated insurer.

5 References to "insurer"

- (1) Sections 43, 44, 45, 47, 52 and 57 of the 1998 Act are to be read as if:
 - (a) a reference to **insurer** were, in the case of a self-insurer who is a Government employer covered for the time being by the Government's managed fund scheme, a reference to the Insurance Ministerial Corporation, and
 - (b) a reference to **insurer** were, in the case of a self-insurer for whom there is a designated insurer, a reference to that designated insurer, and
 - (c) the Insurance Ministerial Corporation were the insurer of each employer who is a Government employer covered for the time being by the Government's managed fund scheme, and
 - (d) the designated insurer for a group self-insurer were the insurer of the group self-insurer.

Clause 5 Workplace Injury Management and Workers Compensation Regulation
2002

Part 2 Modification of provisions applying to self-insurers

- (2) A reference in sections 50 and 58 of the 1998 Act to *insurer* is to be read as including a reference:
- (a) to the Insurance Ministerial Corporation, when the insurer is a Government employer covered for the time being by the Government's managed fund scheme, and
 - (b) when the insurer is a group self-insurer for whom there is a designated insurer, to that designated insurer.

6 Modification of exceptions for self-insurers

The following modifications are to be made to the 1998 Act:

- (a) section 43 (3)—omit “This subsection does not apply to a self-insurer.”,
- (b) section 43 (4)—omit “(except when the insurer is a self-insurer)”,
- (c) section 43 (5)—omit “This subsection does not apply when the employer is a self-insurer.”,
- (d) omit section 44 (4),
- (e) section 45 (2)—omit “(except when the insurer is a self-insurer)”,
- (f) section 45 (5)—omit “This subsection does not apply when the insurer is a self-insurer.”,
- (g) omit section 46 (3).

7 Preparation of injury management plan

Section 45 (1) of the 1998 Act is replaced with the following subsection:

- (a) When it appears that a workplace injury is a significant injury, an injury management plan must be established for the injured worker by:
 - (i) the Insurance Ministerial Corporation, when the self-insurer who is or may be liable to pay compensation to the injured worker is a Government employer covered for the time being by the Government's managed fund scheme, or

Workplace Injury Management and Workers Compensation Regulation 2002	Clause 7
Modification of provisions applying to self-insurers	Part 2

- (ii) when the insurer who is or may be liable to pay compensation to the injured worker is a group self-insurer for whom there is a designated insurer, that designated insurer.

8 Self-insurer's licence

- (1) A reference in section 55 of the 1998 Act to *insurer's licence* is, in the application of that section to a group self-insurer (whether or not a group self-insurer for whom there is a designated insurer), to be read as a reference to the licence as a self-insurer on which the group self-insurer is endorsed.
- (2) It is a condition of a licence as a self-insurer that the holder of the licence must ensure that any subsidiary of the holder endorsed on the licence complies with the subsidiary's obligations under Chapter 3 of the 1998 Act.

Clause 9 Workplace Injury Management and Workers Compensation Regulation
2002

Part 3 Offences against Chapter 3 of the 1998 Act

Part 3 Offences against Chapter 3 of the 1998 Act

9 Employer must give early notification of significant workplace injury

A person who fails to comply with section 44 (2) of the 1998 Act is guilty of an offence.

Maximum penalty: 20 penalty units.

Workplace Injury Management and Workers Compensation Regulation
2002

Clause 10

Return-to-work programs

Part 4

Part 4 Return-to-work programs

10 Time within which program to be established

- (1) A return-to-work program required to be established by a category 1 employer must be established before the expiration of the period of 12 months after the employer becomes a category 1 employer.
- (2) A return-to-work program required to be established by a category 2 employer must be established before the expiration of the period of 12 months after the employer becomes a category 2 employer.
- (3) The Authority may, in a particular case, extend the period during which a return-to-work program is required to be established.

Note. Section 52 (2) (b) of the 1998 Act requires a return-to-work program to be developed by an employer in consultation with workers of the employer and any industrial union of employees representing those workers.

11 Offence—failure to establish program

An employer who fails to establish a return-to-work program under section 52 of the 1998 Act within the period required by this Regulation is guilty of an offence.

Maximum penalty:

- (a) in the case of a category 2 employer, 5 penalty units,
- (b) in the case of a category 1 employer, 20 penalty units.

12 Standard return-to-work programs for category 2 employers

- (1) The Authority may prepare (in accordance with the guidelines) standard return-to-work programs for category 2 employers generally or for different kinds of category 2 employers.
- (2) A category 2 employer who does not establish a separate return-to-work program in accordance with the 1998 Act may establish a return-to-work program by adopting a relevant standard return-to-work program prepared under this clause.
- (3) The Authority may include in a compensation claim form approved by the Authority under section 65 (1) (b) of the 1998 Act a copy of any standard return-to-work program prepared under this clause.

Clause 13	Workplace Injury Management and Workers Compensation Regulation 2002
Part 4	Return-to-work programs

13 Program to comply with guidelines etc

- (1) An employer is not to be regarded as having established a return-to-work program unless the program complies with the guidelines and any directions under or requirements of this Regulation.
- (2) A category 2 employer who adopts a relevant standard return-to-work program under clause 12 is to be regarded as having duly established a return-to-work program.

14 Guidelines for programs—directions

- (1) The Authority may give an employer directions in writing in connection with any return-to-work program established, or to be established, by the employer to ensure that the program complies with the guidelines.
- (2) The Authority is to review a direction given by it under this clause if the employer concerned requests a review but need not review any particular direction more than once.

15 Nomination in programs of accredited providers of rehabilitation services

- (1) A return-to-work program must, if the guidelines so require, nominate an accredited provider of rehabilitation services (or a list of such accredited providers) for the purposes of the program.
- (2) Consultation on the nomination of an accredited provider of rehabilitation services is to be carried out in such circumstances and in such manner as the guidelines may provide.

16 Offence—failure to display or notify program

An employer who fails to display or notify a return-to-work program in accordance with section 52 (2) (c) of the 1998 Act at the places of work under the employer's control is guilty of an offence.

Maximum penalty:

- (a) in the case of a category 2 employer, 2 penalty units,
- (b) in the case of a category 1 employer, 10 penalty units.

Workplace Injury Management and Workers Compensation Regulation
2002

Clause 17

Return-to-work programs

Part 4

17 Notification etc of program by category 2 employer

A category 2 employer is not required to display or notify a return-to-work program at the places of work under the employer's control:

- (a) if the employer provides a copy of the program to any worker who requests a copy or who applies for compensation for any injury, or
- (b) if the employer makes other satisfactory arrangements to ensure that workers have access to a copy of the program.

18 Category 1 employers must have return-to-work co-ordinator

- (1) A category 1 employer must:
 - (a) employ a person to be a return-to-work co-ordinator for injured workers of the employer, being a person who has undergone such training as the guidelines may require, or
 - (b) engage a person in accordance with such arrangements as the guidelines may from time to time permit to be a return-to-work co-ordinator for injured workers of the employer.

Maximum penalty: 20 penalty units.

- (2) The following are examples of the arrangements that the guidelines can permit for the purposes of this clause:
 - (a) the engagement of a person under an arrangement with a person or organisation that provides return-to-work co-ordinators to employers,
 - (b) an arrangement under which a person is engaged on a shared basis by 2 or more employers.
- (3) The guidelines can require an employer to obtain the approval of the Authority before entering into an arrangement for the purposes of subclause (1) (b).
- (4) The guidelines can impose requirements with respect to the training, qualifications and experience of persons who may be engaged to be return-to-work co-ordinators under subclause (1) (b).

19 Functions of return-to-work co-ordinators

An employer's return-to-work co-ordinator has such functions as may be specified in the guidelines.

Clause 20	Workplace Injury Management and Workers Compensation Regulation 2002
Part 4	Return-to-work programs

20 Shared return-to-work programs

- (1) For the purposes of section 52 (5) of the 1998 Act, a group of 2 or more employers may establish a single return-to-work program for the members of the group if:
 - (a) those employers have engaged a person to be a return-to-work co-ordinator for injured workers of those employers on a shared basis, and
 - (b) in the opinion of the Authority:
 - (i) those employers are engaged in the same business, or
 - (ii) those employers operate in the same locality, or
 - (iii) those employers satisfy any requirements of the guidelines imposed for the purposes of this paragraph, and
 - (c) in the opinion of the Authority, those employers have complied with all of the requirements of the guidelines with respect to the establishment of a single return-to-work program for groups of employers.
- (2) The guidelines can require employers to obtain the approval of the Authority for:
 - (a) the establishment of a single return-to-work program for a group of employers, and
 - (b) the terms of a single return-to-work program and any revisions or amendments to those terms.

Workplace Injury Management and Workers Compensation Regulation
2002

Clause 21

Accreditation of rehabilitation providers

Part 5

Part 5 Accreditation of rehabilitation providers

21 Application for certificate of accreditation

- (1) A person may apply to the Authority for a certificate of accreditation.
- (2) Two or more persons jointly providing, or intending to jointly provide, rehabilitation services may (but are not required to) apply for a joint certificate of accreditation.
- (3) An application must:
 - (a) be in the form approved by the Authority, and
 - (b) contain such particulars and be accompanied by such documents as may be required by that form, and
 - (c) be accompanied by such fee as the Authority may determine.

22 Determination of application

- (1) The Authority is to determine an application for a certificate of accreditation:
 - (a) by granting a certificate to the applicant in the applicant's name, or, if there is more than one applicant, in their joint names, or
 - (b) by refusing to grant a certificate.
- (2) In determining an application for a certificate of accreditation, the Authority is to have regard to:
 - (a) the application, and
 - (b) in relation to the applicant or each applicant (if more than one):
 - (i) if the applicant is a natural person—the desirability of granting individual accreditation to natural persons, and
 - (ii) the capacity of the applicant to comply with the standards for rehabilitation providers, and
 - (iii) any information supplied by a trade union or employer organisation relating to the applicant's provision of rehabilitation services, and
 - (iv) any complaint lodged with the Authority against the applicant by a client of the applicant, and

Clause 22 Workplace Injury Management and Workers Compensation Regulation
2002

Part 5 Accreditation of rehabilitation providers

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- (v) information procured in the course of any interviews with or examination of premises used by the applicant, and
 - (vi) verification of any references supplied by the applicant, and
 - (c) any relevant information relating to workers compensation costs and statistics concerning the return to work of injured workers, and
 - (d) such other matters as the Authority thinks fit.
- (3) Before dealing with an application under this clause, the Authority may refer the application to the Council for a report and recommendation.
- (4) The Authority must not grant a certificate unless:
- (a) the Authority has considered the Council's report and recommendation (if any) on the application, and
 - (b) in the case of an application by a natural person or natural persons—the Authority is of the opinion that the applicant or each applicant is a fit and proper person to hold a certificate and is of or above the age of 18 years, and
 - (c) in the case of an application by a corporation:
 - (i) the Authority is of the opinion that the corporation is a fit and proper person to hold a certificate, and
 - (ii) each director of the corporation would, if the application had been made by the director, be a fit and proper person to be granted a certificate.

23 Form of certificate of accreditation

- (1) A person may be granted a certificate of accreditation in respect of one or more of the following classes of accreditation:
- (a) a workplace based occupational rehabilitation provider,
 - (b) a regional occupational rehabilitation centre,
 - (c) a specialist occupational rehabilitation provider.
- (2) A certificate is to be in the form approved by the Authority and is to specify:
- (a) the name of the person or, in the case of a joint certificate, the names of the persons to whom the certificate is granted, and

Workplace Injury Management and Workers Compensation Regulation 2002	Clause 23
Accreditation of rehabilitation providers	Part 5

- (b) the class or classes of accreditation for which the certificate is granted, and
- (c) in the case of a certificate in respect of the class referred to in subclause (1) (b)—the premises comprising the regional occupational rehabilitation centre.

24 Conditions of certificate

- (1) It is a condition of every certificate of accreditation that the holder of the certificate must:
 - (a) comply with the standards for rehabilitation providers which are appropriate for the class or classes of accreditation for which the certificate is granted, being standards of which the holder has been notified, and
 - (b) in the case of a certificate in respect of the class referred to in clause 23 (1) (b)—give the Council at least 1 month's notice of any proposed change of address of the regional occupational rehabilitation centre.
- (2) A certificate may be granted subject to such other conditions as may be specified in the certificate.
- (3) The Authority may, by notice in writing served on the holder of a certificate, amend or revoke the conditions specified in the certificate or add to those conditions.
- (4) Any such amendment, revocation or addition takes effect on and from a date specified in the Authority's notice, being a date at least 7 days after the notice is served on the holder of the certificate.

25 Amendment of certificate

- (1) If a person who does not hold a certificate of accreditation proposes to provide a rehabilitation service jointly with the holder of a certificate, the person may apply to the Authority for the certificate to be amended by the addition of that person as a joint holder of the certificate.
- (2) If a joint holder of a certificate ceases to provide rehabilitation services with any other joint holder of the certificate, any of the joint holders may apply to the Authority for the amendment of the certificate by the deletion of the name of a joint holder.

Clause 25 Workplace Injury Management and Workers Compensation Regulation
2002

Part 5 Accreditation of rehabilitation providers

- (3) The holder of a certificate may apply to the Authority for the specification of the class or classes of accreditation for which the certificate is granted to be amended.
- (4) The holder of a certificate of a class referred to in clause 23 (1) (b) may apply to the Authority for the certificate to be amended by the substitution of the premises of the regional occupational rehabilitation centre.
- (5) An application under this clause must:
 - (a) be in the form approved by the Authority, and
 - (b) contain such particulars and be accompanied by such documents as may be specified in that form, and
 - (c) be accompanied by a fee of \$50.
- (6) The Authority is to determine an application under this clause:
 - (a) by granting the application and amending the certificate accordingly, or
 - (b) by refusing the application.
- (7) Before dealing with an application under this clause, the Authority may refer the application to the Council for a report and recommendation.
- (8) The Authority is not to grant an application for the amendment of a certificate:
 - (a) if the Authority would not have granted a certificate as so amended had an application been made for such a certificate under this Regulation, and
 - (b) unless the Director-General of the Department of Health has concurred in the granting of the application.
- (9) If an application referred to in subclause (1) is granted and the certificate is amended by specifying in the certificate the name of the person concerned, that person is taken to be a person to whom the certificate is granted.

26 Notice of refusal

- (1) If the Authority refuses to grant or amend a certificate of accreditation, the Authority must as soon as practicable cause notice of the refusal to be served on the applicant.

Workplace Injury Management and Workers Compensation Regulation
2002

Clause 26

Accreditation of rehabilitation providers

Part 5

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- (2) In the case of a joint application, it is a sufficient compliance with subclause (1) if the notice of refusal is served on any one of the applicants.
 - (3) The Authority is taken to have refused to grant or amend a certificate (and is taken to have notified the applicant accordingly) if the Authority does not give a decision on an application within 4 months after the date of lodgment of the application.

27 Duration of certificates

- (1) A certificate of accreditation remains in force, unless sooner cancelled or surrendered, for such period as may be determined by the Authority and specified in the certificate.
- (2) A certificate may be renewed from time to time by the grant of a further certificate.

28 Surrender of certificates

A holder of a certificate of accreditation may surrender it by delivering it to the Authority with notice in writing that the certificate is surrendered.

29 Duplicate certificates

If the Authority is satisfied that a certificate of accreditation has been lost or destroyed, the Authority may, on payment of a fee of \$10, issue a duplicate certificate.

30 Register of certificates

- (1) The Authority is to cause a register of certificates of accreditation to be kept, in such form as the Authority determines, and is to cause to be recorded in the register in respect of each certificate:
 - (a) the matters which by this Regulation are required to be specified in the certificate, and
 - (b) particulars of any amendment of the certificate, and
 - (c) particulars of any cancellation, suspension or surrender of the certificate, and
 - (d) such other matters as the Authority thinks fit.
- (2) The Authority may cause to be made such alterations of the register as are necessary to ensure that the register is an accurate record.

Clause 30 Workplace Injury Management and Workers Compensation Regulation
2002

Part 5 Accreditation of rehabilitation providers

- (3) The register may be inspected by any person at the office of the Authority during the Authority's usual office hours and copies of all or any part of the register may be taken on payment of a fee of \$4.

31 False or misleading statements

A person must not, in or in connection with an application for a certificate of accreditation or amendment of such a certificate, make any statement which the person knows to be false or misleading in a material particular.

Maximum penalty: 20 penalty units.

32 Cancellation or suspension of certificate

- (1) The Authority may cancel or suspend a certificate of accreditation if the Authority is satisfied:
- (a) that the holder of the certificate has made a statement in or in connection with an application for the certificate or amendment of the certificate that the holder knows to be false or misleading in a material particular, or
 - (b) that the holder of the certificate has contravened a condition of the certificate, or
 - (c) that the holder of the certificate has been convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more, or
 - (d) that the holder of the certificate, not being a corporation, has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with creditors or made an assignment of remuneration for their benefit, or
 - (e) that the holder of the certificate, being a corporation:
 - (i) is in the course of being wound up, or
 - (ii) is under administration, or
 - (iii) is a corporation in respect of the property of which a receiver or manager (or other controller within the meaning of the *Corporations Act 2001* of the Commonwealth) has been appointed, or
 - (iv) has entered into a compromise or arrangement with its creditors, or

Workplace Injury Management and Workers Compensation Regulation
2002

Clause 32

Accreditation of rehabilitation providers

Part 5

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- (f) that the holder of the certificate has not provided rehabilitation services for a continuous period of 3 months or more, or
 - (g) that the holder of the certificate is for any other reason not a fit and proper person to hold a certificate, or
 - (h) in the case of a holder of a certificate, being a corporation—that any director of the corporation:
 - (i) has been convicted of an offence referred to in paragraph (c), or
 - (ii) for any other reason would not be a fit and proper person to hold a certificate, if the certificate were held by the person.
- (2) Before determining whether a certificate of accreditation should be cancelled or suspended, the Authority may refer the matter to the Council for a report and recommendation.
 - (3) The grounds referred to in subclause (1) (except paragraph (f)) are taken to exist:
 - (a) in the case of a joint certificate—if those grounds apply to any holder of that certificate, or
 - (b) in the case of 2 or more certificates held by persons providing rehabilitation services in partnership—if those grounds apply to any holder of any of those certificates.
 - (4) Before cancelling or suspending a certificate, the Authority must give the holder of the certificate an opportunity of showing cause why the certificate should not be cancelled or suspended on such grounds as are notified to the holder.
 - (5) The cancellation or suspension of a certificate does not take effect until notice in writing of the cancellation or suspension has been served on the holder of the certificate.

33 False claim of accreditation

A person must not falsely hold himself or herself out as being the holder of a certificate of accreditation.

Maximum penalty: 20 penalty units.

Clause 34	Workplace Injury Management and Workers Compensation Regulation 2002
Part 6	Miscellaneous

Part 6 Miscellaneous

34 Penalty notice offences

For the purposes of section 246 of the 1998 Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is declared to be a penalty notice offence, and
- (b) the prescribed penalty for such an offence is the amount specified opposite it in Column 2 of Schedule 1, and
- (c) the following persons are declared to be authorised officers:
 - (i) each officer of the Authority authorised by the Authority for the purposes of section 238 of the 1998 Act,
 - (ii) each inspector appointed under section 47 of the *Occupational Health and Safety Act 2000*.

35 Exemptions

The following classes of employers, to the extent indicated, are exempt from the requirement to establish a return-to-work program under section 52 of the 1998 Act and from clause 18:

- (a) employers (including bodies corporate for strata schemes or strata (leasehold) schemes) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent of the workers concerned),
- (b) employers who hold owner-builders' permits under the *Home Building Act 1989* (but only to the extent of workers employed for the purposes of the work to which the permits relate),
- (c) employers (being corporations) who only employ workers who are directors of the corporation,
- (d) employers who only employ workers who are members of the employer's family,
- (e) employers who only employ workers who perform work while outside New South Wales,
- (f) employers exempted in writing by the Authority (but only to the extent specified in the exemption).

Workplace Injury Management and Workers Compensation Regulation 2002	Clause 36
Miscellaneous	Part 6

36 Savings and transitional provisions

- (1) Any act, matter or thing that, immediately before the repeal of the *Workers Compensation (Workplace Injury Management) Regulation 1995*, had effect under that Regulation is taken to have effect under this Regulation.
- (2) A workplace rehabilitation program established under section 152 of the 1987 Act and in force immediately before the repeal of that section is taken to be a return-to-work program established under section 52 of the 1998 Act. However, any such program does not have effect to the extent that it is inconsistent with the injury management program of the employer's insurer.
- (3) Part 2A (Return to work plans) of the *Workers Compensation (Workplace Injury Management) Regulation 1995*, as in force immediately before the repeal of that Part, continues to have effect in respect of injuries that happened before the commencement of Chapter 3 of the 1998 Act.
- (4) If an injury management plan has been prepared in compliance with section 45 of the 1998 Act in respect of an injury to a worker that happened before the commencement of Chapter 3 of the 1998 Act (and has been so prepared within the time within which a return-to-work plan under Part 2A of the *Workers Compensation (Workplace Injury Management) Regulation 1995* would have otherwise been required to be prepared):
 - (a) subclause (3) does not apply in respect of the injury, and
 - (b) despite section 41 (2) of the 1998 Act, sections 45 (7), 46, 47, 55, 56 and 57 of the 1998 Act apply in respect of the injury.
- (5) Despite section 41 (2) of the 1998 Act, a reference in section 52, 53 and 54 of the 1998 Act to an injured worker is to be read as including a reference to an injured worker when the injury happened before the commencement of Chapter 3 of the 1998 Act.

37 Repeal

The *Workplace Injury Management and Workers Compensation Regulation 1999* is repealed.

Workplace Injury Management and Workers Compensation Regulation
2002

Schedule 1 Penalty notice offences

Schedule 1 Penalty notice offences

(Clause 34)

Column 1	Column 2
Provision	Penalty \$
Clause 9	250 (category 2 employer)
	500 (category 1 employer)
Clause 11	50 (category 2 employer)
	200 (category 1 employer)
Clause 16	20 (category 2 employer)
	100 (category 1 employer)

Rules

PUBLIC LOTTERIES ACT 1996 SECTION 23

KENO – APPROVAL OF RULES

The following rules for the game of keno, being a game of chance within the meaning of section 5(1)(c) of the Public Lotteries Act 1996, have been approved by the Honourable J Richard Face MP, Minister for Gaming and Racing, under section 23(1) of the Act and, at the request of the joint licensees Club Gaming Systems Pty Limited and Clubkeno Holdings Pty Limited, are published in the Government Gazette, such rules to take effect on and from 01 September 2002.

The following rules amend, on and from 01 September 2002, the rules for the conduct of the game of keno as notified in the Government Gazette of 20 November 1998 (as amended by addenda dated 17th May 1999, 13th September 1999, 1st July 2000, 25th May 2001 and 1st March 2002).

RULE ADDENDUM FOR KENO CHANGE OF NAME FOR KENO JOINT LICENSEE AND OPERATING COMPANY AND GAMBLING LEGISLATION AMENDMENT (RESPONSIBLE GAMBLING)

The Keno Rules dated 23rd November 1998 (as amended by addenda dated 17th May 1999, 13th September 1999, 1st July 2000, 25th May 2001 and 1st March 2002) are further amended as set out in this Addendum. This Addendum is effective on and from 1st September 2002.

1. Definition of “Customer Session”

Insert the following as a new definition:

“**Customer Session**” means the period of time when a Subscriber either:

- (i) makes an Entry in a Game of Keno; or
 - (ii) checks a Receipt Ticket; or
 - (iii) cancels an Entry in a Game of Keno
- to that time when the End Customer Terminal key is activated;

2. Definition of “Licensees”

Delete current definition and insert the following as the new definition:

“**Licensees**” means Clubkeno Holdings Pty Limited ABN 51 002 821 570 and Jupiters Gaming (NSW) Pty Limited ABN 16 003 992 327;

Delete current definition and insert the following as the new definition:

“Operating Company” means Jupiters Gaming (NSW) Pty Limited ABN 16 003 992 327;

4. Definition of “Total Prize Money”

Delete current definition and insert the following as the new definition:

“Total Prize Money” means the total amount of money payable to a person, as a result of the person winning money in respect of a Customer Session in a Game of Keno (whether or not that Customer Session relates to one, or more than one, game or entry in the Game of Keno);

5. Rule 16(b)

Delete existing Rule 16(b) and replace it with the following:

A cheque for \$5 made payable to Jupiters Gaming (NSW) Pty Limited must accompany the Unclaimed Prize Claim Form. The \$5 shall be refunded in the event of a prize payment. In the event of a dispute, the decision of the Inspector will be final.

6. Rule 17(a)

Delete existing Rule 17(a) and replace it with the following:

If a Receipt Ticket, submitted by a Subscriber for processing, is unable to be read by a Terminal or the Writer, or the Receipt Ticket has been lost, a claim for payment may be made by the submission of an Unclaimed Prize Claim Form. A cheque for \$5 made payable to Jupiters Gaming (NSW) Pty Limited must accompany the Unclaimed Prize Claim Form. The \$5 shall be refunded in the event of a prize payment.



New South Wales

Supreme Court Rules (Amendment No 362) 2002

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 19 August 2002.

Steven Jupp

Secretary of the Rule Committee

Explanatory note

The object of these Rules is to amend Part 2 of Schedule E to the *Supreme Court Rules 1970*:

- (a) to enable registrars to exercise certain new powers under the *Corporations Act 2001* of the Commonwealth, and
- (b) to replace outdated references to the *Corporations Law* with references to the *Corporations Act 2001* and remove other outdated references to that Law.

Rule 1 Supreme Court Rules (Amendment No 362) 2002

Supreme Court Rules (Amendment No 362) 2002

under the

Supreme Court Act 1970

1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 362) 2002*.

2 Amendment of Supreme Court Rules 1970

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

Supreme Court Rules (Amendment No 362) 2002

Amendments

Schedule 1

Schedule 1 Amendments

(Rule 2)

[1] Schedule E

Omit “*Corporations Law*” from paragraphs 28, 30 and 31 in Part 2 wherever occurring.

Insert instead “*Corporations Act 2001 of the Commonwealth*”.

[2] Schedule E, Part 2, paragraph 28

Insert after paragraph 28 (aa):

- (aaa) section 440D (1) (which relates to leave to proceed against a company under administration) where the claim against the company is, or includes, a claim for damages for personal injury,

[3] Schedule E, Part 2, paragraph 28

Omit paragraph 28 (b).

[4] Schedule E, Part 2, paragraph 28

Omit paragraph 28 (c). Insert instead:

- (bc) section 465B (which relates to substitution of applicants for winding up),
- (c) section 471B (which relates to leave to proceed against a company in liquidation) where the claim against the company is, or includes, a claim for damages for personal injury,

[5] Schedule E, Part 2, paragraph 28 (l)

Omit paragraph 28 (l).

[6] Schedule E, Part 2, paragraph 32

Omit the paragraph.

Supreme Court Rules (Amendment No 363) 2002

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on the 19 August 2002.

Steven Jupp

Secretary to the Rule Committee

Explanatory note

The object of these Rules is to extend to criminal trials, with some modification, the Rules relating to conferences between expert witnesses that presently apply in civil trials. In particular these Rules:

- (a) require an expert witness to read and be bound by the expert witness code of conduct found in Schedule K of the Rules, and
- (b) require a party that engages an expert witness to serve any supplementary report by the expert on any other party, if that party has been served an earlier report by the expert and the expert has changed his or her opinion on a material matter contained in that report, and
- (c) permit the Court, with the consent of the parties, to:
 - (i) direct expert witnesses to confer before or during the trial, and
 - (ii) specify the matters on which they are to confer, and
 - (iii) require them to provide the Court with a joint report specifying matters agreed, matters not agreed and the reasons for non agreement, and

Supreme Court Rules (Amendment No 363) Rule 2002

Explanatory note

- (iv) make directions as to whether the legal representatives of the parties are to be permitted at a conference between expert witnesses, and
- (v) give any additional directions as may be considered necessary, and
- (d) prohibit a party from adducing expert evidence inconsistent with a matter that has been agreed on pursuant to these new Rules unless that party is granted leave by the Court.

Supreme Court Rules (Amendment No 363) 2002

Clause 1

Supreme Court Rules (Amendment No 363) 2002

1 Name of Rules

These Rules are the *Supreme Court Rules (Amendment No 363) 2002*.

2 Amendment of Supreme Court Rules 1970

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

Supreme Court Rules (Amendment No 363) 2002

Schedule 1 Amendment

Schedule 1 Amendment

(Rule 2)

Part 75—Criminal Proceedings

Insert after rule 3I:

3J Expert witnesses

- (1) This rule and rule 3K apply to all criminal proceedings in the Court (including those specified in the Third Schedule to the Act).
- (2) For the purposes of this rule and rule 3K:
expert witness means an expert engaged for the purpose of:
 - (a) providing a report as to his or her opinion for use as evidence in proceedings or proposed proceedings, or
 - (b) giving opinion evidence in proceedings or proposed proceedings,*the code* means the expert witness code of conduct in Schedule K.
- (3) Unless the Court otherwise orders:
 - (a) at or as soon as practicable after the engagement of an expert as a witness, whether to give oral evidence or to provide a report for use as evidence, the person engaging the expert must provide the expert with a copy of the code, and
 - (b) unless an expert witness's report contains an acknowledgment by the expert witness that he or she has read the code and agrees to be bound by it:
 - (i) service of the report by the party who engaged the expert witness is not valid service for the purposes of the rules or of any order or practice note, and
 - (ii) the report is not to be admitted into evidence, and

Supreme Court Rules (Amendment No 363) 2002

Amendment

Schedule 1

-
- (c) oral evidence is not to be received from an expert witness unless:
- (i) he or she has acknowledged in writing, whether in a report relating to the proposed evidence or otherwise in relation to the proceedings, that he or she has read the code and agrees to be bound by it, and
 - (ii) a copy of the acknowledgment has been served on all parties affected by the evidence.
- (4) If an expert witness furnishes to the engaging party a supplementary report, including any report indicating that the expert witness has changed his or her opinion on a material matter expressed in an earlier report by the expert witness:
- (a) the engaging party must forthwith serve the supplementary report on all parties on whom the engaging party has served the earlier report, and
 - (b) the earlier report must not be used in the proceedings by the engaging party, or by any party in the same interest as the engaging party on the question to which the earlier report relates, unless paragraph (a) is complied with.
- (5) This rule does not apply to an expert engaged before this rule commences.

3K Conference between experts

- (1) The Court may do any or all of the following, with the consent of the parties:
- (a) direct expert witnesses to confer (whether before or during a trial or other proceedings),
 - (b) specify the matters on which they are to confer,
 - (c) direct that they provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non agreement,
 - (d) direct that such conference be held with or without the attendance of the legal representatives of the parties affected, or with or without the attendance of legal representatives at the option of the parties respectively,

Supreme Court Rules (Amendment No 363) 2002

Schedule 1 Amendment

- (e) give any additional directions as may be considered necessary.
- (2) An expert who is the subject of an order made under subrule (1) may apply to the Court for further directions.
- (3) The content of the conference between the expert witnesses is not to be referred to at the hearing or trial unless the parties affected agree.
- (4) The parties may agree, at any time, to be bound by agreement on any specified matter. In that event, the joint report may be tendered at the trial as evidence of the matter agreed. Otherwise, the joint report may be used or tendered at the trial only in accordance with the rules of evidence and the practices of the Court.
- (5) Where, pursuant to this rule, expert witnesses have conferred and have provided a joint report agreeing on any matter, a party affected may not, without leave of the Court, adduce expert evidence inconsistent with the matter agreed.



New South Wales

Supreme Court Rules (Amendment No 364) 2002

under the

Supreme Court Act 1970

The Supreme Court Rule Committee made the following rules of court under the *Supreme Court Act 1970* on 19 August 2002.

Steven Jupp

Secretary of the Rule Committee

Explanatory note

Part 52A rule 42 (1) of the *Supreme Court Rules 1970* provides that a trustee or mortgagee who is a party to proceedings in the Supreme Court in the capacity of trustee or mortgagee is entitled to pay the costs of the proceedings out of the fund held by the trustee or out of the mortgaged property, unless the Court orders otherwise.

Part 52A rule 42 (2) provides that the Court may only order otherwise where the trustee or mortgagee has acted unreasonably or (in the case of a trustee) has acted for the trustee's own benefit rather than for the benefit of the fund.

The object of these Rules is to amend the *Supreme Court Rules 1970* so as to enable a Registrar of the Court to exercise the power of the Court to make an order as to costs under Part 52A rule 42. A Registrar will only be able to exercise the power in proceedings that are in the Possession List (which comprises certain proceedings on a claim for possession of land).

Clause 1 Supreme Court Rules (Amendment No 364) 2002

Supreme Court Rules (Amendment No 364) 2002

under the

Supreme Court Act 1970

1 Name of rules

These rules are the *Supreme Court Rules (Amendment No 364) 2002*.

2 Amendment of Supreme Court Rules 1970

The *Supreme Court Rules 1970* are amended as set out in Schedule 1.

Supreme Court Rules (Amendment No 364) 2002

Amendment

Schedule 1

Schedule 1 Amendment

(Rule 2)

Schedule E

Insert in numerical order in Part 1 of Schedule E in the matter relating to Part 52A:

Rule 42

Costs against trustee or mortgagee

Restricted to proceedings in the Possession List

Orders

Revenue Laws (Reciprocal Powers) Order 2002

under the

Revenue Laws (Reciprocal Powers) Act 1987

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 3 of the *Revenue Laws (Reciprocal Powers) Act 1987*, make the following Order.

Dated, this 14th day of August 2002.

By Her Excellency's Command,

MICHAEL EGAN, M.L.C.,
Treasurer

Explanatory note

Section 3 (3) of the *Revenue Laws (Reciprocal Powers) Act 1987* provides that the Governor may by order declare a law of the Commonwealth or another State (which is defined to include the Northern Territory and the Australian Capital Territory) that provides for the levying and collection of a tax, fee, duty or other impost to be a recognised revenue law for the purposes of the Act. Such an order may also declare:

- (a) an office established for the purpose of administering or executing that law to be the designated Commonwealth or State revenue office in respect of that law, and

Revenue Laws (Reciprocal Powers) Order 2002

Explanatory note

- (b) an office established for the purpose of administering or executing a New South Wales revenue law to be the relevant principal New South Wales revenue office in respect of that law.

The objects of this Order are:

- (a) to make an order under section 3 (3) of the Act relating to certain revenue laws of the Commonwealth, the Australian Capital Territory, the Northern Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia, and
- (b) to repeal the *Revenue Laws (Reciprocal Powers) Order 2000* (***the existing Order***) in respect of certain revenue laws of those jurisdictions.

The implied power to repeal the existing Order is pursuant to section 43 (2) of the *Interpretation Act 1987*.

Revenue Laws (Reciprocal Powers) Order 2002

Clause 1

Revenue Laws (Reciprocal Powers) Order 2002

1 Name of Order

This Order is the *Revenue Laws (Reciprocal Powers) Order 2002*.

2 Recognised revenue laws

It is declared that:

- (a) each law described in Column 1 of Schedule 1 to this Order is a recognised revenue law for the purposes of the *Revenue Laws (Reciprocal Powers) Act 1987*, and
- (b) each office described in Column 2 of Schedule 1 to this Order is the designated revenue office in respect of the corresponding recognised revenue law described in Column 1 of that Schedule, and
- (c) each office described in Column 3 of Schedule 1 to this Order is the relevant principal New South Wales revenue office in respect of the corresponding recognised revenue law described in Column 1 of that Schedule.

3 Repeal

The *Revenue Laws (Reciprocal Powers) Order 2000* published in Gazette No 22 of 11 February 2000 (at pages 818–827) is repealed.

Revenue Laws (Reciprocal Powers) Order 2002

Schedule 1 Recognised revenue laws

Schedule 1 Recognised revenue laws

(Clause 2)

Column 1	Column 2	Column 3
Recognised revenue law	Designated revenue office	Principal New South Wales revenue office
Commonwealth		
<i>Debits Tax Administration Act 1982</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Fringe Benefits Tax Act 1986</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Fringe Benefits Tax Assessment Act 1986</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Higher Education Funding Act 1988</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Income Tax Assessment Act 1936</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Income Tax Assessment Act 1997</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Medicare Levy Act 1986</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Petroleum Resource Rent Tax Assessment Act 1987</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Sales Tax Assessment Acts (Nos 1–9) 1930</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Sales Tax Assessment Acts (Nos 10 and 11) 1985</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Sales Tax Assessment Act 1992</i>	Commissioner of Taxation	Chief Commissioner of State Revenue

Page 4

Revenue Laws (Reciprocal Powers) Order 2002

Recognised revenue laws

Schedule 1

Column 1	Column 2	Column 3
Recognised revenue law	Designated revenue office	Principal New South Wales revenue office
<i>Superannuation Guarantee (Administration) Act 1992</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Superannuation Guarantee Charge Act 1992</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Taxation (Unpaid Company Tax) Assessment Act 1982</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Tobacco Charges Assessment Act 1955</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Trust Recoupment Tax Assessment Act 1985</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
<i>Wool Tax (Administration) Act 1964</i>	Commissioner of Taxation	Chief Commissioner of State Revenue
Australian Capital Territory		
<i>Ambulance Service Levy Act 1990</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Debits Tax Act 1997</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Duties Act 1999</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Duties (Consequential and Transitional Provisions) Act 1999</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Financial Institutions Duty Act 1987</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue

Revenue Laws (Reciprocal Powers) Order 2002

Schedule 1 Recognised revenue laws

Column 1	Column 2	Column 3
Recognised revenue law	Designated revenue office	Principal New South Wales revenue office
<i>Gaming Machine Act 1987</i>	Commissioner for Australian Capital Territory Revenue	Secretary of the Liquor Administration Board
<i>Insurance Levy Act 1998</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Interactive Gambling Act 1998</i>	Commissioner for Australian Capital Territory Revenue	Secretary of the Liquor Administration Board
<i>Payroll Tax Act 1987</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Stamp Duties and Taxes Act 1987</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Subsidies (Liquor and Diesel) Act 1998</i>	Commissioner for Australian Capital Territory Revenue	Secretary of the Liquor Administration Board in respect of liquor and Chief Commissioner of State Revenue in respect of diesel
<i>Taxation Administration Act 1999</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Taxation Administration (Consequential and Transitional Provisions) Act 1999</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue
<i>Tobacco Licensing Act 1984</i>	Commissioner for Australian Capital Territory Revenue	Chief Commissioner of State Revenue

Revenue Laws (Reciprocal Powers) Order 2002

Recognised revenue laws

Schedule 1

Column 1	Column 2	Column 3
Recognised revenue law	Designated revenue office	Principal New South Wales revenue office
Northern Territory		
<i>Business Franchise Act</i>	Commissioner of Taxes	Chief Commissioner of State Revenue
<i>Debits Tax Act</i>	Commissioner of Taxes	Chief Commissioner of State Revenue
<i>Financial Institutions Duty Act</i>	Commissioner of Taxes	Chief Commissioner of State Revenue
<i>Pay-roll Tax Act</i>	Commissioner of Taxes	Chief Commissioner of State Revenue
<i>Stamp Duty Act</i>	Commissioner of Taxes	Chief Commissioner of State Revenue
<i>Taxation (Administration) Act</i>	Commissioner of Taxes	Chief Commissioner of State Revenue
Queensland		
<i>Debits Tax Act 1990</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Duties Act 2001</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Fuel Subsidy Act 1997</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Land Tax Act 1915</i>	Assistant Commissioner of Land Tax	Chief Commissioner of State Revenue
<i>Pay-roll Tax Act 1971</i>	Commissioner of Pay-roll Tax	Chief Commissioner of State Revenue
<i>Stamp Act 1894</i>	Commissioner of Stamp Duties	Chief Commissioner of State Revenue

Revenue Laws (Reciprocal Powers) Order 2002

Schedule 1 Recognised revenue laws

Column 1	Column 2	Column 3
Recognised revenue law	Designated revenue office	Principal New South Wales revenue office
<i>Taxation Administration Act 2001</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Tobacco Products (Licensing) Act 1988</i>	Commissioner of Tobacco Products Licensing	Chief Commissioner of State Revenue
South Australia		
<i>Debits Tax Act 1994</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
<i>Financial Institutions Duty Act 1983</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
<i>Land Tax Act 1936</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
<i>Pay-roll Tax Act 1971</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
<i>Petroleum Products Regulation Act 1995</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
<i>Stamp Duties Act 1923</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
<i>Taxation Administration Act 1996</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
<i>Tobacco Products Regulation Act 1997</i>	Commissioner of State Taxation	Chief Commissioner of State Revenue
Tasmania		
<i>Debits Duties Act 2001</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Duties Act 2001</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue

Revenue Laws (Reciprocal Powers) Order 2002

Recognised revenue laws

Schedule 1

Column 1	Column 2	Column 3
Recognised revenue law	Designated revenue office	Principal New South Wales revenue office
<i>Financial Institutions Duty Act 1986</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Land and Income Taxation Act 1910</i>	Commissioner of Taxes	Chief Commissioner of State Revenue
<i>Land Tax Act 2000</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Pay-roll Tax Act 1971</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Stamp Duties Act 1931</i>	Commissioner of Stamp Duties	Chief Commissioner of State Revenue
<i>Taxation Administration Act 1997</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
Victoria		
<i>Business Franchise (Petroleum Products) Act 1979</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Business Franchise (Tobacco) Act 1974</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Debits Tax Act 1990</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Financial Institutions Duty Act 1982</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Land Tax Act 1958</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Liquor Control Reform Act 1998</i>	Commissioner of State Revenue	Secretary of the Liquor Administration Board
<i>Pay-roll Tax Act 1971</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue

Revenue Laws (Reciprocal Powers) Order 2002

Schedule 1 Recognised revenue laws

Column 1	Column 2	Column 3
Recognised revenue law	Designated revenue office	Principal New South Wales revenue office
<i>Stamps Act 1958</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Taxation Administration Act 1997</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
Western Australia		
<i>Debits Tax Assessment Act 1990</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Financial Institutions Duty Act 1983</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Fuel Suppliers Licensing Act 1997</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Land Tax Assessment Act 1976</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Pay-roll Tax Assessment Act 1971</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Stamp Act 1921</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue
<i>Tobacco Sellers Licensing Act 1975</i>	Commissioner of State Revenue	Chief Commissioner of State Revenue

Subordinate Legislation Act 1989—Order

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 11 of the *Subordinate Legislation Act 1989*, do, by this my Order, postpone from 1 September 2002 to 1 September 2003 the date on which the following statutory rules are repealed by section 10 of that Act:

Aboriginal Land Rights Regulation 1996

Adoption Information Regulation 1996

Adoption of Children Regulation 1995

Animal Research Regulation 1995

Apiaries Regulation 1995

Architects (Elections and Appointments) Regulation 1995

Architects (General) Regulation 1995

Centre Based and Mobile Child Care Services Regulation (No 2) 1996

Children (Care and Protection) Regulation 1996

Children (Care and Protection—Review of Child Deaths) Regulation 1996

Clean Air (Plant and Equipment) Regulation 1997

Coastal Protection (Non-Local Government Areas) Regulation 1994

Community Services (Complaints, Appeals and Monitoring) Regulation 1996

Confiscation of Proceeds of Crime Regulation 1996

Country Industries (Pay-roll Tax Rebates) Regulation 1994

Day Procedure Centres Regulation 1996

Dentists (General) Regulation 1996

Subordinate Legislation Act 1989—Order

Disability Services Regulation 1993
Driving Instructors Regulation 1993
Entertainment Industry Regulation 1995
Exhibited Animals Protection Regulation 1995
Family Day Care and Home Based Child Care Services Regulation 1996
Fire Brigades (General) Regulation 1997
Firearms (General) Regulation 1997
Gas Supply (General) Regulation 1997
Hairdressing Regulation 1997
Home Building Regulation 1997
Hunter Catchment Management Trust Regulation 1997
Hunter Water (Special Areas) Regulation 1997
Landlord and Tenant Regulation 1994
Landlord and Tenant (Rental Bonds) Regulation 1993
Liquor Regulation 1996
Local Government (Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 1995
Local Government (Manufactured Home Estates and Manufactured Homes) Regulation 1995
Lord Howe Island (General) Regulation 1994
Mining (General) Regulation 1997
Murray Valley Citrus Marketing (Polls) Regulation 1996
Non-Indigenous Animals Regulation 1997
Noxious Weeds Regulation 1993
Nurses (General) Regulation 1997
Nursing Homes Regulation 1996
Optometrists Regulation 1995
Ozone Protection Regulation 1997
Parking Space Levy Regulation 1997
Pawnbrokers and Second-hand Dealers Regulation 1997

Page 2

Subordinate Legislation Act 1989—Order

Physiotherapists Registration Regulation 1995
Plant Diseases Regulation 1996
Podiatrists Regulation 1995
Poultry Meat Industry Regulation 1995
Prevention of Cruelty to Animals (Animal Trades) Regulation 1996
Prevention of Cruelty to Animals (General) Regulation 1996
Private Hospitals Regulation 1996
Property, Stock and Business Agents (General) Regulation 1993
Protected Estates Regulation 1995
Protection of the Environment Operations (Waste) Regulation 1996
Public Sector Management (General) Regulation 1996
Radiation Control Regulation 1993
Registered Clubs Regulation 1996
Residential Tenancies (Residential Premises) Regulation 1995
Road Transport (Mass, Loading and Access) Regulation 1996
Seeds Regulation 1994
Small Businesses' Loans Guarantee Regulation 1994
Stock (Artificial Breeding) Regulation 1995
Stock (Chemical Residues) Regulation 1995
Stock Diseases (General) Regulation 1997
Stock Foods Regulation 1997
Stock Medicines Regulation 1995
Strata Schemes Management Regulation 1997
Taxation Administration Regulation 1996
Veterinary Surgeons Regulation 1995
Victims Compensation Regulation 1997
Water (Part 2—General) Regulation 1997
Water (Part 5—Bore Licences) Regulation 1995
Water (Part 5—Drillers' Licences) Regulation 1995

Subordinate Legislation Act 1989—Order

Water (Part 8—General) Regulation 1995

Water Management (Broken Hill Water Supply—General) Regulation 1997

Water Management (Broken Hill Water Supply—Special Areas) Regulation 1997

Water Management (Broken Hill Water Supply—Water, Sewerage and Trade Waste) Regulation 1997

Water Management (Water Supply Authorities—Finance) Regulation 1996

Western Lands Regulation 1997

Workers Compensation (General) Regulation 1995

Workers Compensation (Insurance Premiums) Regulation 1995

Signed at Sydney, this 28th day of August 2002.

By Her Excellency's Command,

BOB CARR, M.P.,
Premier

OFFICIAL NOTICES

Appointments

CRIMES (ADMINISTRATION OF SENTENCES) ACT 1999

Parole Board

Extension of appointment of Chairperson

HER Excellency the Governor, on the advice of the Executive Council and pursuant to the provisions of the Crimes (Administration of Sentences) Act 1999, has approved the extension of the appointment of William Kenneth Fisher as Chairperson of the Parole Board on and from 22 July 2002 up to and including 27 July 2002.

RICHARD AMERY M.P.,
Minister for Corrective Services
and Minister for Agriculture

CRIMES (ADMINISTRATION OF SENTENCES) ACT 1999

Parole Board

Re-appointment of Member

HER Excellency the Governor, on the advice of the Executive Council and pursuant to the provisions of the Crimes (Administration of Sentences) Act 1999, has approved the re-appointment of John Haigh as a community member of the Parole Board on and from 8 August 2002 up to and including 21 August 2002.

RICHARD AMERY M.P.,
Minister for Corrective Services
and Minister for Agriculture

CRIMES (ADMINISTRATION OF SENTENCES) ACT 1999

Parole Board

Re-appointment of Member

HER Excellency the Governor, on the advice of the Executive Council and pursuant to the provisions of the Crimes (Administration of Sentences) Act 1999, has approved the re-appointment of John Haigh as a community member of the Parole Board on and from 21 August 2002 up to and including 7 August 2005.

RICHARD AMERY M.P.,
Minister for Corrective Services
and Minister for Agriculture

CRIMES (ADMINISTRATION OF SENTENCES) ACT 1999

Parole Board

Appointment of Member

HER Excellency the Governor, on the advice of the Executive Council and pursuant to the provisions of the Crimes (Administration of Sentences) Act 1999, has approved the

appointment of Brenda Jean Smith as a community member of the Parole Board for a period of three (3) years on and from 1 October 2002 up to and including 30 September 2005.

RICHARD AMERY M.P.,
Minister for Corrective Services
and Minister for Agriculture

INDUSTRIAL RELATIONS ACT 1996

Appointment Of Commissioner Of Industrial
Relations Commission

HER Excellency the Governor, with the advice of the Executive Council, and in pursuance of section 148 of the Industrial Relations Act 1996, has approved the appointment of David Wallace Ritchie as a Commissioner of the Industrial Relations Commission of New South Wales, with effect on and from 6 September 2002.

JOHN DELLA BOSCA, M.L.C.,
Minister for Industrial Relations

RURAL FIRES ACT 1997

Appointment of Members

Bush Fire Coordinating Committee

I, ROBERT JOHN DEBUS, Minister for Emergency Services, in pursuance of section 47 (1) (g) of the Rural Fires Act 1997, appoint the following person as a Member of the Bush Fire Coordinating Committee:

PETER KINKEAD,
Superintendent

for the remainder of the five year period expiring 1 March 2003.

BOB DEBUS, M.P.,
Minister for Emergency Services

RURAL FIRES ACT 1997

Appointment of Members

Rural Fire Service Advisory Council

I, ROBERT JOHN DEBUS, Minister for Emergency Services, in pursuance of section 123(1) (e) of the Rural Fires Act 1997, appoint the following persons as Members of the Rural Fire Service Advisory Council:

WARWICK DONALD ROCHE,
Superintendent

JOHN ANDREW JAFFRAY,
Group Captain

for the remainder of the five year period expiring 1 March 2003

BOB DEBUS, M.P.,
Minister for Emergency Services

FISHERIES MANAGEMENT ACT 1994

Fisheries Management (General) Regulation 1995

Elected Industry Members to Management Advisory Committee

I, Steve Dunn, pursuant of clause 256(2) of the Fisheries Management (General) Regulation 1995, publish written notice of the appointment of the elected industry members to the relevant Management Advisory Committees as set out in the schedule below.

STEVE DUNN,
Director, NSW Fisheries

Schedule

Management Advisory Committee (MAC)	Name	Region	Expiry of Term
Ocean Haul MAC	Paul Gibson	1	February 2005
	Ron Prindable	2	February 2005
	Vince Jordan	3	February 2005
	Edward Allan	5	February 2005
Ocean Prawn Trawl MAC	Ian Craig	4	February 2005

NSW Agriculture

STOCK DISEASES ACT 1923

Notification No. 1730 – OJD

“High Forest” Quarantine Area – Nerriga

I, RICHARD AMERY MP, Minister for Agriculture, pursuant to section 10 of the Stock Diseases Act 1923 (‘the Act’), declare the land described in the Schedule to be a quarantine area on account of the presence or suspected presence of Johne’s disease in sheep, goats, and deer (other than fallow deer) (“the stock”).

Note: It is an offence under section 20C(1)(c) of the Act to move any of the stock or cause or permit any of the stock to be moved out of a quarantine area, unless they are moved in accordance with a permit under section 7(6) or an order under section 8(1)(b) or when all of the conditions set out in section 20C(3) are satisfied.

The course of action to be taken by the owner or occupier of the land in the quarantine area or the owner or person in charge of the stock in the quarantine area shall be as ordered by an inspector.

SCHEDULE

Owner: David John VAN ESSEN and Margaret VAN ESSEN
Shire: Talaganda
County: St Vincent
Parish: Meangora
Land: Lots 50, 54, 78, 79, 80 and 135 in DP 755944.

Dated this 20th day of August 2002.

RICHARD AMERY M.P.,
Minister for Agriculture

NSW Fisheries

ERRATUM

THE following gazettal which appeared in the NSW *Government Gazette* No. 133 of 23 August 2002, folio 6452, was published with an error. (General) Regulation 1995. which appeared under Column 2 should have appeared under Column 1. The notice is re-published below:

FISHERIES MANAGEMENT ACT 1994

Section 8 Notification — Fishing Closure Clarence River

I, Edward OBEID, prohibit the taking of fish by all methods of commercial fishing from the waters of the Clarence River and its tributaries described in Schedule 1 of this notification. An exception to this prohibition is the method of commercial fishing described in Schedule 2 in the waters and for the period specified in Schedule 2.

This notification will be effective from 1 September 2002 for a period of five (5) years.

This notification replaces all other commercial fishing closures currently in force in the waters of the Clarence River described in Schedule 1, below.

The Hon. EDWARD OBEID, OAM, M.L.C.,
Minister for Mineral Resources
and Minister for Fisheries

Note: This closure does not apply to fishing gear on board licensed fishing boats when travelling through these waters by the most direct route or when moored near the south western shore of Oyster Channel on the downstream side of the Oyster Channel Road Bridge. Fishing gear must be secured at all times within the closures.

SCHEDULE 1

Waters where Commercial Fishing is Prohibited

Waters

The whole of the waters of the Clarence River from a line drawn across the river entrance from the eastern extremity of the northern breakwall, to the eastern extremity of the southern breakwall, and then upstream to a line drawn from the NSW Waterways Authority Front Lead Beacon number 122 at mean high water on the northern side of Hickey Island, then northwesterly to the NSW Waterways Authority navigation Aid number 097 located on the downstream side of the most easterly opening in Middle Wall, and then northeasterly across to the western extremity of Moriartys Wall.

The whole of the waters of Oyster Channel from a line drawn from the NSW Fisheries marker post RFH1, located on the southern shore adjacent to the intersection of Micalo and Yamba Roads, northeasterly to the NSW Fisheries marker post RFH2 located on the shore north of Whyna Island, then following mean high water upstream to a NSW Fisheries marker post RFH3 beneath the second set of powerlines crossing Oyster Channel, located approximately 420m upstream of the Oyster Channel Road Bridge, then westerly following the powerlines to a NSW Fisheries marker post RFH4 on the shore of Micalo Island.

The whole of the waters of Romiaka Channel south from a line drawn from the NSW Fisheries marker post RFH5, located on the shore of the northern extremity of Romiaka Island, northerly across to the NSW Fisheries marker post RFH6 on the shore at Palmers Island, west of Ungundam Island, and then upstream to a line drawn from the NSW Fisheries marker post RFH7 located on the shore of Romiaka Island at the southern end of the rock retaining wall on "Burn's farm", then westerly across Romiaka Channel to the NSW Fisheries marker post RFH8 on the shore of Palmers Island.

The whole of the waters of the North Arm of the Clarence River within the following boundaries, commencing at the NSW Fisheries marker post RFH9 located on the shore beneath the multiple overhead powerlines crossing the waters of the North Arm near Marandowie Drive, Iluka, then westerly directly beneath those powerlines for 100 metres, then upstream and parallel to the shore to a line parallel to the powerlines drawn from the NSW Fisheries marker post RFH10 located on the shore near the northern end of the rock retaining wall at the entrance to Saltwater Inlet.

SCHEDULE 2

Exception to Schedule 1

<i>Column 1</i> Methods	<i>Column 2</i> Waters
Hauling net (general purpose) as prescribed by clause 23 of the Fisheries Management (General) Regulation 1995.	The waters adjacent to Wave Trap Beach located at the western end of the northern breakwall at the entrance of the Clarence River.

NB: this Schedule only applies between 1 April and 31 August each year, inclusive.

FISHERIES MANAGEMENT ACT 1994

Section 8 Notification

Fishing Closure – Belmore River

I, Edward Obeid, prohibit the taking of fish by the methods of fishing specified in Column 1 of the Schedule to this notification, from waters specified in Column 2 of the schedule. This notification will be effective for a period of five (5) years from the date of publication.

The Hon EDWARD OBEID OAM, MLC,
Minister for Mineral Resources
and Minister for Fisheries

Schedule

Column 1 <i>Methods</i>	Column 2 <i>Waters</i>
All methods with the exception of a single rod and line or handline, with not more than two hooks attached to the line.	County of Macquarie; Parishes of Kinchela, Kempsey and Beranghi: The waters of that part of the Belmore River and its creeks, tributaries and inlets, from its source, downstream to the road bridge at Gladstone.

Department of Land and Water Conservation

Land Conservation

DUBBO OFFICE

Department of Land and Water Conservation
142 Brisbane Street (PO Box 865), Dubbo NSW 2830
Phone: (02) 68415200 Fax: (02) 68415231

NOTIFICATION OF CLOSING OF ROADS

IN pursuance of the provisions of the Roads Act 1993, the roads hereunder specified are closed and the lands comprised therein are freed and discharged from any rights of the public or any other person to the same as highways.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

Description

*Land District of Warren;
Local Government Area of Warren*

Lot 1 DP 1040261, Parish of Holybon, County of Gregory (not being land under the Real Property Act). File No: DB01H510

Note: On closing, the title for Lot 1 shall vest in Council as Operational Land.

NOTIFICATION OF CLOSING OF ROADS

IN pursuance of the provisions of the Roads Act 1993, the roads hereunder specified are closed and the lands comprised therein are freed and discharged from any rights of the public or any other person to the same as highways.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

Description

*Land District of Mudgee;
Local Government Area of Merriwa*

Lot 1 DP 1031644, Parish of Munmurra, County of Bligh (not being land under the Real Property Act). File No: DB00H35

Note: On closing, the title for Lot 1 shall vest in Council as Operational Land.

ROADS ACT 1993

ORDER

Transfer of a Crown Road to a Council

IN pursuance of the provisions of section 151 Roads Act 1993, the Crown roads specified in Schedule 1 are transferred to the Roads Authority specified in Schedule 2 hereunder as from the date of publication of this notice. The road specified in Schedule 1 ceases to be a Crown road from that date.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

SCHEDULE 1

The Crown Public Road which is Lot 6 DP 881081 near the town of Rocky Glen, Parish Borah, County White.

SCHEDULE 2

Roads Authority: Coonabarabran Shire Council. Papers DB01H541.

ROADS ACT 1993

ORDER

Transfer of a Crown Road to a Council

IN pursuance of the provisions of section 151 Roads Act 1993, the Crown roads specified in Schedule 1 are transferred to the Roads Authority specified in Schedule 2 hereunder as from the date of publication of this notice. The road specified in Schedule 1 ceases to be a Crown road from that date.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

SCHEDULE 1

The Crown Public Road which is the part of Shepherd's Land west of Lots 1 and 2 DP 1006125 in the town of Gulgong, Parish Guntawang, County Phillip.

SCHEDULE 2

Roads Authority: Mudgee Shire Council. Papers DB02H307. Councils Ref. File: CPF0780017.

REVOCATION OF RESERVATION OF CROWN LAND

PURSUANT to Section 90 of the Crown Lands Act, 1989, the reservation of Crown land specified in Column 1 of the Schedule hereunder is revoked to the extent specified opposite thereto in Column 2 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation.

SCHEDULE

COLUMN 1
Land District: Coonamble
Local Government Area:
Coonamble
Parish: Moolambong
County: Leichhardt
Locality: Moolambong
Reserve No.: 89583
Purpose: Future Public
Requirements
Notified: 5 September 1975
File Ref: Th02h23.

COLUMN 2
The whole being Lot 53 in DP
722789 in the Parish of
Moolambong, County of
Leichhardt of an area of 2.5
hectares.

FAR WEST REGIONAL OFFICE
Department of Land and Water Conservation
45 Wingewarra Street (PO Box 1840), Dubbo, NSW 2830
Phone: (02) 6883 3000 Fax: (02) 6883 3099

**ALTERATION OF PURPOSE OF A WESTERN
LANDS LEASE**

IT is hereby notified that in pursuance of the provisions of section 18J, Western Lands Act 1901, the purpose and conditions of the undermentioned Western Lands Leases have been altered as shown.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

*Administrative District – Bourke; Shire – Bourke;
Parishes –Gibson; Wapweelah County – Irrara*

The purpose of Western Lands Leases 537, 1641 and 1737, being the land contained within Folio Identifiers 6029/768886, 6025/768882 and 2/790314 have been altered from “Pastoral Purposes” to “Pastoral Purposes, Film Making and Recreational Hunting” effective from 20 August 2002.

Annual rental and lease conditions remain unaltered as a consequence of the change of purpose except for the addition of those special conditions published in the *Government Gazette* of 8 March 2002, Folios 1478-1482.

DECLARATION OF LAND TO BE CROWN LAND

PURSUANT to section 138 of the Crown Lands Act 1989, the land described in the Schedule hereunder is declared to be Crown land within the meaning of that Act.

(WLL 3604)

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

SCHEDULE

All that parcel of land resumed by notification in the *Government Gazette* of 26 October 1897, under the Public Works Act of 1888, 51 Victoria No.37, being Portion 3 in the Parish of Nalticomebee, County of Landsborough of 2023 square metres. Folio Identifier 3/754165

**ALTERATION OF CONDITIONS OF A WESTERN
LANDS LEASE**

IT is hereby notified that in pursuance of the provisions of section 18J, Western Lands Act 1901, the purpose of the undermentioned Western Lands Leases have been altered as shown.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

*Administrative District – Wentworth; Shire – Wentworth
Parish – Moorna and others; County –Wentworth*

The conditions of Western Lands Leases 2550, 2551, 2552, 2553, 2554 and 4282 being the land contained within Folio Identifiers 6/756181, 7/756181, 11/756181, 12/756181, 44/756181, 45/756181, 580/761592, 5080/705035, 5081/705036, 5082/705037 and 5178/761488 have been altered as follows.

**CONDITIONS AND RESERVATIONS REMOVED FROM
WESTERN LANDS LEASES 2550, 2551, 2552, 2553, 2554
and 4282**

1. Should the lease be held by a proprietary company the said proprietary company shall remain constituted as such and shall not:
 - (i) be converted into a public company;
 - (ii) issue any shares therein or consent to or allow the transfer or transmission of any shares already issued therein without the consent in writing of the Minister for Lands;
 - (iii) amend the Company’s Memorandum and Articles of association any respect without the consent in writing of the Minister for Lands;

**CONDITIONS AND RESERVATIONS ADDED TO
WESTERN LANDS LEASES 2550, 2551, 2552, 2553, 2554
and 4282**

1. The Lessee will advise the Lessor of the name, address and telephone number of the Lessee’s company secretary, that person being a person nominated as a representative of the company in respect of any dealings to be had with the company. The Lessee agrees to advise the Lessor of any changes in these details.
2. Any change in the shareholding of the Lessee’s company which alters its effective control of the lease from that previously known to the Commissioner shall be deemed an assignment by the Lessee.
3. Where any notice or other communication is required to be served or given or which may be convenient to be served or given under or in connection with this lease it shall be sufficiently executed if it is signed by the company secretary.
4. A copy of the company’s annual financial balance sheet or other financial statement which gives a true and fair view of the company’s state of affairs as at the end of each financial year is to be submitted to the Minister upon request.

GOULBURN OFFICE
Department of Land and Water Conservation
159 Auburn Street (PO Box 748), Goulburn, NSW 2580
Phone: (02) 4828 6725 Fax: (02) 4828 6730

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
 Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Robyn Lea VENESS (new member)	RYE Park Showground Trust	Reserve No. 82961 Public Purpose: Showground Public Recreation Notified: 16 December 1960 File Reference: GB80R174

For a term commencing the date of this notice and expiring 28 July 2004.

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Michael McMAHON (new member) John Fredrick WALKER (new member) Thomas Maxwell HOLMES (new member)	Young Community Purposes (Cadet Training) Reserve Trust	Reserve No. 96330 Public Purpose: Community Purposes Notified: 10 September 1982 File Reference: GB82R28

For a term commencing the date of this notice and expiring 29 August 2007.

ROADS ACT 1993

ORDER

CORRECTION OF DEFECTIVE INSTRUMENT

IN pursuance of the provisions of the Roads Act 1993, Section 257 the Instrument contained within Government Gazette No. 25 dated 18 January 2002, Folio 209, being Notification of Closing of a Road in the Parish of Bong Bong, County of Camden, "(being land in CT Vol 2129 Folio 87)" should be deleted and replaced with "(being land in CT Volume 2129 Folio 87 and part of the land in Acknowledgment Book 591 No 550)".

ROADS ACT 1993

ORDER

Transfer of Crown Road to a Council

IN pursuance of the provisions of Section 151 of the Act, the Crown Road specified in Schedule 1 is transferred to the roads authority specified in Schedule 2 hereunder as from the date of publication of this notice and as from that date the road specified in Schedule 1 ceases to be a Crown road.

JOHN AQUILINA, M.P.,
 Minister for Land and Water Conservation

SCHEDULE 1

Parish — Jinden;
County — Dampier;
Land District — Braidwood;
Shire — Tallaganda

DESCRIPTION: Crown road through Lot 52 DP 752149 (providing access to Lot 33, DP 7522149).

SCHEDULE 2

Roads Authority: The Council of the Shire of Tallaganda (Council's Ref: EN.19.32.1)
 Reference: GB 00 H 296.jk

GRAFTON OFFICE
Department of Land and Water Conservation
76 Victoria Street (Locked Bag 10), Grafton, NSW 2460
Phone: (02) 6640 2000 Fax: (02) 6640 2035

**PLANS OF MANAGEMENT FOR A CROWN
 RESERVE UNDER DIVISION 6 OF PART 5 OF
 THE CROWN LANDS ACT 1989 AND CROWN
 LANDS REGULATION 1990**

A DRAFT Management Strategy for the Clarence Coast Reserves and five Draft Plans of Management have been prepared for the Crown reserves described hereunder, which are under the trusteeship of the Clarence Coast Reserve Trust.

Flinders Park (R85724); Ford Park (R81523); South Head Park (R82611); Yamba Boatharbour Reserve (R140085) and Yamba Bay Park (R87315).

Inspection of the strategy and draft plans can be made during normal business hours at the following premises:

1. Department of Land and Water Conservation
76 Victoria Street, Grafton NSW 2460;
2. Maclean Shire Council Chambers
50 River Street, Maclean 2463
2. Clarence Regional Library
Cnr Duke and Micalo Streets, Iluka NSW 2466
3. Clarence Regional Library
9 Stanley Street, Maclean NSW 2463
4. Clarence Regional Library
Wooli Street, Yamba NSW 2464
5. Yamba Community Health Centre
Treeland Drive, Yamba 2464

Representations are invited from the public on the draft plans. These may be made in writing from 2 September 2002 until submissions close on 14 October 2002. Submissions should be sent to the Manager Strategic Planning Maclean Shire Council, PO Box 171 Maclean NSW 2463.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

DESCRIPTION OF RESERVES

*Parish: Yamba; County: Clarence;
 Land District: Grafton;
 Local Government Area: Maclean Shire*

Reserve 85724 (Flinders Park) notified in the *Government Gazette* of 1 April 1966; Reserve Purpose: Public Recreation and Public Hall. Location: Yamba Comprising: Allotments 1A, 1, 10, 11, 12 Section 1 DP 759130; Lot 1 Section 18 DP 759130 Lot 7031 DP 751395 File No: GF 94 R 59.

Reserve 81523 (Ford Park) notified in the *Government Gazette* of 10 April 1959; Reserve Purpose: Public Recreation and Resting Place Location: Yamba Road, Yamba Comprising: Lots 7032 & 7035 DP 751359 Lots 202 & 203 DP 727454 Lot 266 DP 822794 File No: GF80 R 283.

Reserve 82611 (South Head Park) notified in the *Government Gazette* of 8 July 1960; Reserve Purpose: Public Recreation Location: Yamba Comprising: Lots 113 & 7022 DP 751395 File No: GF99 R 51.

Reserve 140085 (Yamba Boatharbour Reserve) notified in the *Government Gazette* of 7 October 1994. Reserve Purpose: Public Recreation. Location: North section between Yamba Road and Urara Street. South section between Urara Street and Mulgi Street, Yamba. Comprising: Lots 262 & 225 DP 822829 File No: GF02 R 22.

R87315 (Yamba Bay Park) notified in the *Government Gazette* of 8 August 1969. Reserve Purpose: Public Recreation. Location: Yamba Road, Yamba. Comprising: Lots 7018, 7019 & 164 DP 751395 File No: GF97 R 93.

**ESTABLISHMENT OF A RESERVE TRUST AND
 APPOINTMENT OF CORPORATION TO MANAGE
 RESERVE TRUST**

1. PURSUANT to section 92(1) of the Crown Lands Act 1989, the reserve trust specified in Column 2 of the Schedule is established under the name stated in that column and is appointed as trustee of the reserves specified in Column 1 of the Schedule.
2. PURSUANT to section 95 of the Crown Lands Act 1989, the corporation specified in Column 3 of the Schedule is appointed to manage the affairs of the reserve trust specified in Column 2.

RICHARD AMERY M.P.,
Minister for Agriculture
Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Reserve No. 57670 for the purpose of Public Recreation, notified 12 December 1924	Lumley Park Reserve Trust	Ballina Shire Council

File No.: GF01R38.

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Wayne Grantley Nancarrow (new member)	Bilbul Recreation Reserve Trust	Reserve No. 55678 Public Purpose: Public Recreation Notified: 22 September 1922 File Reference: GH87R3/2

For a term commencing this day and expiring 30 November 2005.

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Norma Loraine O'Hara (new member) Steven Richard Merideth (new member) Peter John McHugh (new member) Desmond Allan George OHara (new member)	Nericon (R1003016) Reserve Trust	Reserve No. 1003016 Public Purpose: Environmental Protection Notified: 28 September 2001 File Reference: GH01R10/1

For a term commencing this day and expiring 29 August 2007.

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Elsie Florence Nancarrow (new member) Colleen De Saxe (new member) Karen Harrison (new member) Fiona Joy Durham (new member)	Post School Options/Ningana (R.83392) Reserve Trust	Reserve No. 83392 Public Purpose: School for Sub-Normal Children Notified: 11 August 1961 File Reference: GH93R45/1

For a term commencing this day and expiring 29 August 2007.

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Gordon Harold Clarke (re-appointment) Norman Leonard Tidbury (re-appointment) Kay Annette Jeffery (re-appointment) Raymond William Peters (new member) Henry Albert Stevens (new member) Marje Minchin (new member) Jane G Bronotte (new member)	Iluka Koala Reserve Trust	Reserve No. 140072 Public Purpose: Environmental Protection Notified: 13 December 1991 File Reference: GF91R28

For a term commencing the date of this notice and expiring 29 August 2007.

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
John Michael Linton (re-appointment) Ronald Victor Warburton (re-appointment) Peter Francis Brady (new member) Michael Joseph Murphy (re-appointment) Norman Elwyn Parry (re-appointment) Evan John Connick (re-appointment) Desmond John Healey (re-appointment)	Tintenbar Recreation Reserve Trust	Reserve No. 54223 Public Purpose: Public Recreation Notified: 15 October 1920 File Reference: GF81R319

For a term commencing the date of this notice and expiring 29 August 2007.

**PLAN OF MANAGEMENT FOR A CROWN
RESERVE UNDER DIVISION 6 OF PART 5 OF
THE CROWN LANDS ACT 1989 AND CROWN
LANDS REGULATION 1990**

A draft plan of management has been prepared for the Crown reserves described in the Schedule hereunder and other Crown lands listed in the Plan of Management.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

—————
SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Ballina Shire Holiday Parks Reserve Trust	Reserve No. 82783 for Public Recreation, notified 9 September 1960 Reserve No. 84107 for Public Recreation and Resting Place, notified 14 December 1962	Ballina Shire Council
Lennox Head Surfing Reserve Reserve Trust	Reserve No. 83506 for Public Recreation, notified 13 October 1961	Ballina Shire Council
Ballina Shelley Beach Reserve Reserve Trust	Reserve No. 82765 for Public Recreation and Protection from Sand Drift, notified 26 August 1960	Ballina Shire Council
Ballina Lighthouse Hill Reserve Reserve Trust	Reserve No. 65048 for Public Recreation, notified 18 January 1935	Ballina Shire Council
Lighthouse Beach (R90859) Reserve Trust	Reserve No. 90859 for Parking, notified 12 August 1977	Ballina Shire Council
Shaws Bay (R94492) Public Recreation Reserve Trust	Reserve No. 94492 for Public Recreation, notified 6 April 1981	Ballina Shire Council

Inspection of the draft plan can be made during normal business hours at:

1. Department of Land and Water Conservation, 76 Victoria Street, Grafton,
2. Ballina Shire Council Chambers, Cnr Cherry & Tamar Streets, Ballina,

Representations are invited from the public on the draft plan. These may be made in writing for a period of 28 days commencing from Monday 2 September 2002, and should be sent to: Land Access Manager, Land Access Unit, Department of Land and Water Conservation, Locked Bag 10, Grafton 2460.

ORANGE OFFICE
Department of Land and Water Conservation
92 Kite Street (PO Box 2146), Orange NSW 2800
Phone: (02) 6393 4300 Fax: (02) 6362 3896

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

—————
SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
John Joseph WHITE (re-appointment)	Peel Native Flora & Fauna Reserve Trust	Reserve No. 91214 Public Purpose: Promotion Of The Study And The Preservation Of Native Flora And Fauna Notified: 4 August 1978 File Reference: OE90R17/2
Geoffrey Francis DENMEAD (new member)		
Robert Kim TAYLOR (new member)		
Stewart William ENEVER (new member)		
Britt CULLEN-WARD (new member)		
Judith Anne SARGEANT (new member)		

For a term commencing the date of this notice and expiring 29 August 2007.

**REVOCAION OF RESERVATION OF CROWN
LAND**

PURSUANT to section 90 of the Crown Lands Act 1989, the reservation of Crown land specified in Column 1 of the Schedule hereunder is revoked to the extent specified opposite thereto in Column 2 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

—————
SCHEDULE

COLUMN 1	COLUMN 2
Land District: Bathurst Local Government Area: Oberon Council Locality: Adderley Reserve No. 95298 Public Purpose: Future Public Requirements Notified: 19 June 1981 File Reference: OE01H396	The whole being Lot 51, D.P. No. 757034, Parish Adderley, County Westmoreland of an area of 182.7ha

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

—————
SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Raymond Dudley Blackley (new member)	Cullen Bullen Recreation Reserve Trust	Reserve No. 55154 Public Purpose: Public Recreation Notified: 3 February 1922 File Reference: OE80R60/3
Robert Thomas Dobson (new member)		
Arthur Eric Smith (re-appointment)		
Mervyn Jack Crane (re-appointment)		
Edward Laurence Banks (re-appointment)		
Frederick Spencer Gilson (re-appointment)		
Dennis L Roberts (re-appointment)		

For a term commencing this day and expiring 29 August 2007.

SYDNEY METROPOLITAN OFFICE
Department of Land and Water Conservation
2-10 Wentworth Street (PO Box 3935), Parramatta, NSW 2124
Phone: (02) 9895 7503 Fax: (02) 9895 6227

**APPOINTMENT OF ADMINISTRATOR TO
MANAGE A RESERVE TRUST**

PURSUANT to Section 117, Crown Lands Act, 1989, the person specified in Column 1 of the Schedule hereunder is appointed as administrator for the term also specified in Column 1, of the reserve trust specified opposite thereto in Column 2, which is trustee of the reserve referred to in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Andrew James McANESPIE	Six Foot Track Heritage Trust	Reserve No. 1001056 Public Purpose: Public Recreation Environmental Protection Heritage Purposes Notified: 27 February 1998 File Ref.: MN02R5

For a term commencing 01 September 2002 and expiring 28 February 2003.

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the person whose name is specified in Column 1 of the Schedule hereunder is appointed, for the term office specified in that column, as a member of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation.

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Gordon McKENZIE	French's Forest Bushland Cemetery	Area at Frenchs Forest dedicated for the public purpose of general cemetery in the Gazette of 8 October 1937 Dedication No. D500580

Term of Office: For a period expiring on 18 July 2004
File No.: MN84R131

ROADS ACT 1993

ORDER

Transfer of a Crown Road to Council

IN pursuance of the provisions of Section 151, Roads Act, 1993, the Crown road specified in Schedule 1 is transferred to the Roads Authority specified in Schedule 2, hereunder, as from the date of publication of this notice and as from that date the road specified in Schedule 1 ceases to be a Crown road.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

SCHEDULE 1

*Land District – Penrith; Local Government Area – Penrith;
Parish – Castlereagh; County – Cumberland*

The unformed Crown public road 20.115 wide at Agnes Banks adjoining the northern boundary of lot 43 D.P. 585210 for a distance of 50 metres easterly of its intersection with Castlereagh Road.

SCHEDULE 2

Roads Authority: Penrith City Council

File No.: MN02H257

TAMWORTH OFFICE
Department of Land and Water Conservation
25–27 Fitzroy Street (PO Box 535), Tamworth, NSW 2340
Phone: (02) 6764 5100 Fax: (02) 6766 3805

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation

—————
SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Alan James	Bowling Alley	Reserve No. 96568
Fullbrook (new member)	Point Recreation Reserve Trust	Public Purpose: Public Recreation Notified: 28 January 1983 File Reference: TH89R16/2

For a term commencing the date of this notice and expiring
12 June 2003.

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TAREE OFFICE
Department of Land and Water Conservation
102-112 Victoria Street (PO Box 440), Taree, NSW 2430
Phone: (02) 6552 2788 Fax: (02) 6552 2816

RESERVATION OF CROWN LAND

PURSUANT to section 87 of the Crown Lands Act 1989, the Crown land specified in Column 1 of the schedule hereunder is reserved as specified opposite thereto in Column 2 of the Schedule.

JOHN AQUILINA, M.P.,
 Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2
Land District: Newcastle	Reserve No: 1003848
Local Government Area: Great Lakes Council	Public Purpose: Port Facilities and Services
Locality: Tea Gardens	
Lot DP Parish	
156 823709 Fens	
1 1041647 Fens	
1 1019073 Coweambah	
County: Gloucester	
Area: 3751m ²	
File: TE02R53	

Note: The affected parts of Reserves 56146 from Sale or Lease Generally notified 11 May 1923 and R93622 for Future Public Requirements notified 12 September 1980 are hereby revoked by this notification.

DISSOLUTION OF RESERVE TRUST

PURSUANT to section 92(3) of the Crown Lands Act 1989, the reserve trust specified in Column 1 of the schedule hereunder, which was established in respect of the reserve specified opposite thereto in Column 2 of the schedule, is dissolved.

JOHN AQUILINA, M.P.,
 Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2
Macksville Kindergarten (R89589) Reserve Trust	Reserve No: 89589 Public Purpose: Kindergarten Notified: 12 September 1975 File: TE83R3

**APPOINTMENT OF ADMINISTRATOR TO
 MANAGE A RESERVE TRUST**

PURSUANT to Section 117, Crown Lands Act, 1989, the person specified in Column 1 of the Schedule hereunder is appointed as administrator for the term also specified in Column 1, of the reserve trust specified opposite thereto in Column 2, which is trustee of the reserve referred to in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
 Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
KarenAnn Lambley	Collombatti Public Hall Trust	Dedication No. 610016 Public Purpose: Public Hall Notified: 19 July 1918 File Reference: TE80R351/2

For a term commencing 30 August 2002 and expiring 27 February 2003.

APPOINTMENT OF TRUST BOARD MEMBERS

PURSUANT to section 93 of the Crown Lands Act 1989, the persons whose names are specified in Column 1 of the Schedule hereunder are appointed, for the terms of office specified in that Column, as members of the trust board for the reserve trust specified opposite thereto in Column 2, which has been established and appointed as trustee of the reserve referred to opposite thereto in Column 3 of the Schedule.

JOHN AQUILINA, M.P.,
 Minister for Land and Water Conservation

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Peter James Wildblood (new member) Colin Ray Cowan (new member) Sherry Stumm (new member) Colin Roy Sheather (re-appointment) John Arthur Hicks (re-appointment)	Hannam Vale Recreation Reserve Trust	Reserve No. 80942 Public Purpose: Public Recreation Notified: 15 August 1958 File Reference: TE80R197/2

For a term commencing the date of this notice and expiring 29 August 2007.

**DRAFT ASSESSMENT OF LAND UNDER PART 3
 OF THE CROWN LANDS ACT 1989 AND CROWN
 LANDS REGULATION 1995**

THE Minister for Land and Water Conservation has prepared a draft land assessment for the Crown land described hereunder.

Inspection of this draft assessment can be made at the Department of Land and Water Conservation, 102-112 Victoria Street, Taree and at the Offices of Hastings Council during normal business hours.

Representations are invited from the public on the draft assessment. These may be made in writing for a period commencing from 30 August 2002 to 30 September 2002 and should be sent to the Manager, Resource Knowledge, Department of Land and Water Conservation, P.O. Box 440,

Taree, 2430. Telephone enquiries should be directed to the Taree office on 02 6552 2788.

JOHN AQUILINA, M.P.,
Minister for Land and Water Conservation
Minister for Fair Trading

Description: Part of northwestern bed of Camden Haven Inlet south of Seymour Street, Laurieton, adjoining Crown land being Public Recreation Reserve 80714 under the care and control of Hastings Council.

Reason: Consideration of application for commercial licence for jetty and pontoon to replace existing timber jetty held under Licence 311082 and concrete boat ramp.

Contact Officer: Bob Birse
(File No. TE83 H 751).

Water Conservation

WATER ACT 1912

APPLICATIONS under Part 2 of the Water Act 1912, being within a Proclaimed (declared) Local Area under Section 5 (4) of the Act.

Applications for licences under Section 10 of Part 2 of the Water Act 1912, have been received as follows:

Murray River Valley

John Arthur WOODHEAD for 1 pump on Dry Lake Lot 1/1003527, Parish of Taila, County of Taila, for domestic purposes (fresh licence – domestic purpose only) (Ref: 60SL085395) (GA2:499539).

John Arthur WOODHEAD for 1 pump on Dry Lake Lot 1/1003527, Parish of Taila, County of Taila, for domestic purposes (fresh licence – domestic purpose only) (Ref: 60SL085396) (GA2:499539).

Written objections to the applications specifying the grounds thereof may be made by any statutory authority or local occupier within the proclaimed local area and must be lodged within the Department's Natural Resource Project Officer at Buronga within twenty-eight (28) days as provided by the Act.

P. WINTON,
Natural Resource Project Officer
Murray Region

Department of Land and Water Conservation
PO Box 363, 32 Enterprise Way, BURONGA NSW 2739

WATER ACT 1912

APPLICATION under Part 2 of the Water Act 1912 being within a proclaimed (declared) local area under Section 5(4) of the Act.

Application for an Authority, under Section 20 of Part 2 of the Water Act 1912 has been received as follows:

Murray River Valley

Anthony Rupert WATSON and SAMMY ONE PTY LTD for a pump on Deep Creek, on Lot 7 DP270076, Parish of Benarca, County of Cadell, for water supply for irrigation (division of existing entitlement – no increase in entitlement or area) (GA2: 504546) (Ref: 50SA6602).

Any enquiries regarding the above should be directed to the undersigned (PH: [03] 5881-2122).

Written objections to the application specifying the grounds thereof may be made by any statutory authority or a local occupier within the proclaimed area and must be lodged at the Department's Office at Deniliquin within 28 days of the date of this publication.

L. J. HOLDEN,
A/Senior Natural Resource Officer
Murray Region

Department of Land and Water Conservation
PO Box 205, DENILIQUIN NSW 2710

WATER ACT 1912

APPLICATIONS for licences under Part 5 of the Water Act, 1912, as amended, have been received as follows:

Lachlan River Valley

Ian Francis CASHMERE for a bore on Lot 30 DP 755185, Parish of Mullion, County of Nicholson for a water supply for the irrigation of 400 hectares (vegetables, fodder crops). New Licence – 70BL226881.

Lila ROSENDAHL for a bore on Lot 3 DP 13589, Parish of Weepool, County of Nicholson for a water supply for the irrigation of 400 hectares (improved pastures). New Licence – 70BL226907.

Giuseppe Mario SARTOR for a bore on Lot 3217 DP 765422, Parish of Goolagunni, County of Franklin for a water supply for the irrigation of 257 hectares (wheat, canola). New Licence – 70BL226956.

Keith William HORNEMAN for a bore on Lot 2370 DP 764333, Parish of Hadyn, County of Franklin for a water supply for the irrigation of 800 hectares (corn). New Licence – 70BL226992.

Donald James ROBERTSON for a bore on Lot 4635 DP 767799, Parish of Nellywanna, County of Franklin for water supply for the irrigation of 400 hectares (crops). New Licence – 70BL226993.

Paul Frederick STORRIER for a bore on Lot 3906 DP 766379, Parish of Goolagunni, County of Franklin for water supply for irrigation of 100 hectares (summer and winter crops). New Licence – 70BL226996.

Richard Arthur KALJO for a bore on Lot 3214 DP 765419, Parish of Uranaway, County of Blaxland for water supply for the irrigation of 400 hectares (summer and winter crops). New Licence – 70BL226999.

Aldur KALJO for a bore on Lot 4982 DP 43243, Parish of Torcobil, County of Blaxland for a water supply for the irrigation of 1700 hectares (maize, sorghum, wheat). New Licence – 70BL227000.

Paul Frederick STORRIER for a bore on Lot 2 DP 1021758, Parish of Gonowlia, County of Franklin for water supply for the irrigation of 200 hectares (summer crops). New Licence – 70BL227043.

Thomas Andrew STALLEY for a bore on Lot 1 DP752986, Parish of Moolbong, County of Franklin for water supply for stock and domestic purposes and irrigation of 1000 hectares (crops). New Licence – 70BL227045.

Aubrey James CASHMERE and Alan Jeffrey CAHMERE for a bore on Lot 346 DP 755189, Parish of Redbank, County of Nicholson for water supply for stock purposes and irrigation of 50 hectares (lucerne). New Licence – 70BL227053.

Richard KALJO for a bore on Lot 4986 DP 43245, Parish of Buckley, County of Blaxland for a water supply for the irrigation of 1500 hectares (corn, wheat, sorghum). New Licence – 70BL227061.

SHEAFFE BROTHERS LIMITED for a bore on Lot 3 DP 755202, Parish of Yandumbin, County of Nicholson for water supply for irrigation of crops. New Licence – 70BL227066.

INIPTY LIMITED for a bore on Lot 6729 DP822022, Parish of Ini, County of Franklin for a water supply for the irrigation of 1500 hectares (crops). New Licence – 70BL227071.

Peter Lindsay MILTHORPE for a bore on Lot 1871 DP763753, Parish of Salamagundia, County of Blaxland for a water supply for the irrigation of 160 hectares (horticulture). New Licence – 70BL227090.

RON POTTER FARMS PTY LTD for a bore on Lot 37 DP 752315, Parish of Carilla, County of Dowling for a water supply for the irrigation of 700 hectares (improved pastures, cereals). New Licence – 70BL227148.

RON POTTER FARMS PTY LTD for a bore on Lot 23 DP 752315, Parish of Carilla, County of Dowling for a water supply for the irrigation of 1400 hectares (cereals). New Licence – 70BL227150.

RED LAGOON PTY LIMITED for a bore on Lot 4949 DP 41051, Parish of Jundrie, County Blaxland for a water supply for the irrigation of 700 hectares (crops). New Licence – 70BL227151.

Santo Peter TRIPODINA for a bore on Lot 1043 DP 762265, Parish of Gunnagi, County of Blaxland for a water supply for the irrigation of 8095 hectares (wheat, canola). New Licence – 70BL227170.

Donald Lloyd JONES for a bore on Lot 4 DP752986, Parish of Moolbong, County of Franklin for a water supply for farming purposes and irrigation of 259 hectares (lucerne, clover, oats). New Licence – 70BL227196.

Donald Lloyd JONES for a bore on Lot 5976 DP 768852, Parish of Roeta, County of Franklin for a water supply for farming purposes and irrigation of 1100 hectares (forage crops). New Licence – 70BL227197.

Michael Gordon MILTHORPE for a bore on Lot 6348 DP 769240, Parish of Uranaway, County of Blaxland for a water supply for irrigation of 160 hectares (improved pastures). New Licence – 70BL227198.

MILTHORPE PASTORAL COMPANY for a bore on Lot 7 DP 755196, Parish of Wallanthery, County of Nicholson for a water supply for the irrigation of 300 hectares (crops). New Licence – 70BL227199.

Michael Gordon MILTHORPE for a bore on Lot 2362 DP 764325, Parish of Torcobil, County of Blaxland for a water supply for the irrigation of 160 hectares (crops). New Licence – 70BL227200.

HILLSTON CENTRAL SCHOOL for a bore on Lot 1 Section 24 DP 758521, Parish of Redbank, County of Nicholson for a water supply for domestic and recreational purposes. New Licence – 70BL227261.

Ian Walter SHELLY and Susanne Andrea SHELLY for a bore on Lot 25 DP 755198, Parish of Weenya, County of Nicholson for water supply for the irrigation of 500 hectares (crops). New Licence – 70BL227276.

Ian Walter SHELLY and Susanne Andrea SHELLY for a bore on Lot 6 DP 755157, Parish of East Marowie, County of Nicholson for a water supply for the irrigation of 750 hectares (crops). New Licence – 70BL227277.

Lila ROSENDAHL for a bore on Lot 3 DP 13589, Parish of Weepool, County of Nicholson for test bore. New Licence – 70BL227279.

Andrew Robert RATHMELL and Margaret June RATHMELL for a bore on Lot 28 DP 755188, Parish of Parker, county of Nicholson for water supply for the irrigation of 500 hectares (cereals, improved Pastures). New Licence – 70BL227047. GA2 – 494446.

Written submissions of support or objections with grounds stating how your interest may be affected must be lodged before 27 September, 2002 as prescribed by the Act.

VIV RUSSELL,
Resource Access Manager
Central West Region – Lachlan

Department of Land and Water Conservation
PO Box 136, Forbes NSW 2871

NOTICE UNDER SECTION 22B OF THE WATER ACT 1912

Pumping Restrictions

Richmond River From Casino To The Risk And Its Tributaries

THE Department of Land and Water Conservation pursuant to Section 22B of the Water Act 1912, is satisfied that the quantity of water available in Richmond River from Casino to the Risk and its tributaries is insufficient to meet all requirements and hereby gives notice to all holders of permits, authorities and licenses under Part 2 of the Act that from Tuesday 27 August 2002 and until further notice, the right to pump water from Richmond River from Casino to the Risk and its tributaries is RESTRICTED to a maximum of twelve hours in any twenty-four hour period between the hours of 4pm and 10am.

This restriction excludes water supply for town water supply, stock, domestic and farming (fruit washing and dairy washdown) purposes.

Any person who contravenes the restrictions imposed by this notice is guilty of an offence and is liable on conviction to a penalty not exceeding:

- a) where the offence was committed by a Corporation – 200 penalty units.
- b) where the offence was committed by any other person – 100 penalty units.

One penalty unit = \$110.00.

DATED this twenty-seventh day of August 2002.

G. LOLLBACK,
Resource Access Manager
North Coast Region
Grafton

GA2: 343369

NOTICE UNDER SECTION 22B OF THE WATER ACT 1912

Pumping Restrictions

Fawcetts Creek, Upper Richmond River, Terrace Creek, Long Creek, Roseberry Creek, Findon Creek And Their Tributaries

THE Department of Land and Water Conservation pursuant to Section 22B of the Water Act 1912, is satisfied that the quantity of water available in Fawcetts Creek, Upper Richmond River, Terrace Creek, Long Creek, Roseberry Creek, Findon Creek and their tributaries is insufficient to meet all requirements and hereby gives notice to all holders of permits, authorities and licenses under Part 2 of the Act that from Tuesday 27 August 2002 and until further notice, the right to pump water from the abovementioned watercourses and their tributaries is RESTRICTED to a maximum of ten hours in any forty-eight hour period between the hours of 4pm and 10am.

This restriction excludes water supply for town water supply, stock, domestic and farming (fruit washing and dairy washdown) purposes.

Any person who contravenes the restrictions imposed by this notice is guilty of an offence and is liable on conviction to a penalty not exceeding:

- c) where the offence was committed by a Corporation – 200 penalty units.
- d) where the offence was committed by any other person – 100 penalty units.

One penalty unit = \$110.00.

DATED this twenty-seventh day of August 2002.

G. LOLLBACK,
Resource Access Manager
North Coast Region
Grafton

GA2: 343369

WATER ACT 1912

AN application for a licence under Part 5 of the Water Act 1912, as amended, has been received as follows:

Murrumbidgee Valley

HOLLIDEN PTY LIMITED for a bore on Lot 20 DP 757239, Parish Livingstone, County of Wynyard for a water supply for industrial (feedlot) purposes. Existing bore – change of purpose. 40BL188679.

HOLLIDEN PTY LTD for a bore on Lot 20 DP 757239, Parish Livingstone, County of Wynyard for a water supply for industrial (feedlot) purposes. Existing bore – change of purpose. 40BL188743.

Written submissions of support or objections with grounds stating how your interest may be affected must be lodged before 27th September 2002 as prescribed by the Act.

S.F. WEBB,
Resource Access Manager
Murrumbidgee Region

Department of Land & Water Conservation
PO Box 156, LEETON NSW 2705

WATER ACT 1912

AN application for a licence under Part 5 of the Water Act, 1912, as amended, has been received as follows:

Murrumbidgee Valley

William Robert FREDERICKS and Edina Julia FREDERICKS for a bore on Lot 357 DP753624, Parish of Murrumboola, County of Harden for a water supply for the irrigation of 2.5 hectares (Lucerne). New Licence. 40BL188817.

Written submissions of support or objections with grounds stating how your interest may be affected must be lodged before 3 October 2002 as prescribed by the Act.

S.F. WEBB,
Resource Access Manager
Murrumbidgee Region

Department of Land & Water Conservation
PO Box 156, LEETON NSW 2705

WATER ACT 1912

APPLICATIONS under Part 2 within a Proclaimed (declared) Local Area under Section 5(4) of the Water Act, 1912.

An application for a licence under Section 10 for works within a proclaimed (declared) local area as generally described hereunder has been received from:

Murrumbidgee Valley

FLYNN CONSTRUCTION (QLD) PTY LTD for a bywash dam on an Unnamed Watercourse, lot 10 DP1018640, Parish of Talagandra, County of Murray, for the conservation of water for irrigation purposes (40 hectares of Olives). The dam exceeds the "Harvestable Right" of the property and extraction will be restricted to the allowable "Harvestable Right". New Licence. Reference: 40SL70819.

Any enquiries regarding the above should be directed to the undersigned (telephone 0269 530700).

Formal objections to the application specifying the grounds thereof, may be made by any statutory authority or a local occupier within the proclaimed area and must be lodged with the Department at Leeton within the 28 days as fixed by the Act.

S.F. WEBB,
Resource Access Manager
Murrumbidgee Region

Department of Land & Water Conservation
PO Box 156, LEETON NSW 2705

WATER ACT 1912

AN application for an Authority for a joint water scheme under section 20 of Part 2 of the Water Act 1912, as amended, has been received as follows:

John James STARR and others for a pump on Grose River on 19//250448, Parish of Kurrajong, County of Cook for water supply for stock and domestic purposes and irrigation of 19.5 hectares (improved pastures) (existing works) (to replace existing licence 10SL34064 – no increase in area – no increase in Volumetric Entitlement) (not subject to the

Hawkesbury/Nepean Embargo) (Ref: 10SA2525) (GA2:460638).

In lieu of previous notice appearing in *Government Gazette* No 133 dated 23rd August, 2002.

Written objections specifying grounds thereof must be lodged with the Department within 28 days of the date of this publication as prescribed by the Act.

Wayne CONNERS,
A/Natural Resource Project Officer
Sydney/South Coast Region

Department of Land and Water Conservation
PO Box 3935, PARRAMATTA NSW 2124

WATER ACT 1912

AN application under Part 2, being within a proclaimed (declared) local area under Section 10 of the Water Act, 1912, as amended.

An application for a Licence within a proclaimed local area as generally described hereunder has been received as follows:

Macintyre-Dumaresq River Valley

Darvall Humphrey HICKSON for a pump on the Macintyre River on Part T S & C R 32649 and a pump and diversion channel on Tarpaulin Creek on Lot 13/750431, both Parish of Boronga, County of Benarba for irrigation of 360.5 hectares (cotton). The works are unaltered; the purpose of the application is a permanent transfer of 119 megalitres of existing entitlement from the Severn River to "Bywanna". L.O. Papers 90SL100624.

GA2493743.

Written objections to the application specifying the grounds thereof may be made by any statutory authority or local occupier within the proclaimed (declared) area, whose interest may be affected and must be lodged with the Department's Manager, Resource Access, Tamworth within 28 days as specified in the Act.

GEOFF CAMERON,
Manager Resource Access

Department of Land and Water Conservation
PO Box 550, TAMWORTH NSW 2340

WATER ACT 1912

APPLICATIONS under Part 2, being within a proclaimed (declared) local area under Section 10 of the Water Act 1912, as amended.

Applications for Licences within a proclaimed local area as generally described hereunder have been received as follows:

Gwydir River Valley

1. SUNDOWN PASTORAL CO PTY LIMITED to amend 90SA11628 for six (6) pumps and a weir on Lot 1/751793, Parish of Wathagar, Pt Lot 13/751782, Parish of Nepickallina, three (3) regulators and six (6) diversion channels on Tarran Creek on Lots 20/751793, 17/751793, 31/751793, 32/751793, 16/751793, 36/751793, 38/751793, 39/751793, 22/751793, Lot 1/822882, Parish of Wathagar, County of Courallie for conservation and supply of water for stock and domestic purposes and irrigation of 5,219 hectares (to include 229.5 hectares of existing valley entitlement by way of permanent transfer). L.O. Papers 90SA11667.
2. William John SEERY and Ada SEERY for a pump on the Mehi River on Lot 22/751792 and a diversion pipe on Tycannah Creek on Lot 1/930112, Parishes of Wallanoh and Combadelo, both County of Courallie, for water supply for stock and domestic purposes and irrigation of 619.5 hectares. (Permanent transfer of valley allocation to "Clifton"; works as authorised remain unchanged). L.O. Papers 90SL100608.

GA2493742.

Written objections to the applications specifying the grounds thereof may be made by any statutory authority or local occupier within the proclaimed (declared) area, whose interest may be affected and must be lodged with the Department's Manager, Resource Access, Tamworth within 28 days as specified in the Act.

GEOFF CAMERON,
Manager Resource Access

Department of Land and Water Conservation
PO Box 550, Tamworth NSW 2340

Department of Mineral Resources

NOTICE is given that the following applications have been received:

EXPLORATION LICENCE APPLICATIONS

(T02-0393)

No. 1965, AUSTMINEX NL (ACN 005 470 799), area of 165 units, for Group 1, dated 19 August, 2002. (Sydney Mining Division).

(T02-0394)

No. 1966, ANDROMEDA EXPLORATION LTD (ACN 101 667 672), area of 53 units, for Group 1, dated 20 August, 2002. (Coffs Harbour Mining Division).

(T02-0395)

No. 1967, PLATSEARCH NL (ACN 003 254 395), area of 22 units, for Group 1, dated 20 August, 2002. (Broken Hill Mining Division).

(T02-0396)

No. 1968, BALRANALD GYPSUM PTY LTD (ACN 081 196 947), area of 4 units, for Group 2, dated 20 August, 2002. (Broken Hill Mining Division).

MINING LEASE APPLICATION

(C02-0434)

No. 214, MAITLAND MAIN COLLIERIES PTY LTD (ACN 000 012 652) and CONSOL ENERGY AUSTRALIA PTY LTD (ACN 097 238 349), area of about 3.99 hectares, to mine for coal, dated 29 July, 2002. (Singleton Mining Division).

EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

NOTICE is given that the following applications have been granted:

EXPLORATION LICENCE APPLICATIONS

(T02-0014)

No. 1859, now Exploration Licence No. 5972, GEMSTAR DIAMONDS LIMITED (ACN 097302675), Counties of Bligh and Wellington, Map Sheet (8732), area of 17 units, for Group 6, dated 15 August, 2002, for a term until 14 August, 2004.

(T02-0026)

No. 1870, now Exploration Licence No. 5975, PASMINGO AUSTRALIA LIMITED (ACN 004 074 962), County of Mouramba, Map Sheet (8133), area of 3 units, for Group 1, dated 20 August, 2002, for a term until 19 August, 2004.

(C02-0097)

No. 1875, now Exploration Licence No. 5967, WHITEHAVEN COAL MINING PTY LIMITED (ACN 086 426 253), County of Nandewar, Map Sheet (8936), area of 5848 hectares, for Group 9, dated 24 July, 2002, for a term until 23 July, 2007. As a result of the grant of this title, Authorisation No. 216 has partly ceased to have effect.

(C02-0123)

No. 1893, now Exploration Licence No. 5967, WHITEHAVEN COAL MINING PTY LIMITED (ACN 086 426 253), County of Nandewar, Map Sheet (8936), area of 5848 hectares, for Group 9, dated 24 July, 2002, for a term until 23 July, 2007. As a result of the grant of this title, Authorisation No. 216 has partly ceased to have effect.

EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

NOTICE is given that the following application has been withdrawn:

EXPLORATION LICENCE APPLICATION

(T02-0381)

No. 1954, GRAHAM JAMES BARCLAY, JAMES HILTON BROADLEY, KAY ANNETTE BARCLAY, KEITH JOHN HERDEGEN and RESTCARD PTY LIMITED (ACN 064 733 553), County of Gloucester, Map Sheet (9333). Withdrawal took effect on 19 August, 2002.

EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

NOTICE is given that the following application for renewal has been received:

(T96-0229)

Mining Purposes Lease No. 316 (Act 1973), JOSEPH WALTER JAKITSCH and WOLFGANG HORST MOOSMUELLER, area of 2 hectares. Application for renewal received 19 August, 2002.

EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

RENEWAL OF CERTAIN AUTHORITIES

NOTICE is given that the following authorities have been renewed:

(C88-0211)

Authorisation No. 406, NAMOI VALLEY COAL PTY LIMITED (ACN 001 234 000), County of Nandewar, Map Sheet (8936), area of 2493 hectares, for a further term until 18 November, 2006. Renewal effective on and from 5 August, 2002.

(C91-0454)

Authorisation No. 447, SAXONVALE COAL PTY LIMITED (ACN 003 526 467), County of Northumberland, Map Sheet (9132), area of 322.8 hectares, for a further term until 1 September, 2006. Renewal effective on and from 15 August, 2002.

(T90-0302)

Exploration Licence No. 3856, NEWCREST MINING LIMITED (ACN 005 683 625), Counties of Ashburnham and Bathurst, Map Sheet (8630, 8631, 8731), area of 43 units, for

a further term until 20 May, 2004. Renewal effective on and from 20 August, 2002.

(T95-1085)

Exploration Licence No. 4933, LFB RESOURCES NL (ACN 073 478 574), Counties of Cunningham and Kennedy, Map Sheet (8432), area of 25 units, for a further term until 6 February, 2004. Renewal effective on and from 20 August, 2002.

(T97-1321)

Exploration Licence No. 5447, WAYNE EDWARD DUNFORD, County of Ashburnham, Map Sheet (8431), area of 1 unit, for a further term until 8 March, 2003. Renewal effective on and from 20 August, 2002.

(T99-0133)

Exploration Licence No. 5707, LIMESTONE MINING LIMITED (ACN 089 190 198), County of Lincoln, Map Sheet (8633), area of 6 units, for a further term until 22 March, 2004. Renewal effective on and from 20 August, 2002.

(C97-0446)

Exploration Licence No. 5712, LITHGOW COAL COMPANY PTY LIMITED (ACN 073 632 952), County of Roxburgh, Map Sheet (8831), area of 333.5 hectares, for a further term until 9 April, 2004. Renewal effective on and from 19 August, 2002.

(T99-0216)

Exploration Licence No. 5722, GOLDEN CROSS OPERATIONS PTY. LTD. (ACN 050 212 827), Counties of Ashburnham and Wellington, Map Sheet (8631, 8632), area of 16 units, for a further term until 4 May, 2004. Renewal effective on and from 20 August, 2002.

(T98-1144)

Exploration Licence No. 5741, ALKANE EXPLORATION LTD (ACN 000 689 216), County of Narromine, Map Sheet (8532), area of 2 units, for a further term until 8 June, 2004. Renewal effective on and from 20 August, 2002.

(T00-0026)

Exploration Licence No. 5748, GOLDEN CROSS OPERATIONS PTY. LTD. (ACN 050 212 827), Counties of Bathurst and Georgiana, Map Sheet (8730), area of 43 units, for a further term until 27 June, 2004. Renewal effective on and from 20 August, 2002.

(T74-1892)

Exploration (Prospecting) Licence No. 1024, NEWCREST OPERATIONS LIMITED (ACN 009 221 505), County of Bathurst, Map Sheet (8731), area of 6 units, for a further term until 20 May, 2004. Renewal effective on and from 20 August, 2002.

EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

WITHDRAWAL OF APPLICATION FOR RENEWAL

NOTICE is given that the application for renewal in respect of the following authority has been withdrawn:

(T99-0220)

Exploration Licence No. 5739, TRIAKO RESOURCES LIMITED (ACN 008 498 119), County of Yancowinna, Map Sheet (7134, 7234), area of 27 units. The authority ceased to have effect on 19 August, 2002.

EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

CANCELLATION OF AUTHORITY AT REQUEST OF HOLDER

NOTICE is given that the following authority has been cancelled:

(T00-0089)

Exploration Licence No. 5775, PASMINGO AUSTRALIA LIMITED (ACN 004 074 962), County of Farnell and County of Mootwingee, Map Sheet (7235), area of 32 units. Cancellation took effect on 26 July, 2002.

EDWARD OBEID, M.L.C.,
Minister for Mineral Resources

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Exia 10229**
ISSUE : **A2586-00**
DATE : **16 July 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved Item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate standards or requirements, and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 71 of the Coal Mines Regulation (General) Regulation 1999.

This APPROVAL is issued to : **Ringway Holdings Pty Ltd ABN 47 087 315 179**
Address of Approval Holder : **4/6 Third Ave, UNANDERRA NSW 2526**
Description of Item/s : **Ringway Machine and Traffic Alarm System**
Manufacturer : **Ringway Holdings Pty Ltd - NSW**
Model/Type : **As listed in the Schedule**
C.M.R.A Regulation : **Coal Mines (Underground) Regulation 1999** Clause: **140 (1)**
Specific Approval Category : **Explosion Protected – Intrinsically Safe**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

The Approval Number shall appear in a conspicuous place and in a legible manner on each approved item, unless specifically excluded.

A copy of the Approval Documentation shall be supplied to each user of the approved item and shall comprise the number of pages listed in the footer block together with supplementary documentation as listed in the Schedule and in respect to drawings, all drawings as listed in the schedule or those drawings specifically nominated for the purposes of repair and maintenance.

Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

L. R. JEGO,
Accredited Assessing Authority (MDA-A2586)
For Chief Inspector of Coal Mines

Dept. File No: **C02 / 0304**

Page 1 of 4

Approval Holder : **Ringway Holdings Pty Ltd**

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex ib 10230**
ISSUE : **A2586-00**
DATE : **19 July 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved Item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate standards or requirements, and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 71 of the Coal Mines Regulation (General) Regulation 1999.

This APPROVAL is issued to : **DBT Australia Pty Ltd ABN 68 001 253 470**
Address of Approval Holder : **10-14 Kellogg Road, ROOTY HILL NSW 2766**
Description of Item/s : **Pressure Transducer**
Manufacturer : **Hydrostar Mebtechnik Gmbh - Germany**
Model/Type : **DAN6021, DAN6022, DAN6024**
C.M.R.A Regulation : **Coal Mines (Underground) Regulation 1999** Clause: **140 (1)**
Specific Approval Category : **Explosion Protected – Intrinsically Safe**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

The Approval Number shall appear in a conspicuous place and in a legible manner on each approved item, unless specifically excluded.

A copy of the Approval Documentation shall be supplied to each user of the approved item and shall comprise the number of pages listed in the footer block together with supplementary documentation as listed in the Schedule and in respect to drawings, all drawings as listed in the schedule or those drawings specifically nominated for the purposes of repair and maintenance.

Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

L. R. JEGO,
Accredited Assessing Authority (MDA-A2586)
For Chief Inspector of Coal Mines

Dept. File No: **C02 / 0417**
Page 1 of 3
Approval Holder : **DBT Australia Pty Ltd**

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex d 17039
(Issue o)**
 ISSUE : **C02/0357**
 DATE : **24 July 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Toshiba International Corporation Pty Ltd. ABN 29 001 555 068**
 Address of Approval Holder : **2 Morton Street, Parramatta, NSW 2124**
 Description of Item/s & Variations : **Range of FLP Induction Motors**
 Manufacturer and model / type : **Felten & Guilleaume, Helgolander Damm 75, D26945 NORDENHAM
Frame Sizes CD 315 -L2 and CD 450**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
 Specific Approval Category : **Explosion Protected – Flameproof (Ex d)**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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A copy of the Approval Documentation shall be supplied to each user of the approved item and shall comprise the number of pages listed in the footer block together with supplementary documentation as listed in the Schedule and in respect to drawings, all drawings as listed in the schedule or those drawings specifically nominated for the purposes of repair and maintenance.

Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0357**
 Doc No : d\wes\appmaster\ToshibaExd17039priapp.doc
 Page 2 of 4
 App Holder : Toshiba International CorporationG Pty Ltd.

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex d 17038
(Issue 0)**
 ISSUE : **C02/0358**
 DATE : **27 June 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Toshiba International Corporation Pty Ltd. ABN 29 001 555 068**
 Address of Approval Holder : **2 Morton Street, Parramatta, NSW 2124**
 Description of Item/s & Variations : **Range of FLP Induction Motors**
 Manufacturer and model / type : **Felten & Guilleaume, Helgolander Damm 75, D26945 NORDENHAM
 Frame Sizes CD 200, CD225, CD250, CD280, CD315-S.M.L1 and
 CD 355.**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (l)**
 Specific Approval Category : **Explosion Protected – Flameproof (Ex d)**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0358**
 Doc No : d:\wes\appmaster\ToshibaExd17038priapp.doc
 Page 2 of 5
 App Holder : Toshiba International Corporation Pty Ltd.

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA (Ex ib) 17030
(Issue 0)**
 ISSUE : **C02/0381**
 DATE : **12 July 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Ampcontrol Pty Ltd (ACN 001 737 533)**
 Address of Approval Holder : **250 Macquarie Road, WARNERS BAY, NSW 2282**
 Description of Item/s & Variations : **Signal Line System**
 Manufacturer and model / type : **Ampcontrol Pty Ltd / Type SLD / SRD**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
 Specific Approval Category : **Explosion Protected – Intrinsically Safe (Ex ib)**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0381**
 Doc No : d:\wes\appmaster\AMPSLDExib17030priapp.doc
 Page 2 of 4
 App Holder : Ampcontrol Pty Ltd

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex d 17040
(Issue 0)**
ISSUE : **C02/0424**
DATE : **22 July 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Ampcontrol Pty Ltd (ACN 001 737 533)**
Address of Approval Holder : **6 Martin Drive, TOMAGO. NSW 2322**
Description of Item/s & Variations : **FLPDCB / Low Tension Enclosure**
Manufacturer and model / type : **Ampcontrol Pty Ltd / Type RF-W-2xx modular assembly**
C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
Specific Approval Category : **Explosion Protected – Intrinsically Safe (Ex d)**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
Accredited Assessing Authority (MDA A2516)
For Chief Inspector of Coal Mines

Dept File No : **C02/0424**
Doc No : d:\wes\appmaster\AmpRFW2xx\Exd17040priapp.doc
Page 2 of 4
App Holder : Ampcontrol Pty Ltd

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA (Exia) 17029
(Issue 0)**
 ISSUE : **C02/0382**
 DATE : **12 July 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Ampcontrol Pty Ltd (ACN 001 737 533)**
 Address of Approval Holder : **250 Macquarie Road, WARNERS BAY, NSW 2282**
 Description of Item/s & Variations : **Earth Continuity Relay**
 Manufacturer and model / type : **Ampcontrol Pty Ltd / Type R.O.C.**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
 Specific Approval Category : **Explosion Protected – Intrinsically Safe (Ex ia)**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0382**
 Doc No : d:\wes\appmaster\AMPROCExia17029priapp.doc
 Page 2 of 3
 App Holder : Ampcontrol Pty Ltd

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Exd 17037
(Issue 0)**
 ISSUE : **C02/0359**
 DATE : **24 July 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Toshiba International Corporation Pty Ltd. ABN 29 001 555 068**
 Address of Approval Holder : **2 Morton Street, Parramatta, NSW 2124**
 Description of Item/s & Variations : **Range of FLP Induction Motors**
 Manufacturer and model / type : **Felten & Guilleaume, Helgolander Damm 75, D26945 NORDENHAM
Frame Sizes CD 63 to CD 180**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (l)**
 Specific Approval Category : **Explosion Protected – Flameproof (Ex d)**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0359**
 Doc No : d:\wes\appmaster\ToshibaExd17037priapp.doc
 Page 2 of 4
 App Holder : Toshiba International Corporation Pty Ltd.

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex[ib] 17047
(Issue 0)**
 ISSUE : **C02/0486**
 DATE : **19 August 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Nautitech Mining Services Pty Ltd (ABN 40 094 272 616)**
 Address of Approval Holder : **Unit 9/6 Anella Ave., CASTLE HILL. NSW 2154**
 Description of Item/s & Variations : **Communication Barrier**
 Manufacturer and model / type : **Nautitech Mining Services Pty Ltd / Type NMS 01**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
 Specific Approval Category : **Explosion Protected – Intrinsically Safe Ex[ib]**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0486**
 Doc No : d:\wes\appmaster\NMS01\Exib17047priapp.doc
 Page 2 of 3
 App Holder : Nautitech Mining Services Pty Ltd

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex ia 17046
(Issue 0)**
ISSUE : **C02/0485**
DATE : **17 August 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Mann Industries Pty Ltd (ABN 50 002 931 731)**
Address of Approval Holder : **4/26 Leighton Place, HORNSBY. NSW 2077**
Description of Item/s & Variations : **Two Wire Head Mounted Transmitter**
Manufacturer and model / type : **Mann Industries Pty Ltd / Type NTX/H/RTD/IS**
C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
Specific Approval Category : **Explosion Protected – Intrinsically Safe Ex ia**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

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Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
Accredited Assessing Authority (MDA A2516)
For Chief Inspector of Coal Mines

Dept File No : **C02/0485**
Doc No : d:\wes\appmaster\Mann\Exib17046priapp.doc
Page 2 of 4
App Holder : Mann Industries Pty Ltd

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex ib 17043
(Issue 0)**
 ISSUE : **C02/0451**
 DATE : **16 August 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Voith Australia Pty Ltd (ABN 48 008 763 808)**
 Address of Approval Holder : **11 Sleigh Place, WETHERILL PARK, NSW 2164**
 Description of Item/s & Variations : **Solenoid Actuators**
 Manufacturer and model / type : **Valvex Ventiltechnik Gmbh / Type V-i-AS**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
 Specific Approval Category : **Explosion Protected – Intrinsically Safe Ex ib**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

The Approval Number shall appear in a conspicuous place and in a legible manner on each approved item, unless specifically excluded.

A copy of the Approval Documentation shall be supplied to each user of the approved item and shall comprise the number of pages listed in the footer block together with supplementary documentation as listed in the Schedule and in respect to drawings, all drawings as listed in the schedule or those drawings specifically nominated for the purposes of repair and maintenance.

Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0451**

Doc No : d:\wes\appmaster\Voith\Exib17043priapp.doc

Page 2 of 3

App Holder : Voith Australia Pty Ltd

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex ib 17022
(Issue 0)**
ISSUE : **C02/0452**
DATE : **7 August 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Bosch Rexroth Pty Ltd (ABN 89 003 258 384)**
Address of Approval Holder : **3 Valediction Road, KINGS PARK, NSW 2148**
Description of Item/s & Variations : **Solenoid Actuators**
Manufacturer and model / type : **Bosch Rexroth Pty Ltd / Type GE35-2-A, GE45-2-A and GE60-7-A**
C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
Specific Approval Category : **Explosion Protected – Intrinsically Safe Ex ib**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

The Approval Number shall appear in a conspicuous place and in a legible manner on each approved item, unless specifically excluded.

A copy of the Approval Documentation shall be supplied to each user of the approved item and shall comprise the number of pages listed in the footer block together with supplementary documentation as listed in the Schedule and in respect to drawings, all drawings as listed in the schedule or those drawings specifically nominated for the purposes of repair and maintenance.

Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
Accredited Assessing Authority (MDA A2516)
For Chief Inspector of Coal Mines

Dept File No : **C02/0452**
Doc No : d:\wes\appmaster\Rexroth\Exib17022priapp.doc
Page 2 of 4
App Holder : Bosch Rexroth Pty Ltd

COAL MINES REGULATION ACT 1982

APPROVAL No. : **MDA Ex ib 17028
(Issue 0)**
 ISSUE : **C02/0282**
 DATE : **17 June 2002**

NOTICE OF PRIMARY APPROVAL

IT is hereby notified that the Approved item listed herein has been assessed for compliance with the Coal Mines Regulation Act and appropriate Standards or requirements and is hereby APPROVED in accordance with the requirements of the COAL MINES REGULATION ACT 1982. This approval is issued pursuant to the provisions of Clause 70 and 73 of the Coal Mines (General) Regulation, 1999.

This APPROVAL is issued to : **Forced Potato Pty Ltd**
 Address of Approval Holder : **Unit 3 / 13 Hoyle Avenue CASTLE HILL NSW 2154**
 Description of Item/s & Variations : **I.S. Control System**
 Manufacturer and model / type : **Forced Potato Pty Ltd / Type Jagannath**
 C.M.R.A Regulation : **Electrical Underground Clause 140 (I)**
 Specific Approval Category : **Explosion Protected – Intrinsically Safe Ex ib**

This Approval is issued subject to compliance with the requirements of the Occupational Health and Safety Act 2000.

The Authority issuing this Approval has, for the purpose of the Occupational Health and Safety Act 2000, appended a list of conditions (including drawings, documents, etc.) that are applicable to this approved item, as identified during test and/or assessment, to assist the Approval Holder and User to comply with the obligations of the Occupational Health and Safety Act 2000. The onus is on the Supplier and/or User to ensure the Approved Item, and any deviation from the list of conditions, in reference to that item is not inferior in any way to the item tested and/or assessed, this includes the supply, installation and continuing use of the approved item.

The Approval Number shall appear in a conspicuous place and in a legible manner on each approved item, unless specifically excluded.

A copy of the Approval Documentation shall be supplied to each user of the approved item and shall comprise the number of pages listed in the footer block together with supplementary documentation as listed in the Schedule and in respect to drawings, all drawings as listed in the schedule or those drawings specifically nominated for the purposes of repair and maintenance.

Any Maintenance, Repair or Overhaul of Approved Items shall be carried out in accordance with the requirements of the Coal Mines Regulation Act 1982.

G. L. M. WARING
 Accredited Assessing Authority (MDA A2516)
 For Chief Inspector of Coal Mines

Dept File No : **C02/0282**
 Doc No : d:\wes\appmaster\ForcedPotatoExib17028priapp.doc
 Page 2 of 8
 App Holder : Forced Potato Pty Ltd

Department of Planning

Ryde Local Environmental Plan No 97

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the *Environmental Planning and Assessment Act 1979*. (S98/00948/S69)

ANDREW REFSHAUGE, M.P.,
Minister for Planning,

Clause 1 Ryde Local Environmental Plan No 97

Ryde Local Environmental Plan No 97

1 Name of plan

This plan is *Ryde Local Environmental Plan No 97*.

2 Aims of plan

(1) This plan aims:

- (a) reclassify the land to which this plan applies from community land to operational land within the meaning of the *Local Government Act 1993 (the 1993 Act)*, and
- (b) to rezone the land to Zone No 2 (a) Residential "A" under the *Ryde Planning Scheme Ordinance (the Ordinance)*.

(2) This plan incidentally makes more extensive provisions in the Ordinance for the classification or reclassification of public land as operational land as a consequence of major changes made to the statutory scheme in section 30 (Reclassification of community land as operational) of the 1993 Act.

3 Land to which plan applies

This plan applies to land situated in the City of Ryde, being part of Lot 35, DP 236893, and known as part of Kittys Creek Reserve, East Ryde, as shown edged heavy black on Sheet 2 of the map marked "Ryde Local Environmental Plan No 97" deposited in the office of Ryde City Council.

4 Amendment of Ryde Planning Scheme Ordinance

The *Ryde Planning Scheme Ordinance* is amended as set out in Schedule 1.

Ryde Local Environmental Plan No 97

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 4)

[1] Clause 3 Interpretation

Insert in appropriate order in the definition of *scheme map* in clause 3 (1):
Ryde Local Environmental Plan No 97—Sheet 1

[2] Clause 72MA

Omit the clause. Insert instead:

72MA Classification and reclassification of public land as operational land

- (1) The public land described in Schedule 13 is classified, or reclassified, as operational land for the purposes of the *Local Government Act 1993*, subject to this clause.
- (2) The amendments made by the *Local Government Amendment (Community Land Management) Act 1998* to section 30 of the *Local Government Act 1993* do not apply to the land described in Part 1 of Schedule 13.
- (3) Land described in Part 2 of Schedule 13:
 - (a) to the extent (if any) that the land is a public reserve, does not cease to be a public reserve, and
 - (b) continues to be affected by any trusts, estates, interests, dedications, conditions, restrictions or covenants by which it was affected before its classification, or reclassification, as operational land.
- (4) Land described in Columns 1 and 2 of Part 3 of Schedule 13, to the extent (if any) that it is a public reserve, ceases to be a public reserve on the commencement of the relevant amending plan and, by the operation of that plan, is discharged from all trusts, estates, interests, dedications, conditions, restrictions and covenants affecting the land or any part of the land except those (if any) specified opposite the land in Column 3 of Part 3 of Schedule 13.

Ryde Local Environmental Plan No 97

Schedule 1 Amendments

- (5) In this clause, *the relevant amending plan*, in relation to land described in Part 3 of Schedule 13, means this plan or, if the description of the land is inserted in that Part by another local environmental plan, that plan.
- (6) Before the relevant amending plan inserted the description of land into Part 3 of Schedule 13, the Governor approved of subclause (4) applying to the land.

[3] Schedule 13 Classification and reclassification of public land as operational land

Insert after the new heading to the Schedule:

Part 1 Land classified, or reclassified, under original section 30 of Local Government Act 1993

[4] Schedule 13, Parts 2 and 3

Insert at the end of the Schedule the following Parts:

Part 2 Land classified, or reclassified, under amended section 30 of Local Government Act 1993—interests not changed

Column 1	Column 2
Locality	Description

Ryde Local Environmental Plan No 97

Amendments

Schedule 1

Part 3 Land classified, or reclassified, under amended section 30 of Local Government Act 1993—interests changed

Column 1	Column 2	Column 3
Locality	Description	Trusts etc not discharged
East Ryde		
Part of Kittys Creek Reserve	Part of Lot 35, DP 236893, as shown edged heavy black on Sheet 1 of the map marked "Ryde Local Environmental Plan No 97" deposited in the office of the Council.	Nil.

Woollahra Local Environmental Plan 1995 (Amendment No 42)

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the
Environmental Planning and Assessment Act 1979. (S02/00593/S69)

ANDREW REFSHAUGE, M.P.,
Minister for Planning

Clause 1 Woollahra Local Environmental Plan 1995 (Amendment No 42)

Woollahra Local Environmental Plan 1995 (Amendment No 42)

1 Name of plan

This plan is *Woollahra Local Environmental Plan 1995 (Amendment No 42)*.

2 Aims of plan

This plan aims to amend *Woollahra Local Environmental Plan 1995* by amending the description of No 198 Queen Street, Woollahra, as a heritage item.

3 Land to which plan applies

This plan applies to Lot 1, DP 178026 and known as No 198 Queen Street, Woollahra.

4 Amendment of Woollahra Local Environmental Plan 1995

Woollahra Local Environmental Plan 1995 is amended by omitting from Schedule 3 in the matter relating to No 198 Queen Street, Woollahra, under the heading **Description of the heritage item** the word "House" and by inserting instead the words "The former schoolhouse, being an outbuilding at the rear of the property".

Roads and Traffic Authority

Roads Act 1993

Notice under Clause 17 of the Road Transport (Mass, Loading and Access) Regulation, 1996

Goulburn City Council, in pursuance of Division 2 of Part 3 of the *Road Transport (Mass, Loading and Access) Regulation 1996*, by this Notice, specify the routes and areas on or in which B-Doubles may be used subject to any requirements or conditions set out in the Schedule.

I Aldridge
Manager Engineering Services
 for
Mr D Cooper
General Manager
Goulburn City Council
 (by delegation from the Minister for Roads)

Schedule

Citation

This Notice may be cited as the Goulburn City Council B-Doubles Notice No. 1/2002.

Commencement

This Notice takes effect from the date of gazettal.

Effect

This Notice remains in force until 1 December 2007, unless it is amended or repealed earlier.

Application

This Notice applies to B-Doubles which comply with Schedule 1 to the Road Transport (Mass, Loading and Access) regulation 1996 and Schedule 4 to the Road Transport (Vehicle Registration) Regulation 1998.

Routes

B-Double routes within the Goulburn City Council

Type	Road No	Road Name	Starting point	Finishing point	Conditions
25m	000	Union Street, Goulburn	Lagoon St (Sydney Rd MR676)	Reynolds St	
25m	000	Reynolds St, Goulburn	Union St	Grafton St	
25m	000	Grafton St, Goulburn	Reynolds St	Sloane St	
25m	000 & 079	Sloane St, Goulburn	Grafton St	Garroorigang Rd	

Roads Act 1993

Notice under the Road Transport (Mass, Loading and Access) Regulation 1996

I, Paul Forward, Chief Executive of the Roads and Traffic Authority, in pursuance of Clause 10 of the Road Transport (Mass, Loading and Access) Regulation 1996, do by this Notice, permit vehicles, that are described in clause 1.5 of the Schedule to this Notice, to stand and operate on roads and road related areas subject to the conditions set out in the Schedule hereto.

Paul Forward
Chief Executive
Roads and Traffic Authority

Schedule

Citation

1.1 This Notice may be cited as the Special Purpose Emergency Vehicle Stand and Operate Notice 2002.

Commencement

1.2 This Notice takes effect on the date of gazettal.

Effect

1.3 This Notice remains in force until 1 August 2007 unless it is amended or repealed earlier.

Interpretations

1.4 Unless stated otherwise, words and expressions used in this Notice that are defined in clause 1.8 of this Notice or the Dictionary forming part of the Road Transport (Mass, Loading and Access) Regulation 1996 (the MLA Regulation), have the same meaning as those set out in that clause or that Dictionary.

Application

1.5 (1) This Notice applies to any standing special purpose emergency vehicle that exceeds a dimension limit specified in Table 3 of Schedule 2 to the MLA Regulation or the corresponding limit in the Road Transport (Vehicle Registration) Regulation 1998 or Schedule 1 to the MLA Regulation while such vehicle is standing and operating upon a road or road related area in New South Wales.

(2) Notes in the text of this Notice do not form part of this Notice.

NOTE:

This Notice extends to standing special purpose emergency vehicles that are standing and operating with booms, jibs, masts, platforms and stabiliser outriggers extended beyond the prescribed limits.

Conditions and Operating requirements

1.6 The dimension limits specified in Part 2 of Schedule 1 to the MLA Regulation do not apply to a standing special purpose emergency vehicle while such vehicle is standing or operating in accordance with a Notice published in the Government Gazette.

Mass and Dimension Limit

1.7 (1) When not standing and operating, travel is only permitted on a road or road related area if the standing special purpose emergency vehicle does not exceed a mass or dimension limit specified in Schedule 2 to the MLA Regulation, or the corresponding limit in the Road Transport (Vehicle Registration) Regulation 1998 or Schedule 1 to the MLA Regulation, unless it is exempt from such limit by a Class 1 Notice or a Class 1 Permit and is travelling in accordance therewith.

(2) When a standing special purpose emergency vehicle is standing and operating then any booms, jibs, masts, platforms and stabiliser outriggers that are incidental to such use must only be used in accordance with the manufacturer's recommendations.

Definitions

1.8 In this Notice:

“authorised officer” means a person employed by the Roads and Traffic Authority as an enforcement officer.

“standing and operating” means using in a stationary position or between positions in close proximity to one another for the purpose for which a standing special purpose vehicle is designed and standing as incidental to such use.

“standing special purpose emergency vehicle” means a aerial appliance, elevated travel tower, scissor lift or other vehicle used by the NSW Fire Brigade or other emergency service.

ROADS ACT 1993

Section 10

Notice of Dedication of Land as Public Road at
Faulconbridge in the Blue Mountains City Council area

THE Roads and Traffic Authority of New South Wales dedicates the land described in the schedule below as public road under section 10 of the Roads Act 1993.

D J Lorsch
Manager, Statutory Processes
Roads and Traffic Authority of New South Wales

SCHEDULE

ALL those pieces or parcels of land situated in the Blue Mountains City Council area, Parishes of Coomassie and Magdala and County of Cook, shown as:

Lots 1 to 4 inclusive Deposited Plan 97303;
Lots 13 to 24 inclusive Deposited Plan 773938;
Lot 1 Deposited Plan 337993;
Lot 11 Deposited Plan 818708;
Lots 13 to 20 inclusive Deposited Plan 791169;
Lots 14 to 22 inclusive Deposited Plan 800430;
Lots 102 and 103 Deposited Plan 883518;
Lots 10 to 18 inclusive Deposited Plan 873810;
Lot 2 Deposited Plan 866671;
Lots 102 and 103 Deposited Plan 1042097;
Lots 6, 46, 50, 53 to 57 inclusive and 60 to 64 inclusive Deposited Plan 226639;
Lot 13 Deposited Plan 865745;
Lots 3 and 4 Deposited Plan 878267;
Lots 17 to 20 inclusive Deposited Plan 873996;
Lots 2, 3, 4, 6, 44 to 49 inclusive and 51 to 57 inclusive Deposited Plan 226643;
Lots 10 to 18 Deposited Plan 793479; and
Lot 1 Deposited Plan 502087.

(RTA Papers FPP 5/44.1358)

Other Notices

ANTI-DISCRIMINATION ACT 1977 EXEMPTION ORDER

UNDER the provisions of Section 126 of the Anti-Discrimination Act 1977, and on the recommendation of the Anti-Discrimination Board, an exemption is given from the provisions of sections 8, 25 and 51 of the Anti-Discrimination Act 1977 to the Northern Rivers Community Legal Centre to designate and recruit an Indigenous woman as the Indigenous Assistant Coordinator of the Women's Domestic Violence Court Assistance Scheme.

This exemption will remain in force for a period of ten years from the date given.

Dated this 22nd day of August 2002

BOB DEBUS, M.P.,
Attorney General

APPRENTICESHIP AND TRAINEESHIP ACT 2001 ORDER

I, Pam Christie, Commissioner for Vocational Training, in pursuance of section 5 of the *Apprenticeship and Traineeship Act 2001*, make the Order set forth hereunder.

PAM CHRISTIE,
Commissioner for Vocational Training

Commencement

- This Order takes effect from the date of publication in the NSW Government Gazette.

Amendment

- The Apprenticeship and Traineeship Order 2001 is amended by:

inserting in Schedule 1 in appropriate alphabetical order the following vocation which is designated as a recognised traineeship vocation for the purposes of the *Apprenticeship and Traineeship Act 2001*:

Media Journalism

APPRENTICESHIP AND TRAINEESHIP ACT 2001 Notice of making of a Vocational Training Order

NOTICE is given that the Commissioner for Vocational Training, in pursuance of section 6 of the *Apprenticeship and Traineeship Act 2001*, has made the following Vocational Training Order in relation to the recognised traineeship vocation Media Journalism.

CITATION

The order is cited as the Media Journalism Order.

ORDER

A summary of the Order is given below.

(a) Term of Training

(i) **Full-time**

Training shall be given for a nominal period of 12 months for a Certificate II outcome and for a Certificate III outcome or until achievement of the relevant competencies to this Vocational Training Order is demonstrated.

(ii) **Part-time**

The nominal term for a part time traineeship is determined by the average weekly hours worked in the traineeship (including structured training) and the nominal full-time term for that traineeship.

School based traineeships

In the case of school-based part-time traineeships, where the nominal full-time term is twelve (12) months, training shall be for nominal terms up to 30 months within which period(s) trainees shall be required to demonstrate competencies relevant to the Vocational Training Order. Training may extend to 36 months where the Higher School Certificate is being delivered over a three (3) year period.

Students may work full-time during school vacations. They are not required to attend on-the-job or off-the-job training for more than 7.6 hours per week during examination periods or exam preparation periods.

The table below identifies the allowable hours that may be undertaken and the nominal terms for part-time traineeships.

Full-time Traineeship Term	6 mths	12 mths	18 mths	24 mths	30 mths	36 mths	48 mths
Weekly Hours	Nominal Term Required (Months)						
15	15	30	45	Not Allowable			
16	15	29	44	Not Allowable			
17	14	28	42	Not Allowable			
18	14	27	41	Not Allowable			
19	13	26	39	Not Allowable			
20	13	25	38	Not Allowable			
21	12	24	36	48	Not Allowable		
22	12	23	35	46	Not Allowable		
23	11	22	33	44	55	Not Allowable	
24	11	21	32	42	53	Not Allowable	
25	10	20	30	40	50	60	Not Allowable
26	10	19	29	38	48	57	Not Allowable
27	9	18	27	36	45	54	72
28	9	17	26	34	43	51	68
29	8	16	24	32	40	48	64
30	8	15	23	30	38	45	60
31	Not Allowable		22	28	35	42	56
32	Not Allowable		20	26	33	39	52

(b) Courses of Study to be Undertaken

Trainees will undertake the following courses of study:
Certificate II in Media Journalism (National Code 3638)
Certificate III in News Media (National Code 90859 NSW)

AVAILABILITY TO INSPECT

A copy of the Vocational Training Order may be inspected at any Industry Training Centre of the Department of Education and Training or on the Internet at <http://apprenticeship.det.nsw.edu.au>

CO-OPERATIVES ACT 1992

**NOTICE UNDER SECTION 601AA OF THE
CORPORATIONS LAW AS APPLIED BY SECTION 325
OF THE CO-OPERATIVES ACT 1992**

NOTICE is hereby given that the Co-operative mentioned below will be deregistered when two months have passed since the publication of this notice.

NAME OF CO-OPERATIVE

NARRABEEN LAKE PARK CO-OPERATIVE LTD

Dated this twenty-eighth day of August 2002.

C. GOWLAND,
Delegate Of The Registrar Of Co-operatives

DISTRICT COURT RULES 1973**DIRECTION**

BY this direction made under Part 51A rule 1(2) of the District Court Rules 1973, I specify Port Macquarie to be a prescribed place for the purpose of section 63A of the District Court Act 1973, for the week commencing 23 September 2002.

Dated this 22 day of August 2002

R. O. BLANCH,
Chief Judge

ELECTRICITY SAFETY ACT 1945**Order under Section 21**

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and pursuant to sections 21 (1) and 21 (2) of the Electricity Safety Act 1945, do, by this my Order, declare the electrical articles of the class described in Schedule 1 to be, on and from 17 August 2002, electrical articles to which Part 4C of the Electricity Safety Act 1945 applies and the specifications, including modifications, specified in the schedule to the Order to be those applicable to electrical articles of that class.

This Order revokes, on and from 17 August 2002, the Order dated 18 July 2001 published in the Government Gazette of 27 July 2001, No 117.

Signed at Sydney, this 14th day of August 2002.

MARIE BASHIR, Governor
By Her Excellency's Command,

JOHN AQUILINA, M.P.,
Minister for Fair Trading

GEOGRAPHICAL NAMES ACT 1966

Notice of proposal to create a new locality and amend a boundary within Tumbarumba Shire

PURSUANT to the provisions of section 8 of the Geographical Names Act 1966, the Geographical Names Board hereby notifies that it proposes to create the new locality Welaregang, reducing the extent of Tooma, as indicated on map GNB3808/C. The map may be viewed at Tumbarumba Shire Council Chambers, Tumbarumba Library and the office of the Geographical Names Board, Land and Property Information NSW, Panorama Avenue, Bathurst.

Any person wishing to make comment upon this proposal may within one (1) month of the date of this notice write to the Secretary of the Board with that comment.

W. WATKINS,
Chairperson

Geographical Names Board
PO Box 143, BATHURST NSW 2795

GEOGRAPHICAL NAMES ACT 1966

PURSUANT to the provisions of Section 7 (1) of the Geographical Names Act 1966, the Geographical Names Board has this day assigned the geographical names listed hereunder in the Lachlan Local Government Area.

Moore Creek, Til Creek.

The position and the extent for these features are recorded and shown within the Geographical Names Register of New South Wales. This information can be accessed through the Boards Web Site at www.lpi.nsw.gov.au/geog/.

WARWICK WATKINS,
Chairman

Geographical Names Board
P O Box 143, Bathurst 2795

GEOGRAPHICAL NAMES ACT 1966

PURSUANT to the provisions of Section 10 of the Geographical Names Act 1966, the Geographical Names Board has this day assigned the geographical name listed hereunder.

Assigned Name:	Sydney Olympic Park
Designation:	Urban Place
L.G.A.:	Auburn Council
Parish:	St John
County:	Cumberland
L.P.I. Map:	Parramatta River
1:100,000 Map:	Sydney 9130
Reference:	GNB 4878

The position and the extent for this feature is recorded and shown within the Geographical Names Register of New South Wales. This information can be accessed through the Board's Web Site at www.lpi.nsw.gov.au/geog/.

WARWICK WATKINS,
Chairperson

Geographical Names Board
PO Box 143, Bathurst NSW 2795

HARNESS RACING ACT 2002

Notice

I, JACK RICHARD FACE, Minister for Gaming and Racing, pursuant to clause 5(6) of Schedule 6 to the Harness Racing Act 2002, do hereby appoint Monday 2 September 2002 as the constitution day of Harness Racing New South Wales.

J. RICHARD FACE, M.P.,
Minister for Gaming and Racing

EXPLANATORY NOTE

The Harness Racing Act 2002 provides, inter alia, that Harness Racing New South Wales is formally constituted on a day (the constitution day) appointed by the Minister by notice published in the *Gazette*.

HEALTH ADMINISTRATION ACT 1982

Land Acquisition (Just Terms Compensation) Act 1991

Notice of acquisition of land by compulsory process for the purposes of the Health Administration Act 1982

PURSUANT to section 10 of the Health Administration Act 1982 and section 19(1) of the Land Acquisition (Just Terms Compensation) Act 1991, the Health Administration Corporation by its delegate declares, with the approval of the Governor, that the land described in the Schedule below, excluding mines and minerals within such land, is by this notice acquired by compulsory process for the purposes of the Health Administration Act 1982.

Signed at Sydney this twenty-eighth day of August 2002.

Director, Asset and Procurement Management
Department of Health
a duly authorised delegate of the Health
Administration Corporation

SCHEDULE

ALL THAT piece or parcel of land situated at Nowra, Parish of Nowra and County of St Vincent being Lot 1 in Deposited Plan 1043088.

HERITAGE ACT 1977**INTERIM HERITAGE ORDER NO. 57**

IN pursuance of Section 24 of the Heritage Act 1977, I, the Minister for Urban Affairs and Planning, do, by this my order:

- (i) make an interim heritage order in respect of the item of the environmental heritage specified or described in Schedule 'A'; and
- (ii) declare that the interim heritage order shall apply to the curtilage or site of such item, being the land described in Schedule 'B'.

ANDREW REFSHAUGE, M.P.,
Minister for Urban Affairs and Planning

Sydney, 27 August 2002

SCHEDULE 'A'

The properties known as 5, 7, 9 and 11 Raglan Street, Mosman on the land described in Schedule 'B'.

SCHEDULE 'B'

All those pieces or parcels of land known as Lot 1 DP 104765; Lot 1 DP 540158; Lot 2 DP 540158; and Lot 1 DP 922602.

LAND AND ENVIRONMENT COURT**CITATION OF AUTHORITIES PRACTICE DIRECTION**

This Practice Direction commences on 1 October 2002

Explanation

1. In recent years there has been a substantial growth in the number and availability of reports of judgments in this and other jurisdictions, such reports being available either in published reports or in electronic form. The current weight of available material, whilst increasing the knowledge of the work and decisions of the courts, causes problems both for advocates and for the Court in properly limiting the nature and amount of material used in the preparation of and submissions in subsequent cases.
2. Recent and continuing efforts to increase the efficiency and thus reduce the cost of litigation, whilst maintaining the interest of justice, will be hindered if the Court is burdened by weight of inappropriate and unnecessary authority. The Court has experienced the following:
 - (i) Long lists of authorities, but only a small number from the list being referred to by the advocate;
 - (ii) The citation of a number of authorities for a single proposition when only one authority (namely the most recent or the most authoritative) would be sufficient;
 - (iii) The failure to state the proposition of law for which the authority is cited;
 - (iv) The failure to identify the part or parts of the judgment that support the proposition; and
 - (v) Authorities referred to in electronic form when the authorised report is available.
3. This practice direction is made with a view to limiting the citation of previous authority to cases that are relevant and useful to the Court and to lay down the manner in which that cited material should be handled by advocates.

Citation of Authorities

4. (a) Subject to paragraph 4(b), the authorised report of a judgement should be cited as far as practicable, if it is available in that form. Parallel citation of any medium neutral citation, allocated by a court at the time of delivery of judgment, will maximise accessibility.

The authorised reports of the High Court are the Commonwealth Law Reports (CLR). If a High Court judgment is to be cited then the citation should be CLR, even if the judgment may be reported elsewhere. (For example, the citation of *Oshlack v Richmond River Council* should be 193 CLR 72, not 96 LGERA 173).

Similarly, the authorised reports of the Supreme Court are the New South Wales Law Reports (NSWLR). If a Supreme Court judgement is to be cited then the citation should be from that series even if the judgment may be reported elsewhere. (For example, the citation of the Court of Appeal's decision in *Timbarra Protection Coalition Inc v Ross Mining NL* should be 46 NSWLR 55, not 102 LGERA 52)

(b) The citation of a judgment reported in the Local Government and Environmental Reports of Australia (LGERA) will be accepted.

5. Citation of judgments in only electronic format should, as far as practicable, be done only if not reported in any of the published series of reports. They should be cited in medium neutral form.
6. A party who intends to cite an unreported judgment shall provide photocopies for the Court and for the other parties.
7. Pinpoint citations should refer to both page and paragraph numbers. Example: *Blacktown City Council v Wilkie* (2001) 119 LGERA 255 at 273 [60].
8. It will remain the duty of advocates to draw the attention of the Court to any relevant authority not cited by an opponent which is adverse to the case being advanced.
9. Advocates will be required to state, in respect of each authority that they wish to cite, the proposition of law which the authority demonstrates and the parts of the judgment that support that proposition. If it is sought to cite more than one authority in support of a given proposition, advocates must state the reason for taking that course.
10. The demonstration referred to in par [9] may be contained in any written outline of submissions.

The statements referred to in par [9] should not materially add to the length of submissions or any written outline of submissions.

MAHLAL PEARLMAN AM,
Chief Judge

9 August 2002

LAND AND ENVIRONMENT COURT

AMENDMENT TO PRACTICE DIRECTION CONCERNING EXPERT WITNESSES

1. This Amendment commences on 1 October 2002.
2. The Practice Direction made on 12 August 1999 concerning expert witnesses is amended by omitting paragraphs 5 and 6 from the Schedule and by inserting instead the following paragraphs—
 - 5(1) The Court may, on application by a party or of its own motion, direct expert witnesses to:
 - (a) confer and may specify the matters on which they are to confer;
 - (b) endeavour to reach agreement on outstanding technical matters within their expertise; and

- (c) provide the Court with a joint report specifying matters agreed and matters not agreed and the reasons for any non agreement.

(2) The objectives of such directions for a joint conference of experts include the following:

- (a) the just, quick and cost effective disposal of the proceedings.
- (b) the identification and narrowing of issues in the proceedings during preparation for such a conference and by discussion between the experts at the conference. The joint report may be tendered by consent as evidence of matters agreed and/or to identify and limit the issues on which contested expert evidence will be called.
- (c) the consequential shortening of the trial and enhanced prospects of settlement.
- (d) apprising the Court of the issues for determination.
- (e) binding experts to their position on issues, thereby enhancing certainty as to how the expert evidence will come out at the trial. (The joint report may, if necessary, be used in cross-examination of a participating expert called at the trial who seeks to depart from what was agreed.)
- (f) avoiding or reducing the need for experts to attend court to give evidence.

(3) Where, pursuant to this paragraph, expert witnesses have conferred and have provided a joint report agreeing on any matter, a party affected may not, without leave of the Court, adduce expert evidence inconsistent with the matter agreed.

6 Unless otherwise directed by the Court where a direction is given pursuant to paragraph 5(1), the parties shall agree on the following matters:

- (a) the experts to attend.
- (b) the questions to be answered.
- (c) the materials to be placed before the experts.

7 The experts to attend should be those specified in the Court's direction. If none are so specified, the parties should arrange for experts to attend who have expertise pertinent to the questions to be asked. Separate conferences may be required between experts in different specialities in relation to different issues arising in the case.

8 The questions to be answered should be those specified by the Court or those agreed by the parties as relevant and any other question which any party wishes to submit for consideration.

9 The questions to be answered should be framed to resolve an issue or issues in the proceedings. If possible, questions should be capable of being answered Yes or No, or (if not) by a very brief response.

10 The materials to be provided to each of the participating experts should include:

- (a) this practice note;
- (b) an agreed chronology, if appropriate;
- (c) relevant witness statements or, preferably, a joint statement of the assumptions to be made by the experts, including any competing assumptions to be made by them in the alternative (which should be specified clearly as such);
- (d) copies of all expert opinions already exchanged between the parties and all other expert opinions and reports upon which a party intends to rely; and
- (e) such records and other documents as may be agreed between the parties or ordered by the Court.

11 The participating experts should each be provided, 7 days in advance, with the questions and materials referred to in paragraphs 8 to 10 above.

12 Subject to any directions given by the Court concerning the range of dates for the convening of the conference, the parties should communicate amongst themselves to fix a mutually convenient date, time and place for the conference.

13 The conference should take the form of a personal meeting. Alternatively the participants may choose to hold the conference by teleconference, videolink or similar means if a personal meeting is not practicable.

14 The Court may direct that the conference be held with or without the attendance of the legal representatives of the parties affected, or with or without the attendance of legal representatives at the option of the parties respectively.

15 The experts should be given a reasonable opportunity to prepare for the conference by ensuring that before the conference the experts have:

- (a) an opportunity to seek clarification from the instructing lawyers or the Court concerning any question put to them; and
- (b) access to any additional materials which the parties are able to provide and which the experts consider to be relevant.

16 The experts should provide their respective opinions in response to the questions asked based on the witness statements or assumptions provided. Where alternative assumptions are

provided the experts should provide their respective opinions on the alternative assumptions.

17 The experts may specify in their joint report other questions which they believe it would be useful for them to consider.

18 An expert witness must exercise his or her independent, professional judgment in relation to such a conference and joint report, and must not act on any instruction or request to withhold or avoid agreement. An expert should not assume the role of advocate for any party during the course of discussions at the joint conference. If, for whatever reason, an expert is unable to reach agreement with the other experts on any matter, that expert should be free to express his or her disagreement with the other experts on that matter.

19 The experts should accept as fact the matters stated in witness statements or assumptions submitted to them. It is not their role to decide any disputed question of fact or the credibility of any witness. Where there are competing assumptions to be made in the alternative, alternative answers may have to be provided to a question or questions, specifying which of the assumptions are adopted for each answer.

20 The conference should be conducted in a manner which is flexible, free from undue complexity (so far as is practicable) and fair to all parties.

21 The participating experts may appoint one of their number as a chairperson. If one of them so requests and the parties agree or the court orders, some other person may be appointed to act as chairperson.

22 Secretarial or administrative assistance should be provided by the parties if so requested by the experts.

23 If the participating experts agree, one of them or a secretarial assistant may be appointed to make a note at the conference of matters agreed, matters not agreed and reasons for disagreement.

24 The conference may be adjourned for no more than 7 days and reconvened as may be thought necessary by those participating.

25 The joint report should specify matters agreed and matters not agreed and the reasons for non agreement.

26 The joint report should, if possible, be signed by all participating experts immediately at the conclusion of the conference and, otherwise, as soon as practicable thereafter.

27 Prior to signing of a joint report, the participating experts should not seek advice or guidance from the parties or their legal representatives except as provided for in this Practice Note. Thereafter, the experts may provide a copy of the report to a party or his or her legal representative and may communicate what transpired at the meeting in detail if they wish.

28 The report of the joint conference should be composed by the experts and not the representatives of the parties. The report should be set out in numbered paragraphs and should be divided into the following sections:

- (a) statement of agreed opinion in respect of each matter calling for report;
- (b) statement of matters not agreed between experts with short reasons why agreement has not been reached;
- (c) statement in respect of which no opinions could be given eg issues involving credibility of testimony;
- (d) any suggestion by the participating experts as to any other matter which they believe could usefully be submitted to them for their opinion; and
- (e) disclosure of any circumstances by reason of which an expert may be unable to give impartial consideration to the matter.

29 The joint report, when signed by all participating experts, should be forwarded to the Court.

30 Legal representatives who attend a conference pursuant to an order of the Court or who are approached for advice or guidance by a participating expert should respond jointly and not individually, unless authorised to do so by the legal representatives for all other parties with an interest in the conference.

Such advice or guidance may be provided by:

- (a) responding to any questions in relation to the legal process applicable to the case;
- (b) identifying relevant documents;
- (c) providing further materials on request; and
- (d) correcting any misapprehensions of fact or an misunderstanding concerning the conference process;
- (e) recommended amendments to plans.

31 The legal representatives of the parties should perform any other role the Court may direct.

32 The legal representatives of the parties should inform the Court of the date of a conference when arranged, the names of the participating experts and the questions submitted.

33 It is not intended that the joint report provided to the Court or that information provided to the Court concerning a conference will be evidence in the proceedings unless admitted into evidence in the ordinary way.

The content of the conference between the expert witnesses shall not be referred to at the hearing or trial unless the parties affected agree.

34 An expert directed to confer may apply to the Court for further directions. That may be done, at the expert's election, by arrangement with the Court. A party may also apply for further directions in relation to a directed conference.

MAHLA L PEARLMAN AM,
Chief Judge

28 August 2002

LOCAL GOVERNMENT ACT 1993

Mathoura Sewerage Augmentation

THE Minister for Land and Water Conservation of the State of New South Wales, declares that all right, title and interest in the works described in the Schedule hereto, which were constructed for the purpose of Mathoura Sewerage Augmentation Scheme are vested in Murray Shire Council.

JOHN JOSEPH AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

SCHEDULE

Works of sewerage for the town of Mathoura comprising reticulation mains, rising mains, pumping stations, treatment works and all works incidental thereto.

DPWS reference S808.

LOCAL GOVERNMENT ACT 1993

Angourie Sewerage

THE Minister for Land and Water Conservation of the State of New South Wales, declares that all right, title and interest in the works described in the Schedule hereto, which were constructed for the purpose of Angourie Sewerage Scheme are vested in Maclean Shire Council.

JOHN JOSEPH AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

SCHEDULE

Works of sewerage for the villages of Angourie and Wooloweyah comprising reticulation trunk mains, rising mains, new pumping stations, overflows and upgrading of sewage collection system for West Yamba comprising new pumping station with odour bed, new rising mains, new switch gear and control gear assemblies at nine existing pumping stations, a new inlet/balance tank at the Yamba Treatment Works, a telemetry system and all works incidental thereto.

DPWS reference S851.

LOCAL GOVERNMENT ACT 1993

Barham Water Supply Augmentation

THE Minister for Land and Water Conservation of the State of New South Wales, declares that all right, title and interest in the works described in the Schedule hereto, which were

constructed for the purpose of Barham Water Supply Augmentation Scheme are vested in Wakool Shire Council.

JOHN JOSEPH AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

SCHEDULE

Works of water supply for the town of Barham comprising raw water pumping station, water treatment plant and clear water pumping station, reticulation mains, rising mains, domestic meters, service connections, power supply, chlorination equipment and all works incidental thereto.

DPWS reference W586.

LOCAL GOVERNMENT ACT 1993

East Jindabyne Sewerage

THE Minister for Land and Water Conservation of the State of New South Wales, declares that all right, title and interest in the works described in the Schedule hereto, which were constructed for the purpose of East Jindabyne Sewerage Scheme are vested in Snowy River Shire Council.

JOHN JOSEPH AQUILINA, M.P.,
Minister for Land and Water Conservation
and Minister for Fair Trading

SCHEDULE

Works of sewerage for the town of East Jindabyne comprising sewer reticulation, rising and gravity mains, pumping stations, telemetry and electrical power supply and all works incidental thereto.

DPWS reference S844.

Certificate No. 001/02

**OCCUPATIONAL HEALTH AND SAFETY
REGULATION 2001**

EXEMPTION ORDER

I, Margaret Michele Patterson, Assistant General Manager of the Occupational Health and Safety Division, under the delegation assigned by WorkCover NSW and pursuant to *clause 348* [exemptions for classes of persons or things] of the *Occupational Health and Safety Regulation 2001* (the Regulation), being satisfied that the application of the provisions in *clause 113(3)(d)* [payment of fee] and *clause 118* [annual item of plant registration] of the Regulation is inappropriate and unnecessary in the circumstances, hereby exempt the person who has control of the plant specified in Schedule 1 from complying with clauses *113(3)(d)* and *118* of the Regulation, subject to the conditions specified in Schedule 2.

SCHEDULE 1

Lifts installed within a private dwelling, except where the lift is used by a member of the public as a means of access to or egress from the dwelling.

SCHEDULE 2

1. Private use of lifts

The lifts are not to be available for unrestricted use by the general public as a means of access to or egress from the dwelling.

2. Access arrangement for Emergencies and Periodic Maintenance

A satisfactory arrangement, which ensures access to all floors for emergency and maintenance reasons, is to be negotiated between the dwelling owner and the lift servicing company.

3. Notification of Changes

WorkCover NSW is to be given notice in writing of change of ownership of the lift, alteration to the lift or change of use of the building which could result in the building being used for purposes other than as a private dwelling.

Note: Clause 117 provides that if ownership of the lift changes, and WorkCover NSW is not notified, registration of the plant is automatically cancelled.

Dated this day of August, 2002.

MARGARET MICHELE PATTERSON,
Assistant General Manager
WorkCover NSW

Please note under Clause 349 of the *Occupational Health and Safety Regulation 2001*, a Register of Exemptions must be kept by WorkCover NSW and be available for public inspection upon request.

POISONS AND THERAPEUTIC GOODS ACT 1966

PROCLAMATION

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, on the recommendation of the Minister for Health and in pursuance of section 8(6) of the Poisons and Therapeutic Goods Act 1966, do, by this my Proclamation, amend the Poisons List in the manner set out in the Schedule hereunder with effect on and from 1 September 2002.

Signed and sealed at Sydney, this twenty-eighth day of August 2002.

By Her Excellency's Command,

CRAIG KNOWLES, M.P.,
Minister for Health

GOD SAVE THE QUEEN!

SCHEDULE

The Poisons List is hereby amended as follows:

- Omit from the additional entries in Schedule 4 the following entry:
PENTAZOCINE.
- Omit from the additional entries in Schedule 7 the following entries:

PHENYLACETIC ACID AND SALTS AND ESTERS
OF PHENYLACETIC ACID, AS SUCH.
1-PHENYL-2-CHLOROPROPANE, AS SUCH.
1-PHENYL-2-NITROPROPENE, AS SUCH.
1-PHENYL-2-PROPANOL, AS SUCH.
1-PHENYL-2-PROPANONE, AS SUCH.
1-PHENYL-2-PROPANONE OXIME, AS SUCH.

3. Omit from the excepted entries in Schedule 8 the following entry:
PENTAZOCINE.

RURAL FIRES ACT 2002

PURSUANT to Section 82 of the Rural Fires Act 2002 as amended, the Commissioner of the NSW Rural Fire Service, following consultation with the local stakeholders, declares the following Local Bush Fire Danger Period Variation:

Area of variation: Numbucca Local Government Area

The Local Bush Fire Danger period has been extended for the period 1 August 2002 until 31 August 2002.

During this period permits pursuant to Section 87 of the Rural Fires Act 2002 as amended, will be required for the lighting of fire for the purposes of land clearance or fire breaks.

Dated 15 August 2002.

SHANE FITZSIMMONS, AFSM,
Executive Director Operations
Delegate

RURAL FIRES ACT 2002

PURSUANT to Section 82 of the Rural Fires Act 1997 (as amended), the Commissioner of the NSW Rural Fire Service, following consultation with the local stakeholders, declares the following Local Bush Fire Danger Period Variation:

Area of variation: Lithgow Local Government Area

The Local Bush Fire Danger period has been extended for the period 1 September 2002 until 30 September 2002.

During this period permits pursuant to Section 87 of the Rural Fires Act 1997 (as amended), will be required for the lighting of fire for the purposes of land clearance or fire breaks.

Dated 19 August 2002.

SHANE FITZSIMMONS, AFSM,
Executive Director Operations
Delegate

RURAL FIRES ACT 2002

PURSUANT to Section 82 of the Rural Fires Act 1997 (as amended), the Commissioner of the NSW Rural Fire Service, following consultation with the local stakeholders, declares the following Local Bush Fire Danger Period Variation:

Area of variation: Sutherland Local Government Area

The Local Bush Fire Danger period has been extended for the period 1 September 2002 until 30 September 2002.

During this period permits pursuant to Section 87 of the Rural Fires Act 1997 (as amended), will be required for the lighting of fire for the purposes of land clearance or fire breaks.

Dated 23 August 2002.

SHANE FITZSIMMONS, AFSM,
Executive Director Operations
Delegate

RURAL FIRES ACT 2002

PURSUANT to Section 82 of the Rural Fires Act 1997 (as amended), the Commissioner of the NSW Rural Fire Service, following consultation with the local stakeholders, declares the following Local Bush Fire Danger Period Variation:

Area of variation: Kempsey Local Government Area

The Local Bush Fire Danger period has been extended for the period 1 September 2002 until 30 September 2002.

During this period permits pursuant to Section 87 of the Rural Fires Act 1997 (as amended), will be required for the lighting of fire for the purposes of land clearance or fire breaks.

Dated 23 August 2002.

SHANE FITZSIMMONS, AFSM,
Executive Director Operations
Delegate

THREATENED SPECIES CONSERVATION ACT

Notice of Preliminary Determination

Proposed Addition to Schedules

THE Scientific Committee, established by the Threatened Species Conservation Act, has made a Preliminary Determination to support a proposal to list the following in the relevant Schedule of the Act.

Key Threatening Process (Schedule 3)

Removal of dead wood, dead trees and log.

The Committee is of the opinion this threatening process adversely affects two or more threatened species, populations or ecological communities or could cause species, populations or ecological communities that are not threatened to become threatened.

Notice of Preliminary Determination

Proposed Amendment to Schedules

The Scientific Committee, established by the Threatened Species Conservation Act, has made a Preliminary Determination to support a proposal to list the shrub *Zieria citriodora* J.A. Armstrong ms. as an ENDANGERED SPECIES in Part 1 of Schedule 1 of the Act, and as a consequence, to omit reference to *Zieria citriodora* J.A. Armstrong ms. from Schedule 2 (Vulnerable Species) of the Act.

The Committee is of the opinion that this species is likely to become extinct in nature in NSW unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

Any person may make a written submission regarding these Preliminary Determinations, which should be forwarded to:

Director General
National Parks & Wildlife Service
PO Box 1967
Hurstville NSW 2220

Attention: Kelly Taylor
Acting Executive Officer,
Scientific Committee

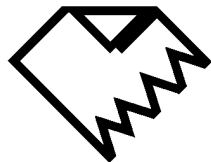
Submissions must be received by 4th October, 2002.

DR CHRIS DICKMAN,
Chairperson
Scientific Committee



**Treatment, Rehabilitation and
Attendant Care Guidelines for
CTP Insurers with Conditional
Licenses (non-underwriters)**

July 2002



**MOTOR ACCIDENTS
AUTHORITY**



Introduction

The Motor Accidents Compensation Act 1999 (MACA) and the Motor Accidents Act 1988 place responsibilities concerning treatment, rehabilitation and attendant care on the Motor Accidents Authority of NSW (MAA), the CTP insurers and claimants.

The main goal of the Treatment, Rehabilitation and Attendant Care (TRAC) Guidelines is to ensure that there is consistency in the decision making within an insurer about the provision of treatment, rehabilitation and attendant care services for claimants, notwithstanding that these insurers no longer underwrite CTP business in NSW.

For claims prior to 5 October 1999, these guidelines define 'rehabilitation' as it appears in Section 35 of the Motor Accidents Act 1988.

The following set of Treatment, Rehabilitation and Attendant Care (TRAC) Guidelines developed by the MAA aim to promote best practice and facilitate consistency in the decision making within an insurer about the provision of treatment, rehabilitation and attendant care services to claimants. They are designed to ensure CTP insurers address the ongoing needs of claimants by facilitating their access to appropriate treatment, rehabilitation and attendant care, and apply throughout the lifetime of a claim.

These Guidelines are applicable to CTP insurers with suspended CTP licenses, and apply to claims arising from policies under both the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988. They also apply to CTP insurers with a current license who are managing "tail" or "run-off" claims, which have not been subsumed into the insurer's regular claims' management system.

The objectives of the Motor Accidents Compensation Act 1999 include the encouragement of early and appropriate treatment and rehabilitation to achieve optimum recovery (section 4). An objective of the Motor Accidents Act 1988 is to encourage and support recovery from injury and the use of early and appropriate rehabilitation to assist injured people return as far as possible to their pre-injury lifestyle (section 34A).

Insurers are obliged to pay for treatment, rehabilitation and attendant care on an as incurred basis once liability has been admitted. However, the insurer is only obliged to pay for treatment, rehabilitation and attendant care costs that are reasonable and necessary, properly verified and relate to injuries resulting from the motor vehicle accident (section 45 of the Motor Accidents Act and section 83 of Motor Accidents Compensation Act). Claimants are under a duty to do everything possible to recover from their injuries (section 39 of the Motor Accidents Act and section 136 of Motor Accidents Compensation Act).

Decisions about whether treatment, rehabilitation and attendant care services are reasonable and necessary for the recovery or long-term support of the claimant should be based on assessments and information from treating and independent practitioners and any other relevant and objective information.

The Guidelines provide standards and criteria against which insurers can measure their performance and demonstrate they are meeting the objectives and their responsibilities under the Motor Accidents Compensation Act 1999 and the Motor

Accidents Act 1988. The associated auditing process enables objective and external verification of achievement of the standards and continuous improvement in performance.

These Guidelines apply from the date they are gazetted to injuries arising from accidents under both the Motor Accidents Act 1988 and the Motor Accidents Compensation Act 1999.

These Guidelines are issued pursuant to Section 44 of the Motor Accidents Compensation Act 1999 and apply by Chapter 3 of that Act in respect of an injury caused by a motor accident. Further, these guidelines, so far as rehabilitation is concerned, apply in relation to insurers' obligations under Section 84 of the Motor Accidents Compensation Act 1999. Sections 44 and 84 of the Motor Accidents Compensation Act 1999 apply in relation to treatment of injuries whether the injuries were sustained in accidents occurring before 5 October 1999, or on or after 5 October 1999.

General Principles

The implementation of the Treatment, Rehabilitation and Attendant Care Guidelines for insurers requires **demonstrated** consideration and acceptance of the following general principles:

- 1 Addressing the needs of claimants by facilitating their access to rehabilitation and attendant care is an integral part of the Motor Accidents Scheme.
- 2 Effective treatment, rehabilitation and attendant care is a collaborative arrangement requiring communication and cooperation between the claimant, the provider and the insurer.
- 3 It is vital that treatment and rehabilitation are regularly monitored until conclusion. While not all CTP claimants will need rehabilitation services, it should be facilitated when required for all age groups, including children and older people.
- 4 Wherever possible, claimants should exercise choice about the selection of their treatment, rehabilitation and /or attendant care service provider. However, the insurer is only obliged to pay for treatment, rehabilitation and attendant care costs that are reasonable and necessary, properly verified and relate to injuries resulting from the motor vehicle accident.
- 5 The selection of a service provider should be determined by the claimant's needs and the service best able to meet these needs. Any commercial relationship between the insurer and the service provider is not a factor to be considered when selecting a service provider.
- 6 Claimants should be encouraged to be involved in the development and ongoing review and modification of their treatment, rehabilitation and attendant care plans.
- 7 The insurer is not responsible for developing treatment, rehabilitation or attendant care plans. This is the responsibility of relevant service providers.
- 8 There should be consistency in the decision making process about treatment, rehabilitation and attendant care issues between claims and rehabilitation staff.
- 9 All rehabilitation and claims staff actively seek to minimise the risk of disputes associated with managing the treatment, rehabilitation and attendant care needs of claimants. They should be proactive in seeking resolution of disputes by facilitating referral to insurer's internal complaints and disputes resolution processes, and when necessary, the appropriate external disputes resolution services.
- 10 Relevant ongoing professional development, support, and performance review are provided for employed rehabilitation advisers, and a system of review is in place for contracted rehabilitation advisers.
- 11 Relevant ongoing training for rehabilitation advisers and claims officers is provided regarding the application of these treatment, rehabilitation and attendant care guidelines.

- 12 When there is a need to coordinate services or when there are differences of opinion about claimants' programs, the insurer considers the use of case conferences involving rehabilitation advisers and/or providers, treating practitioners, attendant care agencies and claimants.

Explanatory notes

Attendant care

Attendant care assists people with disabilities to perform tasks they would normally be doing for themselves. Attendant care services aim to provide assistance to people with everyday tasks and include, for example, personal assistance, nursing, home maintenance and domestic services. They enable individuals to live independently and to exercise basic rights about choice of lifestyle.

Attendant care plan

An attendant care plan should normally outline the claimant's present condition, functional capacity, role of attendant carer, goals and specified activities of the program and hours of care required. Attendant care plans are developed collaboratively between the attendant care agency, the rehabilitation provider involved, the claimant and their family, as well as the insurer.

For simple domestic assistance, the attendant care plan may take the form of a brief proposal. At a minimum this type of plan should include timeframes, costs and type of services.

Claims officer

The role of a claims officer employed by a CTP insurer, as related to these Guidelines, may include:

- Responding to requests and paying accounts in a timely fashion;
- Ensuring the appropriate involvement of the rehabilitation adviser in facilitating assessment of the rehabilitation and attendant care needs of claimants;
- Where appropriate, establishing whether the proposed interventions and programs are 'reasonable and necessary' in consultation with the rehabilitation adviser.

The statements in these Guidelines are not designed to limit the scope of the role of claims officers.

Days

Refers to working days.

Insurer

These Guidelines apply to all insurers who insure the person against the person's liability for damages in respect of a claim, whether or not under a third party policy (section 42 of the Motor Accidents Compensation Act 1999). However, for the purpose of the audit, the insurer refers to all insurers who were licensed by the MAA and manage NSW Compulsory Third Party (CTP) claims, including insurers acting as agent for the Nominal Defendant.

Rehabilitation

The Guidelines reflect the definition of rehabilitation used in both the Motor Accidents Act 1988 (Section 35) and Motor Accidents Compensation Act 1999 (Section 3).

Rehabilitation, in relation to an injured person, means the process of restoring or attempting to restore the person, through the combined and coordinated use of medical, social, educational and vocational measures, to the maximum level of functioning of which the person is capable or which the person wishes to achieve and includes placement in employment and all forms of social rehabilitation such as family counselling, leisure counselling and training for independent living.

The Guidelines support the philosophy that rehabilitation is the process of restoring an injured person as close as possible to their pre-injury level of functioning and to a quality of life comparable with their pre-injury level. Where function cannot be restored, the aim of rehabilitation becomes the acquisition of new functional or vocational skills.

Rehabilitation Adviser

The role of the insurer's rehabilitation adviser may include:

- Facilitating the assessment of the treatment, rehabilitation and attendant care needs of claimants;
- Facilitating access of claimants to services if considered necessary;
- Establishing whether the proposed interventions and programs are reasonable and necessary;
- Providing a point of contact for the claimant, treating practitioners and rehabilitation providers;
- Undertaking a coordinating role between all involved stakeholders;
- Advising claims officers and managers on rehabilitation issues; and
- Assisting the insurer to develop a consistent approach to decision making regarding 'reasonable and necessary'.

Insurers either employ permanent or contract health professional staff in the role of rehabilitation advisers. Rehabilitation advisers do not provide direct services to claimants.

The statements in these Guidelines are not designed to limit the scope of the role of the rehabilitation adviser. The term 'rehabilitation adviser' is used variously by the insurers. The roles and titles may vary from insurer to insurer.

Rehabilitation plan

A rehabilitation plan is a formal document which identifies the assessed needs of the claimant, the goals or outcomes to be achieved, the proposed interventions or strategies to achieve these goals, time frames for achievement, periodic evaluation and reporting, and associated costings.

Rehabilitation Provider

A rehabilitation provider delivers direct services to the claimant. A rehabilitation provider may be a multidisciplinary organisation or an individual health practitioner in either the public or the private sectors.

Service Provider

A service provider delivers direct services to the claimant. A service provider may be a multidisciplinary organisation or an individual. The services provided may include rehabilitation and attendant care.

Treatment

Treatment is defined in Section 42 of the Motor Accidents Compensation Act 1999. An insurer has a responsibility to deal with requests for treatment. These requests should be dealt with in a timely fashion with reference to 'reasonable and necessary'. CTP insurers are responsible for having a system in place for responding to such requests.

Format of the Guidelines

Phases

The revised MAA Guidelines for insurers divides the management of motor accident injuries into three phases. Claimants may move in and out of the different phases during their recovery and resettlement. The elements of treatment, rehabilitation and attendant care are addressed in each phase.

Each phase has an underpinning **standard**. Objective **criteria** in each phase assist in the application of the **standard and in the measurement of achievement**.

Phase 1	Phase 2	Phase 3
Assignment of claims and rehabilitation staff.	Identification and review of treatment, rehabilitation and attendant care needs.	Management of treatment, rehabilitation and attendant care needs.

Standard

Each phase has a standard from which the criteria arise.

Criteria

The criteria are statements that act to clarify the standard and provide practical advice on implementation. In the process of self-assessment and external audit of these Guidelines, the criteria provide the basis for assessing levels of achievement or compliance.

Phase 1 Assignment of claims and rehabilitation staff**Standard**

The insurer assigns rehabilitation staff to claimants who may require rehabilitation and/or attendant care services in order to oversee their assessment, rehabilitation and resettlement and to facilitate effective communication between all parties.

Criteria

The insurer must:

- 1.1 Allocate and document in the claim file a rehabilitation adviser to each claimant requiring rehabilitation.
- 1.2 Ensure that all rehabilitation advisers have a health professional background and qualifications and rehabilitation experience relevant to the role.
- 1.3 Identify any potential conflicts of interest, advise the claimant in writing and document in the claim file. Possible situations include :
 - A rehabilitation adviser who is employed by a service provider. If a claimant is referred by the insurer to the service provider then the claimant must be informed:
 - Of the relationship between the insurer/rehabilitation adviser and the service provider
 - That the insurer or the claimant's medical practitioner can refer the claimant to another service provider.
 - How to arrange a referral to another service provider.
 - An insurer which has an interest in a service provider. If a claimant is referred by the insurer to the service provider, then the claimant must be informed:
 - Of the relationship between the insurer / rehabilitation adviser and the service provider.
 - That the insurer or their medical practitioner can refer the claimant to another service provider.
 - How to arrange a referral to another service provider.
- 1.4 Document in the claim file the date and summary of all verbal communications about treatment, rehabilitation or attendant care between claimants/claimant's solicitor or service providers by rehabilitation advisers. A copy of any written correspondence must be kept on the claim file.

Phase 2	Identification and review of treatment, rehabilitation and attendant care needs
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Standard

The insurer identifies the ongoing treatment, rehabilitation and attendant care needs of claimants.

Criteria

The insurer must:

- 2.1 Have a documented procedure for determining the need for rehabilitation and attendant care services. This procedure will have indicators to identify claimants who may be in need of rehabilitation and attendant care services. Some indicators may include, but are not limited to:
- Reported head injury
 - Reported spinal cord injury
 - Reported multiple orthopaedic injuries
 - Reported severe leg fractures
 - Reported burns
 - Amputations
 - Chronic disabling pain
 - Loss of sight/hearing
 - Difficulties with Activities of Daily Living
 - Reported severe psychological reactions
 - Reported soft tissue injuries where the claimant's work capacity is affected
 - Reported brachial plexus injuries
 - Where the claimant has returned to work under duress or with restrictions to normal duties due to work capacity being affected
 - Where a claimant has not returned to work
 - An elderly claimant where difficulties at home are reported
 - Parents who indicate difficulty in caring for a child
 - If the covering solicitor's letter indicates rehabilitation requirements
 - If medical, treatment or rehabilitation advice indicates that the claimant will not return to full function
 - Where there has been a change in medical condition
 - When a transition between education facilities (for example between primary and high school), or from education to employment, is imminent for claimants with head injuries or spinal cord injuries.
- 2.2 Review, at least every six months, using the documented procedure to establish any rehabilitation needs, every file involving:
- Children or adolescents
 - Claimants with brain or spinal cord injuries
 - Claimants receiving current treatment, rehabilitation or attendant care, or where there is current involvement of a service provider
 - Where there may be an ongoing need for rehabilitation.
- Record the date of the review, and if necessary, refer the claimant to a rehabilitation adviser within 10 working days of identifying the need.
- 2.3 This regular review process may cease if the rehabilitation adviser is satisfied that no further rehabilitation is likely to be required. If this occurs it should be clearly stated in the claim file, 'signed off' by the rehabilitation adviser and dated.

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- 2.4 Have a management system that ensures all claimants have an up-to-date, retrievable and secure file. This must include all correspondence relating to the ongoing treatment, rehabilitation, and attendant care of claimants.
- 2.5 Code all claims according to the Abbreviated Injury Scale (AIS) Revision adopted by the MAA and using the 'Guidelines and Handbook for Injury Coders' published by the MAA.
- 2.6 Ensure that all AIS Injury Coders are appropriately trained by MAA approved trainers.
- 2.7 Ensure that for all claims:
- The injury codes are reviewed by an injury coder throughout the life of the claim, with a maximum interval of 12 months between reviews. The date of each review should be noted in the claim file
 - This regular review process may cease if the injury coder is satisfied all injuries have been coded and that it is unlikely that any further medical information which would alter the injury coding will be received. If this occurs it should be clearly stated in the claim file, 'signed off' by the coder and dated
 - The injury codes are reviewed within one month prior to file closure if they have not already been signed off by the coder. The date of this review should be noted in the claim file.
- 2.8 Ensure that written communications with claimants are:
- Personalised, tailored to the claimant's circumstances
 - Written in plain English, understandable to the claimant
 - Written for a specific purpose
 - Kept as copies in the claim file.
- 2.9 Send information to claimants who have been identified as requiring rehabilitation services on the role of rehabilitation advisers; how to contact them; and their rights and responsibilities, within 10 working days of the identification (MAA brochure 'Rehabilitation and the Motor Accidents Scheme' or insurer's own brochure with relevant information).
- 2.10 Ensure that claimants currently receiving treatment, rehabilitation or attendant care are informed when there is a change in rehabilitation adviser or contact at the insurer, and that this is recorded in the claim file. The service provider should also be informed of this change.

Phase 3 Management of treatment, rehabilitation and attendant care needs**Standard**

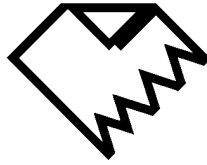
The insurer has a system in place for managing the treatment, rehabilitation and attendant care progress of claimants, and achievement of their outcomes in meeting their continuing needs.

Criteria

The insurer must:

- 3.1 Refer claimants it has identified as requiring treatment, rehabilitation or attendant care services to an appropriate assessor or service provider within 10 working days of the identification. This may arise from a file review, or a request from:
 - The claimant or their solicitor
 - The claimant's service provider
 - The claimant's school or educational facility
 - A hospital.
- 3.2 Review the claimant's rehabilitation plans and/or attendant care plans to ensure that all the needs resulting from the motor vehicle accident have been addressed in the relevant plans.
 - To facilitate the claimant's rehabilitation, the insurer must request rehabilitation plans that identify goals, time frames and progress evaluation.
 - In the case of serious injuries, the insurer should normally request attendant care plans that specify goals, time frames, specific activities, hours of care, frequency and cost of services. However, for simple domestic assistance, the attendant care plan may take the form of a simple proposal for care and/or support services to be provided to the claimant.
- 3.3 Advise in writing, within 10 working days of receipt of the request or plan, about:
 - The acceptability of all treatment, rehabilitation or attendant care requests and plans.
 - The treatment, rehabilitation and attendant care costs the insurer has agreed to meet. A return fax of the plan indicating the insurer's decision is sufficient. The insurer must keep a copy of this correspondence in the claim file.
- 3.4 Provide written feedback to providers clearly outlining why the insurer considers the plan, or components of the plan, not to be reasonable and necessary within 20 working days of receipt of the plan by the insurer. The decisions are informed by assessments and information from treating professionals, independent practitioners and any other objective information. The insurer must keep a copy of this correspondence in the claim file.
- 3.5 Have a documented procedure on how decisions are made on whether a service is considered reasonable and necessary.
 - Staff are trained in the process.
 - Monitoring and review demonstrate consistency in decision making.

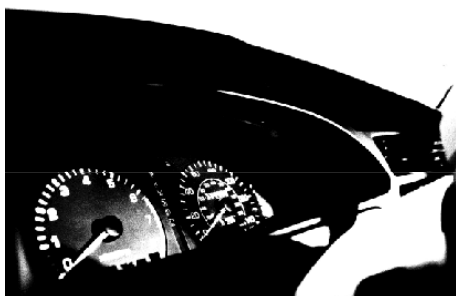
- 3.6 Inform the claimant and/or their solicitor when the insurer declines to pay for/terminates the claimant's treatment, rehabilitation, attendant care, equipment or modifications. It must:
- Advise the service provider by telephone or confirmed fax that they will no longer meet the costs of the service from that date or a specified future date
 - Advise the claimant and/or solicitor within the same day
 - Document the advice and correspondence in the claim file.
- 3.7 Inform the claimant and/or their solicitor of their options for resolving the dispute when the insurer declines to pay for the claimant's treatment, rehabilitation, attendant care, equipment or modifications, within 10 working days of making the decision. (Sending the MAA brochure 'Resolving Medical Disputes' will meet this requirement.)
- For accidents occurring before 5 October 1999, the options for resolving the dispute are to refer the matter to:
 - The insurer's internal complaints and disputes processes, and
 - The Motor Accidents Authority.
 - For accidents occurring on or after 5 October 1999, the options for resolving the dispute are to refer the matter to:
 - The insurer's internal complaints and disputes processes, and
 - The Motor Accidents Assessment Service of the MAA.
- 3.8 Ensure that the claimant's progress is reviewed by the rehabilitation adviser and/or the designated claims officer.
- The insurer must establish with each provider an agreed time frame for reports, as well as the level of detail required and evidence of the claimant's progress according to their individual plans and agreed outcomes.
 - Time frames for submission of progress reports may vary according to the nature of service and the nature and complexity of the claim.
 - Copies of progress reports must be kept in the claim file.
- 3.9 Achieve the following timelines:
- a) Equipment requests acknowledged within 10 working days of receipt of request
 - b) A written response to equipment requests indicating approval or rejection within 20 working days of receipt of request
 - c) Home modification requests acknowledged within 10 working days
 - d) A written response to home modification requests indicating approval or rejection within three months.
- 3.10 Pay accounts for approved treatment, rehabilitation, attendant care and equipment within 20 working days of receipt.



**MOTOR ACCIDENTS
AUTHORITY**

**Treatment, Rehabilitation and Attendant Care Guidelines for
Currently Licensed CTP Insurers**

July 2002



Initially issued January 1998
Reviewed November 2000

Introduction

The Motor Accidents Compensation Act 1999 (MACA) and the Motor Accidents Act 1988 place responsibilities concerning treatment, rehabilitation and attendant care on the Motor Accidents Authority of NSW (MAA), the CTP insurers and claimants.

The main goal of the Treatment, Rehabilitation and Attendant Care (TRAC) Guidelines is to ensure that there is consistency in the decision making within an insurer about the provision of treatment, rehabilitation and attendant care services for claimants. This is regardless of whether the decision is made by the rehabilitation adviser or by the claims officer handling the claim.

The following set of Guidelines developed by the MAA aim to promote best practice and facilitate consistency in the management of motor accident injuries by CTP insurers. They are designed to ensure CTP insurers address the needs of claimants by facilitating their access to appropriate treatment, rehabilitation and attendant care, and apply throughout the lifetime of a claim.

The objectives of the Motor Accidents Compensation Act 1999 include the encouragement of early and appropriate treatment and rehabilitation to achieve optimum recovery (section 4). An objective of the Motor Accidents Act 1988 is to encourage and support recovery from injury and the use of early and appropriate rehabilitation to assist injured people return as far as possible to their pre-injury lifestyle (section 34A).

Insurers are obliged to pay for treatment, rehabilitation and attendant care on an as incurred basis once liability has been admitted. However, the insurer is only obliged to pay for treatment, rehabilitation and attendant care costs that are reasonable and necessary, properly verified and relate to injuries resulting from the motor vehicle accident (section 45 of the Motor Accidents Act and section 83 of Motor Accidents Compensation Act). Claimants are under a duty to do everything possible to recover from their injuries (section 39 of the Motor Accidents Act and section 136 of Motor Accidents Compensation Act).

Decisions about whether treatment, rehabilitation and attendant care services are reasonable and necessary for the recovery of the claimant should be based on assessments and information from treating and independent practitioners and any other relevant and objective information.

The Guidelines provide standards and criteria against which insurers can measure their performance and demonstrate they are meeting the objectives and their responsibilities under the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988. The associated auditing process enables objective, external verification of achievement of the standards and continuous improvement in performance.

These Guidelines apply from the date they are gazetted to injuries arising from accidents under both the Motor Accidents Act 1988 and the Motor Accidents Compensation Act 1999.

These Guidelines are issued pursuant to Section 44 of the Motor Accidents Compensation Act 1999 and apply by Chapter 3 of that Act in respect of an injury

caused by a motor accident. Further, these guidelines, so far as rehabilitation is concerned, apply in relation to insurers' obligations under Section 84 of the Motor Accidents Compensation Act 1999. Sections 44 and 84 of the Motor Accidents Compensation Act 1999 apply in relation to treatment of injuries whether the injuries were sustained in accidents occurring before 5 October 1999, or on or after 5 October 1999.

General Principles

The implementation of the Treatment, Rehabilitation and Attendant Care Guidelines for insurers requires demonstrated consideration and acceptance of the following general principles:

- 1 Addressing the rehabilitation needs of claimants by facilitating their access to rehabilitation and attendant care is an integral part of the Motor Accidents Scheme.
- 2 Effective treatment, rehabilitation and attendant care is a collaborative arrangement requiring communication and cooperation between the claimant, the provider and the insurer.
- 3 The aim of rehabilitation is to maximise early recovery from injuries and promote independence and function.
- 4 It is vital that treatment and rehabilitation are commenced as early as possible and are regularly monitored until conclusion. While not all CTP claimants will need rehabilitation services, it should be facilitated when required for all age groups, including children and older people.
- 5 Wherever possible, claimants should exercise choice about the selection of their treatment, rehabilitation and /or attendant care service provider. However, the insurer is only obliged to pay for treatment, rehabilitation and attendant care costs that are reasonable and necessary, properly verified and relate to injuries resulting from the motor vehicle accident.
- 6 The selection of a service provider should be determined by the claimant's needs, not the relationship between the insurer and the service provider. Any commercial relationship between the insurer and the service provider is not a factor to be considered when selecting a service provider.
- 7 Claimants should be encouraged to be involved in the development and ongoing review and modification of their treatment, rehabilitation and attendant care plans.
- 8 The insurer is not responsible for developing treatment, rehabilitation or attendant care plans. This is the responsibility of relevant service providers.
- 9 There should be consistency in the decision making process about treatment, rehabilitation and attendant care issues between claims and rehabilitation staff.
- 10 Successful implementation of the Guidelines relies on management support and teamwork between rehabilitation and claims staff employed in CTP insurers, and general acceptance of the notion of continuous improvement.
- 11 All rehabilitation and claims staff actively seek to minimise the risk of disputes associated with managing the treatment, rehabilitation and attendant care needs of claimants. They should be proactive in seeking resolution of disputes by facilitating referral to insurer's internal complaints and disputes resolution

processes, and when necessary, the appropriate external disputes resolution services.

Explanatory notes

Attendant care

Attendant care assists people with disabilities to perform tasks they would normally be doing for themselves. Attendant care services aim to provide assistance to people with everyday tasks and include, for example, personal assistance, nursing, home maintenance and domestic services. They enable individuals to live independently and to exercise basic rights about choice of lifestyle.

Attendant care plan

An attendant care plan should normally outline the claimant's present condition, functional capacity, role of attendant carer, goals and specified activities of the program and hours of care required. Attendant care plans are developed collaboratively between the attendant care agency, the rehabilitation provider involved, the claimant and their family, as well as the insurer.

For simple domestic assistance, the attendant care plan may take the form of a brief proposal. At a minimum this type of plan should include timeframes, costs and type of services.

Claims officer

The role of a claims officer employed by a CTP insurer, as related to these Guidelines, may include:

- Responding to requests and paying accounts in a timely fashion;
- Ensuring the appropriate involvement of the rehabilitation adviser in facilitating assessment of the rehabilitation and attendant care needs of claimants;
- Where appropriate, establishing whether the proposed interventions and programs are 'reasonable and necessary' in consultation with the rehabilitation adviser.

The statements in these Guidelines are not designed to limit the scope of the role of claims officers.

Days

Refers to working days.

Insurer

These Guidelines apply to all insurers who insure the person against the person's liability for damages in respect of a claim, whether or not under a third party policy (section 42 of the Motor Accidents Compensation Act 1999). However, for the purpose of the audit, the insurer refers to all insurers who are licensed by the MAA and provide Compulsory Third Party (CTP) insurance in NSW, including insurers acting as agent for the Nominal Defendant.

Rehabilitation

The Guidelines reflect the definition of rehabilitation used in both the Motor Accidents Act 1988 (Section 35) and Motor Accidents Compensation Act 1999 (Section 3).

Rehabilitation, in relation to an injured person, means the process of restoring or attempting to restore the person, through the combined and coordinated use of medical, social, educational and vocational measures, to the maximum level of functioning of which the person is capable or which the person wishes to achieve and includes placement in employment and all forms of social rehabilitation such as family counselling, leisure counselling and training for independent living.

The Guidelines support the philosophy that rehabilitation is the process of restoring an injured person as close as possible to their pre-injury level of functioning and to a quality of life comparable with their pre-injury level. Where function cannot be restored, the aim of rehabilitation becomes the acquisition of new functional or vocational skills.

Rehabilitation Adviser

The role of the insurer's rehabilitation adviser may include:

- Facilitating the assessment of the treatment, rehabilitation and attendant care needs of claimants;
- Facilitating access of claimants to services if considered necessary;
- Establishing whether the proposed interventions and programs are reasonable and necessary;
- Providing a point of contact for the claimant, treating practitioners and rehabilitation providers;
- Undertaking a coordinating role between all involved stakeholders;
- Advising claims officers and managers on rehabilitation issues; and
- Assisting the insurer to develop a consistent approach to decision making regarding 'reasonable and necessary'.

Insurers either employ permanent or contract health professional staff in the role of rehabilitation advisers. Rehabilitation advisers do not provide direct services to claimants.

The statements in these Guidelines are not designed to limit the scope of the role of the rehabilitation adviser. The term 'rehabilitation adviser' is used variously by the insurers. The roles and titles may vary from insurer to insurer.

Rehabilitation plan

A rehabilitation plan is a formal document which identifies the assessed needs of the claimant, the goals or outcomes to be achieved, the proposed interventions or strategies to achieve these goals, time frames for achievement, periodic evaluation and reporting, and associated costings.

Rehabilitation Provider

A rehabilitation provider delivers direct services to the claimant. A rehabilitation provider may be a multidisciplinary organisation or an individual health practitioner in either the public or the private sectors.

Service Provider

A service provider delivers direct services to the claimant. A service provider may be a multidisciplinary organisation or an individual. The services provided may include rehabilitation and attendant care.

Treatment

Treatment is defined in Section 42 of the Motor Accidents Compensation Act 1999. An insurer has a responsibility to deal with requests for treatment. These requests should be dealt with in a timely fashion with reference to 'reasonable and necessary'. CTP insurers are responsible for having a system in place for responding to such requests.

Format of the Guidelines

Phases

The revised MAA Guidelines for insurers divides the management of motor accident injuries into four phases. Claimants may move in and out of the different phases during their recovery and resettlement. The elements of treatment, rehabilitation and attendant care are addressed in each phase.

Each phase has an underpinning **principle**, followed by a **standard**. Objective **criteria** under each principle assist in the application of the **standard and in the measurement of achievement**.

Phase 1	Phase 2	Phase 3	Phase 4
Early identification of treatment, rehabilitation and attendant care needs.	Assignment of insurer's claims and rehabilitation staff.	Coordination of assessment and planning of treatment, rehabilitation and attendant care needs.	Monitoring and evaluation of treatment, rehabilitation and attendant care programs.

Principle

Each phase has a principle that outlines the basic tenet from which the standards and criteria derive. The principles are not measurable but act to encapsulate the beliefs of the particular phase.

Standard

Under each principle is a standard that is the overall standard for the phase. The criteria derive from the standard.

Criteria

The criteria are statements that act to clarify the standard and provide practical advice on implementation. In the process of self-assessment and external audit of these Guidelines, the criteria provide the basis for assessing levels of achievement or compliance.

Phase 1 Identification of treatment, rehabilitation and attendant care needs**Principle**

Early identification of the need for services optimises clinical outcomes for claimants and provides the best opportunity for cost effective treatment, rehabilitation and attendant care.

Standard

The insurer has an effective system for the early identification of the needs of claimants and for the accurate coding of their injuries.

Criteria

Policies and practices ensure:

- 1.1 A screening system is in place which identifies claimants:
 - Who may need rehabilitation services.
 - With serious injuries who may need attendant care services.
- 1.2 Health care professionals are involved in the process of screening and determining the rehabilitation and/or attendant care needs of claimants.
- 1.3 Consistency in the process of determining the need for rehabilitation and attendant care services, encompassing:
 - Use of internally agreed indicators to identify claimants in need of rehabilitation and attendant care services;
 - Accurate identification of extent and type of injury;
 - Ongoing monitoring of changing needs of claimant.
- 1.4 Any contact, including verbal, about treatment, rehabilitation or attendant care between claimants/claimant's solicitor or service providers is documented and dated in the claim file. A copy of any written correspondence must be kept on the claim file.
- 1.5 There is a file management system that ensures all claimants have a current, complete, accurate, retrievable and secure rehabilitation file encompassing all aspects of treatment, rehabilitation and attendant care.
- 1.6 All claims are coded according to the Abbreviated Injury Scale (AIS) Revision adopted by the MAA and using the 'Guidelines and Handbook for Injury Coders' published by the MAA. All Accident Notification Forms (ANFs) are coded with a Provisional Injury Code, using the 'ANF Coding Guidelines for Provisional Injury Codes' published by the MAA.
- 1.7 All AIS Injury Coders are appropriately trained by MAA approved trainers.
- 1.8 For all claims (including claims converted from ANFs):
 - The injury codes are reviewed by an injury coder throughout the life of the claim, with a maximum interval of six months between reviews. The date of each review should be noted in the claim file.
 - This regular review process may cease if the injury coder is satisfied all injuries have been coded and that it is unlikely that any further medical information which would alter the injury coding will be received. If this

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- occurs it should be clearly stated in the claim file, 'signed off' by the coder and dated.
- All claims must have been signed off by an injury coder before finalisation. The date of the sign off should be noted in the claim file.
- 1.9 For ANFs, insurers provide a provisional injury code for each ANF within one month of lodgement. The date the code is assigned should be noted in the claim file.
- 1.10 The identification of rehabilitation and attendant care needs of claimants are completed in a timely fashion.
- Initial determination and documentation of claimant's likely need for rehabilitation services within 20 working days of receipt of the claim by the insurer.
 - Regular review of the need for rehabilitation and attendant care services.
- 1.11 Written communications with claimants are:
- Personalised, tailored to the claimant's circumstances.
 - Written in plain English, understandable to the claimant.
 - Written for a specific purpose.
- 1.12 Information is sent to those claimants who have been identified as requiring rehabilitation services on the role of rehabilitation advisers; how to contact them; and their rights and responsibilities (MAA brochure 'Rehabilitation and the Motor Accidents Scheme' or insurer's own brochure with relevant information).
- 1.13 There are processes for the ongoing review of claimant files, re-assessment of their needs, and updating of injury coding.

Phase 2 Assignment of the insurer's claims and rehabilitation staff**Principle**

The assignment of claims and rehabilitation staff by the insurer promotes the provision and coordination of treatment, rehabilitation and attendant care services. Claimants requiring services need to know who to contact at the insurer and how to contact them.

Standard

The insurer assigns rehabilitation staff to claimants who may require rehabilitation and/or attendant care services in order to oversee their assessment, rehabilitation and resettlement and to facilitate effective communication between all parties.

Criteria

Policies and practices ensure:

- 2.1 A system is in place to identify claimants who should be assigned a rehabilitation adviser. For claimants who have been identified as requiring rehabilitation should have a rehabilitation adviser assigned to them within 10 working days of the identification.
- 2.2 All rehabilitation advisers have a health professional background and qualifications and rehabilitation experience relevant to the role.
- 2.3 Potential conflicts of interest are identified and addressed. Possible situations include:
 - A rehabilitation adviser who also works elsewhere as a rehabilitation provider. The rehabilitation adviser should undertake not to refer any claimants to their own service.
 - A rehabilitation adviser who is employed by a service provider. If a claimant is referred by the insurer to the service provider then the claimant should be informed:
 - Of the relationship between the insurer and the service provider.
 - That the insurer or their medical practitioner can refer the claimant to another service provider.
 - How to arrange a referral to another service provider.
 - An insurer which has an interest in a service provider. If a claimant is referred by the insurer to the service provider, then the claimant should be informed:
 - Of the relationship between the insurer / rehabilitation adviser and the service provider.
 - That the insurer or their medical practitioner can refer the claimant to another service provider.
 - How to arrange a referral to another service provider.
- 2.4 Relevant ongoing professional development, support, and performance review are provided for employed Rehabilitation Advisers, and a system of performance review is in place for contracted rehabilitation advisers.

TRAC Guidelines for Currently Licensed CTP Insurers

- 2.5 Relevant ongoing training for claims officers regarding the application of these treatment, rehabilitation and attendant care guidelines.
- 2.6 The insurer continues to meet its treatment, rehabilitation and attendant care responsibilities during periods of staff absence.

Phase 3	Coordination of assessment and planning of treatment, rehabilitation and attendant care needs
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Principle

Effective assessment and planning is essential and aims to ensure all parties involved are aware of the overall plan, their role, and the roles and responsibilities of others involved in the process.

Standard

The insurer refers claimants to appropriate providers, when necessary, for assessment of their rehabilitation and attendant care needs and responds to requests for treatment, rehabilitation and attendant care in a timely fashion.

Criteria

Policies and practices ensure:

- 3.1 A system is in place for responding to treatment requests. Feedback must be provided regarding requests for treatment within 10 working days of receipt of the treatment request by the insurer.
- 3.2 Claimants who have been identified as requiring treatment, rehabilitation or attendant care assessments or services must be referred to an appropriate provider within 10 working days of the identification.
- 3.3 Plans identifying the rehabilitation and/or attendant care needs of claimants are reviewed by rehabilitation advisers and/or designated claims officers to ensure all the needs resulting from the motor vehicle accident have been addressed in the relevant plans.
 - To facilitate the claimant's rehabilitation, the insurer should request rehabilitation plans that identify goals, time frames and progress evaluation.
 - In the case of serious injuries, the insurer should normally request attendant care plans that specify goals, time frames, specific activities, hours of care, frequency and cost of services. However, for simple domestic assistance, the attendant care plan may take the form of a simple proposal for care and/or support services to be provided to the claimant.
- 3.4 Specialised assessments are negotiated and approved according to the claimant's needs for such assessments; for example, functional, psychological and/or vocational assessments.
- 3.5 Decisions on whether the proposed plan is reasonable and necessary are informed by assessments and information from treating and independent practitioners and any other relevant and objective information.
- 3.6 Consistency in the determination of what constitutes 'reasonable and necessary' services.
 - Staff are trained in the process.
 - Monitoring and review demonstrate consistency in decision making.

-
- 3.7 Feedback to providers about the acceptability of their rehabilitation and attendant care plans within 10 working days of receipt of the plan by the insurer.
- Early discussions about any concerns relating to management plans with the relevant providers are encouraged.
- 3.8 Claimants and/or service providers are advised in writing as soon as the decision is made, but within 10 days of receipt of plan, about the rehabilitation and attendant care costs the insurer has agreed to meet. A return fax of the plan indicating the insurer's decision is sufficient.
- 3.9 Written feedback to providers clearly outlining why the insurer considers a plan, or components of a plan, not to be reasonable and necessary within 20 working days of receipt of the plan or request by the insurer.
- 3.10 When the insurer declines to pay for or terminates the claimant's treatment, rehabilitation, attendant care, equipment or modifications, it must:
- Advise the service provider by telephone or confirmed fax that they will no longer meet the costs of the service from that date or a specified future date.
 - Advise the claimant and/or solicitor immediately.
- 3.11 When the insurer declines to pay for the claimant's treatment, rehabilitation, attendant care, equipment or modifications, it must inform the claimant and/or solicitor of their options for reviewing the decision within 10 working days of the decision. (Sending the MAA brochure 'Resolving Medical Disputes' will meet this requirement.) This is not necessary if the insurer revises or negotiates a new plan which is satisfactory to the claimant.
- For accidents occurring before 5 October 1999, the options for resolving the dispute are to refer the matter to:
 - The insurer's internal complaints and disputes processes, and
 - The Motor Accidents Authority
 - For accidents occurring on or after 5 October 1999, the options for resolving the dispute are to refer the matter to:
 - The insurer's internal complaints and disputes processes, and
 - The Motor Accidents Assessment Service of the MAA.

Phase 4	Monitoring and evaluation of treatment, rehabilitation and attendant care programs
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Principle

Ongoing monitoring and evaluation ensures that treatment, rehabilitation and attendant care programs continue to address the needs of claimants to maximise their independence.

Standard

The insurer has an effective system for monitoring the progress of claimants and for reviewing their continuing treatment, rehabilitation and attendant care needs and achievement of agreed outcomes.

Criteria

Policies and practices ensure:

- 4.1 The claimant's progress is documented and regularly monitored by the rehabilitation adviser and/or the designated claims officer.
 - The insurer should establish a system governing the regular submission of reports by providers, the level of detail required and evidence of the claimant's progress according to their individual plans and agreed outcomes.
 - Time frames for submission of progress reports may vary according to the nature of service and the nature and complexity of the claim.
- 4.2 When there is a need to coordinate services or when there are differences of opinion about claimants' programs, the insurer considers the use of case conferences involving rehabilitation advisers and/or providers, treating practitioners, attendant care agencies and claimants.
- 4.3 The insurer achieves the following timelines:
 - a) Equipment requests acknowledged within 10 working days of receipt of request.
 - b) A written response to equipment requests indicating approval or rejection within 20 working days of receipt of request.
 - c) Home modification requests acknowledged within 10 working days.
 - d) A written response to home modification requests indicating approval or rejection within three months.
- 4.4 Approved treatment, rehabilitation, attendant care and equipment accounts paid within 20 working days of receipt.
- 4.5 There is the opportunity to review and/or reopen any case after completion of rehabilitation programs and prior to settlement where there has been a change in circumstances.
 - There should be an appropriate follow-up system in place where review of a case after 6-12 months is indicated.
 - The review and reopening of cases should be in accordance with established criteria.
 - There must be an appropriate monitoring system to review all claim files where there may be a change in circumstances. All claims involving either a spinal cord or brain injury must be reviewed at least every six months. For

example, when a transition between education facilities (i.e., between primary and high school), or from education to employment, is imminent for claimants with head injuries or spinal cord injuries.

Code of Practice for the fluoridation of public water supplies

Fluoridation of Public Water Supplies Act 1957

**Oral Health Branch
NSW Department of Health**

August 2002

Table of Contents

1. Introduction - water fluoridation	1
2. Legislative framework and role of the Code of Practice	2
3. Structure of the Code of Practice document	3
4. Application and approval to fluoridate	4
5. Design controls for fluoridation facilities	6
6. Occupational health and safety	14
7. Environmental safety	18
8. Control of fluoridating agent	21
9. Measurement of fluoride in the treated water	23
10. Plant operation and process control	26
11. Reporting requirements	31
12. Operator training and qualification	34
13. Records keeping and availability	35
14. Quality assurance and auditing	36
Glossary of Terms	37
Appendix A Protocol and Application Form 1	
Appendix B Fluoridation records: Forms 2 to 4	
Appendix C Generic Fluoridation Plant Process and Instrumentation Diagrams	
Appendix D Sample fluoride measurement Standard Operating Procedure (SOP)	

Contacting NSW Health

Contact the NSW Health Water Unit for further information on the Code of Practice. The Water Unit will refer enquiries to Chief Dental Officer for consideration as appropriate. Correspondence should be addressed to:

Manager, Water Unit
NSW Department of Health
PO Box 798
GLADESVILLE NSW 2111

Telephone 02 9816 0589 Fax 02 9816 0377 email: waterqual@doh.health.nsw.gov.au

1 Introduction - water fluoridation

Fluoridation of drinking water at optimal levels remains the most significant dental public health program in New South Wales and Australia. Water fluoridation delivers the most effective, cost effective and socially equitable means of achieving community wide exposure to the dental caries (decay) preventive effects of fluoride. The optimal level of fluoridation is the level of fluoride in the community water supply that is associated with the maximum reduction of dental decay in the population and the minimal occurrence of any adverse dental effects.

Australian children had among the highest level of dental decay experience in the 1940s and 1950s with only 1 per cent of 12-year-old children free of dental decay. The level of dental decay began to decrease in the mid 1960s coinciding with the introduction of water fluoridation and the use of fluoride toothpaste. By 1993 over half of the children in Australia had no experience of dental decay. Today, only a minority of children in Australia experience dental decay. The percentage decrease in disease prevalence attributed to water fluoridation was 70 per cent, while 26 per cent was attributed to fluoride toothpaste and only 2 per cent to fluoride tablets (Spencer 1986). In adults, water fluoridation has also contributed to improving oral health and decline in edentulism (no natural teeth remaining in the mouth).

The advantage of water fluoridation is that the entire community benefits from the preventive measure, regardless of age, socioeconomic level, educational achievement, individual motivation, or the availability of a dental workforce. Water fluoridation is one of the few public health measures that results in true cost savings (ie the measure saves more money than it cost to operate). As early as 1958, the World Health Organisation has recognised the importance of water fluoridation and has repeatedly endorsed the fluoridation of drinking water as a desirable public health policy based on numerous scientific studies carried out throughout the world. As a result of the oral health and economic benefits it confers, water fluoridation has also been endorsed and recommended by more than 150 scientific, health and political organisations throughout the world including the National Health and Medical Research Council of Australia. The National Health and Medical Research Council has recently conducted extensive reviews of recent literature in Australia and overseas and concluded that water fluoridation at optimal levels continues to provide significant benefits in the prevention of dental caries. The National Health and Medical Research Council and the Australian Water Resources Council have jointly recommended ranges for fluoride concentration in drinking water based on the annual average maximum daily air temperature to secure most of the dental caries preventive effect, with no or minimal adverse dental effects. Communities that have ceased water fluoridation have a demonstrated increase in dental caries experience. There is also no evidence of adverse health effects attributable to fluoride in communities exposed to a combination of appropriately fluoridated water and discretionary sources of fluoride (such as that obtained from fluoride toothpastes).

Spencer A.J. (1986) Contribution of fluoride vehicles to change in caries severity in Australian adolescents *Community Dent Oral Epidemiol* 14:238-41

2. Legislative framework

Legislation providing for water fluoridation in New South Wales is described as permissive or enabling legislation. The legislation, first passed in 1957 (Fluoridation of Public Water Supplies Act 1957), permits the NSW Department of Health to define the conditions when fluoride may be added to a water supply. The Act provides for the establishment of the Fluoridation of Public Water Supplies Advisory Committee with the power to initiate and refer to the Minister proposals concerning the addition of fluoride to public water supplies. The Fluoridation for Public Water Supplies Regulation 2002 under the Fluoridation of Public Water Supplies Act 1957 deals with the procedures for keeping records of the addition of fluoride, analysing the water for fluoride content, qualifications of the operators, as well as precautions to be taken by water supply authorities to protect the operators.

The Code of Practice includes generally technical material, which has not been specified in the Act or in the Fluoridation of Public Water Supplies Regulation 2002. The material in this Code therefore either forms part of the regulatory framework which water supply authorities that fluoridate are required to follow, or is part of an advisory guide to water supply authorities as to the source of other relevant material or legislation (such as that governing occupational health and safety).

The NSW Department of Health recognises that water fluoridation, when implemented, must be effectively managed to achieve maximum oral health benefits and to minimise any risks associated with water fluoridation. The aim of this Code of Practice is to achieve best practice in the establishment and operation of fluoridation plants in New South Wales, in order to meet the technical, occupational health and safety, and environmental requirements of the relevant legislation. It applies to all new and existing plants in New South Wales and it is the responsibility of the fluoridating water supply authorities to ensure that they comply with this Code of Practice.

There are potential aesthetic, health and environmental risks associated with the use of fluoridation chemicals. These risks need to be effectively managed. The application of risk control measures should be applied systematically to all identified risks based on a hierarchy of control.

The Fluoridation of Public Water Supplies Act and the associated Regulations and this Code of Practice are the key documents for the communication and implementation of this risk control strategy. This Code of Practice is a supporting document to the Fluoridation of Public Water Supplies Act and associated Regulations prepared by Department of Health to assist water supply authorities in interpreting and complying with the Act and Regulations. This Code of Practice will be updated from time to time as considered necessary by the NSW Department of Health in consultation with key stakeholders.

The NSW Department of Health is committed to improving the oral health of all New South Wales' population and continues to strongly support water fluoridation as an important public health policy.

3 Structure of the Code of Practice document

This Code of Practice covers a number of areas. Within each area there will be statements of the *Outcomes* required within those areas. These *Outcomes* are the fundamental intent of the controls required in this Code of Practice, and as such, should remain the focus of Water Supply Authorities at all times.

Under these *Outcomes* will be listed various requirements which are considered necessary to achieve the required *Outcomes*. These requirements are in effect *Minimum Standards*. All *Minimum Standards* must be complied with unless NSW Health has approved otherwise.

Simple compliance with these *Minimum Standards* however, does not relieve the fundamental requirement for a Water Supply Authority to focus on achieving the stated *Outcomes*. Compliance with the *Minimum Standards* and achievement of the stated *Outcomes* are the basis on which NSW Health will assess whether a Water Supply Authority meets the requirements of the Fluoridation Act and Regulations.

In some places there will be *Guide Notes* that are inserted to more fully explain a specific requirement. These *Guide Notes* may also include suggestions for improving performance or reducing risk beyond the Minimum Standard requirements for consideration by Water Authorities. The *Guide Notes* are not legislative requirements under the Fluoridation Act but rather a means of providing further clarification, lessons learnt from past experience, and an indication of current best practice as appropriate.

Within this document:

3.1.1 Required Outcomes are printed in bold typeface.

3.1.1.1 Minimum Standards are listed under an Outcome in italic typeface.

Guide Notes are indented under the Minimum Standards in plain typeface.

4 Application and approval to fluoridate

4.1 New Applications to Fluoridate a Water Supply

4.1.1 Systematic and appropriate risk control measures are in place at each fluoridation facility within NSW to minimise the potential for over and under dosing of fluoride

4.1.1.1 A Water Supply Authority shall obtain approval from NSW Health prior to fluoridating any water supply.

The process for a Water Supply Authority to gain an approval to fluoridate is set out in the protocol, and Application Form 1 attached as Appendix A. This process includes the initial application, the detailed design of the fluoridation plant, through to commissioning of the plant.

It is expected that a Water Supply Authority would have carried out a public consultation process prior to the Application to Fluoridate being made to NSW Health.

As part of the process, NSW Health may, at its discretion, consider a request for subsidy towards the cost of a new plant up to a limit of “dollar for dollar” of direct capital costs (that is, not including project management or other overhead costs).

4.1.1.2 A Water Supply Authority shall not commence fluoridating until a formal Instrument of Approval is received from NSW Health and all NSW Health requirements are in place and operational.

The formal Instrument of Approval from NSW Health will specify:

- The name of the Water Supply Authority
- The water supply to be fluoridated
- The fluoridation plant name and location
- The design water flow range to be treated.
- The allowable fluoride concentration operating range
- The plant fluoride concentration operating target dose rate
- The fluoridating agent(s) that can be used
- Any conditions of approval (eg the Water Supply Authority shall not permanently cease fluoridation without the express approval of NSW Health).
- Any additional plant-specific requirements.

4.1.1.3 A Water Supply Authority must not commence fluoridation of a water supply prior to the consumers within that supply area being given adequate warning of the commencement date.

It is important that consumers are aware of the intention to fluoridate, both in terms of keeping the public informed, and to prevent excessive intake of fluoride by those who may currently be taking fluoride tablets.

4.2 Fluoridation Plant and Water Supply System Upgrades

4.2.1 Initial design risk control measures shall not be degraded through subsequent modifications of the fluoridation plant and/or the water supply system.

4.2.1.1 For any water supply system capacity upgrade or major fluoridation plant upgrade, NSW Health must be consulted in advance and, if required by NSW Health, the Water Supply Authority must submit a new Application to Fluoridate form (refer to Appendix A).

Where a Water Supply Authority replaces equipment items within a fluoridation plant, without changing the sizing of the equipment or negatively impacting on any existing control measures (eg. interlocks etc) then NSW Health need not be informed.

It is good practice however to maintain a record of all changes made to the fluoridation plant (eg. in a plant register, or via maintenance management systems).

4.2.2 Relevant staff of a Water Supply Authority have an awareness of the key design risk control measures to prevent over and under dosing of fluoride.

4.2.2.1 The Water Supply Authority shall display a current copy of the Instrument of Approval at the plant, and provide relevant staff with easy access to a copy of this Code of Practice.

A visible “approval document” helps maintain staff awareness of key control limits on the fluoridation plant design and that NSW Health has a direct interest in its operation.

The Code of Practice provides a useful educational tool and easy reference source.

4.3 Permanent Cessation of Fluoridation of a Water Supply

4.3.1 The community receives water that is fluoridated to the optimal level so that oral health is not compromised.

4.3.1.1 A Water Supply Authority shall not permanently cease fluoridating a water supply without the written approval of NSW Health

This requirement does not refer to short-term stoppages due to breakdowns or maintenance work – refer to Section 11.

5 Design controls for fluoridation facilities

5.1 General Design Criteria

5.1.1 The design of the fluoridation plant shall ensure it can consistently achieve an overall accuracy of within $\pm 5\%$ of the required fluoride target dose rate over the full water flow rate range approved by NSW Health. For example, to consistently achieve between 0.95 to 1.05 mg/L of fluoride in the treated water for a target of 1.00 mg/L F.

5.1.1.1 The fluoridation chemical feeding equipment shall be designed to dose fluoride at the target dose rate specified in the Director General's Instrument of Approval within $\pm 5\%$ over the full water flow rate range approved by NSW Health.

5.1.1.2 Water flowmeter(s) must be provided to measure and integrate the water flow, and to pace the fluoride dosing equipment where the plant design calls for such, over the full water flow rate range approved by NSW Health.

A flow meter must be provided to measure the water flow. This is critical to the accuracy and reliability of the whole process. Where possible the use of electromagnetic flowmeters is recommended as they can achieve an accuracy of $\pm 1-2\%$ of rate over a large turn down range.

5.1.2 The design of the fluoridation plant shall ensure reliable automatic operation. That is, it must reliably stop and start with the water flow being dosed.

5.1.2.1 Two discreet physical indications of water flow shall be 'hard' wired in series, either directly or via PLC (programmable logic controller) coding, in the control loop for starting and stopping of the fluoridation plant. One indication shall be from upstream of the fluoride injection point and one shall be downstream.

Reliance on a single primary flow sensing device (eg. flow switches, flowmeter etc) can significantly increase the risk of overdosing, as a fault/failure could lead to the fluoridation plant continuing to dose after the water flow as actually stopped. The use of two devices in series should significantly reduce this risk, as it would require both devices to give false positive readings at the same time. The failure of one of the devices will stop the fluoridation plant dosing when it should, but this is a much more acceptable situation than overdosing which could create an acute health risk – refer Section 11 re short term stoppages. Care should be taken in selecting the most appropriate devices for this duty (eg. flow switches have a significant history of sticking) Use of flow sensing devices, which are remote to the fluoridation plant via telemetry, may have a higher risk of failure.

5.1.2.2 All key components of the fluoride dosing system shall be electrically interlocked to ensure total fluoride dosing system shutdown on the failure of any individual equipment item.

It is good design practice for discrepancy alarms and interlocks to be provided where possible to minimise the possibility of overdosing. A risk assessment of the possible causes of overdosing should be carried out on the plant design and, where feasible, appropriate interlocks and alarms designed into the system. This will minimise both, the risk of overdosing occurring, and the length of time for which the condition exists before plant staff intervention. This assessment should be documented, stored, and made available upon request.

The key components would include stop/start/pacing signals, feeders, dosing pumps, solution transfer pumps, solution tank levels, mixers, dilution water pumps etc.

The failure of any key component should result in alarms being generated and operational staff responding.

5.1.2.3 Any solution water supply shall have a backflow prevention device fitted upstream of where the fluoridating agent is diluted (eg mixing tanks) or injected (eg dosing pumps). Where relevant the device should comply with the current Australian Standard.

It is important that fluoridating agent is not syphoned backwards into the solution water system should a failure of the solution water system occur. This possibility could cause problems to other equipment, create a health hazard, or result in an environmental release. In some situations this can be achieved simply through use of an air gap.

5.1.2.4 For dry fluoridating agent systems a water softener should be included if the solution water hardness exceeds 75 mg/L as calcium carbonate.

If the solution water is too hard then operating problems due to precipitation of calcium fluoride may cause operational problems and result in variation in the treated water fluoride concentration.

5.1.3 The design of the fluoridation plant shall minimise the risk of overdosing due to human error wherever possible.

5.1.3.1 The maximum physical dosing capacity of the fluoridation chemical feeding equipment shall be limited by design to a maximum value equivalent to 110% of the operating target dose rate specified in the Director General's instrument of approval at the maximum water flow rate approved by NSW Health.

5.1.3.2 It shall be made physically impossible for any component of the fluoridation feeding or control equipment to be manually plugged into standard electrical outlets for continuous operation.

It is not uncommon for dosing pumps, electrical controls etc at small plants to be wired with standard single or three phase power plugs to facilitate removal for maintenance by non-electrical staff.

Unfortunately, in terms of overdosing risks, this significantly increases the reliance on the human factor as the equipment could be easily left operating continuously independent of the water flow.

5.1.3.3 Any manual mode (or 'test') switch for the fluoridation chemical feeding equipment shall not permit permanent selection (eg spring loaded switches) and must return to the off position when released to prevent unattended manual operation.

Manual operation of equipment needs to be carefully controlled as it is totally reliant on the human factor. For example the ability to plug a dosing pump directly into a power outlet and operate it manually creates a high risk of overdosing should the plant flow stop and the operating staff be unaware of it, or if they simply forget to turn it off.

This requirement is focussed on the design of local control panels. Where PLC/SCADA (supervisory control and data acquisition) systems are provided then the Water Supply Authority may need to consider other controls in the PLC and SCADA software to minimise this risk. The approach to be taken may need to be negotiated with NSW Health.

5.1.4 The design of the fluoridation plant shall provide plant operational staff with all that is required to measure and control the fluoridation process (and equipment) accurately and consistently in a timely manner.

5.1.4.1 The plant design must provide the ability to measure:

- *the instantaneous water flow and fluoride dose rates*
- *the total amount of water treated and fluoridating agent used over a 24 hour period*

The calculation of instantaneous and average 24 hour calculated doses shall not have errors greater than $\pm 5\%$

The use of large storage tanks, inappropriately designed drop test tubes, and poor choice of integrated water flow units can significantly increase measurement errors to a point where they become meaningless for daily process control.

Not providing plant operators with the ability to accurately monitor their plant performance is counter productive and only increases risk to the Water Supply Authority and consumers.

5.1.4.2 All necessary local indications shall be provided to allow the operator to assess whether the process and equipment are running satisfactorily.

Not providing plant operators with the ability to accurately monitor their plant and equipment performance is counter productive and only increases risk to the Water Supply Authority. Local indicators which need to be considered would include water flow, integrators,

fluoridating agent feed rate, pressure and level indicators, storage levels, equipment status, alarms, ammeters, hours run, etc.

5.1.5 The design of the fluoridation plant shall provide a safe working environment and facilitate safe working practices to protect both plant operations staff and the public (refer also to Section 6).

5.1.5.1 Where hydrofluosilicic acid is used electrical control cubicles for the fluoridation plant shall be located to minimise deterioration due to corrosion and to minimise the need for staff to enter the fluoridation room.

This requirement is focused on minimising the need for entry into the fluoridation plant room for operational and maintenance staff, and reducing risk to the fluoridation process due to breakdowns from increased corrosion problems (particularly plants using hydrofluosilicic acid), as well as improving general asset life of the control equipment. It is suggested that the control cubicles should be in a separate room beside the room containing the fluoridating agent dosing equipment. The two rooms would have separate entry doors, a window in the common wall but no inter-connecting door or other means of air to pass between the rooms (eg unsealed electrical conduits or chases). The location/orientation of the control cubicles and fluoride dosing equipment should allow operators to have a clear view of the dosing equipment when operating the control panel.

5.1.5.2 The installation (eg. relative locations, mounting height, all round access etc.) of all equipment, valves, controls and access points shall facilitate easy access for all expected operational and maintenance requirements.

Careful thought needs to be given to the finished physical layout of equipment within the fluoridation plant room (ie. the sum of the design and the installation phases) so that safety risks are minimised. This includes providing clear access to equipment for both operational duties as well as for maintenance staff. For example, not creating trip hazards, or locating items which people may walk into or hit their head on, locating all valves and controls such that they are easily accessible and operated, etc.

5.1.5.3 Where a dry fluoridating agent is used there must be an appropriate dust extraction system(s) to prevent escape of powder into the fluoridation room and to maintain an acceptable breathing atmosphere. The dust extraction equipment shall operate from the time the bags are opened to when it is dissolved into water as a minimum.

The design of the dust extraction systems should take into account the total process from when the bags are unloaded into storage hoppers, powder transport from the hoppers to the feeders and from the feeders into the dosing solution.

In some situations the use of two dust extraction systems may need to be considered – one for the bag loading and hopper equipment, and one for the atmosphere in the fluoridation room.

5.1.5.4 Where a dry fluoridating agent is used the design of the fluoridation plant room shall remove any potential for build up of powder from air deposition over time wherever possible.

The design of the fluoridation room should ensure:

- smooth ceilings and walls coved to the floor (eg. brick walls would need to be rendered smooth) and painted with gloss paint,
- no horizontal or gently sloping surfaces such as window ledges or steel beams,
- smooth cement floor (but including some appropriate preparation to provide a non slip surface eg steel trowelled incorporating carborundum) sloped to a drain or sump,
- use of flush surfaces (eg. windows and doors flush with walls, design of internal structures and equipment mountings etc.)

5.1.5.5 Where hydrofluosilicic acid is used the associated corrosive fumes shall be removed from the fluoridation plant room via mechanical ventilation and venting of fume sources (eg. internal storage tanks) to an appropriate outside location.

Hydrofluosilicic acid is quite corrosive and will give off acidic fumes, which will both affect the atmosphere in the fluoridation plant room as well as significantly increasing corrosion rates of equipment in the room. Firstly the source of fumes from any permanent internal storage tank should be minimised through sealing of the tank, extending the vent outside the building, and possibly putting a water seal on the tank overflow outlet (if the bunded area is internal to the room). Similarly drop tubes and pressure relief lines etc need to be enclosed and piped back to the main storage or day tanks. Secondly an acid resistant exhaust fan should be installed to remove the fumes from the fluoridation plant room. The location of the fan and room vents should be chosen to maximise cross flow ventilation of the room.

5.1.5.6 The fluoridation room shall be designed to allow easy cleaning and removal of spilt fluoridation chemical through hosing down of the lower walls and floor. Refer to Section 7 below concerning requirements on the fate of this water.

A tap and hose should be provided in the fluoridation plant to facilitate cleaning and decontamination of spilt fluoridating agent as required. If any liquid waste is collected in a bunded area then a sump should be provided to allow complete removal via a sump pump. The location of the sump shall not require access into the bunded area to operate, and preferably should be at an accessible edge of the bunded area if feasible.

5.1.5.7 Where a dry fluoridating agent is used, the design of the plant shall minimise the need for any manual handling. Where manual handling is appropriate the design shall minimise the number of lifts required, the amount of bending, and the distance and height through which bags are lifted.

The design should consider the use of hand operated pallet forklifts, the matching of the height of the fluoride loading floor with the tray of the delivery truck, use of self raising pallet systems to maintain the same 'lifting' level as bags are taken off a pallet for loading into the storage hopper – this minimises the need to bend further the emptier the pallet becomes.

5.1.5.8 Access to the fluoridation room shall be restricted through provision of a security locking system.

Control of access to the fluoridation chemicals and dosing equipment is an effective control measure to minimise risks to untrained staff and the public, as well as minimising the potential for unauthorised changes to the fluoridation dose rate.

5.1.5.9 Appropriate signage shall be provided to indicate the presence of the fluoridating agent, and that authorised entry only is permitted.

Signage is required under various legislation (Dangerous Goods Act 1975, OH&S Act 2000, and associated Regulations) depending on the chemical and quantities stored.

5.1.5.10 Fluoride shall not be allowed to flow to lagoons where supernatant is returned to the head of the works.

It is not uncommon for general drainage from chemical handling areas etc to flow to sludge lagoons as a way of providing emergency containment. In the event of a major spill this arrangement can lead to overdosing of the treated water if the plant returns its supernatant to the head of the works. This requirement refers primarily to handling of fluoridating agent spillages and does not apply to fluoridated treated water used to backwash filters.

5.1.5.11 The plant design shall allow for any requirements identified under Section 6 of this Code.

5.1.6 The design of the plant shall minimise the risk of fluoridating agents escaping to the environment (refer also to Section 7).

5.1.6.1 Where a liquid fluoridating agent is used then appropriate bunding shall be provided to contain any spillage. The design of bunding must facilitate the safe removal of any spillage.

Design of environmental containment should take into consideration the potential spillage volumes during delivery and unloading, the maximum volumes stored on site, the volume that may spill if the dosing pump suction or delivery pipe work should fracture. Apart from being easier for operational staff, the provision of accessible pump out sumps to allow effective removal of spills can also be an important safety requirement.

5.1.6.2 Where dry fluoridating agents are used powder should not be allowed to escape from the fluoridation room to the external atmosphere.

The use of doors with rubber seals and airtight windows should be considered. The use of dust extraction should effectively deal with this issue.

5.1.6.3 The location and design of absorption trenches shall not allow fluoride to be carried into a water supply well or be a hazard to stock or local wildlife.

The use of absorption trenches should be considered a last resort for disposal of concentrated fluoride spillage.

5.1.6.4 The plant design shall allow for any requirements identified under Section 7 of this Code.

5.1.7 The fluoridation plant complies with all legislative requirements.

5.1.7.1 The Water Supply Authority shall ensure the fluoridation plant complies with all legislative requirements.

The Fluoridation Act, Regulation and Code of Practice does not contain or reference all legislative requirements that a Water Supply Authority may have to comply with in the design, construction and operation of a fluoridation plant (for example building codes). The responsibility for identification of, and compliance with, relevant legislative requirements lies with the Water Supply Authority.

5.2 Description and specific requirements for typical Fluoride Feed Systems

Typically four generic types of fluoride dosing systems are in use. Generic fluoridation plant process and instrumentation diagrams are contained in Appendix C. The choice of which to use includes issues such as size, availability of fluoridating agent, costs, staffing availability/limitations, ease of operation, management limitations etc. The minimum requirements for each of these four are described below:

5.2.1 Dry fluoridating agent feed systems

5.2.1.1 Dry fluoride feed systems shall include a dust extractor system, a bag loader, a storage/feed hopper, a volumetric or gravimetric dry feeder, a dissolving tank with mechanical stirrer, a weight loss system to monitor the weight of fluoridating agent used, a potable or filtered dilution water source, and a solution transfer pump (if not gravity fed).

5.2.1.2 For this type of system a direct dust extraction capability from the bag loader when it is opened for manually filling the storage hopper must be available.

5.2.1.3 *The storage hopper must have a minimum capacity of 36 hours operation at the maximum water flow rate approved by NSW Health.*

5.2.1.4 *The dry feeder, tank solution level, mixer, and transfer pump must be electrically interlocked to ensure total fluoride dosing system shut down.*

5.2.2 Fluoride solution feed systems

5.2.2.1 *Fluoride solution feed systems shall include two batching tanks with mechanical mixers, a dilution water meter, a potable or filtered dilution water source, a graduated calibration tube, and a metering pump with pressure relief and a loading valve on the delivery side of the pump.*

5.2.2.2 *Each batching tank must have a minimum capacity of 36 hours operation at the maximum water flow rate approved by NSW Health.*

5.2.2.3 *The solution tank and the metering pump must be electrically interlocked to ensure total system shut down when the tank is empty.*

5.2.3 Fluoride saturator systems

5.2.3.1 *Fluoride saturator systems shall include a saturator tank with powder support media, a bag loader system, a dilution water meter, a potable or filtered dilution water source, a graduated calibration tube, and a metering pump with pressure relief and a loading valve on the delivery side of the pump.*

5.2.3.2 *The saturator tank must have the ability to visually check the level of undissolved fluoridating agent in the tank.*

5.2.4 Hydrofluosilicic acid dosing systems

5.2.4.1 *Hydrofluosilicic acid dosing systems shall include either:
For small plants a direct feed arrangement from carboys/drums, a weighing platform for the acid container, a graduated calibration tube, a metering pump with pressure relief and a loading valve on the delivery side of the pump, and a potable or filtered dilution water source, or
For larger plants a bulk storage tank, a day tank, weighing platform for the day tank, a graduated calibration tube, a metering pump with pressure relief and a loading valve on the delivery side of the pump, and a potable or filtered dilution water source.*

5.2.4.2 *Carboys, drums, day tanks, indoor bulk storage tanks, and graduated calibration tubes should be sealed and vented back to the bulk storage tank, or directly to the outside of the fluoridation plant building.*

6 Occupational Health and Safety

6.1 Primary Requirement

6.1.1 The Water Supply Authority shall provide a safe working environment and safe working practices for both plant operators and untrained staff/public.

7.1.1.1 The Water Supply Authority must comply with the Occupational Health and Safety Act 2000, the Dangerous Goods Act 1975, and associated regulations (Occupational Health and Safety Regulation 2001, Dangerous Goods (General) Regulation 1999).

These Acts and Regulations will impact all aspects of the fluoridation plant, including design, operational and maintenance procedures, training, auditing, and record keeping. Water Supply Authorities need to regularly review the requirements of these Acts and Regulations to ensure compliance.

In the area of safety, and the handling and storage of dangerous goods, these Acts and Regulations will have precedence over the Fluoridation Act, Regulation and Code of Practice. If clarification is required in these areas then WorkCover NSW will provide the defining interpretation. On this basis no other minimum standards are stated under this section.

The following guide notes in this section of the Code however provide a basis for a water supply authority to assess what control measures it should employ to manage occupational and safety risks associated with fluoridation systems. The issues and control measures discussed are focussed on meeting some of the key elements of the Acts and Regulations involved. They are in no way exhaustive, and the use of these control measures in no way infers that this is sufficient to comply with these Acts and Regulations.

The issues and control measures discussed are presented under the following dot points:

- ◆ The Water Supply Authority should carry out and document a site-specific safety hazard risk assessment covering all aspects associated with the design and operation of the fluoridation plant. Where risks are identified appropriate control measures (based on the hierarchy of controls) should be implemented.

Based on the hierarchy of controls hazards should be eliminated wherever possible, followed by use of engineering controls. Fluoridation plant designers should only rely on personal protective equipment as a risk control measure as a last resort.

Where feasible the involvement of a range of people in the hazard assessment (eg plant operators, managers and technical experts etc) may provide an improved end result over that achieved by one person. Such hazard assessments should be done as part of the design and commissioning processes for new plants.

The hazard risk assessment for the fluoridation plant and the effectiveness of implemented control measures should be reviewed on a regular basis.

- ◆ The Water Supply Authority should control access to the fluoridation plant and equipment in order to minimise the risk of untrained staff or public being injured.

The fluoridation plant (plant room/building, fluoridating agent storage areas) should be of sufficiently solid construction to minimise the risk of unauthorised entry. These areas should be kept locked when unattended to prevent unauthorised entry.

In particular the carrying out of maintenance work needs to be controlled to prevent injury to maintenance staff. Determining control measures under this requirement should normally be considered at the same time as those required for protecting the process from being impacted (refer Section 11.2). Best practice would involve the use of some form of work permit system that includes a systematic hazard risk assessment of the work to be done.

In this regard the operator and the maintenance staff should assess the hazards together and agree on any special controls required while the work is being carried out (eg isolation of the storage tank, draining or release of pressure in dosing pumps and lines, mechanical and electrical isolation, use of personal protective equipment, not working alone, etc). The degree of control required may also reflect the knowledge and training of the maintenance staff (eg. are they experienced internal staff, under long term maintenance contracts, or “one off” contractor who has never previously been to the plant etc).

- ◆ The Water Supply Authority should ensure standard operating procedures required by this Code include all relevant safety requirements (refer Section 11.2).
- ◆ The Water Supply Authority should ensure the plant operators are adequately trained as to the hazards associated with the fluoridating agent, and should ensure a current Material Safety Data Sheet for the fluoridating agent is easily available to staff on site at all times.
- ◆ The Water Supply Authority should ensure the atmosphere in any area where the fluoridating agent is stored or used is acceptable for staff to work in. For dry fluoridating agents the fluoride dust concentration should not exceed the recommended exposure limit specified by the National Occupational Health and Safety Commission.

The current recommended exposure limit is 2.5 mg/m³. These exposure limits are called up by the OH&S 2000 Act and associated Regulation.

This requirement will generally require dust extraction for both the fluoridation plant room and any powder bag loader in order to comply (typically two separate units). If the Water Supply Authority is concerned about the air quality air sampling and analysis can be performed. Experience to date would tend to indicate air testing would not be required on a routine basis if the fluoridation plant were operating as designed. For hydrofluosilicic acid plants exhaust fans should be used to ventilate the fluoridation plant room. This will not only benefit the air quality for staff but should also reduce corrosion rates due to the acidic fumes.

- ◆ The Water Supply Authority should ensure operators are supplied with appropriate personal protective equipment, and that operators are trained in its use.

When selecting appropriate PPE consideration of the following items should be included:

- Elbow length impervious rubber or plastic gloves,
- Long sleeve shirt, trousers, and full length impervious rubber or plastic apron, or as an alternative, a disposable full suit system,
- Impervious rubber or plastic boots
- for plants using dry fluoridating agents, a full face mask with type 3 respiratory filters (as per AS/NZS 1715 1994), or as an alternative, a chemical goggle and a half mask with P3 type respiratory filter (as per AS/NZS 1715 1994)
- for plants using liquid fluoridating agents, a full face shield or splash proof safety goggles

Where respirators are used it is important that they are changed regularly and that an adequate stock of filters are kept on site. Irrespective of condition filters should be changed after 13 weeks of usage.

- ◆ The Water Supply Authority should provide adequate routine washing and emergency eyewash/shower decontamination facilities at the fluoridation plant site using a potable water supply.

Emergency eyewash/showers should be available where ever fluoridating agents are stored and handled. The water supply to these units should be permanently connected. The supply pipe work should not create additional risks (eg burns due to pipe work being exposed to the direct sun etc).

When handling fluoridating agents PPE and clothing can become contaminated, particularly in plants using dry fluoridating agents. It is important that PPE, and clothing in particular, is routinely cleaned and kept free of contamination due to the fluoridating agent (eg rinsing of rubber/plastic equipment, washing of clothing etc).

Care should also be taken in preventing any fluoridating agent contamination being carried into other parts of the plant where staff/public frequent, such as control rooms, lunchrooms, vehicles etc. This may necessitate changing clothing after handling the fluoridating agent.

Similarly operators should be aware of the importance of effectively removing any fluoridating agent on their hands. The use of soap and nail brushes after contact with dry fluoridating agents is suggested.

7 Environmental safety

7.1 Primary Requirements

7.1.1 The environment is protected from impact due to the fluoridation plant.

7.1.1.1 The Water Supply Authority must comply with the Protection of Environment Operation Act 2000, the Dangerous Goods Act 1975, and associated regulations (Regulation 2001, Dangerous Goods (General) Regulation 1999).

These Acts and Regulations may impact all aspects of the fluoridation plant, including design, operational and maintenance procedures, training, auditing, and record keeping. Water Supply Authorities need to regularly review the requirements of these Acts and Regulations to ensure compliance.

In the area of protection of the environment these Acts and Regulations will have precedence over the Fluoridation Act, Regulation and Code of Practice. If clarification is required in these areas then the NSW Environment Protection Authority and WorkCover NSW will provide the defining interpretations. On this basis no other minimum standards are stated under this section.

The following guide notes in this section of the Code however provide a basis for a water supply authority to assess what control measures it should employ to manage environmental risks associated with fluoridation systems. The issues and control measures discussed are focussed on meeting some of the key elements of the Acts and Regulations involved. They are in no way exhaustive, and the use of these control measures in no way infers that this is sufficient to comply with these Acts and Regulations.

The issues and control measures discussed are presented under the following dot points:

- ◆ The Water Supply Authority should carry out and document a site-specific environmental hazard risk assessment covering all aspects associated with the design and operation of the fluoridation plant. Where risks are identified appropriate control measures (based on the hierarchy of controls) should be implemented.

Where ever possible hazards should be eliminated, followed by use of engineering controls. Reliance on procedural controls alone should be a last resort.

Where feasible the involvement of a range of people in the hazard assessment (eg plant operators, managers and technical experts etc) may provide an improved end result over that achieved by one person.

Such hazard assessments should be done as part of the design and commissioning processes for new plants.

The hazard risk assessment for the fluoridation plant and the effectiveness of implemented control measures should be reviewed on a regular basis.

- ◆ The Water Supply Authority should ensure the fluoridation plant and equipment is designed and operated to both minimise the risk of fluoridating agent spills or leaks and to contain any spills or leaks should they occur.

The fluoridating agent should be stored in a designated storage area separate from other chemicals. The Dangerous Goods Act and Regulation specify various requirements on storage (administered by WorkCover NSW) of the fluoridating agent, such as bunding, signage, and licensing.

In designing the fluoridation plant, the inclusion of all elements containing concentrated fluoridating agent handling (including the feeding equipment) in the storage bund area may be an effective way of reducing environmental risks.

Where powdered fluoridating agents are used then both the bag loading equipment and the fluoride plant building atmospheres should be contained and filtered. If powder is spilt then it should be removed either by hosing down, or preferably by vacuuming rather than by sweeping.

The plant design must also take into consideration the fluoridating agent transport and unloading risks, which can be substantial.

Drainage of the unloading area may be needed.

Where procedural controls are to be used they should be included in the routine operational SOPs (refer to Section 11.2).

Where appropriate an emergency response plan should also be developed (refer to Section 11.3).

- ◆ The Water Supply Authority should control access to the fluoridation plant and equipment in order to minimise the risk of untrained staff or public causing a fluoride spill to the environment.

The fluoridation plant (plant room/building, fluoridating agent storage areas) should be of sufficiently solid construction to minimise the risk of unauthorised entry. These areas should be kept locked when unattended to prevent unauthorised entry.

In particular the carrying out of maintenance work needs to be controlled to prevent accidental release of fluoride to the environment. Determining control measures under this requirement should normally be considered at the same time as those required for protecting the process from being impacted (refer Section 11.2). Best practice would involve the use of some form of work permit system that includes a systematic hazard risk assessment of the work to be done.

In this regard the operator and the maintenance staff should assess the hazards together and agree on any special controls required while the

work is being carried out (eg isolation of the storage tank, draining or release of pressure in dosing pumps and lines, temporary bunding, etc). The degree of control required may also reflect the knowledge and training of the maintenance staff (eg. are they experienced internal staff, under long term maintenance contracts, or “one off” contractor who has never previously been to the plant etc).

- ◆ The Water Supply Authority should prepare, document and implement an environmental waste disposal plan for fluoridating agent spills and leaks, contaminated fluoridating agent and fluoridating agent containers.

The options for disposal of fluoridating agent containers varies from returning them to the supplier, engagement of a waste disposal contractor, local waste tips, to that of internal disposal on site by burial. Concentrated fluoride powder is poisonous to wildlife and thus care must be taken with some disposal options. The plan should follow the waste fluoridating agent and containers to their final disposal irrespective of whether private waste disposal contractors are employed or not.

- ◆ The Water Supply Authority should ensure standard operating procedures required by this Code (refer to Section 10.2) include all relevant environmental control requirements.

8 Control of fluoridating agent

8.1 Procurement of Fluoridating Agent

8.1.1 Any impurities in the fluoridating agent shall not cause health problems for consumers or result in non-compliance with the Australian Drinking Water Guidelines. Physical characteristics and variations in strength should not significantly increase risk of reliably maintaining the required fluoride concentration in the treated water.

8.1.1.1 The Water Supply Authority shall develop and use a suitable chemical specification for purchasing the required fluoridating agent. The latest American Waterworks Association standard specifications for the various fluoridating agents are to be treated as a minimum requirement.

Metals are the main impurities of health significance to be found in fluoride chemicals, particularly with hydrofluosilicic acid where the levels of various metals can vary significantly.

The presence of moisture in powdered chemicals can lead to unreliable feeder operation. The level of insoluble matter can increase turbidity levels in the final water.

The following specification requirements are provided for consideration (1).

	NaF**	H ₂ SiF ₆ **	Na ₂ SiF ₆ **
Product purity, % by weight	min 97 (dry basis)	20-30	min 98 (dry basis)
Moisture, % by weight	max 0.5		max 0.5
Insoluble matter, % by weight	max 0.6		max 0.5
Heavy metals, % by weight as lead *	max 0.04	max 0.02	max 0.05
Hydrogen fluoride (HF), % by weight		max 1.0	

* These levels should ensure that at a fluoride ion dose of 1.00 mg/L the maximum concentration of metals added to the water would be in the order of 1 µg/L expressed as lead. The Australian Drinking Water Guidelines set a guideline value for lead of 10 µg/L.

** NaF Sodium Fluoride
 H₂SiF₆ Hydrofluosilicic Acid
 Na₂SiF₆ Sodium Silicofluoride

Water Supply Authorities should include the requirement for regular full chemical analysis by suppliers in supply contracts. It is also good practice to periodically obtain independent chemical analysis.

1. Queensland Health (2000) Code of practice for fluoridation of public water supplies

8.2 Storage of Fluoridating Agent

8.2.1 Fluoridation plants shall not run out of fluoridating agent.

8.2.1.1 A minimum of 3 months storage of fluoridating agent shall be maintained.

The supply risk is a function of a number of issues including the quantities involved, transport distance, procurement strategy and general availability of the agent. Thus for some plants more than three months storage may be warranted.

For larger plants where the supply risks are low, long-term procurement contracts are maintained, and the cost of storage infrastructure significant, NSW Health may consider reducing this requirement.

8.2.2 Fluoridating Agents are appropriately stored to minimise deterioration.

8.2.2.1 Dry fluoridating agents must be stored in a secure dry environment.

When bags of powdered fluoridating agent become damp or wet they can be very difficult to use in the fluoridation equipment, often leading to increased maintenance and variable fluoride concentrations in the treated water. In more extreme circumstances the bags can become unusable and would need to be disposed of.

In some situations the use of room heaters can minimise such problems.

9 Measurement of fluoride in the treated water

9.1 Sample requirements

9.1.1 A representative sample of treated water that directly reflects the real time dosing performance of the fluoridation plant shall be available at all times.

9.1.1.1 The sampling point location should be far enough downstream of the fluoride injection point to ensure the fluoride is well mixed, but prior to any service reservoir or tank if possible.

For good control the plant operator needs to be able to directly relate the measured fluoride level to plant settings at a given point of time, in order to know how much to adjust the dosing settings. If the sample point is too far downstream, or if the sample is from or after a service reservoir then this becomes more difficult.

Pipe wall effects can impact the sample quality. It is good practice to use a stainless steel insertion probe, particularly if the sample point is also used for other parameters such as microbiological indicators.

Where long sample lines are used it is good practice to carry out regular checks to ensure the sample line is not affecting the sample water quality (eg. compare results taken from each end of the sample line).

9.2 Analytical requirements

9.2.1 A reliable method for determining fluoride concentration in the treated water shall be provided on site at all times.

9.2.1.1 An appropriate permanent bench area shall be provided at, or in close proximity to, the fluoridation plant to allow routine fluoride concentration analyses to be performed.

The area should have adequate bench space to leave the analytical equipment permanently set up. It will require a sink with both water supply and waste, and sufficient storage for consumables (glassware, chemicals, spare parts etc.). If possible the area should not be exposed directly to sun or high temperature extremes – air conditioning is preferred. It is good practice to provide a small fridge for storing samples and reagents at a constant low temperature.

9.2.1.2 Unless otherwise approved the ion selective electrode method shall be used for determining the fluoride concentration in treated water. The method should conform to that described in the latest edition of Standard Methods for the Examination of Water and Wastewater.

The ion selective method is preferred as it is reliable, less technique sensitive, and less impacted by interfering substances.

9.2.1.3 The minimum requirements for equipment and reagents to carry out analyses are:

- *An ion selective meter that can be used for fluoride and temperature probes, and that can display in millivolts (and preferably fluoride concentration), and degrees Celsius as required.*
- *Fluoride electrodes (either a combined electrode, or separate measuring and reference electrodes)*
- *Temperature probe (for measuring temperature of sample being tested)*
- *A magnetic stirrer with insulated top, moveable arm stand with probe holder for fluoride and temperature probes, and Teflon coated stirrer bars*
- *Laboratory plastic ware (beakers, measuring cylinders and sample/storage bottles)*
- *Timer and thermometer*
- *Reagents (total ionic strength adjuster, and electrode filling solution)*
- *Calibration standards (0.20 and 2.00 mg/L standard fluoride solutions, 1.00 mg/L may also be used)*

Appropriate spare equipment/parts should be available on site such that measurement capability should not be lost for more than a day or two due to failures. Where a Water Supply Authority makes up or dilutes its own solutions then additional facilities to those above will be required and normal laboratory good practice should apply.

Only plastic beakers, sample bottles etc should be used for fluoride samples as the use of glassware may lead to lower results due to fluoride interacting with the glass.

If the plant operators also need to measure pH then there is an advantage in using an identical meter to that used for fluoride probes in that it in effect provides a backup meter for both parameters.

9.2.2 The calibration standards are accurate, the quality of the total ionic strength adjuster and electrode filling solutions and the operation of the fluoride meter are reliable.

9.2.2.1 Appropriate regular quality assurance checks and balances are in place to ensure the accuracy and reliability of fluoride measurements in the treated water.

Whether the fluoride standards and chemical reagents are bought or made up by a Water Supply Authority it is good practice to carry out regular quality assurance checks. Simple checks such as keeping track of batch numbers, age of the chemicals, comparison of results when changing from one batch to another, asking for quality assurance documentation from the manufacturers etc, all help to give confidence in the fluoride results obtained.

Similarly keeping calibration records including the slope and sensitivity readings on the meter display can help identify whether a fluoride meter/electrodes have changed in performance and will

require maintenance or replacement. If requested NSW Health can assist in the development of these checks.

9.2.3 All operating staff at a fluoride plant follow the same procedure when calibrating the fluoride meter and analysing fluoride samples.

9.2.3.1 The Water Supply Authority must develop, train, and implement standard operating procedures (SOPs) for carrying out calibration of the fluoride meter, and for routinely determining the fluoride concentration in a treated water sample. All operators must be competent in carrying out these SOPs.

The use of Standard Operating Procedures (SOPs) is a clear outcome of integrating quality management principles into routine duties. The use of pictures in SOPs can be quite useful and effective. If requested NSW Health can assist in the development of these SOPs. A sample SOP is attached as Appendix D.

9.2.4 The potential for incorrect fluoride results due to temperature differences between the calibration standards and the treated water samples is minimised.

9.2.4.1 The analysis procedure should ensure the fluoride calibration standard(s) and the treated water sample are at the same temperature before proceeding with the analysis.

A significant error can occur when the meter has been calibrated using fluoride standards at a different temperature to that of the treated water sample. There are two typical solutions to this issue. Either keep the calibration standards at room temperature and wait for the treated water sample to come to room temperature before analysis, or keep the calibration standards in a water bath using a continuously running treated water sample, in which case the analysis is done immediately. The potential impact of this issue is greatest where the diurnal temperature range is large and the laboratory area is not air-conditioned. The error can be as large as 2% per degree of temperature difference.

10 Plant operation and process control

10.1 Fluoridation Plant operating targets

10.1.1 The fluoridation plant is operated to maintain a consistent fluoride concentration through out the distribution system.

10.1.1.1 The Water Supply Authority shall

- *Use a fluoride operating target of 1.00 mg/L in treated water, unless otherwise specified by NSW Health in the Instrument of Approval.*
- *at no time allow the fluoride concentration to exceed 1.50 mg/L.*
- *set a target that, over a calendar year, greater than 95% of all routine fluoride samples (both treated water and distribution) fall within the fluoride concentration operating range of 0.90 to 1.50 mg/L, unless otherwise specified by NSW Health in the Instrument of Approval.*

These three targets are the default requirements unless NSW Health approve otherwise.

One important issue for a Water Supply Authority is how a failure to dose (or under dosing) due to equipment breakdown might be handled in determining the 95% compliance of all samples. A short-term stoppage will not appreciably affect the oral health benefit. However NSW Health expects a Water Supply Authority to operate in a professional and competent manner and such stoppages should not occur on a frequent basis. Consequently NSW Health considers the non-compliance allowance of 5% of samples over a year to be reasonable. Based on this the Water Supply Authority will need to make business decisions as to whether it wishes to reduce the risk of non-compliance (eg. installing stand-by equipment, increased sampling frequency etc.).

However, should a particular situation arise where either, the Water Supply Authority believes the monitoring results do not adequately reflect the plant performance, or, there has a been a significant failure to dose due to largely uncontrollable problems (eg damage to plant from fire etc) then NSW Health will consider an exemption from normal compliance targets upon request.

10.2 Routine operational requirements

10.2.1 The fluoridation plant reliably achieves the required fluoride concentration in the treated water on a continuous basis with no over or under dosing.

10.2.1.1 The Water Supply Authority shall carry out regular plant inspections and checks to assess whether the process performance has been satisfactory, and in particular whether any significant overdosing has occurred which would require emergency action to be taken. The frequency shall be daily

unless the Water Supply Authority gains approval otherwise from NSW Health (based on effective risk control measures being in place).

Regular plant inspections are necessary to ensure effective process control (eg. target fluoride dose = instantaneous fluoride dose via drop tests = calculated average daily fluoride dose), to identify whether equipment is operating normally (eg. pressure and level readings), and to identify the need for maintenance (eg. leaks, change in sound and vibration of operating pumps, mixers etc).

10.2.1.2 The Water Supply Authority shall maintain a daily record (irrespective of any approved change to the daily inspection requirement) of

- *The volume of water treated*
- *The quantity of fluoridating agent added over the same time period*
- *The corresponding average calculated fluoride dose*
- *The fluoride analysis result from the treated water sample taken during this time period*
- *The stock of fluoridating agent on hand*

This information shall be recorded on either the standard forms attached in Appendix B (Form 2 for solution feed systems, or Form 3 for dry feed systems, and Form 4 for the treated water analysis) or on a site-specific plant log sheet. The records may be in paper or electronic form but must be maintained by the Water Supply Authority (refer to Section 13).

It is the responsibility of the Water Supply Authority to ensure the fluoridation process is adequately monitored and maintained such that any discrepancy, equipment reliability issue, or unacceptable variability in the final fluoride concentration is quickly identified and effectively rectified.

10.2.1.3 The Water Supply Authority shall ensure that the fluoridation plant and equipment is adequately maintained to achieve reliable operation.

There are various strategies used to manage maintenance. Good practice would encourage the use of routine condition monitoring/assessment, preventative maintenance, stand-by equipment, critical spares inventory, and reliable maintenance records.

10.2.1.4 For fluoride saturator systems specifically the level of fluoridating agent in the saturator must not be allowed to fall below 150 mm above the support media.

10.2.2 Fluoride concentrations reaching consumers in the distribution system match the treatment plant operating target.

10.2.2.1 Unless otherwise approved by NSW Health the Water Supply Authority shall collect and analyse a minimum of two samples that are well separated in the system per week. The results shall be recorded on Form 4 (refer Appendix B) or on a site-specific form. The records may be in paper or electronic form but must be maintained by the Water Supply Authority (refer to Section 13).

10.2.2.2 Unless otherwise approved by NSW Health the Water Supply Authority shall send a duplicate of one of its distribution water samples to the Division of Analytical Laboratories (Water Chemistry Laboratory) within the first week of each month. A NSW Health Drinking Water Monitoring Program label is to be attached to the sample (either an Allocated Chemical – Comprehensive, an Allocated Chemical – Standard, an Allocated Chemical – Monthly, or an Allocated Fluoride label type). The fluoride result obtained by the Water Supply Authority shall be recorded on the label.

This sample provides both quality assurance on analyses carried out by the Water Supply Authority, as well as an independent assessment of fluoride levels across NSW. The results will be available on the NSW Drinking Water Database.

10.2.3 All operating staff at a fluoride plant follow the same procedures when carrying out routine operational duties.

10.2.3.1 The Water Supply Authority must develop, train, and implement standard operating procedures (SOPs) for carrying out routine operational duties within the fluoridation plant. All operators must be competent in carrying out these SOPs

The use of Standard Operating Procedures (SOPs) is a clear outcome of integrating quality management principles into routine duties. The use of pictures in SOPs can be quite useful and effective. The SOPs should cover routine daily inspections, management of fluoridating agent (eg. topping up of day tanks, hoppers, saturators, ordering new stocks etc.), process control decisions, dose corrections, and record keeping.

10.2.4 The fluoridation plant and equipment shall not be operated by unqualified persons.

10.2.4.1 Only qualified operators shall operate the fluoridation plant and equipment. Access to the fluoridation plant and equipment shall be controlled to minimise the risk of impacting the treated water fluoride concentration from incorrect operation of the fluoridation equipment, or damage to the facility, from unauthorised persons.

The fluoridation plant (plant room/building, fluoridating agent storage areas, dosing lines etc) should be of sufficiently solid construction to minimise the risk of damage to equipment due to vandalism. The plant design should minimise the risk of accidental damage to equipment such as dosing lines, valves etc. where feasible.

The fluoridation plant should be kept locked when unattended to prevent unauthorised entry. Entry to the fluoridation plant by untrained persons (staff and public) needs to be controlled both for protection of the process (and for their own safety).

In particular the carrying out of maintenance work needs to be carefully controlled to prevent impacts on the fluoridation process. The responsibility lies directly with the Water Supply Authority and plant operator(s) to ensure maintenance staff do not impact or put the fluoridation process at risk (or put themselves or the environment at risk – refer Sections 6 and 7). Determining controls measures under this requirement should normally be considered at the same time as those required for safety management. Best practice would involve the use of some form of work permit system that includes a systematic risk assessment of the potential impact on the fluoridation process from the work to be done.

In this regard the operator and the maintenance staff should assess the risks together and agree on any special controls required while the work is being carried out (eg work carried out while water flow is off, maintenance staff will not switch dosing equipment on or off for testing without the knowledge of the operator etc). The degree of control required (eg. whether maintenance staff are left unsupervised or not) will depend on the knowledge and training of the maintenance staff (eg. are they experienced internal staff, under long term maintenance contracts, or “one off” contractor who have never previously been to the plant etc). Irrespective of what control measures are put in place however, maintenance staff shall not be allowed to operate the fluoridation plant. In some circumstances it may be beneficial for key maintenance staff to obtain the Fluoride Plant Operators Certificate.

10.2.4.2 The Water Supply Authority shall ensure that it has a sufficient number of qualified people available to enable operation of the fluoridation plant at all times. A minimum of two qualified people is required.

The number of qualified people required will depend on the particular staffing arrangements used by a Water Supply Authority (eg. single operator, team based etc). As a minimum two qualified operators are required to ensure periods of sickness, annual leave, weekends, and other issues such as training and meetings are covered.

It is also recommended that the fluoridation plant operator’s supervisor (or other appropriate manager) obtain the operators qualification in order to provide a detailed awareness of requirements under the Fluoridation Act within the management structure of the Water Supply Authority (as well as providing operational support in an emergency).

10.3 Emergency response requirements

10.3.1 Consumers should not receive fluoride concentrations over 1.5 mg/L. Any over or under dosing incidents are quickly identified and effectively managed to minimise any impact on consumers.

10.3.1.1 The Water Supply Authority shall develop an emergency response plan to minimise (or preferably prevent) fluoride concentrations over 1.5 mg/L reaching consumers in the event of an overdosing incident. The response plan should form part of the Water Supply Authority's overall emergency management strategy and plans, and must include liaison with the local Public Health Unit (refer to Fluoride Communication Protocol flow diagram).

In approaching emergency response planning it is suggested that Emergency Risk Management principles be followed. These can be summarised as a cyclic process involving Hazard Analysis, Prevention, Preparation, Response, and Recovery.

The options to respond effectively to an overdosing incident are often related to how the distribution system is designed and operated, in particular the location and size of service reservoirs that can dilute small events. The ability to quickly remove water from the system can be affected by environmental considerations such as quantity of water involved and chlorine residual levels. The most important element in many cases involves how quickly a problem is identified after it occurs, and in this regard a small amount of careful planning in the design of both the plant and routine operational duties can significantly reduce the impact of an overdosing incident.

NSW Health requires that the Water Supply Authority liaise with the local Public Health Unit in developing the emergency response plan, and where appropriate in its execution.

The responsibility to respond in an emergency lies primarily with the Water Supply Authority.

11 Reporting requirements

11.1 Routine Reporting and Communication requirements

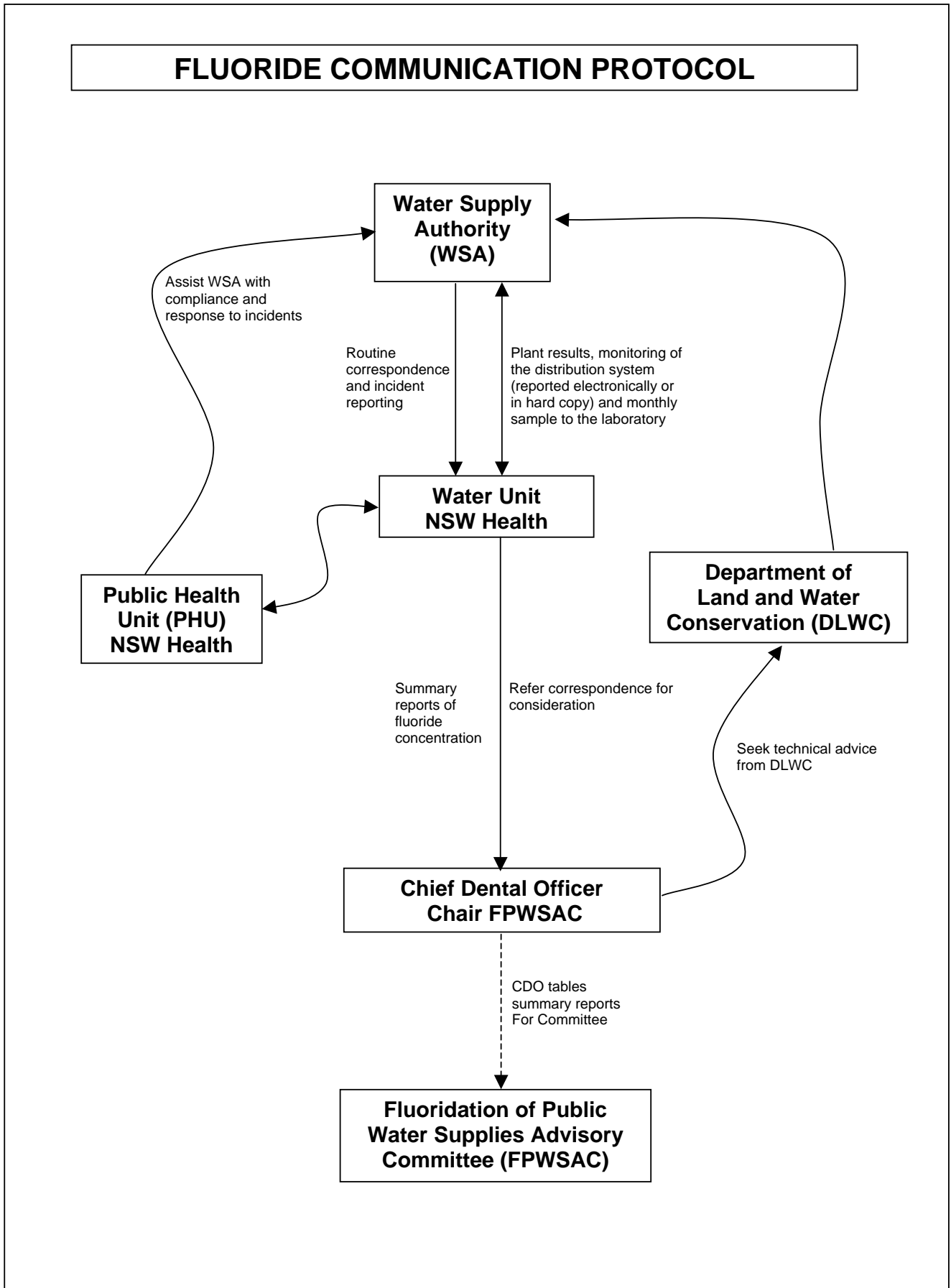
11.1.1 Effective routine communication is maintained between NSW Health and Water Supply Authorities

11.1.1.1 Water Supply Authorities shall follow the Fluoride Communication Protocol diagram for routine reporting and communication with NSW Health. Water Supply Authorities shall follow Appendix A of this Code of Practice when approval is sought to fluoridate for the first time or to modify an existing plant.

Routine correspondence and enquiries relating to the Code of Practice should be directed to the NSW Health Water Unit. The Water Unit will refer enquiries to Chief Dental Officer for consideration as appropriate. Correspondence should be addressed to:

Manager, Water Unit
NSW Department of Health
PO Box 798
GLADESVILLE NSW 2111

Telephone 02 9816 0589
Fax 02 9816 0377
email: waterqual@doh.health.nsw.gov.au



11.1.2 Routine fluoridation plant performance data is provided to NSW Health in a timely manner.

11.1.2.1 Unless otherwise approved by NSW Health, the Water Supply Authority shall report to NSW Health within the first week of each month the results of all fluoride analyses carried out for the previous month, that is, results for the treated water samples leaving the fluoridation plant and samples taken in the distribution system recorded on Form 4 (or its equivalent). Where possible this data should be directly entered into the on-line NSW Drinking Water Database. If this is not possible the Water Supply Authority must submit a paper copy of Form 4 (or its equivalent) to the NSW Health Water Unit.

The use of the on-line NSW Drinking Water Database provides some additional benefits over paper records in that there is the capacity for a Water Supply Authority to generate standard reports in electronic form which it can use for internal assessment and management reporting,

11.1.3 Exception reports are provided to NSW Health in a timely manner.

11.1.3.1 The Water Supply Authority shall advise NSW Health Water Unit in writing within three working days of any:

- *overdosing incident that resulted in the fluoride concentration exceeding 1.5 mg/L in the treated water entering the distribution system,*
- *any failure to fluoridate or maintain the fluoride concentration above the minimum fluoride concentration stated in the Instrument of Approval that extends for a period greater than 24 hours.*

The notification should include details of the incident (extent, times, water volume affected etc), what remedial action has been taken, and what actions the Water Supply Authority intends to take to minimise the risk of the same event occurring again.

Information gathered over time will assist NSW Health in identifying risks and improvements, which may be relevant to other Water Supply Authorities as well as providing input into future reviews of the Code of Practice.

12 Operator training and qualification

12.1 Training requirements

12.1.1 Fluoridation plant operators are competent to operate a fluoridation plant.

12.1.1.1 A Qualified Operator is an operator who holds a Fluoride Plant Operator's Certificate issued by NSW Health. All fluoridation plant operators must obtain this certificate.

NSW Health will issue a Fluoride Plant Operators Certificate to those persons who

- (a) Have passed a fluoride training course conducted by NSW Health, or
- (b) Have successfully completed the Water Industry Operations (Water Treatment) Certificate II course (9244) provided by NSW TAFE (OTEN), or
- (c) Successfully completed such other fluoridation training courses as may be approved by the Director-General as being the equivalent of (a) or (b).

12.1.1.2 The Water Supply Authority shall provide on the job training under the direct supervision of a qualified operator in how to operate the fluoridation plant. Unless approval is gained from NSW Health, operators being trained shall not operate the fluoridation plant by themselves and must attend the next available NSW Health training course.

In the normal course of events it is expected that new operators would receive on the job training until they can attend a NSW Health operators training course.

Should an emergency situation arise due to sudden departure of qualified staff NSW Health will consider interim conditional approval to operate for a new operator on a case-by-case basis until the next training course. The Water Supply Authority would need to provide details of the person's relevant experience, and controls put in place to support that person.

13 Records keeping and availability

13.1 Record keeping requirements

13.1.1 Appropriate records documenting the fluoridation plant performance are maintained.

13.1.1.1 The Water Supply Authority shall maintain the key records corresponding to the information recorded on Forms 2,3 and 4 for two (2) years. The records may be in electronic or hardcopy form.

Care needs to be taken to ensure electronic records are reliably backed up, and paper records are kept in an appropriate environment that will minimise deterioration.

13.1.1.2 The Water Supply Authority shall ensure all records created are in an auditable form.

In applying quality management principles it is important that records are traceable to the date they were created and to those who generated the records.

13.1.2 Records of the fluoridation plant performance are available to NSW Health

13.1.2.1 The Water Supply Authority shall make all records associated with the fluoridation plant available to NSW Health upon request.

14 Quality assurance and auditing

14.1 Audit requirements

14.1.1 The Water Supply Authority complies with the requirements of the Fluoridation Act, Regulations, and the requirements of this Code of Practice on an on-going basis.

14.1.1.1 The Water Supply Authority shall carry out and document an audit to assess compliance with the latest version of the Fluoridation Act, Regulation, and Code of Practice on a regular basis. These audits shall be stored and made available to NSW Health on request.

Regular auditing is a key part of quality management principles in that it helps to maintain an initial level of performance, identify risks and associated control measures that may need to be reassessed, and identify opportunities for improvement. It is suggested that this process be carried out every two to three years or when the Code has been changed whichever is the least.

An important part of the process is the inclusion of all stakeholders (plant operators, supervisors, managers, technical experts, etc) in the analysis of the results and the development of any identified opportunities for improvement. This process is also useful as a training refresher for operating staff as to the requirements of the Code.

14.1.1.2 NSW Health may from time to time carry out an independent audit of the Water Supply Authority's compliance. The Water Supply Authority shall provide such assistance as may be required.

Glossary of Terms

Fluoridating Agent

The substance that is added to drinking water to achieve fluoridation. Fluoridating agents include the dry (or powder) fluoridating agents Sodium Fluorosilicate (Na_2SiF_6) and Sodium Fluoride (NaF) as well as “liquid fluoride” or “fluoride acid” Hydrofluosilicic Acid (H_2SiF_6).

Fluoridation

The addition of fluoride to drinking water for the purpose of oral health benefit. Fluoridation involves the controlled addition of a fluoridating agent to a public water supply to increase the fluoride to a level that effectively prevents tooth decay.

Fluoridation Act

The NSW Fluoridation of Public Water Supplies Act 1957 sets out the composition and functions of Fluoridation of Public Water Supplies Advisory Committee (the Committee). Under the Act, the Committee has powers to approve and regulate fluoridation by public water supply authorities.

Fluoridation Regulation

The NSW Fluoridation of Public Water Supplies Regulation 2002 sets out requirements for risk minimisation, accuracy of dosing, and reporting requirements and refers to detailed requirements under this Code.

Fluoridation Code of Practice

The NSW Code of Practice for the Fluoridation of Public Water Supplies 2002 sets out the details of requirements for risk minimisation, accuracy of dosing, and reporting requirements as required by the Fluoridation Regulation.

Fluoridation Plant

The building and equipment involved in fluoridation of drinking water, including chemical storage areas, dosing and control equipment, safety equipment and any other fixtures used for, or associated with, the purpose of fluoridation.

Required Outcome

The Required Outcomes are the fundamental intent of the controls required in the Fluoridation Code. The required outcome for each section of this Code is set out in bold.

Minimum Standard

Minimum Standards are the minimum requirements considered necessary to achieve the Required Outcomes. Minimum Standards are set out in *Italic font*. Achievement of the Minimum Standard in the Fluoridation Code is a legislative requirement under the Fluoridation Act and Regulation.

Guide Note

Guide Notes include explanatory notes for the Minimum Standard requirements. They may also include suggestions regarding surpassing the good practice. Also included in the guide notes, for information, are some requirements covered other legislation, such as the Dangerous Goods Regulations. The guide notes are not legislative requirements under the Fluoridation Act.

Instrument of Approval

The document issued by the Department of Health, and published in the Government Gazette, which sets out details and conditions of approval under which a Water Supply Authority may fluoridate a water supply.

Water Supply Authority

A Water Supply Authority is a Major Utility or Water Supply Authority as defined under the Water Management Act 2000.

APPENDIX A

Protocol and Application Form 1

For a water supply authority seeking approval to:

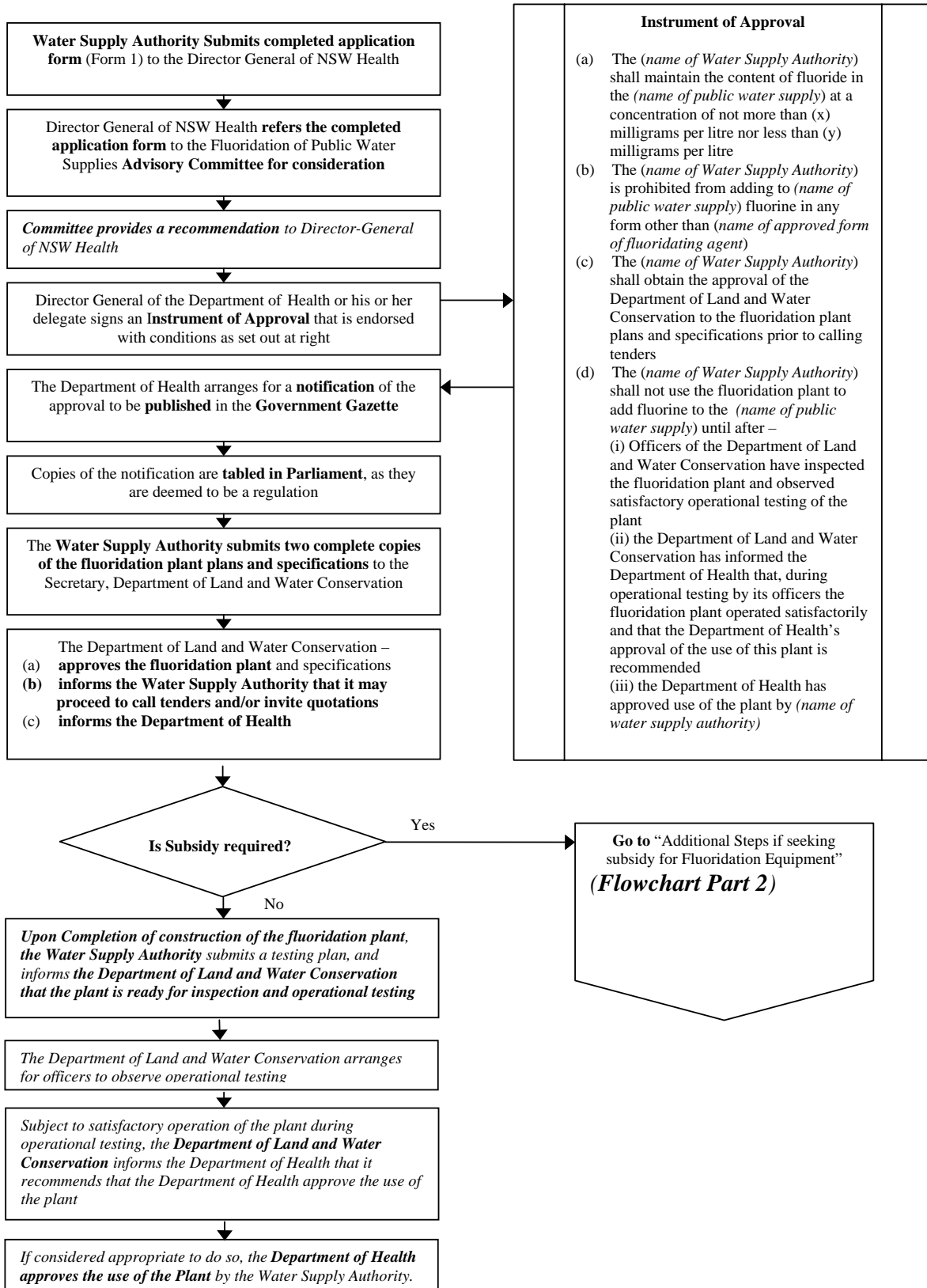
Fluoridate a water supply for the first time

or

Modify an existing fluoridation plant

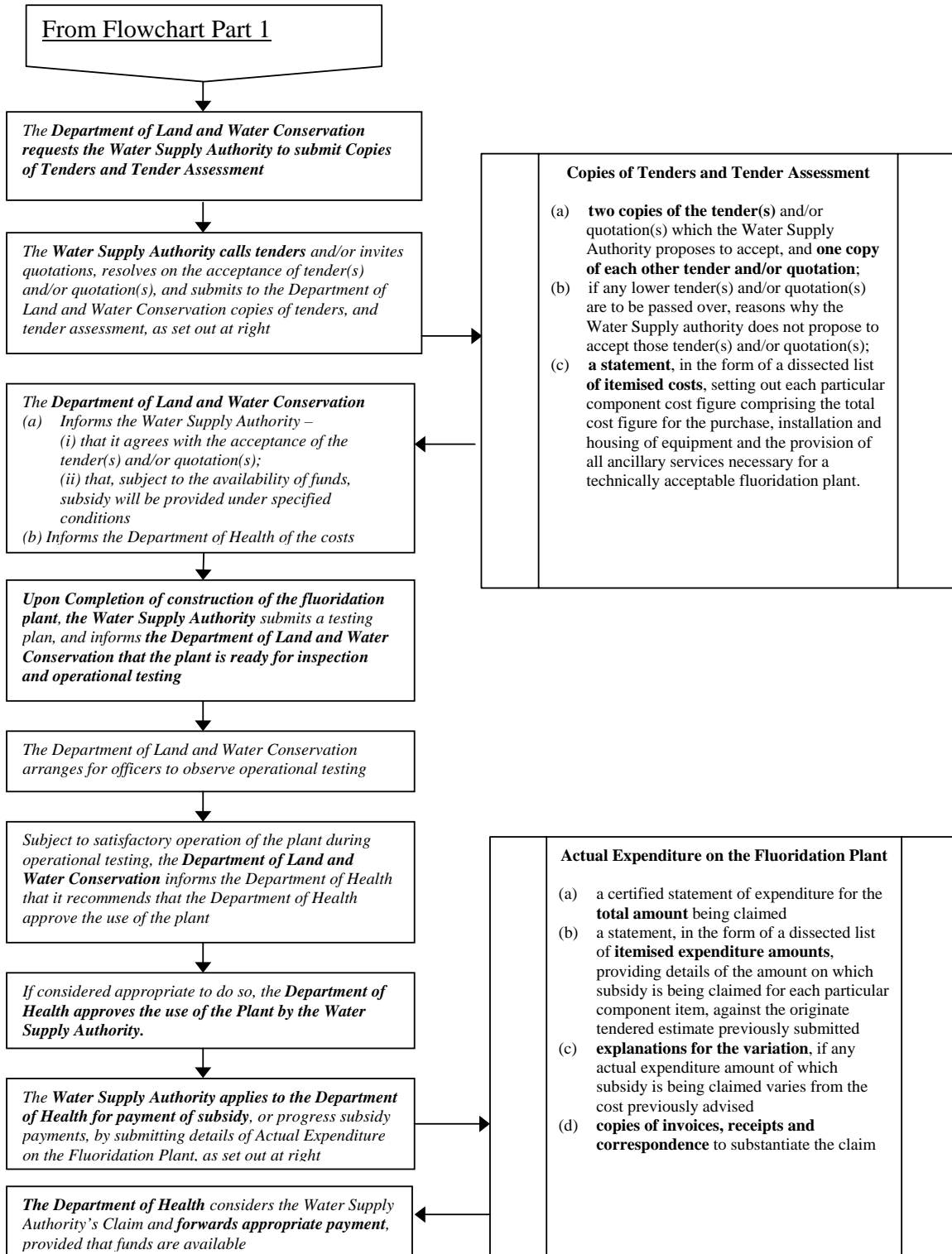
Flow Chart Part 1:

Protocol for Seeking Approval to Fluoridate or to Modify an Existing Fluoridation Plant



Flow Chart Part 2:

Additional Steps if applying for subsidy for Fluoridation Equipment



Form 1

APPLICATION FORM
(Fluoridation of Public Water Supplies Act 1957)

Application for the approval of the NSW Department of Health under Section 6 of the Fluoridation of Public Water Supplies Act 1957 to add fluoride to a Public Water Supply.

Upgrade of Existing Fluoride System, ie Water Supply is currently fluoridated *or*
 New Fluoride System, ie Water Supply is **not** currently fluoridated

To the Director-General
 NSW Department of Health
 Locked Mail Bag 961
 NORTH SYDNEY NSW 2060

Application is hereby made by _____

(Name of Water Supply Authority)

for approval for the fluoridation of the water supply in accordance with the accompanying plans and specifications of equipment and installation.

Designing Engineer

Name: _____

Address: _____

1. Employee responsible for supervision of addition of fluorine:

Name: _____

Qualifications: _____

2. Name of proposed operator or operators: _____

List qualifications of each proposed operator: _____

3. Approximate number of persons to be served: _____

4. Towns and municipalities to be served: _____

5. Estimated water consumption in cubic metres per day:

Min. _____ Avge. _____ Max. _____

6. Instantaneous flow rate at point of fluoridation with plant operating:

Min. _____ Avge. _____ Max. _____

7. Gravity or pumped supply: _____

Form 1, p.2.

8. List of other chemicals now used in treatment of supply: _____

9. What provision, if any, exists for the testing and control of the water supply:

10. Proposed location of fluoridation equipment: _____
11. Location of precise point of fluoridation: _____
12. Method to be followed in preventing back-siphonage or backflow of fluorine solution into potable water supply serving chemical feeder: _____

13. Name of manufacturer of equipment: _____
14. Is the equipment to be manually controlled? _____ If not, describe method to be used to provide automatic control of the equipment (describe type of meter to be used and other hydraulic details pertaining to the automatic control of specific fluoridation equipment not clearly shown on plans).

15. Dry feed fluoridation equipment: Capacity in kg/24 hrs with plant operating
Min. _____ Max. _____
16. Solution feed fluoridation equipment: Capacity in dm³/24 hrs with plant operating
Min. _____ Max. _____
17. Fluoridation chemical to be used: _____
18. Type of toxic dust respirators to be used: _____
19. (a) Details of equipment used for metering quantity of water fluoridated:

- (b) Date of installation of metering equipment: _____
20. Method to be used in testing water for fluoride content: _____

Signature: _____

Official Title: _____

Postal Address: _____

Date: _____

APPENDIX B

Fluoridation records: Forms 2 to 4

Form 2: Daily log sheet for solution feed system

Form 3: Daily log sheet for dry feed system

Form 4: Daily analysis of fluoride ion content

Form 2

(for solution feed system)

**DAILY LOG SHEET
(Fluoridation of Public Water Supplies Act 1957)**

Water Supply Authority _____

Fluoridation Plant _____ Operation Log For The Week Ending _____

Sun	Mon	Tue	Wed	Thur	Fri	Sat	Weekly Summary	Day
								Date
								Time
								No.1 Meter Today
								No.1 Meter Yesterday
								Water Throughput
								No.2 Meter Today
								No.2 Meter Yesterday
								Water Throughput
								Total Water Treated
								No.1 Tank Yesterday
								No.1 Tank Today
								Usage No.1 Tank
								No.2 Tank Yesterday
								No.2 Tank Today
								Usage No.2 Tank
								Total Usage
								No.1 Tank Additions
								Total In No.1 Tank
								No.2 Tank Additions
								Total In No.2 Tank
								Total Additions
								Tank Cleaning Losses
								Unopened Bulk Stock
								Container In Use
								Additions To Stock
								Spillage or Weight
								Total Today
								Feeder Setting
								Calculated
								Raw or Clear
								Treated Water
								1.
								2.
								3.
								4.
								5.
								Operators Initials

Fluoride Chemical Used Source Purity

Remarks

Operator Supervisor

This form is to be retained by the water authority for two years (do not send to NSW Health)

Form 3
(for dry feed system)

DAILY LOG SHEET
(Fluoridation of Public Water Supplies Act 1957)

Water Supply Authority _____

Fluoridation Plant

Operation Log For Week Ending _____

Day	Date	Time	Water Throughput Cubic Metres					Fluoride Chemical in Kilograms						Fluoride Ion Content, mg/L					Operator's Initials																					
			No.1 Meter Reading	Throughput Since Last Reading	No.2 Meter Reading	Throughput Since Last Reading	Total Water Treated	Weight In Hopper	Before Addition	After Addition	Chemical Used Since Last Reading	Chemical Added To Hopper Since Last Reading	Bulk Stock After Additions To Hopper	New Chemical Received Since Last Reading	Spillage or Weight Variations	Feeder Setting	Calculated	Raw or Clear Water		Treated Water	By Analysis																			
																			1.		2.	3.	4.	5.																
Sat																																								
Sun																																								
Mon																																								
Tue																																								
Wed																																								
Thu																																								
Fri																																								
Sat																																								
Weekly Totals																																								

Fluoride Chemical Used Source Purity
 Remarks

Operator Supervisor
 This form is to be retained by the water authority for two years (do not send to NSW Health)

DAILY ANALYSIS OF FLUORIDE ION CONTENT
(Fluoridation of Public Water Supplies Act 1957)

Water Supply Authority _____

Water Treatment Plant _____

Month _____ Year _____ Operator's Signature _____

Date	Daily Fluoride Concentration	Weekly Point 1	Weekly Point 2	Other	Sign

This form is to be completed and, by the first week of the next month, data entered into the NSW Drinking Water Database or a copy forwarded to:

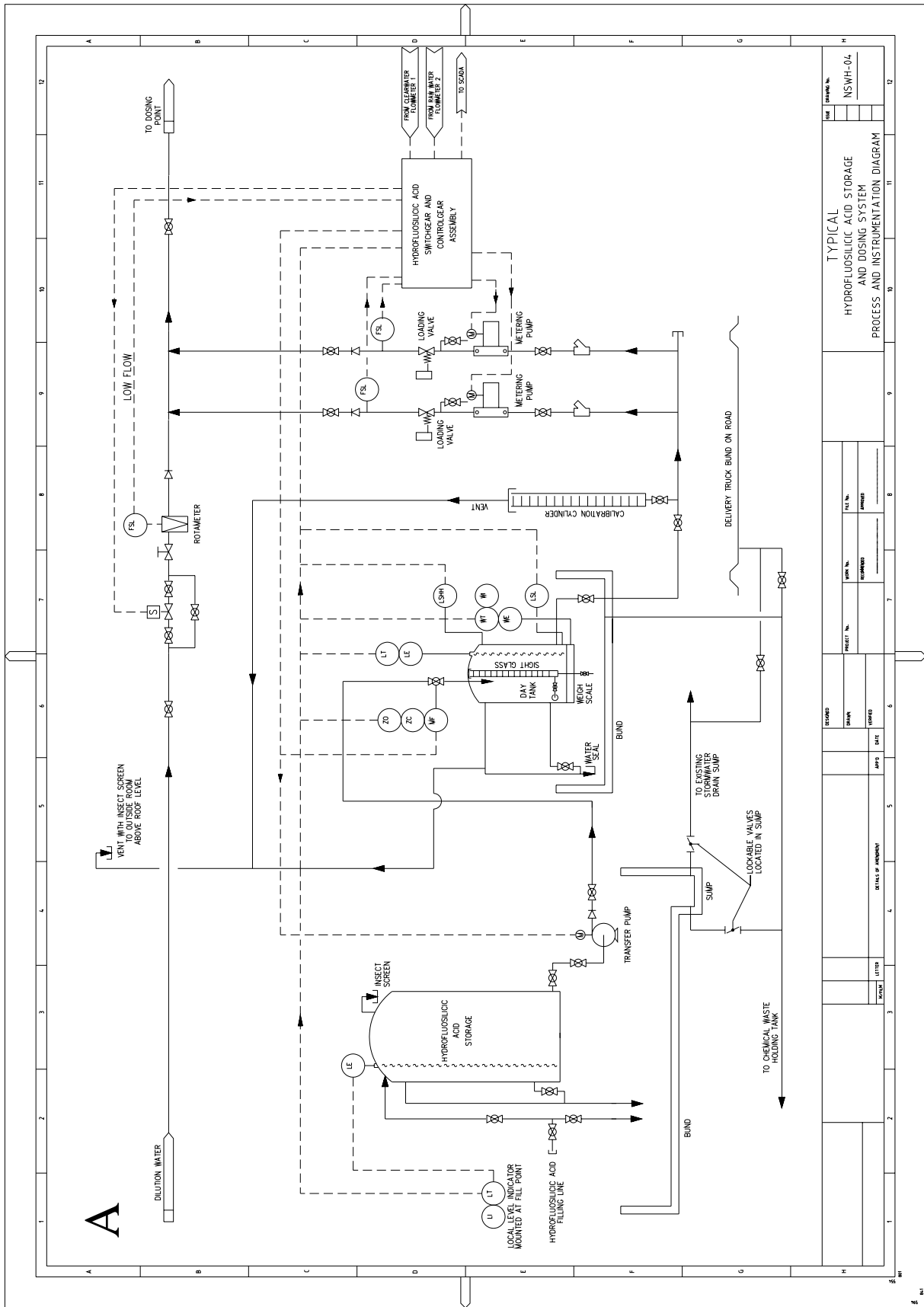
The Clerical Officer
 Water Unit, NSW Health
 PO Box 798
 GLADESVILLE NSW 2111

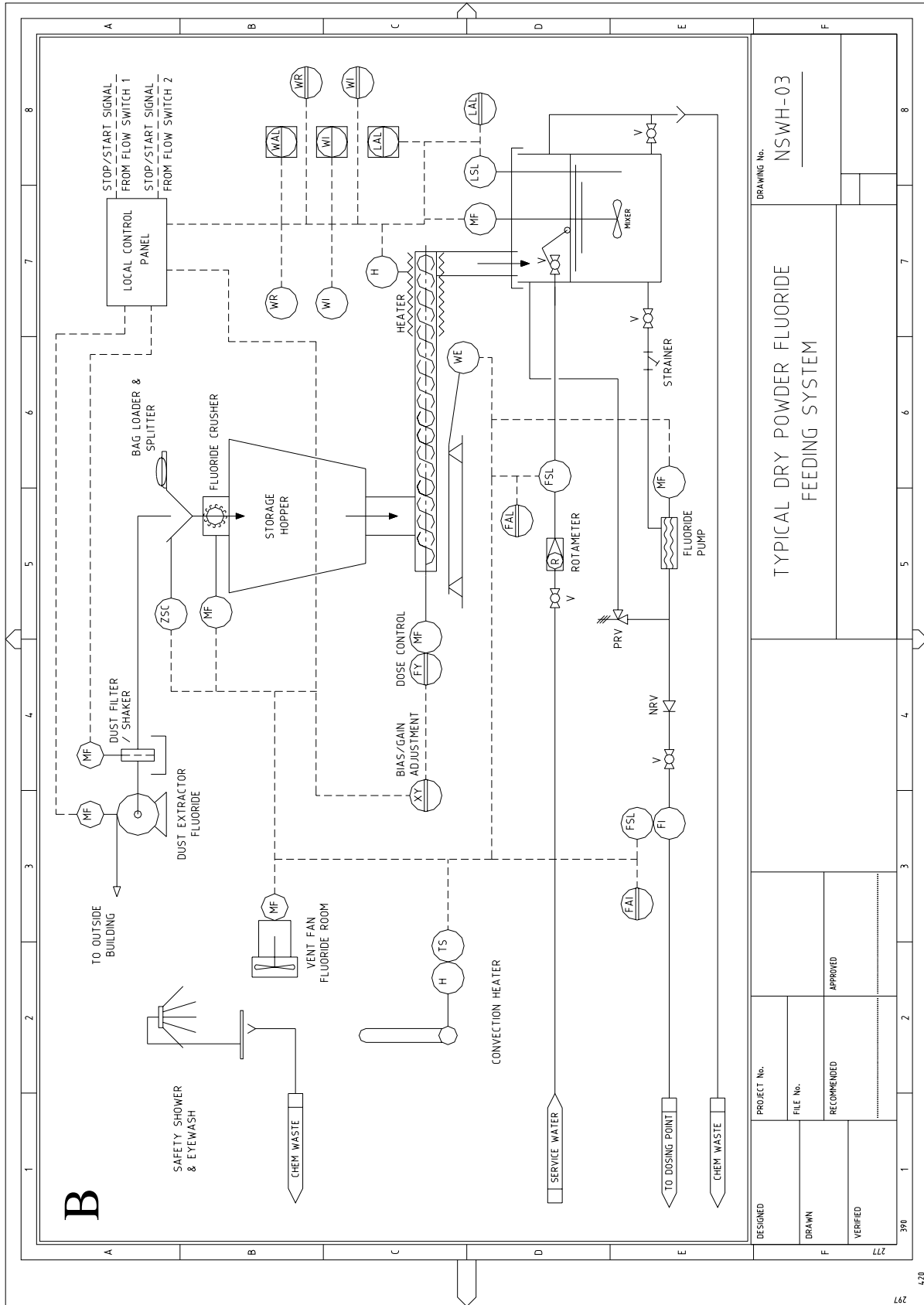
A copy of this form is to be retained by the water authority for two years.

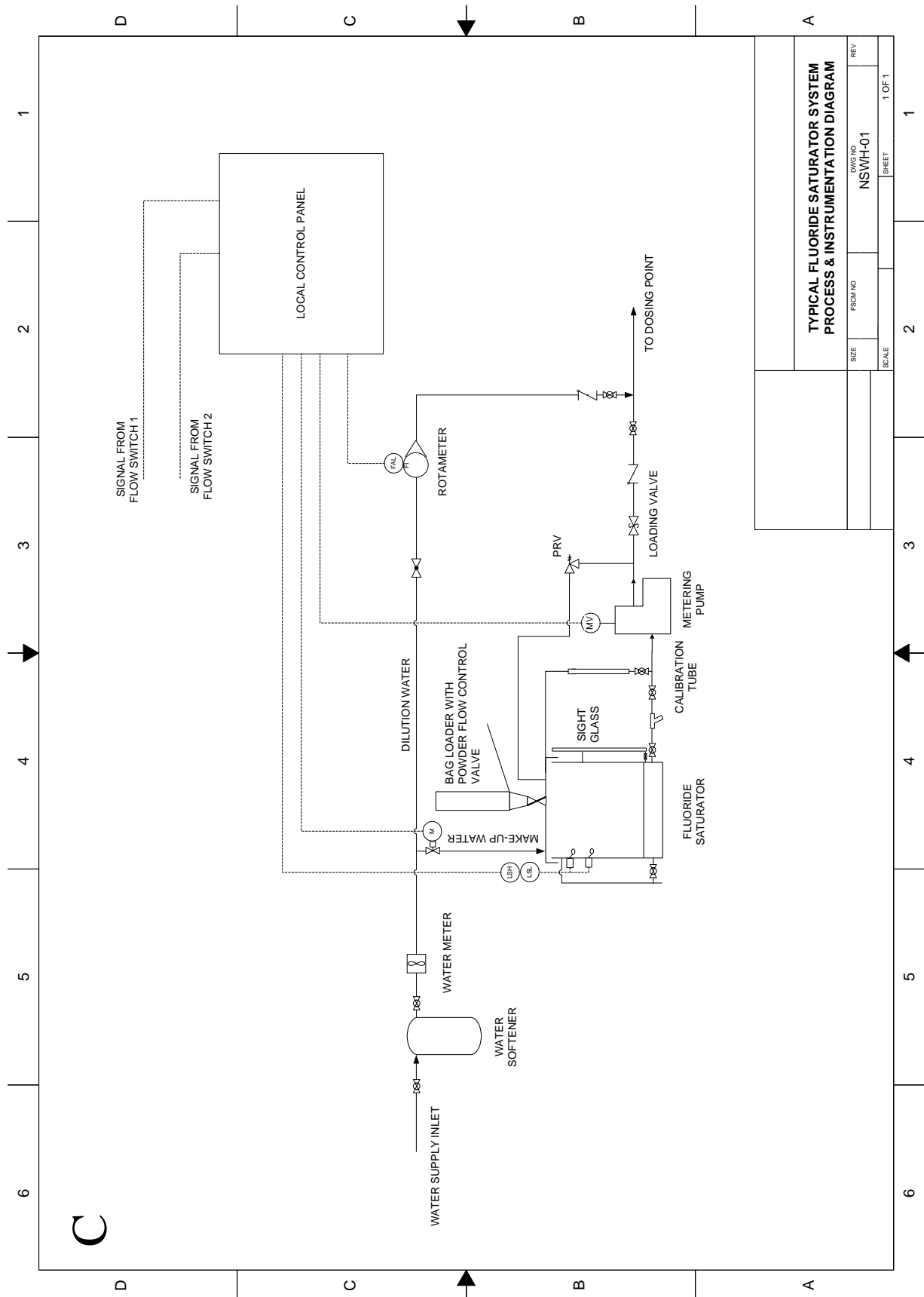
APPENDIX C

Generic fluoridation plant process and instrumentation diagrams (P&IDs)

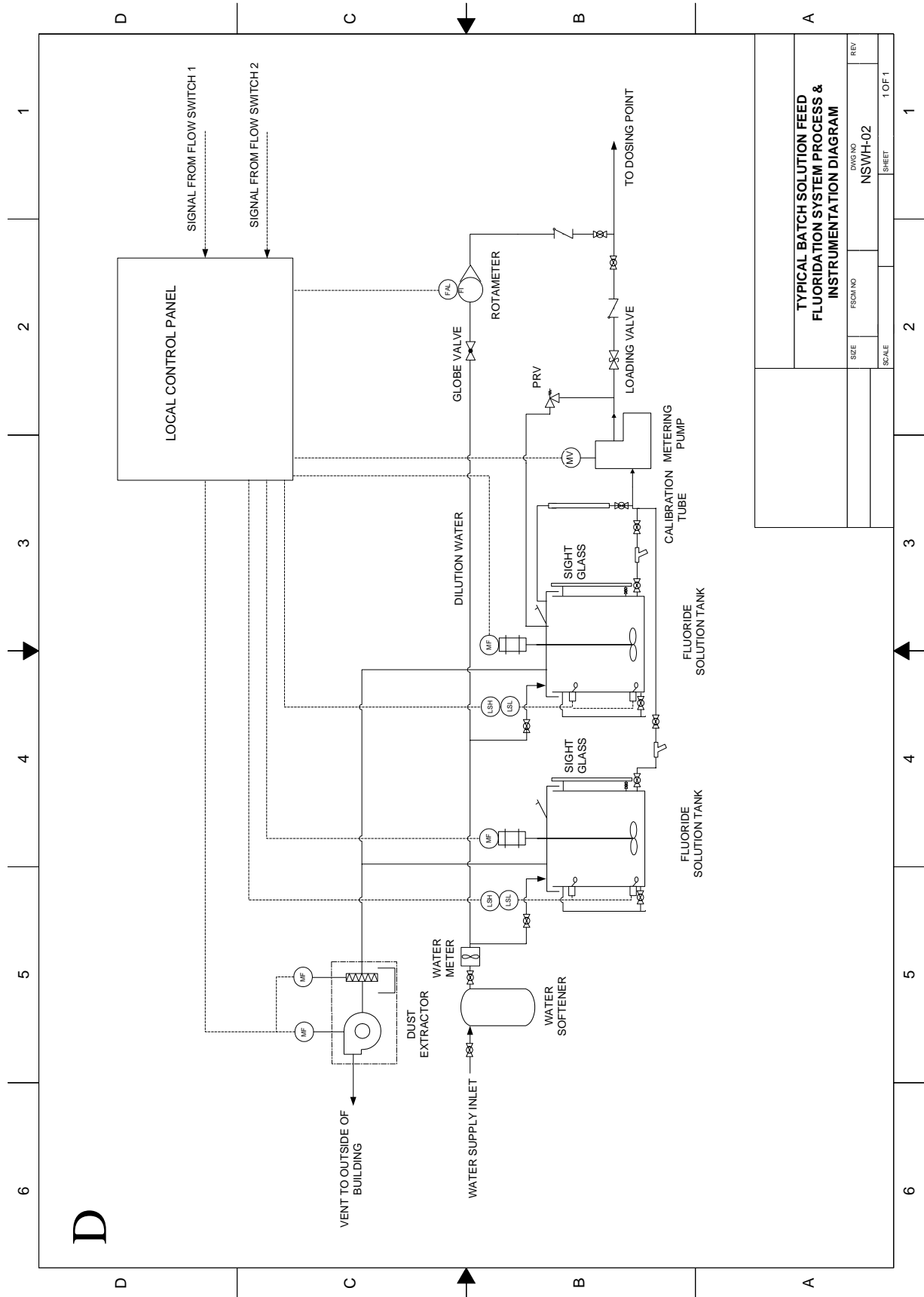
- A Hydrofluosilicic acid storage and dosing system
- B Dry powder fluoride feeding system
- C Fluoride saturator system
- D Batch solution feed fluoridation system







TYPICAL FLUORIDE SATURATOR SYSTEM PROCESS & INSTRUMENTATION DIAGRAM			
SIZE	FSCM NO	DWG NO	REV
		NSWH-01	
SCALE			SHEET 1 OF 1



TYPICAL BATCH SOLUTION FEED FLUORIDATION SYSTEM PROCESS & INSTRUMENTATION DIAGRAM		DWG NO NSWH-02	REV
SCALE	FSCM NO		
SIZE			
SHEET		1 OF 1	

APPENDIX D

Sample standard operating procedure (SOP) for fluoride
measurement

Standard Operating Procedure (SOP)

Title: Determination of fluoride in drinking water by the method of ion selective electrode (ISE)

a. Introduction

These procedures are designed to give general instructions on how to perform the determination of fluoride in drinking water. They represent best practice.

Due to the large variety of instruments capable of performing this determination, these procedures cannot give specific instructions on the use of such instruments. The user must refer to and become familiar with the operating manual(s) of the specific instrument used in the plant.

b. Principles

The fluoride electrode has a single crystal of an insoluble fluoride salt at its base. When this sensing element comes into contact with a solution containing free fluoride ions, a potential develops across it and it is measured against a reference electrode immersed in the same solution.

The fraction of free fluoride ions to total fluoride ions in solution is dependent on the total ionic strength of the solution. By keeping the ionic strength high and constant the measured free fluoride ions is proportional to the concentration of fluoride in solution.

The presence of metal ions (e.g. iron and aluminium) cause interferences. The addition of appropriate buffers containing complexing agents limits the effect of interferences.

c. Minimum Equipment Requirement

- i. Meter: either Direct Readout or a pH/mV meter with a resolution of 0.1 mV;
- ii. Fluoride ISE with connectors suitable for Meter above;
- iii. Reference Electrode with connectors suitable for Meter above;
- iv. Reference Electrode refilling solution;
- v. Magnetic Stirrer with electrode holder;
- vi. Magnetic teflon coated stir bars ;
- vii. 12 x 150 or 200 mL beakers, preferably made of plastic;
- viii. De-ionised or distilled water;
- ix. Fluoride standards;
- x. Buffer;
- xi. 100 mL measuring cylinder;
- xii. 5 or 10 mL dispensing pipette;
- xiii. 12 x 100 – 250 mL plastic storage bottle with tight fitting cap;
- xiv. 4 cycle semi-log graph paper (not required for Direct Readout meters);
- xv. thermometer.

NB: Combined fluoride electrodes incorporate the ISE and Reference electrodes (ii & iii above) into a single unit.

d. Type of Meters

Two types of meters are available: Direct Readout and pH/mV Readout.

Direct Readout: Once calibrated these instruments display the actual concentration of fluoride in solution.

pH/mV: These instrument display the potential difference in mV between the ISE and the reference electrode. The readings (in mV) for the standards are plotted on semi-log graph paper from which fluoride concentrations for samples are extrapolated.

e. Recommended Checks Prior to Analysis

- i. The electrolyte level in the reference electrode must be kept between 5 mm and 20 mm of the filling hole. Refill with the solution recommended by the electrode supplier.
- ii. Ensure that the level of electrolyte in the electrode is always at least 20mm above the top of the solution being measured.
- iii. Ensure that all the filler holes are unplugged prior to measurements. Replace plugs at completion of testing (to ensure free flow of electrolyte).
- iv. Wipe the base of the ISE clean with a soft tissue, make sure to remove any crystallised material present.
- v. Inspect the base of the ISE. The base should be free of any scratch or other mechanical damage. Replace electrode if damage is present.
- vi. If the ISE has been stored dry, immerse it in a solution containing the High Standard for 10-15 minutes before analysis. This conditions the electrode.

f. Recommended Calibration Standards

Accurate standards of known fluoride concentration are essential for the proper determination of fluoride in drinking water.

A minimum of two standards are necessary to calibrate the ISE instrument. The fluoride concentration in the High Standard should be close to the upper limits of the sought concentration. The fluoride concentration in the Low Standard should be $1/10^{\text{th}}$ of that of the High Standard.

The most practical standards are:

- i. **High Standard:** 2.0 mg/L fluoride
- ii. **Low Standard:** 0.2 mg/L fluoride (Note: this standard can be prepared by diluting the High Standard 10 times, i.e. 100 mL High Standard diluted to 1000 mL with de-ionised or distilled water)

Calibration standards should be replaced monthly. Upon receiving a new set of standards, decant at least 100 mL into a plastic storage bottle, cap the bottle tightly and keep in the fridge. These can be used whenever contamination of standards is suspected.

When not in use, keep standards in a fridge. Remove from fridge and allow to reach room temperature before use for calibration.

The above standards can be purchased through the Division of Analytical Laboratories, phone 02 9646 0424.

g. Recommended Quality Control Standards

The Quality Control (QC) standards are used to check the meter and procedures. They need to be independent of the standards used for calibration and have to be close to the fluoride concentration sought.

The most practical QC standard is 1.0 mg/L fluoride.

QC standard should be replaced every 6 months. Upon receiving a new QC standard, decant at least 100 mL into a plastic storage bottle, cap the bottle tightly and keep in the fridge. This can be used whenever contamination of the QC standard is suspected.

When not in use, keep QC standard in a fridge. Remove from fridge and allow to reach room temperature before use.

The above QC Standard can be purchased through the Division of Analytical Laboratories, phone 02 9646 0424.

h. The Function of Buffers

Buffers, often abbreviated to TISAB (Total Ion Strength Adjuster Buffer) in fluoride determination have three distinct functions, they:

- i. Adjust and maintain constant pH of solution;
- ii. Adjust and maintain high ionic strength of solution; and
- iii. Free fluoride ions from complexes thus making them available for determination.

The principal cause of error in fluoride determination by ISE is the failure of the buffer to perform one or more of the above tasks.

The strength and hence the volume ratio of sample to buffer are critical factors.

i. Recommended Buffers

Two buffers are in common use: **Low Level TISAB** and **High Level TISAB**

Low Level TISAB (also known as **TISAB II**) is recommended only for fluoride concentrations less than 0.4 mg/L and in the absence of iron and aluminium. It is used in the ratio of 1:1, i.e. 50 mL sample and 50 mL buffer.

High Level TISAB (also known as **TISAB IV**) is recommended for general use for samples containing up to 2 mg/L fluoride. It is suitable for samples containing up to 100 mg/L of iron and aluminium. Because of its considerably higher strength, the ratio of buffer to sample can be reduced to 1 in 50, i.e. 2 mL of buffer to 100 mL of sample or standard. It is the recommended buffer for fluoride determination.

TISAB IV can be purchased through the Division of Analytical Laboratories, phone 02 9646 0424.

j. Preparation of Buffers

The preparation of buffers involves using hazardous chemicals. It should be attempted only by competent and trained personnel skilled in handling concentrated acids and alkali. It must be carried out in a laboratory equipped with analytical balances, glassware and pH meter.

Due to the criticality of buffers, it is recommended that they be purchased ready-to-use.

Follow the instruction below to prepare buffers.

- i. **Low Level TISAB (TISAB II):** To 500 mL of distilled water in a 1L beaker add 57 mL of Glacial Acetic Acid and 58 g of reagent grade Sodium Chloride. Allow the solution to cool to room temperature and using a calibrated pH meter adjust the pH of the solution to 5.0 – 5.5 using 5M Sodium Hydroxide. Pour into a 1 L volumetric flask and make to the mark with distilled water.
- iii. **High Level TISAB (TISAB IV):** To 500 mL of distilled water in a 1 L beaker add 84 mL of concentrated Hydrochloric Acid (36-38%), 242 g of Tris (Hydroxymethyl) Amino Methane and 230 g of reagent grade Sodium Tartrate. Stir to dissolve and allow the solution to cool to room temperature. Pour into a 1 L volumetric flask and make to the mark with distilled water.

k. Calibration and Measurements Using Direct Readout Meters

Consult the meter Instruction Manual to ensure that electrodes are connected properly and all the functions of the meter are understood.

i. Using High Level TISAB IV

1. Measure 100 mL of the Low Standard, transfer it to a beaker and add 2 mL of buffer.
2. Add a magnetic stir bar to the beaker, rinse electrodes with deionised water, blot them dry and immerse them in the solution. Start stirring and wait for a stable reading.
3. Follow instructions set out in the Instrument Manual on how to adjust the meter so that it reads the value of the Low Standard.
4. Repeat procedures from 1. to 3. using the High Standard.
5. Measure 100 mL of the QC Standard, transfer to a beaker and add 2 mL of buffer.
6. Add a magnetic stir bar to the beaker, rinse electrodes with deionised water, blot them dry and immerse them in the solution. Start stirring and wait for a stable reading.
7. The reading should be within 5% of stated value, e.g. acceptable values for a 1mg/L QC Standard are within the range 0.95 – 1.05 mg/L. Repeat calibration and Steps 5. and 6. till such time QC Standard falls within the acceptable range.
8. Continue with sample measurements using 100 mL of sample and 2 mL of TISAB IV. Record concentration of fluoride in mg/L.
9. When testing multiple samples, re-measure the QC Standard prepared in Step 5. above every 10 samples and after the last sample. The acceptance criteria stated in 7. above should be met. If they are not met, then ignore results, repeat calibration and sample measurements.

ii. Using Low Level TISAB II

Follow identical steps as above but use equal volume of buffer to standard and sample (e.g. 50 mL of buffer with 50 mL standard or sample).

At the conclusion of testing plug all the electrode holes and store the electrodes in a solution containing about 1 mg/L of fluoride (e.g. the High Standard solution used for calibration). In the event that the electrodes are not to be used for over a week, drain them and store them dry in their original container.

l. Calibration and Measurements Using mV/pH Meters

Consult the meter Instruction Manual to ensure that electrodes are connected properly and all the functions of the meter are understood.

i. Using High Level TISAB IV

1. Measure 100 mL of the Low Standard, transfer it to a beaker and add 2 mL of buffer.
2. Add a magnetic stir bar to the beaker, rinse electrodes with deionised water, blot them dry and immerse them in the solution. Start stirring and wait for a stable reading.
3. Record the mV reading.
4. Repeat procedures from 1. to 3. using the High Standard.
5. Subtract one reading from the other. A value between 55 and 60 mV indicates that the meter is working correctly otherwise check meters, electrodes and repeat calibration.
6. Plot the mV reading of each standard against the standard concentration. The standard concentrations are plotted on the log scale of the graph. Draw a straight line between the points.
7. Measure 100 mL of the QC Standard, transfer to a beaker and add 2 mL of buffer.
8. Add a magnetic stir bar, rinse electrodes with water, blot them dry and immerse them in the solution. Start stirring and wait for a stable reading.

9. Record the mV reading and extrapolate the concentration of the QC Standard from the graph prepared in 6.
10. The concentration should be within 5% of stated value (e.g. acceptable values for a 1mg/L QC Standard would be 0.95 – 1.05 mg/L). Repeat calibration and steps 7. to 9. till such time QC Standard falls within the acceptable range.
11. Continue with sample measurements using 100 mL of sample and 2 mL of TISAB IV. Record the mV of each sample and extrapolate the fluoride concentration in mg/L from the plotted graph.
12. When testing multiple samples, re-measure the QC Standard prepared in Step 7. above every 10 samples and after the last sample. The acceptance criteria stated in 10. above should be met. If they are not met, then ignore results, repeat calibration and sample measurements.

ii **Using Low Level TISAB II**

Follow identical steps as above but use equal volume of buffer to standard and sample (e.g. 50 mL of buffer with 50 mL standard or sample).

m. Troubleshooting

Due to the large variety of instruments available for this type of analysis, it is not possible to provide detailed causes and solutions for all possible problems or symptoms. Please refer to instrument manual for details. Below are some of the common symptoms, their possible cause and possible remedies.

Symptom	Possible Cause	Remedy
Wrong QC results but calibration curve appears OK	Incorrect QC Standard used	Check QC Standard, use stored QC Standard
	Incorrect use of the calibration standards	Check calibration standards, use stored standards if not able to correct problem (e.g. if standards are contaminated)
	Incorrect use of TISAB or no TISAB added	Use TISAB in the same ratio for Standards as per QC Standard
	Incorrect use of semilog paper	Plot mV on the linear axis and make sure that the concentration on the log axis are properly marked, e.g. the distance between the point marked 0.5 and 1.0 MUST be the same as that marked 1.0 and 2.0.
	Incorrect recording of mV readings	Make sure that you record the sign of the mV (it can be +ve and -ve!)
Low or No Slope	Contaminated standards	Check calibration standards, use stored standards if not able to correct problem (e.g. if standards are contaminated)
	TISAB was not used	Use TISAB in the correct proportion to sample
	Electrode malfunction	Check electrode, electrolyte levels and replace electrode/s if necessary
Noisy and/or unstable readings	Problems with the reference electrode or wrong electrode used	Check for correct electrode to be used with the specific fluoride electrode; air bubbles in electrode or incorrect electrolyte used. Empty and refill electrode
	TISAB was not used	Use TISAB in the correct proportion to sample
	Defective meter or poorly grounded	Check meter, see meter instruction manual
Reading slowly drifting in one direction only	Standard and samples not at room temperature and/or at different temperature	Allow sufficient time for solutions to reach steady room temperature
	Fluoride electrode dirty	Check and clean electrode, refer to instructions supplied with the meter
	Incorrect reference electrode filling solution used	Empty electrode and refill with correct solution
Meter will not read or reading off scale	Defective meter	Check meter, see meter instruction manual
	Electrodes not plugged in properly	Check connections of electrodes to meter
	Electrodes not in solution	Make sure electrodes are in solution and just few mm above stirring bar
	Reference electrode empty	Refill with correct solution
	Static electricity	Ground the meter correctly

TENDERS

Department of Public Works and Services

SUPPLIES AND SERVICES FOR THE PUBLIC SERVICE

TENDERS for the undermentioned Period Contracts, Supplies and Services, required for the use of the Public Service, will be received by the Department of Public Works and Services, Level 3, McKell Building, 2-24 Rawson Place, Sydney, N.S.W. 2000, up til 9.30 am on the dates shown below:

3 September 2002

038/904 INTRAVENOUS & IRRIGATING SOLUTIONS. DOCUMENTS: \$0.00 PER SET

4 September 2002

2006b COMPUTER PERIPHERALS AND ASSOCIATED EQUIPMENT. DOCUMENTS: \$220.00 PER SET

025/7255 SUPPLY OF ELECTRONIC SECURITY EQUIPMENT. DOCUMENTS: \$110.00 PER SET

023/7306 SUPPLY OF INFLUENZA VACCINE FOR NEW SOUTH WALES DEPARTMENT OF HEALTH. DOCUMENTS: \$110.00 PER SET

11 September 2002

025/7315 PRINTING SERVICES FOR THE SYDNEY OPERA HOUSE. DOCUMENTS: \$110.00 PER SET

014/318b MEDICAL GAS ADMINISTRATION EQUIPMENT AND ACCESSORIES - SUPPLEMENTARY. DOCUMENTS: \$110.00 PER SET

18 September 2002

022/7289 PRE EMPLOYMENT MEDICAL EXAMINATION SERVICE FOR NSW POLICE. DOCUMENTS: \$110.00 PER SET

022/7284 DEVELOPMENT & DELIVERY OF NSW GOVT. EXECUTIVE DEVELOPMENT PROGRAMS. DOCUMENTS: \$110.00 PER SET

025/7309 TEACHER RETRAINING & ACCELERATED TEACHER TRAINING PROGRAMS. DOCUMENTS: \$110.00 PER SET

EOI 025/7312 SUPPLY OF EQUIPMENT BELTS FOR TRIAL BY NSW POLICE. DOCUMENTS: \$55.00 PER SET

19 September 2002

036/7285 BANKING AND PURCHASING CARD FACILITIES TO NSW GOVT, AND SCHOOL BANKING. DOCUMENTS: \$1,650.00 PER SET

S02/00154 (869) CC869 CLEANING FOR DPWS - HERITAGE & BLDG SERVICES, DOONSIDE 0205. CATEGORY D. INSPECTION DATE & TIME: 05/09/2002 @ 11:00 AM SHARP. AREA: 1645 SQ. METERS. DOCUMENTS: \$27.50 PER SET

S02/00116 LAUNDRY AND LINEN HIRE/LEASE SERVICES - PARLIAMENT HOUSE. DOCUMENTS: \$110.00 PER SET

25 September 2002

022/7303 PURCHASE OF ONE FRONT END LOADER WITH BACKHOE ATTACHMENT. DOCUMENTS: \$110.00 PER SET

2 October 2002

016/7162-1 AIRBORNE REMOTE SENSING SYSTEM FOR BUSHFIRE MAPPING. DOCUMENTS: \$110.00 PER SET

3 October 2002

S02/00181 (6030) HENRY DEANE BLDG, JFG/CROWN PORTFOLIO. CATEGORY B. INSPECTION DATE & TIME: 12/09/2002 @ 10:30 AM SHARP. AREA: 10945 SQ. METERS. DOCUMENTS: \$55.00 PER SET

10 October 2002

IT02/2783 SUPPLY OF ANSW GOVERNMENT LICENSING SYSTEM (GLS). DOCUMENTS: \$1,650.00 PER SET

23 October 2002

025/7299 TYPE 1 PUMPER FIREFIGHTING VEHICLE. DOCUMENTS: \$110.00 PER SET

TENDER DOCUMENT FEE

Tender documents for inspection and purchase, and application forms for Expression of Interest are available at the address above. Where charges apply for tender documents, they are not refundable, cheques and credit cards (Bankcard, Mastercard and Visa) only are acceptable, payable to Department of Public Works and Services. NO CASH payments will be accepted. Documents can be Express Posted on request at an extra cost. Non attendance of mandatory site meetings will render tenders informal.

Further Information is available on the Internet (<http://www.dpws.nsw.gov.au/tenders>).

PRIVATE ADVERTISEMENTS

COUNCIL NOTICES

BERRIGAN SHIRE COUNCIL

Roads Act 1993, Section 162

Naming of Public Roads – Wise Court and Erskine Road

NOTICE is hereby given that in pursuance of section 162 of the Roads Act 1993, the Council has named the following roads as follows:

<i>Location</i>	<i>Name</i>
North of Tuppal Road, Tocumwal, being a subdivision of Lot 4, DP 1024841.	Wise Court.

West of Newell Highway, bisecting Lot 304, DP 722039 and Lot 311, DP 48551.	Erskine Road.
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BERRIGAN SHIRE COUNCIL, PO Box 137, Berrigan, NSW 2712. [0711]

BLUE MOUNTAINS CITY COUNCIL

Roads Act 1993, Section 162

Naming of Public Road – Seiberi Close

IN accordance with the provisions of the Roads Act 1993 notice is hereby given that the new road to be created in the subdivision of Lot 2, DP 746674, No.154 Evans Lookout Road, Blackheath will be called "Seiberi Close". The new road is located off Evans Lookout Road, Blackheath. This notice was approved on 28th August 2002 under the authority of David Johnson, Manager, Land Use Management Team, BLUE MOUNTAINS CITY COUNCIL, Locked Bag 5, Katoomba, NSW 2780. [0712]

BYRON SHIRE COUNCIL

Rural Fires Act 1997

Declaration of Bush Fire Danger Period

IN accordance with section 82 of the Rural Fires Act 1997, the Bush Fire Danger Period for the Byron Shire Local Government area will commence on 27th July, 2002 and remain in force until 30th September, 2002. Pursuant to section 87 of the Rural Fires Act 1997, any person wishing to light any fire in the open, for any purpose, must obtain a permit to do so, from their local authority. Failure to comply, can result in fines, under the Rural Fires Act 1997. ROBYN READ, General Manager, Byron Shire Council, PO Box 219, Mullumbimby, NSW 2482. [0701]

GUNDAGAI SHIRE COUNCIL

Roads Act 1993

Naming of Public Road – Tard Lane

THE Gundagai Shire Council in pursuance of section 162 of the abovementioned Act, and the Roads (General) Regulation 2000 has resolved to name the road as shown hereunder:

Description

The road that goes in a northerly direction from the Brungle Road approximately 70 metres west of Tarrabandra Road at Jackalass through Lot 140, DP 864768.

Proposed Name

Tard Lane.

Authorised by resolution of Council on 13th August, 2002. Dated 26th August, 2002. G. A. J. TICKNER, General Manager, Gundagai Shire Council, PO Box 34, Gundagai, NSW 2722. [0702]

HORNSBY SHIRE COUNCIL

Roads Act 1993

Light Traffic Thoroughfares

THE Council hereby advises that, in accordance with the Roads Act 1993, it proposes to control and regulate the use by heavy traffic of public roads in the following location. It is intended that this road be restricted to a maximum loaded weight of three (3) tonnes gross. (1) David Road, Castle Hill. It should be noted that the load limits do not apply to buses or commercial vehicles in excess of the limit who; (a) Wish to gain access to properties in the street defined above and; (b) Must use the street, there being no other street to gain access to the desired street. A period of twenty-eight (28) days from 29th August, 2002 is allowed for persons to lodge a submission regarding the proposal to impose the load limits. Further information regarding the proposal may be obtained by contacting the Traffic and Road Safety Branch between the hours of 8.30 a.m. and 5.00 p.m., Monday to Friday on (02) 9847 6754. R. J. BALL, General Manager, Hornsby Shire Council, PO Box 37, Hornsby, NSW 2077. [0703]

NARRABRI SHIRE COUNCIL

Roads Act 1993

Naming of Public Roads - Hill Street, Newtons Road and Mount View Road

THE Narrabri Shire Council in pursuance of section 162 of the abovementioned Act and in accordance with Clause 9, Division 2 – Part 2 of the Roads (General) Regulation 2000, has resolved that the following roads in the township of Boggabri be named as follows:

<i>Description</i>	<i>Name</i>
Unnamed road commencing at the north-eastern corner of Lot 211, DP 755475 and running to the north-west corner of Lot 172, DP 755475.	Hill Street.

Unnamed road off MR 7709 adjacent to Lots 195 and 193, DP 755475 and finishing at the north-east corner of Lot 193, DP 755475.	Newtons Road.
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Unnamed road off MR 7709 adjacent to Lots 189 and 186, DP 755475 and finishing at the north-east corner of Lot 186, DP 755475.

No objections to the proposed names were received within the prescribed period of time. I. R. McCALLUM, General Manager, Narrabri Shire Council, PO Box 261, Narrabri, NSW 2390. [0704]

RYLSTONE SHIRE COUNCIL

Erratum

THE notice appearing in *Government Gazette* No. 48 of 22nd February, 2002, Folio 1175, under the heading "Rylstone Shire Council", regarding a Notice of Compulsory Acquisition of Land described as Lots 1-8 in Deposited Plan 1030302 for road purposes, is a duplicate of the notice of compulsory acquisition of that land previously published in *Government Gazette* No. 38 of 8 February, 2002 and is hereby deleted. JOHN A. SUMMERS, General Manager, Rylstone Shire Council, PO Box 42, Rylstone, NSW 2849. [0713]

SOUTH SYDNEY CITY COUNCIL

Roads Act 1993, Part 10 Division 2

Proposed Lease – Part of William Street, Potts Point
PUBLIC NOTICE is hereby given that South Sydney City Council has received a request for the renewal of the lease to Repeller Nominees an adjoining land owner, for a period of five (5) years, part of William Street, Potts Point adjacent to No. 248 William Street which is the area occupied by the existing building. Full particulars of the proposal are shown on Plan No. S4-130/392B which is available at Council's Administrative Offices at 280 Elizabeth Street, Surry Hills. Any objections to the abovementioned proposal may be lodged with Council in writing within thirty (30) days of the date hereof. (Council Papers 2015357). MICHAEL WHITAKER, General Manager, South Sydney City Council, 280 Elizabeth Street, Surry Hills, NSW 2010. [0705]

TWEED SHIRE COUNCIL

Local Government Act 1993

Land Acquisition (Just Terms Compensation) Act 1991

Notice of Compulsory Acquisition of Land

THE Tweed Shire Council declares, with the approval of Her Excellency the Governor, that the land described in the Schedule below excluding mines and deposits of minerals within the land, is acquired by compulsory process under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991, for the purpose of a water supply reservoir. Dated on 28th May, 2002 at Murwillumbah. TWEED SHIRE COUNCIL, PO Box 816, Murwillumbah, NSW 2484.

SCHEDULE

Lot 430 in DP 755740.

[0706]

WYONG SHIRE COUNCIL

Local Government Act 1993

Land Acquisition (Just Terms Compensation) Act 1991

Notice of Compulsory Acquisition of Land

THE Wyong Shire Council declares, with the approval of His Excellency the Governor, that the land described in the Schedule below, excluding mines and deposits of minerals within the land, is acquired by compulsory process under the provisions of the Land Acquisition (Just Terms Compensation) Act 1991, for the purposes of a Works Depot. J. S. DAWSON, General Manager, Wyong Shire Council, PO Box 20, Wyong, NSW 2259.

SCHEDULE

Lot 520 as shown in DP 821134.

[0714]

CABONNE COUNCIL

Local Government Act 1993, Section 713

Sale of Land For Overdue Rates

NOTICE is hereby given to the person(s) named hereunder that the Council of Cabonne has resolved, in pursuance of Section 713 of the Local Government Act 1993, to sell the land described hereunder of which the person(s) named are known to the Council to be the owner(s) or to have interest in the land on which the amount of rates and charges stated in each case, as at 31th July, 2002, is due:

	Assess Number Owner(s) or person(s) having interest in the land	Description of land	Amount of rates (including extra charges) overdue for more than five (5) years (\$)	Amount of all other rates and (including extra charges) due and in arrears (\$)	Total (\$)
	(a)	(b)	(c)	(d)	(e)
611	GAVIN, Roland Henry BROOKS, Charles Aaron LESSLIE, William Wallace Estate of the late Gene	Lot 190 DP 750141 Parish Brymedura	275.41	1930.17	2205.58
699	DAWSON, Brenton Mark	Lot 1 DP 377148 Parish of Buckinbah	4898.46	5504.39	10402.85
1016	ROBERTSON, Peter Douglas	Lot 5 DP 3946 Section 4 Miller Street Village of Cumnock Parish of Burrawong	1018.83	5307.93	6326.76

1056	THE MANAGER RURAL DEVELOPMENT CORP	Lot 10 DP 13271 Section A Obley Street Village of Cumnock Parish of Burrawong	1025.21	4796.14	5821.35
2952.01	MCGILL, Leslie John MCGILL, Shirley May	Lot 201 DP 750182 Kareena Street Town of Eugowra Parish of Trajere	647.29	4356.74	5004.03
2957	MONAHAN, Linda	Lot 177 DP 750182 Kareena Street Town of Eugowra Parish of Trajere	620.68	4357.39	4978.07
951.4	NECHEVSKI, Poncho NECHEVSKI, Rozica	Lot 15 DP 7016 Cudumble Road Village of Cumnock Parish of Burrawong	Nil	3034.39	3034.39
1230	HUDSON, Leo	Lot 20 Section 20 DP 758821 Lynn Street Town of Canowindra Parish of Canowindra	3475.67	4717.78	8193.45
1743.01	BOWD, Ross William BOWD, Janet Marion	Lots 13, 14, 15, DP 32505 Eugowra Rd Canowindra Parish of Collett	Nil	4062.47	4062.47
282.05	BLOMFIELD, Frank Aubyn	Lot 1 DP 103777 Parish of Boomey	Nil	622.50	622.50
2913.5	WALTON, Herbert William	Lot 211 DP 750182 Grevillea Ave Town of Eugowra Parish of Goimbla	Nil	730.09	730.09
3161	PINE FORESTS OF AUSTRALIA	Lot 194 DP 550490 Long Point Road Mullion Creek Parish of Forbes	Nil	3700.59	3700.59
3701	PINE FORESTS OF AUSTRALIA	Lot 4 DP 565136 Mullion Creek Parish of Lewis	Nil	4030.54	4030.54
3857.01	WILKINSON, Phillip Murray	Lot 1 DP 254336 Clergate Parish of March	Nil	1720.92	1720.92
5286	CROWE, Susan Marie	Lot 5 DP 758984 Section 15 Forbes Street Toogong Parish of Toogong	1046.46	2247.68	3294.14
4981.52	CONNOR, James Edward	Lots 10, 11, 4 & Pt 3 DP 758806 & Lot 1 DP 122519 Parish of Obley	261.40	2199.16	2460.56
4981.4	COADY, John	Lot 1 DP 653084 Village of Obley Parish of Obley	887.02	2442.56	3329.58
4981.45	BLOOMFIELD, William Josiah	Lot 5 DP 758806 Section 1 Village of Obley Parish of Obley	Nil	1029.07	1029.07
4981.2	EMBLEMEN, Jeremiah	Part Lot 7 DP 758806 Section 1 Village of Obley Parish of Obley	Nil	1029.07	1029.07
4981.31	GARDNER, Thomas	Lot 1 DP 652105 Pt Lot 6 DP 758806 Section 1 Village of Obley Parish of Obley	1013.96	2315.57	3329.53
23	PINE FORESTS OF AUSTRALIA	Lot 53 DP 750353 Parish of Anson	Nil	5746.89	5746.89
2834	MONAHAN, Linda	Lot 1 DP 758396 Section 2A Broad Street Town of Eugowra Parish of Wauhan	316.31	2326.29	2642.60
2841	WATSON, Bruce Malcolm WATSON, Karen Margaret	Lot A DP 342046 Broad Street Town of Eugowra Parish of Wauhan	Nil	3649.69	3649.69
2503	NASTOSKA, Biljana	Lot 3 DP 758311 Section 11 Boree Street Village of Cudal Parish of Boree Cabonne	Nil	3167.91	3167.91
4020	ESTATE OF THE LATE M WELDON	Lot 27 DP 977127 Section A Betts Street Town of Molong Parish of Gamboola	Nil	8303.96	8303.96
4288	DEMPSEY, Ian Winston DEMPSEY, Tracy Ann	Lot 2 DP 212602 Lee Street Molong Town of Molong	1744.36	11709.02	11709.02
4137	EVERS, Mrs Elsie Genevieve	Lot 1 DP 758693 Section 33 George Street Town of Molong Parish of Molong	23641.35	32858.46	32858.46

In default of payment to the Council of the amount stated in Column (e) above and any other rates (including extra charges) becoming due and payable after the publication of this notice, or any arrangement satisfactory to the Council for payment of all such rates being entered into by the rateable person, before the time fixed for sale, the said land will be offered for sale by public auction at Cabonne Council Office, Canowindra by Allan Gray & Co P/L on Saturday the 7th of December 2002 commencing at 11.00am and at Cabonne Council Office Molong by McCarron Cullinane P/L at 2pm. G. L. P. FLEMING, General Manager, Cabonne Council, PO Box 17, Molong NSW 2866. [0716]

ESTATE NOTICES

NOTICE of intended distribution of estate.—Any person having any claim upon the estate of LOIS THERESE AGNES O'CONNOR, late of 278 Nelson Street, Annandale, in the State of New South Wales, retired telegraphist, who died on 28th April, 2002 must send particulars of his claim to the executrix, Helen Galbraith Grier, c.o. Steve Masselos & Co., Solicitors, PO Box A988, Sydney South, NSW 1235, within one (1) calendar month from publication of this notice. After that time the executrix may distribute the assets of the estate having regard only to the claims of which at the time of distribution she has notice. Probate No. 112316/02 was granted in New South Wales on 13th August, 2002. STEVE MASSELOS & CO., A Solicitor Corporation, Level 2, 114-120 Castlereagh Street (PO Box A988, Sydney South, NSW 1235), Sydney, NSW 2000 (DX 305, Sydney), tel.: (02) 9264 7022. [0707]

NOTICE of intended distribution of estate.—Any person having any claim upon the estate of LEO DARCY BROWN, late of 3 Bayview Avenue, Mosman, in the State of New South Wales, retired carpenter, who died on 15th April, 2002 must send particulars of his claim to the executor, Christopher Darcy Brown, c.o. Steve Masselos & Co., Solicitors, PO Box A988, Sydney South, NSW 1235, within one (1) calendar month from publication of this notice. After that time the executor may distribute the assets of the estate having regard only to the claims of which at the time of distribution he has notice. Probate No. 112315/02 was granted in New South Wales on 12th August, 2002. STEVE MASSELOS & CO., A Solicitor Corporation, Level 2, 114-120 Castlereagh Street (PO Box A988, Sydney South, NSW 1235), Sydney, NSW 2000 (DX 305, Sydney), tel.: (02) 9264 7022. [0708]

COMPANY NOTICES

NOTICE of voluntary winding up.—CHUSAN HOLDINGS PTY LIMITED, ACN 000 783 451.—Notice is hereby given that at a general meeting of the abovementioned company, duly convened and held on 22nd August, 2002, the following special resolution was duly passed: "That the company be wound up voluntarily". Mr J. W. Friedland of Heman, Friedland and Associates, Chartered Accountants of 103/44 Mountain Street, Broadway was appointed liquidator of the company. Dated this 22nd August, 2002. J. W. FRIEDLAND, c.o. Heman, Friedland and Associates, Chartered Accountants, 103/44 Mountain Street, Broadway, NSW 2007, tel.: (02) 9281 2533. [0709]

OTHER NOTICES**AUSTRALIAN INLAND ENERGY AND WATER
(AUSTRALIAN INLAND)**

Erratum

THE notice in *Government Gazette* No. 125 of 2nd August, 2002, Folio 5834, under the heading "Determination of Service Charges for Year Commencing 1st July, 2002" is hereby altered by deleting from Schedule 2 paragraphs a), a) iii), b) and b) ii) and inserting the following in lieu thereof.

Sewerage Charges in Respect of Lands Exempt under Schedule 6

- a) The charge for sewerage services rendered, unless otherwise provided by separate assessment by Australian Inland Energy and Water of the cost of providing the service, in respect of -
 - iii) land which belongs to a religious body and which is occupied and used in connection with any church or other building used or occupied for public worship; shall be sixty eight dollars fifty cents per annum for each water closet on the premises. In any case where a urinal is installed an additional seventy seven dollars fifty cents per annum for each cistern serving such urinal may be made.
- b) The charge for sewerage services rendered in respect of -
 - ii) lands, other than lands referred to in paragraph (iii) of clause (a) above, belonging to a religious body which is exempt under Schedule 6 of the Act; shall be sixty-eight dollars fifty cents per annum for each water closet on the premises. In any case where a urinal is installed an additional seventy-seven dollars fifty cents per annum for each cistern serving such urinal may be made.

J. FLYNN, Managing Director, Australian Inland, PO Box 800, Broken Hill, NSW 2880. [0710]

IN the Local Court of New South Wales.-ALLAN FIELD and HEATHER FIELD – vs – ROWLAND EDWARDS.— On Friday, 27th September, 2002 at 11.00 a.m., unless the Writ of Execution herein be previously satisfied, the Sheriff will cause to be sold by public auction at "Ramsay Park", Coolabah, NSW 2831, all the right, title and interest of Rowland Edwards, the defendant herein, of, in and to: All that equity of redemption and all other right, title and interest (if any) of the said defendant of, and to all the piece of land situated at "Ramsay Park", Coolabah, NSW 2831, being described as Lot 3 in Deposited Plan 751874 in the Parish of Garfield, County of Cowper. Title Folio Identifier 3/751874. Intending purchasers should make their own searches and enquiries. A. MANN, Sheriff's Officer, Office of the Sheriff, Court House, Brisbane Street, Dubbo, NSW 2830. [0715]