



Government Gazette

OF THE STATE OF
NEW SOUTH WALES

Number 36
Friday, 2 March 2007

Published under authority by Government Advertising

LEGISLATION

Regulations



New South Wales

Commercial Agents and Private Inquiry Agents Amendment (Miscellaneous) Regulation 2007

under the

Commercial Agents and Private Inquiry Agents Act 2004

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Commercial Agents and Private Inquiry Agents Act 2004*.

JOHN WATKINS, M.P.,
Minister for Police

Explanatory note

The object of this Regulation is to amend the *Commercial Agents and Private Inquiry Agents Regulation 2006*:

- (a) to specify further offences (being offences relating to the participation in criminal groups and recruiting persons to engage in criminal activity) that disqualify a person from applying for a licence to carry on business in respect of any commercial agent activity or private inquiry agent activity, and
- (b) to provide that the following are not required to hold a master or an operator licence in respect of any commercial agent activity or private inquiry agent activity:
 - (i) persons carrying on investigations relating to disciplinary matters or workplace grievances or other investigations of a similar nature on behalf of public sector agencies,
 - (ii) any person providing an employment placement service.

This Regulation is made under the *Commercial Agents and Private Inquiry Agents Act 2004*, including sections 4, 5, 11 and 39 (the general regulation-making power).

Clause 1 Commercial Agents and Private Inquiry Agents Amendment
 (Miscellaneous) Regulation 2007

Commercial Agents and Private Inquiry Agents Amendment (Miscellaneous) Regulation 2007

under the

Commercial Agents and Private Inquiry Agents Act 2004

1 Name of Regulation

This Regulation is the *Commercial Agents and Private Inquiry Agents Amendment (Miscellaneous) Regulation 2007*.

2 Amendment of Commercial Agents and Private Inquiry Agents Regulation 2006

The *Commercial Agents and Private Inquiry Agents Regulation 2006* is amended as set out in Schedule 1.

Commercial Agents and Private Inquiry Agents Amendment
(Miscellaneous) Regulation 2007

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 2)

[1] Clause 5 Major and minor offences

Insert after clause 5 (1):

- (1A) An offence under section 93IK or 351A of the *Crimes Act 1900* is also declared to be a **major offence** for the purposes of the Act.

[2] Clause 10 Certain persons not required to hold master licence

Insert after clause 10 (1) (f):

- (g) any person carrying on investigations relating to disciplinary matters or workplace grievances or other investigations of a similar nature on behalf of an agency that comprises the whole or part of a public sector service within the meaning of the *Public Sector Employment and Management Act 2002*,
- (h) any person providing an employment placement service (within the meaning of section 60P of the *Fair Trading Act 1987*).

[3] Clause 16 Certain persons not required to hold operator licence

Insert after clause 16 (1) (e):

- (f) any person carrying on investigations relating to disciplinary matters or workplace grievances or other investigations of a similar nature on behalf of an agency that comprises the whole or part of a public sector service within the meaning of the *Public Sector Employment and Management Act 2002*,
- (g) any person providing an employment placement service (within the meaning of section 60P of the *Fair Trading Act 1987*).



New South Wales

Constitution (Disclosures by Members) Amendment Regulation 2007

under the

Constitution Act 1902

Her Excellency the Governor, with the advice of the Executive Council and in compliance with the provisions of section 14A (5) of the *Constitution Act 1902*, has made the following Regulation under the *Constitution Act 1902*.

MORRIS IEMMA, M.P.,
Premier

Explanatory note

The object of this Regulation is to amend the *Constitution (Disclosures by Members) Regulation 1983*:

- (a) to require any Member of Parliament who is engaged (whether under an employment contract, as an officer of a corporation or by means of certain other contracts, agreements or arrangements for monetary consideration) by a person (the *principal*) to provide a service involving the use of the Member's parliamentary position to or on behalf of clients of the principal to disclose certain information about the service the Member provides, and
- (b) to require certain Members of Parliament to lodge a supplementary ordinary return in the middle of an ordinary return period in addition to lodging an ordinary return at the end of that period, and
- (c) to permit Members to Parliament to make disclosures by lodging a discretionary return before the time they would otherwise be required to make the disclosures in an ordinary return or supplementary ordinary return, and
- (d) to require Members of Parliament to disclose certain additional information concerning their sources of income, and
- (e) to make certain consequential amendments to the Regulation, and
- (f) to make other minor amendments in the nature of law revision.

This Regulation is made under section 14A (Disclosure of pecuniary interests and other matters by Members) of the *Constitution Act 1902*.

Clause 1 Constitution (Disclosures by Members) Amendment Regulation 2007

Constitution (Disclosures by Members) Amendment Regulation 2007

under the

Constitution Act 1902

1 Name of Regulation

This Regulation is the *Constitution (Disclosures by Members) Amendment Regulation 2007*.

2 Commencement

This Regulation commences on 24 March 2007.

3 Amendment of Constitution (Disclosures by Members) Regulation 1983

The *Constitution (Disclosures by Members) Regulation 1983* is amended as set out in Schedule 1.

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 3)

[1] Clause 2 Arrangement

Omit the clause.

[2] Clause 3 Interpretation

Insert in alphabetical order in clause 3 (1):

discretionary return means a return in or to the effect of Form 4.

supplementary ordinary return means a return in or to the effect of Form 3.

[3] Clause 3 (1), definition of “ordinary return period”

Omit “first day after the” from paragraph (b) of the definition.

[4] Clause 3 (1), definition of “primary return date”

Omit the definition. Insert instead:

primary return date, in relation to a person who becomes a Member (not being a re-elected Member), means the date on which he or she takes the pledge of loyalty required by section 12 of the Act.

[5] Clause 3 (1), definition of “return”

Omit the definition. Insert instead:

return means any of the following:

- (a) a primary return,
- (b) an ordinary return,
- (c) a supplementary ordinary return,
- (d) a discretionary return.

[6] Clause 3 (2) and (3)

Omit the subclauses. Insert instead:

- (2) A reference in this Regulation to a primary return or an ordinary return that was last lodged by a Member includes a reference to a primary return or ordinary return in or to the effect of the relevant form set out in Schedule 1 (as in force before its substitution by the *Constitution (Disclosures by Members) Amendment Regulation 2007*) if that was the last return lodged by the Member.

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

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- (3) Notes included in this Regulation (except for directions, or examples and other notes in a Form) do not form part of this Regulation.

[7] Clause 3A

Insert after clause 3:

3A Forms

- (1) In this Regulation, a reference to a Form is a reference to a Form in Schedule 1.
- (2) A Form must be completed in accordance with such of the following directions and guidelines (if any) as are consistent with this Regulation:
- (a) any directions specified in the Form,
 - (b) any guidelines issued or approved from time to time by the appropriate parliamentary committee for the Member completing the Form.
- (3) Any examples or other notes included in a Form are provided only for the purpose of assisting Members to complete the Form.
- (4) In this clause, the *appropriate parliamentary committee* for a Member completing a Form means:
- (a) a committee of the House of Parliament to which the Member belongs that is authorised by that House to issue or approve guidelines of the kind referred to in subclause (2) (b), or
 - (b) if a joint committee of the Houses of Parliament is so authorised by both Houses, that joint committee.

[8] Clause 4

Omit clauses 4 and 5. Insert instead:

4 Primary returns

A person who becomes a Member (not being a re-elected Member) must, within 3 months after the date on which he or she takes the pledge of loyalty required by section 12 of the Act, lodge a primary return with the Clerk.

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

[9] Clauses 6A and 6B

Insert after clause 6:

6A Supplementary ordinary returns

- (1) A Member must, on or before the relevant date in each year (commencing in the calendar year of 2008), lodge a supplementary ordinary return with the Clerk if the Member has lodged either of the following returns (a *previous return*):
 - (a) an ordinary return in respect of the ordinary return period ending on 30th June of the previous year,
 - (b) a primary return for which the primary return date was after 30th April but before 1st October of the previous year.
- (2) For the purposes of subclause (1), the relevant date in any year is:
 - (a) except as provided in paragraph (b)—31st March in that year, or
 - (b) where there are no Members of the Legislative Assembly on 31st March in that year by reason of the termination, either by dissolution or expiry, of the Legislative Assembly—the date on which the Legislative Assembly first meets after 31st March in that year.
- (3) The *supplementary ordinary return period* in relation to a Member who is required to lodge a supplementary ordinary return under subclause (1) is:
 - (a) in the case of a Member whose previous return was an ordinary return—the period commencing on 1st July and ending on 31st December of the previous year, or
 - (b) in the case of a Member whose previous return was a primary return:
 - (i) where the primary return date in relation to the Member was on or before 1st July of the previous year—the period commencing on 1st July and ending on 31st December of the previous year, or
 - (ii) where the primary return date in relation to the Member was after 1st July of the previous year—the period commencing on the primary return date and ending on 31st December in the previous year.

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

- (4) For the purposes of making disclosures in a supplementary ordinary return:
- (a) the provisions of clauses 8, 12, 13, 14 and 16 apply with the following modifications:
 - (i) a reference in the provisions to an ordinary return is to be read as if it were a reference to a supplementary ordinary return, and
 - (ii) a reference in the provisions to the ordinary return period in relation to a Member is to be read as if it were a reference to the supplementary ordinary return period in relation to the Member, and
 - (iii) any requirement imposed by the provisions to disclose a matter in an ordinary return is to be read as if it were a requirement to disclose the matter in a supplementary ordinary return, but only if the matter was not disclosed in the previous return and it occurred, or was received or had, during the supplementary ordinary return period,
 - (b) the provisions of clauses 9, 10, 11, 15 and 15A apply with the following modifications:
 - (i) a reference in the provisions to an ordinary return is to be read as if it were a reference to a supplementary ordinary return, and
 - (ii) a reference in the provisions to the ordinary return period in relation to a Member is to be read as if it were a reference to the supplementary ordinary return period in relation to the Member, and
 - (iii) any requirement imposed by the provisions to disclose a matter in an ordinary return is to be read as if it were a requirement to disclose the matter in a supplementary ordinary return, but only if the matter occurred, or was received or had, during the ordinary supplementary ordinary return period (regardless of whether or not it was disclosed in the previous return).
- (5) A Member is not excused from disclosing in a subsequent ordinary return any matter that the Member has previously disclosed in a supplementary ordinary return for a supplementary ordinary return period that occurred during the ordinary return period for the ordinary return.

Constitution (Disclosures by Members) Amendment Regulation 2007

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6B Discretionary returns

- (1) If a Member considers it appropriate to do so, the Member may lodge a discretionary return with the Clerk at any time before the date on which the Member is next required to lodge an ordinary return or supplementary ordinary return.
- (2) A discretionary return may contain such disclosures as the Member wishes to make concerning any or all of the matters that under this Regulation are required or permitted to be disclosed in an ordinary return.

[10] Clause 7 Interpretation: Part 3

Omit “his” from paragraph (f) of the definition of *disposition of property* in clause 7 (1).

Insert instead “his or her”.

[11] Clause 7 (1), definition of “income”

Omit “*Income Tax Assessment Act 1936* of the Parliament of the Commonwealth”.

Insert instead “*Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997* of the Commonwealth”.

[12] Clause 7 (4)

Insert after clause 7 (3):

- (4) A reference in this Part to a description that is reasonably sufficient to identify a matter is a reference to a description that would enable a reasonable person to identify the nature or the kind of matter.

[13] Clause 7A

Insert after clause 7:

7A Use of Member’s parliamentary position to provide services

A reference in this Part to a service provided by a Member involving the use of the Member’s parliamentary position is a reference to any service provided by the Member to another person that arises from or relates to the use of the Member’s position as a Member, including (but not limited to) any of the following services:

- (a) the provision of public policy advice,

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Schedule 1 Amendments

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- (b) the development of strategies, or the provision of advice, on the conduct of relations with the Government or Members,
 - (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

[14] Clauses 8 (2), 11 (2) (c) and (f), 12 (1) (a), 13 (a), 14 (3) (d) (ii) and 16

Omit “he”, “his” and “him” wherever occurring.

Insert instead “he or she”, “his or her” and “him or her” respectively.

[15] Clause 9 Sources of income

Omit clause 9 (1) (a). Insert instead:

- (a) in a primary return—each source of income that the Member received, or reasonably expects to receive, in the period commencing on the primary return date and ending on the next succeeding 30th June, and

[16] Clause 9 (2) and (2A)

Omit clause 9 (2). Insert instead:

- (2) A reference in subclause (1) to each source of income received, or reasonably expected to be received, by a Member is a reference to:
 - (a) in relation to income from being an employee of another person (including an employee of a corporation):
 - (i) the name of the occupation in which the Member is engaged, and
 - (ii) a description that is reasonably sufficient to identify the kinds of services provided, or to be provided, for that income, and
 - (iii) the name and address of the Member’s employer, and
 - (b) in relation to income from being the holder of another office (including the holder of an office in a corporation or other body):
 - (i) the name or title of the office held by the Member, and
 - (ii) a description that is reasonably sufficient to identify the kinds of services provided, or to be provided, for that income, and

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- (iii) in the case of an office held in a corporation or other body—the name and address of the corporation or body, and
 - (c) in relation to income from a partnership the Member has entered into with other persons:
 - (i) the name of the occupation (if any) in which the Member is engaged, and
 - (ii) a description that is reasonably sufficient to identify the kinds of services provided, or to be provided, for that income, and
 - (iii) the name (if any) under, and address from which, the partnership is conducted, and
 - (d) in relation to income for a service provided under any other kind of contract, agreement or arrangement:
 - (i) the name of the occupation (if any) in which the Member is engaged, and
 - (ii) a description that is reasonably sufficient to identify the service, and
 - (iii) the name and address of the person from whom the income was, or is reasonably expected to be, received, and
 - (e) in relation to income from a trust—the name and address of the settlor and the trustee, and
 - (f) in relation to any other income—a description that is reasonably sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be, received.
- (2A) Without limiting subclause (2), if:
- (a) the source of income was, or is reasonably expected to be, received:
 - (i) from the Member's employer (including where the employer is a corporation), or
 - (ii) for an office held by a Member in a body (including where the body is a corporation), or
 - (iii) under a contract or any other agreement, and
 - (b) the Member knows that the source of income was, or is reasonably expected to be, received for the provision by the Member of any service involving the use of the Member's parliamentary position,

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the disclosure required by subclause (1) in relation to that source of income must also include a description that is reasonably sufficient to identify the business carried on by the employer, body or other party to the contract or agreement (as the case may be).

[17] Clause 12 Interests and positions in corporations

Insert after clause 12 (2):

- (3) A Member need not disclose any matter that the Member would otherwise be required to disclose under this clause if the Member has already made a disclosure about the same matter when making a disclosure for the purposes of clause 9 (Sources of income).

[18] Clause 15A

Insert after clause 15:

15A Provision of client services

- (1) Any Member who is or was engaged by a person (the *principal*) to provide any service that involves the use of the Member's parliamentary position (a *relevant service*) to or on behalf of any client of the principal must disclose:
- (a) in a primary return—each relevant service the Member provided, or reasonably expects to provide, to or on behalf of any clients of the principal in the period commencing on the primary return date in relation to the Member and ending on the next succeeding 30th June, and
 - (b) in an ordinary return—each relevant service provided to or on behalf of any clients of the principal that the Member provided at any time during the ordinary return period.
- (2) A reference in subclause (1) to each relevant service provided, or reasonably expected to be provided, by a Member to or on behalf of any clients of the principal is a reference to:
- (a) a description that is reasonably sufficient to identify the nature of the service, and
 - (b) the names and addresses of the persons that the Member knows, or ought reasonably to know, have directly benefited or are likely to benefit directly from the provision of the service, and
 - (c) a description that is reasonably sufficient to identify the nature of the business carried on by any of the persons referred to in paragraph (b).

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- (3) A Member is required to disclose a relevant service under subclause (1) regardless of whether or not the Member also received, or is also reasonably expected to receive, a payment, gift or other financial benefit from the client or other person to whom the service is (or is to be) provided.
- (4) For the purposes of this clause:
- (a) a *client* of a principal is any person to whom a service is, or is to be, provided or made available in circumstances where the principal has received, or is reasonably expected to receive, consideration in money or money's worth for the service, and
 - (b) a Member is or was *engaged by a principal* to provide a relevant service to or on behalf of clients of the principal if the Member provides or provided the service in connection with any of the following:
 - (i) any contract of employment that the Member has entered into with the principal,
 - (ii) where the Member is an officer of the principal—the Member's functions as an officer of the principal,
 - (iii) any other contract, agreement or arrangement that the Member has entered into with the principal under which the Member receives, or is reasonably expected to receive, consideration in money or money's worth, and
 - (c) a relevant service is or was provided *on behalf of a client of the principal* if the client has or had requested that the service be provided to another person on the client's behalf.
- (5) Nothing in this clause requires a Member to disclose a relevant service under subclause (1) that was provided by the Member before the primary return date in relation to the Member.
- Note.** The primary return date for a Member (other than a re-elected Member) is the day on which he or she takes the pledge of loyalty required by section 12 of the Act.
- (6) In this clause:
function includes a power, authority or duty.
officer, in relation to a person that is a corporation, has the same meaning as officer of a corporation has in section 9 of the *Corporations Act 2001* of the Commonwealth.

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[19] Clause 19 Form of registers

Omit clause 19 (2) (b). Insert instead:

- (b) There shall be separate parts of a register for the ordinary returns lodged in respect of each ordinary return period, together with:
 - (i) primary returns lodged under clause 4 in respect of primary return dates in that period, and
 - (ii) supplementary ordinary returns lodged under clause 6A in that period, and
 - (iii) discretionary returns lodged under clause 6B in that period.

[20] Clause 22 Nil return

Omit “or an ordinary return”.

Insert instead “, ordinary return or supplementary ordinary return”.

[21] Clause 24

Insert after clause 23:

24 Summary of operation of this Regulation in 2007**(1) Summary of requirements in 2007**

For the avoidance of doubt, this clause summarises the operation of this Regulation (as amended by the *Constitution (Disclosures by Members) Amendment Regulation 2007*) in the calendar year of 2007.

(2) When ordinary return for 2006–2007 is due

The ordinary return for 2006–2007 must be lodged before 1st October 2007. The ordinary return period to which the return will relate will be:

- (a) where the last return lodged by the Member is an ordinary return—the period beginning on 1st July 2006 and ending on 30th June 2007, or
- (b) where the last return lodged by the Member was a primary return—the period commencing on the primary return date in relation to the Member and ending on 30th June 2007.

(3) Members required to lodge first ordinary return

The following Members will be required to lodge an ordinary return for 2006–2007 before 1st October 2007:

- (a) any re-elected Member,

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- (b) any Member of the Legislative Council whose term of office does not expire with the general election to be held on 24 March 2007 (the *2007 general election*),
 - (c) any Member (other than a re-elected Member) who:
 - (i) is elected at the 2007 general election or subsequently, and
 - (ii) takes the pledge of loyalty required by section 12 of the Act on or before 30th April 2007.

(4) **Requirements in relation to recently elected Members**

Any Member (other than a re-elected Member) who is elected at the 2007 general election will also be required to lodge a primary return within 3 months after he or she takes the pledge of loyalty required by section 12 of the Act. However, a Member elected in 2007 or subsequently who takes the pledge of loyalty after 30th April 2007 will not be required to lodge an ordinary return for 2006–2007.

(5) **Supplementary ordinary returns not required until 2008**

No Member will be required to lodge a supplementary ordinary return until 31st March 2008. The return period for those Members who are required to lodge such returns in 2008 will be:

- (a) in the case of a Member whose last return in 2007 was an ordinary return—the period commencing on 1st July 2007 and ending on 31st December 2007, or
- (b) in the case of a Member whose last return was a primary return:
 - (i) where the date on which the Member took the pledge of loyalty was on or before 1st July 2007—the period commencing on 1st July 2007 and ending on 31st December 2007, or
 - (ii) where the date on which the Member took the pledge of loyalty was after 1st July 2007—the period commencing on that date and ending on 31st December 2007.

Constitution (Disclosures by Members) Amendment Regulation 2007

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[22] Schedule 1

Omit the Schedule. Insert instead:

Schedule 1 Forms

(Clauses 3 (1) and 3A)

Form 1 Primary return

(Clause 3 (1), definition of “primary return”)

Constitution (Disclosures by Members) Regulation 1983

Primary Return—Legislative *Council/*Assembly

Directions

- 1 The pecuniary interests and other matters required to be disclosed in this return are prescribed in clauses 8, 9, 12, 13, 14 and 15A of the *Constitution (Disclosures by Members) Regulation 1983*.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 4 A reference in this form to the **primary return period** in relation to a Member is a reference to the period commencing on the day on which the Member took the pledge of loyalty and ending on the next succeeding 30 June.
- 5 Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word “NIL” is to be placed in an appropriate space under that heading.
- 6 The entries marked as “Examples only” are provided by way of example only. These entries may be deleted if the form is completed electronically.
- 7 Matter marked with an asterisk (*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

..... as at

(full name of Member) *(primary return date)*

.....

(Member’s signature)

.....

(Date)

Constitution (Disclosures by Members) Amendment Regulation 2007

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Part 1 Real property

Under clause 8 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose the address of each parcel of real property in which you had an interest on the date on which you took the pledge of loyalty and the nature of the interest in the real property. Make a separate entry for each parcel of real property held, separated by a line, in the table below:

Address of each parcel of real property	Nature of interest

Example only:

1 Pitt Street, Sydney, NSW 2000	Joint tenant
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Part 2 Sources of income

Under clause 9 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the tables below each source of income that you received, or reasonably expect to receive, during the primary return period. You must disclose income received, or which you expect to receive:

- (a) as an employee, as part of a partnership, as an office holder (including an office holder in a corporation or body) or under any other contract, agreement or arrangement (such as a self-employed consultant/contractor) (use Part 2.1 below), and
- (b) from a trust (use Part 2.2 below), and
- (c) from any other source (use Part 2.3 below).

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2.1 Income from employment, offices, partnerships and services

Under clause 9 (2) (a)–(d) of the *Constitution (Disclosure by Members) Regulation 1983*, you must disclose any income you have received or reasonably expect to receive during the primary return period as an employee, as part of a partnership, as an office holder (including an office holder in a corporation or body) or under any other contract, agreement or arrangement (such as a self-employed consultant/contractor).

You must also describe the services you provide in receiving that income. The description of the services provided must be reasonably sufficient to identify the service provided in return for that income. Services from which you do not derive any income do not need to be disclosed.

You must make a separate entry for each different source of income in the appropriate table below. For example, if you are employed and hold an office, two separate entries should be made respectively in Tables 2.1.1 and 2.1.2. Separate multiple entries in each Table by a line. Where the Table is not relevant to your circumstances enter “NIL” in that Table (for example, if you do not derive any income, whether as an employee, as an office holder, from a partnership or otherwise under a contract, agreement or arrangement, you must enter “NIL” in all Tables).

Where you provide services that “arise from or relate to the use of” your position as a Member, you must complete the last column in each table. This includes (but is not limited to) where you engage in:

- (a) the provision of public policy advice, or
- (b) the development of strategies or the provision of advice on the conduct of relations with the Government or Members, or
- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

Note, where the provision of services “arise from or relate to the use of” your position as a Member, you may also need to complete Part 6 of this form.

Table 2.1.1 Income received as an employee

Name of occupation	Description of kinds of services provided or to be provided	Name and address of employer	Nature of business of the employer (where the services provided or to be provided relate to your position as a Member)

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Example only:

Solicitor	Employed solicitor providing legal services to clients, in the areas of criminal and family law	ABC Lawyers, 1 Pitt Street, Sydney	NIL
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Table 2.1.2 Income received as holder of office

Name or title of the office and a description of kinds of services provided or to be provided	Name and address of corporation or body (if any) in which the office is held	Nature of business carried on by the entity (where the services provided or to be provided relate to your position as a Member)

Example only:

Local councillor	Paddington Local Council	NIL
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Constitution (Disclosures by Members) Amendment Regulation 2007

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Table 2.1.3 Income from partnership

Name of occupation (if any)	Description of kinds of services provided or to be provided	Name and address of the partnership	Nature of business carried on by the partnership (where the services provided or to be provided relate to your position as a Member)

Example only:

Solicitor	Partner of the law firm and to provide commercial legal services specialising in litigation, property, intellectual property, competition and corporate law	XYZ Lawyer, 3 Smith Street, Paddington	NIL
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Table 2.1.4 Income from services provided under any other contract, agreement or arrangement

Name of occupation (if relevant) and a description of services provided or to be provided	Name and address of parties to any contract, agreement or arrangement to provide services	Nature of business carried on by the other party to the contract, agreement or arrangement (where the services provided or to be provided relate to your position as a Member)

Example only:

Public affairs consultant—Providing public affairs advice, including lobbying MPs and government departments on the issue of regulation of electrical appliances	XYZ Corporation, 1 Pitt Street, Sydney	Manufacturer of electrical appliances
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2.2 Income from a trust

Under clause 9 (2) (e) of the *Constitution (Disclosures by Members) Regulation 1983*, you are required to disclose any source of income which you received or reasonably expect to receive during the primary return period from a trust, including the name and address of the settlor and the trustee. Make a separate entry in the table below (separated by a line) for each trust:

Constitution (Disclosures by Members) Amendment Regulation 2007

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Name and address of settlor	Name and address of trustee

Example only:

XY Settlor, 2 George Street, Sydney NSW 2000	AB Trustee, 10 George Street, Sydney NSW 2000
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2.3 Other income

Under clause 9 (2) (f) of the *Constitution (Disclosures by Members) Regulation 1983*, you are required to disclose below any other income received or which you expect to receive during the primary return period and provide a description sufficient to identify the person from whom, or the circumstances in which, the income was, or is reasonably expected to be received:

.....

.....

.....

.....

Example only:

Income from the operation of a farm at 1 Pitt Street, Orange of which I am the sole proprietor.

Part 3 Interests and positions in corporations

Under clause 12 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the table below the following particulars for each corporation in which you had an interest or held any position (whether remunerated or not) on the date on which you took the pledge of loyalty:

- (a) the name and address of each corporation,
- (b) the nature of the interest (if any) or a description of the position held,
- (c) except in the case of a public company, a description of the principal objects of each such corporation.

If you received income in respect of any position held in a corporation, that information should be disclosed in Part 2.

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation

Example only:

CD Corporation, 1 Martin Place, Sydney NSW 2000	20 shares	To provide public affairs advice to its clients
---	-----------	---

Part 4 Positions in trade unions and professional or business associations

Under clause 13 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the table below the name of each trade union and professional or business association in which you held any position (whether remunerated or not) on the date on which you took the pledge of loyalty and a description of the position held:

Name of trade union or association	Description of position

Example only:

ABC Trade Union	Member Honorary Secretary
-----------------	---------------------------

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Part 5 Debts

Under clause 14 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose below the name and address of each person to whom you were liable to pay any debt on the date on which you took the pledge of loyalty. You must disclose all debts, whether or not the amount to be paid was due and payable on the date on which you took the pledge of loyalty.

You do not need to disclose a debt that:

- (a) does not exceed \$500 unless the debt was 1 of 2 or more debts owed to 1 person and the amount of those 2 or more debts together exceeds \$500 in aggregate, or
- (b) is owed to a relative of yours (as defined by clause 7 (1) of the *Constitution (Disclosures by Members) Regulation 1983*), or
- (c) is owed to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or
- (d) arises from the supply of goods and services which were supplied in the 12 month period immediately preceding the primary return date, or
- (e) arises from the supply of goods and services in the ordinary course of any occupation not related to your duties as a Member.

.....
.....
.....
.....

Example only:

Personal loan made by Mr John Smith of 1 Pitt Street, Sydney NSW 2000.

Part 6 Client services

Under clause 15A of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose the details set out in the following table if you have provided, or reasonably expect to provide, “client services” at any time during the primary return period.

Client services are provided by you if:

- (a) you are engaged by a person (whether an individual or corporation) to provide services to or on behalf of any of that person’s clients, and
- (b) that person has received or is reasonably expected to receive consideration in money or money’s worth from the client for your services, and
- (c) the services relate to your Parliamentary position.

You are engaged by a person (whether an individual or corporation) to provide services if you provide services in connection with:

- (a) any contract of employment with the person, or
- (b) your role as an officer of the person (such as a corporation), or
- (c) any other contract, agreement or arrangement that you have entered into with the person in respect of which you receive consideration in money, or money’s worth, for providing the services.

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Services relate to your Parliamentary position if the services “arise from or relate to the use of” your position as a Member. This includes (but is not limited to) where you engage in the:

- (a) the provision of public policy advice, or
- (b) the development of strategies or the provision of advice on the conduct of relations with the Government or Members, or
- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

You are required to disclose the persons who receive the benefit of your client services even if you did not directly receive any payment from that person.

You must make a separate entry in the table below for each person who directly receives the benefit of your services. You must also disclose who receives the benefit of your services if the client of the person who engages you, requests that the services be provided to some other person. For example, if you are employed by, or are a director of Company X, and Company X contracts with Person Y for you to provide consultancy services to Company Z, you must disclose the provision of client services to both Person Y and Company Z.

Please note, your engagement with a person to provide client services should be disclosed in Part 2 of this form.

Names and addresses of persons who benefit or are likely to benefit from the services	Description of the services reasonably sufficient to identify the nature of the service provided or to be provided	Nature of business of persons who directly benefited or are likely directly to benefit

Example only:

Smith Constructions Pty Ltd, 1 Orange Street, Paddington NSW 2021	Advising on public policy regarding public infrastructure and the development of strategies on the conduct of relations with the Government, and lobbying government departments in relation to projects managed by the company	Construction company specialising in public infrastructure such as roads
---	---	--

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Part 7 Discretionary disclosures

Under clause 16 of the *Constitution (Disclosures by Members) Regulation 1983*, a Member may disclose below any direct or indirect benefits, advantages or liabilities that are not required to be disclosed by the Regulation but which the Member considers might appear to raise a conflict between his or her private interests and his or her public duty as a Member or which he or she otherwise wishes to disclose:

.....
.....
.....
.....

Form 2 Ordinary return

(Clause 3 (1), definition of "ordinary return")

Constitution (Disclosures by Members) Regulation 1983

Ordinary Return—Legislative *Council/*Assembly

Directions

- 1 The pecuniary interests and other matters required to be disclosed in this return are prescribed by clauses 8 to 15A of the *Constitution (Disclosures by Members) Regulation 1983*.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 4 Where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular main heading in this form, the word "NIL" is to be placed in an appropriate space under that heading.
- 5 A reference in this form to the **ordinary return period** in relation to a Member is a reference to:
 - (a) where the last return lodged by the Member was an ordinary return—the period of 12 months ending on 30th June in the year this return is required to be lodged, or
 - (b) where the last return lodged by the Member was a primary return—the period commencing on the day on which the Member took the pledge of loyalty and ending on 30th June in the year this return is required to be lodged.
- 6 The entries marked as "Examples only" are provided by way of example only. These entries may be deleted if the form is completed electronically.
- 7 **You must disclose ALL matters required to be disclosed as set out in this form (and as required by the *Constitution (Disclosures by Members) Regulation 1983*) for the ordinary return period applicable to you. Specifically, even where you have listed a pecuniary interest for the period of 1 July to 31 December of the previous year in your most recent supplementary ordinary return (such as a source of income, gift, contribution to travel, disposition of property or client services), you must again list that item in this return.**

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

8 Matter marked with an asterisk (*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

.....
(full name of Member)

in respect of the period from to
(ordinary return period)

.....
(Member's signature)

.....
(Date)

Part 1 Real property

Under clause 8 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose the address of each parcel of real property in which you had an interest at any time during the ordinary return period and the nature of the interest in the real property. Make a separate entry for each parcel of real property held, separated by a line, in the table below:

Address of each parcel of real property	Nature of interest

Example only:

1 Pitt Street, Sydney, NSW 2000	Joint tenant
---------------------------------	--------------

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Part 2 Sources of income

Under clause 9 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the tables below each source of income that you received during the ordinary return period. You must disclose income received, or which you expect to receive:

- (a) as an employee, as part of a partnership, as an office holder (including an office holder in a corporation or body) or under any other contract, agreement or arrangement (such as a self-employed consultant/contractor) (use Part 2.1 below), and
- (b) from a trust (use Part 2.2 below), and
- (c) from any other source (use Part 2.3 below).

2.1 Income from employment, offices, partnerships and services

Under clause 9 (2) (a)–(d) of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose any income you have received during the ordinary return period as an employee, as part of a partnership, as an office holder (including an office holder in a corporation or body) or under any other contract, agreement or arrangement (such as a self-employed consultant/contractor).

You must also describe the services you provide in receiving that income. The description of the services provided must be reasonably sufficient to identify the service provided in return for that income. Services from which you do not derive any income do not need to be disclosed.

You must make a separate entry for each different source of income in the appropriate table below. For example, if you are employed and hold an office, two separate entries should be made respectively in Tables 2.1.1 and 2.1.2. Separate multiple entries in each Table by a line. Where the Table is not relevant to your circumstances enter “NIL” in that Table (for example, if you do not derive any income, whether as an employee, as an office holder, from a partnership or otherwise under a contract, agreement or arrangement, you must enter “NIL” in all Tables).

Where you provide services that “arise from or relate to the use of” your position as a Member, you must complete the last column in each table. This includes (but is not limited to) where you engage in:

- (a) the provision of public policy advice, or
- (b) the development of strategies or the provision of advice on the conduct of relations with the Government or Members, or
- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

Note, where the provision of services “arise from or relate to the use of” your position as a Member, you may also need to complete Part 9 of this form.

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Table 2.1.1 Income received as an employee

Name of occupation	Description of services provided	Name and address of employer	Nature of business of the employer (where the services provided relate to your position as a Member)

Example only:

Solicitor	Employed solicitor providing legal services to clients, in the areas of criminal and family law	ABC Lawyers, 1 Pitt Street, Sydney	NIL
-----------	---	--	-----

Table 2.1.2 Income received as holder of office

Name or title of the office and a description of kinds of services provided	Name and address of corporation or body (if any) in which the office is held	Nature of business carried on by the entity (where the services provided relate to your position as a Member)

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Example only:

Local councillor	Paddington Local Council	NIL
------------------	--------------------------	-----

Table 2.1.3 Income from partnership

Name of occupation (if any)	Description of kinds of services provided	Name and address of the partnership	Nature of business carried on by the partnership (where the services provided relate to your position as a Member)

Example only:

Solicitor	Partner of the law firm and to provide commercial legal services specialising in litigation, property, intellectual property, competition and corporate law	XYZ Lawyer, 3 Smith Street, Paddington	NIL
-----------	---	--	-----

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Table 2.1.4 Income from services provided under any other contract, agreement or arrangement

Name of occupation (if relevant) and a description of services provided	Name and address of parties to any contract, agreement or arrangement to provide services	Nature of business carried on by the other party to the contract, agreement or arrangement (where the services provided relate to your position as a Member)

Example only:

Public affairs consultant—Providing public affairs advice, including lobbying MPs and government departments on the issue of regulation of electrical appliances	XYZ Corporation, 1 Pitt Street, Sydney	Manufacturer of electrical appliances
--	--	---------------------------------------

2.2 Income from a trust

Under clause 9 (2) (e) of the *Constitution (Disclosures by Members) Regulation 1983*, you are required to disclose any source of income that you received during the ordinary return period from a trust, including the name and address of the settlor and the trustee. Make a separate entry in the table below (separated by a line) for each trust:

Name and address of settlor	Name and address of trustee

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Example only:

XY Settlor, 2 George Street, Sydney NSW 2000	AB Trustee, 10 George Street, Sydney NSW 2000
--	---

2.3 Other income

Under clause 9 (2) (f) of the *Constitution (Disclosures by Members) Regulation 1983*, you are required to disclose below any other income you received during the ordinary return period and provide a description sufficient to identify the person from whom, or the circumstances in which, the income was received:

.....

.....

.....

.....

Example only:

Income from the operation of a farm at 1 Pitt Street, Orange of which I am the sole proprietor.

Part 3 Gifts

Under clause 10 of the *Constitution (Disclosures by Members) Regulation 1983*, you are required to disclose in the table below any gifts (including gifts of cash) received during the ordinary return period and the name and address of the person from whom the gift was received.

You do not need to disclose gifts that:

- (a) do not exceed \$500 in value unless the gift was 1 of 2 or more gifts made by 1 person at any time during the ordinary return period and the amount of those 2 or more gifts together exceeds \$500 in aggregate, or
- (b) are a political donation disclosed, or required to be disclosed, under Part 6 of the *Election Funding Act 1981*, or
- (c) are from a donor who is a relative of yours (as defined by clause 7 (1) of the *Constitution (Disclosures by Members) Regulation 1983*).

Description of each gift I received at any time during the ordinary return period	Name and address of donor

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Example only:

4 tickets to the XYZ sporting event	XYZ Sports Union, 1 Pitt Street, Sydney
-------------------------------------	---

Part 4 Contributions to travel

Under clause 11 of the *Constitution (Disclosures by Members) Regulation 1983*, you are required to disclose the information set out in the table below for any contribution to any travel (including accommodation incidental to a journey) undertaken by you during the ordinary return period.

You do not need to disclose a contribution if:

- (a) the contribution was made from public funds (including a contribution arising from travel on free passes issued under any Act or from travel in government vehicles), or
- (b) the contribution was made by a relative of yours (as defined by clause 7 (1) of the *Constitution (Disclosures by Members) Regulation 1983*), or
- (c) the contribution was made in the ordinary course of any occupation which is not related to your duties as a Member, or
- (d) the amount of the contribution did not exceed \$250 unless the contribution was 1 of 2 or more contributions made by 1 person at any time during the ordinary return period and the amount of those 2 or more contributions exceeded, in the aggregate, \$250, or
- (e) the contribution was a political contribution disclosed, or required to be disclosed, under Part 6 of the *Election Funding Act 1981*, or
- (f) the contribution was made by a political party of which you are a member and the travel was undertaken for the purpose of political activity of the party in New South Wales or to enable you to represent the party within Australia.

Name and address of each person who made any financial or other contribution to travel undertaken at any time during the ordinary return period	Dates on which travel was taken	Names of States, Territories of the Commonwealth and overseas countries in which travel undertaken

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Example only:

Brisbane City Council, 1 Smith Street, Brisbane	31 August to 4 September	Brisbane, Queensland
---	--------------------------	----------------------

Part 5 Interests and positions in corporations

Under clause 12 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the table below the following particulars for each corporation in which you had an interest or held any position (whether remunerated or not) at any time during the ordinary return period:

- (a) the name and address of each corporation,
- (b) the nature of the interest (if any) or a description of the position held,
- (c) except in the case of a public company, a description of the principal objects of each such corporation.

If you received income in respect of any position held in a corporation, that information should be disclosed in Part 2.

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation

Example only:

CD Corporation, 1 Martin Place, Sydney NSW 2000	20 shares	To provide public affairs advice to its clients
---	-----------	---

Part 6 Positions in trade unions and professional or business associations

Under clause 13 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose in the table below the name of each trade union and professional or business association in which you held any position (whether remunerated or not) at any time during the ordinary return period and a description of the position held:

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Name of trade union or association	Description of position

Example only:

ABC Trade Union	Member Honorary Secretary
-----------------	---------------------------

Part 7 Debts

Under clause 14 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose below the name and address of each person to whom you were liable to pay any debt at any time during the ordinary return period. You must disclose all debts, whether or not the amount to be paid was due and payable at any time during that period.

You do not need to disclose a debt that:

- (a) does not exceed \$500 unless the debt was 1 of 2 or more debts owed to 1 person and the amount of those 2 or more debts together exceeds \$500 in aggregate, or
- (b) is owed to a relative of yours (as defined by clause 7 (1) of the *Constitution (Disclosures by Members) Regulation 1983*), or
- (c) is owed to a bank, building society, credit union or other person whose ordinary business includes the lending of money and the loan was made in the ordinary course of business of the lender, or
- (d) arises from the supply of goods and services which were supplied during the ordinary return period, or
- (e) arises from the supply of goods and services in the ordinary course of any occupation not related to your duties as a Member.

.....

.....

.....

.....

Example only:

Personal loan made by Mr John Smith of 1 Pitt Street, Sydney NSW 2000.

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Part 8 Dispositions of property

Under clause 15 of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose below particulars of each disposition of:

- (a) real property by you at any time during the ordinary return period whereby you retained, wholly or in part, the use and benefit of the property or the right to reacquire the property at a later time, or
- (b) property to a person by any other person under arrangements made by you during the ordinary return period whereby you obtained, either wholly or in part, the use and benefit of the property.

.....

.....

.....

.....

Example only:

Disposition of Lot 5, DP1234 on 30 May to XYZ Corporation, whereby a right is conferred on Mr Smith MP to use the property.

Part 9 Client services

Under clause 15A of the *Constitution (Disclosures by Members) Regulation 1983*, you must disclose the details set out in the following table if you have provided “client services” at any time during the ordinary return period.

Client services are provided by you if:

- (a) you are engaged by a person (whether an individual or corporation) to provide services to or on behalf of any of that person’s clients, and
- (b) that person has received or is reasonably expected to receive consideration in money or money’s worth from the client for your services, and
- (c) the services relate to your Parliamentary position.

You are engaged by a person (whether an individual or corporation) to provide services if you provide services in connection with:

- (a) any contract of employment with the person, or
- (b) your role as an officer of the person (such as a corporation), or
- (c) any other contract, agreement or arrangement that you have entered into with the person in respect of which you receive consideration in money, or money’s worth, for providing the services.

Services relate to your Parliamentary position if the services “arise from or relate to the use of” your position as a Member. This includes (but is not limited to) where you engage in the:

- (a) the provision of public policy advice, or
- (b) the development of strategies or the provision of advice on the conduct of relations with the Government or Members, or
- (c) lobbying the Government or other Members on a matter of concern to the person to whom the service is provided.

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

You are required to disclose the persons who receive the benefit of your client services even if you did not directly receive any payment from that person.

You must make a separate entry in the table below for each person who directly receives the benefit of your services. You must also disclose who receives the benefit of your services if the client of the person who engages you, requests that the services be provided to some other person. For example, if you are employed by, or are a director of Company X, and Company X contracts with Person Y for you to provide consultancy services to Company Z, you must disclose the provision of client services to both Person Y and Company Z.

Please note, your engagement with a person to provide client services should be disclosed in Part 2 of this form.

Names and addresses of persons who benefit from the services at any time during the ordinary return period	Description of the services reasonably sufficient to identify the nature of the service provided	Nature of business of persons who directly benefited or are likely directly to benefit

Example only:

Smith Constructions Pty Ltd, 1 Orange Street, Paddington NSW 2021	Advising on public policy regarding public infrastructure and the development of strategies on the conduct of relations with the Government, and lobbying government departments in relation to projects managed by the company	Construction company specialising in public infrastructure such as roads
---	---	--

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Part 10 Discretionary disclosures

Under clause 16 of the *Constitution (Disclosures by Members) Regulation 1983*, a Member may disclose below any direct or indirect benefits, advantages or liabilities that are not required to be disclosed by the Regulation but which the Member considers might appear to raise a conflict between his or her private interests and his or her public duty as a Member or which he or she otherwise wishes to disclose:

.....
.....
.....
.....

Form 3 Supplementary ordinary return

(Clause 3 (1), definition of "supplementary ordinary return")

Constitution (Disclosures by Members) Regulation 1983

Supplementary Ordinary Return—Legislative *Council/*Assembly

Directions

- 1 The pecuniary interests and other matters required to be disclosed in this return are prescribed by clauses 8 to 15A of the *Constitution (Disclosures by Members) Regulation 1983* (as applied to this return by clause 6A of the Regulation).
- 2 You must complete **EITHER** Section A or Section B of this form.
- 3 The particulars required to complete this form are to be written in block letters or typed.
- 4 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 5 You should refer to the *Constitution (Disclosures by Members) Regulation 1983* and the instructions in your last ordinary return (if any) to identify whether pecuniary interests should be declared.
- 6 A reference in this form to the **supplementary ordinary return period** in relation to a Member is a reference to:
 - (a) in the case of a Member whose previous return was an ordinary return—the period commencing on 1st July and ending on 31st December of the previous year, or
 - (b) in the case of a Member whose previous return was a primary return:
 - (i) where the Member took the pledge of loyalty on or before 1st July of the previous year—the period commencing on 1st July and ending on 31st December of the previous year, or
 - (ii) where the Member took the pledge of loyalty after 1st July of the previous year—the period commencing on that date and ending on 31st December in the previous year.
- 7 The entries marked as "Examples only" are provided by way of example only. These entries may be deleted if the form is completed electronically.
- 8 Matter marked with an asterisk (*) is to be omitted if it is not appropriate for the Member concerned.

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Notes

- 1 This form is designed to update the pecuniary interests declared in the ordinary return or primary return last filed by you that covered the return period ending on 30 June last year. Specifically, the purpose of this form is for you to identify additional pecuniary interests for the period 1 July to 31 December of last year. The form must generally be filed by 31 March. Certain interests do not need to be disclosed if they have been disclosed in your most recent ordinary return or primary return.
- 2 In the case of new Members (other than re-elected Members) who have not yet filed an ordinary return, your primary return is to be treated as your most recent ordinary return for the purposes of completing this supplementary ordinary return. It should also be noted that new Members do not need to disclose anything that occurred, or was received or had, before the date on which the pledge of loyalty was taken. Also, as a result of this, some new Members will have a supplementary ordinary return period that is shorter than the period 1 July to 31 December of last year.
- 3 Additional pecuniary interests must be declared where, during the supplementary ordinary return period, you have:
 - (a) held any interests in real property, which are additional to those already declared in your most recent return, or
 - (b) received income from any source, or
 - (c) received any gifts or contributions to travel, or
 - (d) held any interests or positions in corporations, which are additional to those already declared in your most recent return, or
 - (e) held any positions in trade unions or professional or business associations, which are additional to those already declared in your most recent ordinary return, or
 - (f) incurred a liability to pay a debt to any person, which is additional to those already declared in your most recent ordinary return, or
 - (g) had any dispositions of property (within the meaning of Part 3 of the *Constitution (Disclosures by Members) Regulation 1983*) in which you have retained a benefit, or
 - (h) provided any "client services".
- 4 **Section A** must only be completed where, in respect of the supplementary ordinary return period last year, you do not have any additional pecuniary interests to declare as required by the *Constitution (Disclosures by Members) Regulation 1983*.
Section B must only be completed if you have additional pecuniary interests set out in item 3 (a) to (h) of these notes in respect of the supplementary ordinary return period last year. You must identify each of the additional pecuniary interest in the relevant table in Section B. In Section B, where there are no pecuniary interests or other matters of the kind required to be disclosed under a particular heading in the form, the word "NIL" is to be placed in the appropriate space under that heading. You must disclose the following kinds of pecuniary interests even if you disclosed them in the same or a similar entry in your most recent return:
 - (a) income received from any source,
 - (b) any gifts or contributions to travel that you received,
 - (c) any dispositions of property (within the meaning of Part 3 of the *Constitution (Disclosures by Members) Regulation 1983*),
 - (d) any "client services" you provided.
- 5 If you have ceased to hold a pecuniary interest that you declared in your most recent ordinary return (for example, you have divested yourself of real property), you may (but are not required to) attach a separate document identifying those pecuniary interests that you have ceased to hold.

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Complete only Section A or Section B

***Section A**

Disclosures of pecuniary interests and other matters by:

.....
(full name of Member)

I certify that there are no new pecuniary interests that I need to disclose as required by clause 6A of the *Constitution (Disclosures by Members) Regulation 1983* in respect of the period from to
(supplementary ordinary return period)

.....
(Member's signature)

.....
(Date)

***Section B**

Disclosures of pecuniary interests and other matters by:

.....
(full name of Member)

I certify that the additional pecuniary interests set out in the Parts to this section are the interests that I am required to disclose by clause 6A of the *Constitution (Disclosures by Members) Regulation 1983*

in respect of the period from to
(supplementary ordinary return period)

.....
(Member's signature)

.....
(Date)

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Part 1 Real property

List in the table below any interests in real property you held during the supplementary ordinary return period, which are additional to those which have already declared in your most recent return:

Address of each parcel of real property	Nature of interest

Example only:

1 Pitt Street, Sydney, NSW 2000	Joint tenant
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Part 2 Sources of income

List in the following tables all sources from which you received income during the supplementary ordinary return period. You must list all sources of income for that period, even if you listed the same or a similar matter in your most recent return for the previous return period.

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

2.1 Income from employment, offices, partnerships and services**Table 2.1.1 Income received as an employee**

Name of occupation	Description of kinds of services provided	Name and address of employer	Nature of business of the employer (where the services provided relate to your position as a Member)

Example only:

Solicitor	Employed solicitor providing legal services to clients, in the areas of criminal and family law	ABC Lawyers, 1 Pitt Street, Sydney	NIL
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Table 2.1.2 Income received as holder of office

Name or title of the office and a description of kinds of services provided	Name and address of corporation or body (if any) in which the office is held	Nature of business carried on by the entity (where the services provided relate to your position as a Member)

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Example only:

Local councillor	Paddington Local Council	NIL
------------------	--------------------------	-----

Table 2.1.3 Income from partnership

Name of occupation (if any)	Description of kinds of services provided	Name and address of the partnership	Nature of business carried on by the partnership (where the services provided relate to your position as a Member)

Example only:

Solicitor	Partner of the law firm and to provide commercial legal services specialising in litigation, property, intellectual property, competition and corporate law	XYZ Lawyer, 3 Smith Street, Paddington	NIL
-----------	---	--	-----

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Table 2.1.4 Income from services provided under any other contract, agreement or arrangement

Name of occupation (if relevant) and a description of services provided	Name and address of parties to any contract, agreement or arrangement to provide services	Nature of business carried on by the other party to the contract, agreement or arrangement (where the services provided relate to your position as a Member)

Example only:

Public affairs consultant—Providing public affairs advice, including lobbying MPs and government departments on the issue of regulation of electrical appliances	XYZ Corporation, 1 Pitt Street, Sydney	Manufacturer of electrical appliances
--	--	---------------------------------------

2.2 Income from a trust

List in the table below income from any trusts:

Name and address of settlor	Name and address of trustee

Example only:

XY Settlor, 2 George Street, Sydney NSW 2000	AB Trustee, 10 George Street, Sydney NSW 2000
--	---

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

2.3 Other income

List below any other income:

.....

.....

.....

Example only:

Income from the operation of a farm at 1 Pitt Street, Orange of which I am the sole proprietor.

Part 3 Gifts

List in the following table all gifts you received during the supplementary ordinary return period. You must list all gifts for that period, even if you listed the same or a similar matter in your most recent return for the previous return period:

Description of each gift I received at any time during the supplementary ordinary return period	Name and address of donor

Example only:

4 tickets to the XYZ sporting event	XYZ Sports Union, 1 Pitt Street, Sydney
-------------------------------------	---

Part 4 Contributions to travel

List below all contributions to travel you received during the supplementary ordinary return period. You must list all contributions to travel for that period, even if you listed the same or a similar matter in your most recent return for the previous return period:

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Name and address of each person who made any financial or other contribution to travel undertaken at any time during the supplementary ordinary return period	Dates on which travel was taken	Names of States, Territories of the Commonwealth and overseas countries in which travel undertaken

Example only:

Brisbane City Council, 1 Smith Street, Brisbane	31 August to 4 September	Brisbane, Queensland
---	--------------------------	----------------------

Part 5 Interests and positions in corporations

List in the table below all positions or interests in corporations you held during the supplementary ordinary return period that are additional to those positions or interests that you have already declared in your most recent return. If you received income in respect of any position held in a corporation, that information should be disclosed in Part 2.

Name and address of corporation	Nature of interest (if any) or description of position held	Description of principal objects of corporation

Example only:

CD Corporation, 1 Martin Place, Sydney NSW 2000	20 shares	To provide public affairs advice to its clients
---	-----------	---

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Part 6 Positions in trade unions and professional or business associations

List in the table below all positions in trade unions and professional or business associations you held during the supplementary ordinary return period that are additional to those positions or interests that you have already declared in your most recent return:

Name of trade union or association	Description of position

Example only:

ABC Trade Union	Member Honorary Secretary
-----------------	---------------------------

Part 7 Debts

List below the name and address of persons to whom you were liable for a debt during the supplementary ordinary return period that are additional to those which you have already listed in your most recent return:

.....

.....

.....

.....

Example only:

Personal loan made by Mr John Smith of 1 Pitt Street, Sydney NSW 2000.

Part 8 Dispositions of property

List below all dispositions of property (within the meaning of Part 3 of the *Constitution (Disclosures by Members) Regulation 1983*) in which you have retained a benefit during the supplementary ordinary return period. You must list all such dispositions occurring during that period, even if you listed the same or a similar matter in your most recent return for the previous return period.

.....

.....

.....

.....

Constitution (Disclosures by Members) Amendment Regulation 2007

Schedule 1 Amendments

Example only:

Disposition of Lot 5, DP1234 on 30 July to XYZ Corporation, whereby a right is conferred on Mr Smith MP to use the property.

Part 9 Client services

List in the table below all client services you provided during the supplementary ordinary return period. You must list all client services provided during that period, even if you listed the same or a similar matter in your most recent return for the previous return period:

Names and addresses of persons who benefit from the services at any time during the supplementary ordinary return period	Description of the services reasonably sufficient to identify the nature of the service provided	Nature of business of persons who benefited or are likely to benefit

Example only:

Smith Constructions Pty Ltd, 1 Orange Street, Paddington NSW 2021	Advising on public policy regarding public infrastructure and the development of strategies on the conduct of relations with the Government, and lobbying government departments in relation to projects managed by the company	Construction company specialising in public infrastructure such as roads
---	---	--

Part 10 Discretionary disclosures

List below any other disclosures you wish to make:

.....

.....

.....

.....

Constitution (Disclosures by Members) Amendment Regulation 2007

Amendments

Schedule 1

Form 4 Discretionary return

(Clause 3 (1), definition of “discretionary return”)

**Constitution (Disclosures by Members) Regulation 1983
Discretionary Return—Legislative *Council/*Assembly**

Directions

- 1 If a Member considers it appropriate to do so, a Member may make any disclosures in a discretionary return concerning any or all of the matters that a Member is required or permitted to disclose under the *Constitution (Disclosures by Members) Regulation 1983* in an ordinary return, before the date on which the Member is next required to lodge an ordinary return or supplementary ordinary return.
- 2 The particulars required to complete this form are to be written in block letters or typed.
- 3 If any space is insufficient in this form for all the particulars required to complete it, attach an appendix for that purpose which is properly identified and signed by the Member.
- 4 Matter marked with an asterisk (*) is to be omitted if it is not appropriate for the Member concerned.

Disclosures of pecuniary interests and other matters by:

.....
(full name of Member)

in respect of the period from to

.....
(Member’s signature)

.....
(Date)

Disclosures

.....
.....
.....
.....



New South Wales

Dust Diseases Tribunal Regulation 2007

under the

Dust Diseases Tribunal Act 1989

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Dust Diseases Tribunal Act 1989*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake the *Dust Diseases Tribunal Regulation 2001*, which includes provisions introduced in 2005 that established a claims resolution process for asbestos-related claims.

The Regulation is to be remade in substantially the same form with minor changes to the claims resolution process for asbestos-related claims, including changes:

- (a) to state the objectives of the claims resolution process for claims involving asbestos-related conditions, and
- (b) to provide additional incentives for defendants to agree that a particular defendant is not liable on a claim and should be released, and
- (c) to extend the contribution assessment provisions to new classes of claims, and
- (d) to alter the procedures for the referral of apportionment matters to Contributions Assessors, including by providing for objection to the referral of a matter to a Contributions Assessor who has acted for any of the defendants in the 12 months before referral, and
- (e) to allow defendants to file a joint reply to a claim if the defendants are related bodies corporate with the same legal representation, and
- (f) to provide for the correction of a clerical mistake or an error arising from an accidental slip or omission in a determination of a Contributions Assessor, and
- (g) to limit the requirement to provide the Registrar with information about finalised claims to claims in respect of asbestos-related conditions, and

Dust Diseases Tribunal Regulation 2007

Explanatory note

- (h) to expand the information required to be provided by legal practitioners about finalised claims, and
- (i) to make consequential or ancillary changes.

This Regulation is made under the *Dust Diseases Tribunal Act 1989*, including section 32H.

Dust Diseases Tribunal Regulation 2007

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Dust Diseases Tribunal Regulation 2007

Clause 1

Preliminary

Part 1

Dust Diseases Tribunal Regulation 2007

under the

Dust Diseases Tribunal Act 1989

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Dust Diseases Tribunal Regulation 2007*.

2 Definitions

In this Regulation:

corporation has the same meaning as in section 57A of the *Corporations Law*.

initiating process, in relation to any proceedings, means the document by the filing of which the proceedings are commenced.

the Act means the *Dust Diseases Tribunal Act 1989*.

3 Notes

Notes included in this Regulation (other than those in Schedules 1 and 2) do not form part of this Regulation.

Clause 4 Dust Diseases Tribunal Regulation 2007

Part 2 Fees

Part 2 Fees

4 Fees chargeable

- (1) The fees to be taken in respect of the business of the Tribunal are the fees set out in Schedule 1.
- (2) However, a reference in that Schedule to a corporation does not include a reference to a corporation that produces evidence, satisfactory to the registrar:
 - (a) that its turnover, in the financial year of the corporation immediately preceding the financial year in which the fees are to be taken, was less than \$200,000, or
 - (b) if the corporation has not been in existence for a full financial year—that its turnover in its first financial year is likely to be less than \$200,000.

5 Fees not chargeable to the Crown

- (1) No fee is chargeable to the Crown or any other person with respect to any document or service filed or provided:
 - (a) for the Government of New South Wales, or
 - (b) for any New South Wales Government Department, or
 - (c) for any statutory body whose expenditure is paid out of the Consolidated Fund.
- (2) The registrar may require evidence to be furnished for the purpose of deciding whether a statutory body's expenditure is paid out of the Consolidated Fund.
- (3) This clause does not prevent the recovery from any person by the Crown or by any such statutory body of any such fee that, had it been paid, would have been recoverable from that person.

6 Pro bono cases

- (1) The taking of a fee for the filing of any initiating process (or a cross-claim) on behalf of a pro bono party to proceedings is to be postponed until judgment has been given in the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if in relation to the claim (or cross-claim):
 - (a) judgment is against that party, or
 - (b) judgment is in favour of that party, but damages are not awarded (or only nominal damages are awarded) in his or her favour and costs are not awarded in his or her favour.

Dust Diseases Tribunal Regulation 2007

Clause 7

Fees

Part 2

-
- (3) The registrar must not refuse to file or issue any document relevant to proceedings merely because, in accordance with this clause, a fee has not been taken for the filing of any initiating process (or cross-claim) on behalf of a *pro bono* party to those proceedings.
- (4) For the purposes of this clause, a party is a *pro bono party to proceedings* if:
- (a) he or she is being represented under the pro bono scheme of the Law Society of New South Wales or the pro bono scheme of the New South Wales Bar Association, and
 - (b) a solicitor (in the case of the Law Society's scheme), or a barrister (in the case of the Bar Association's scheme), acting for the party certifies in writing to the registrar, with whom the initiating process (or cross-claim) is lodged on behalf of the party that the party is being so represented.

7 Postponement of fees in certain other cases

- (1) The taking of any fee in respect of the business of the Tribunal in relation to proceedings involving a pensioner party or legally assisted party is, if the fee is payable by the pensioner party or legally assisted party, to be postponed until judgment has been given in the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if:
- (a) judgment in the proceedings is against the pensioner party or legally assisted party, or
 - (b) judgment is in favour of the pensioner party or legally assisted party, but damages are not awarded (or only nominal damages are awarded) in his or her favour and costs are not awarded in his or her favour.
- (3) The registrar must not refuse to file or issue any document relevant to proceedings merely because, in accordance with this clause, a fee in respect of any business of the Tribunal has not been taken on behalf of a pensioner party or legally assisted party to those proceedings.
- (4) For the purposes of this clause:
- (a) a party to proceedings is a *pensioner party* if he or she is the holder of any card issued by the Commonwealth Government that entitles the holder to Commonwealth health concessions, and
 - (b) a party to proceedings is a *legally assisted party* if he or she is receiving legal assistance through a complying community legal centre within the meaning of section 240 of the *Legal Profession Act 2004*.

Clause 8 Dust Diseases Tribunal Regulation 2007

Part 2 Fees

8 Persons by and to whom fees payable

- (1) Any fee charged under this Regulation for any document or service is payable by the person at whose request the document is filed or the service rendered to the registrar.
- (2) If a document is filed or a service rendered at the request of a person acting as an agent for another person, each of those persons is jointly and severally liable for payment of any such fee.
- (3) A reference in Schedule 1 to a fee payable in the case of a corporation is a reference to a corporation on whose behalf a request is made to file a document or render a service.

9 First directions hearing fee

- (1) A first directions hearing fee in relation to any proceedings is payable:
 - (a) except as provided by paragraph (b), by the plaintiff, or
 - (b) if the Tribunal makes any order as to the payment of the fee, by the parties and in the proportions so ordered.

Note. This fee is recoverable as a disbursement and may be the subject of an award of costs.

- (2) If a person is acting as agent for a party to any proceedings, the person and the party are jointly and severally liable for payment of the first directions hearing fee.
- (3) A first directions hearing fee becomes payable:
 - (a) immediately after a date is allocated for the first directions hearing in the Tribunal, as referred to in clause 65 (Non-urgent claims to be subject of directions hearing), or
 - (b) immediately after a date is allocated for the first directions hearing in the Tribunal for a claim determined to be urgent by the Tribunal on application by the claimant under Division 2 of Part 4, or
 - (c) when the Tribunal or Registrar notifies the parties in writing of the Tribunal's intention to allocate a date for a first directions hearing for the proceedings,whichever occurs first.
- (4) A first directions hearing fee is not payable in relation to any hearing for the purpose of the Tribunal making orders to give effect to any agreement or arrangement between the parties as to settlement of the claim or cross-claim.

Dust Diseases Tribunal Regulation 2007

Clause 10

Fees

Part 2

10 Other provisions relating to fees

- (1) A fee charged under this Regulation becomes payable when the document concerned is filed or the service concerned is rendered.
- (2) However, the registrar, when requested to file a document or render a service:
 - (a) may require any fee for the document or service to be paid before the document is filed or the service rendered, or
 - (b) may, by order in writing, direct that the whole or any part of any such fee be postponed, waived or remitted, subject to such conditions (if any) as the registrar thinks fit to impose.
- (3) The registrar may delegate his or her power under this clause to direct that the whole or any part of any fee be postponed, waived or remitted to any person holding office as, or appointed to act temporarily as, deputy registrar of the Tribunal.
- (4) A reference in subclause (2) to the registrar includes a reference to a person to whom the registrar delegates his or her powers in accordance with this clause.
- (5) This clause is subject to clauses 6 and 7.

Clause 11 Dust Diseases Tribunal Regulation 2007

Part 3 Investment

Part 3 Investment

11 Percentage of interest etc payable to Treasurer

The registrar must deduct 2.5% of any amount received by way of interest or dividends on funds that are paid to the Tribunal and invested, in accordance with the *Supreme Court Rules 1970* (as applied by the *Dust Diseases Tribunal Rules*), and must pay any amount so deducted to the Treasurer for payment into the Consolidated Fund.

Dust Diseases Tribunal Regulation 2007

Clause 12

Claims resolution process for asbestos-related conditions

Part 4

Part 4 Claims resolution process for asbestos-related conditions

Division 1 Preliminary

12 Definitions

(1) In this Part:

asbestos-related condition means a dust-related condition that is asbestosis, asbestos induced carcinoma, an asbestos-related pleural disease or mesothelioma.

business day means a day that is not a Saturday, a Sunday or a public holiday throughout New South Wales.

claim means a claim in proceedings in the Tribunal brought or to be brought under section 11 of the Act or transferred under section 12 of the Act.

claims resolution process means the provisions of this Part.

compensation to relatives claim means a claim on a cause of action under the *Compensation to Relatives Act 1897*.

Contributions Assessor means a Contributions Assessor appointed under Division 5 (Apportionment).

first defendant on a claim means the defendant first named in the plaintiff's statement of claim.

malignant claim means a claim in respect of asbestos induced carcinoma or mesothelioma (whether or not the claim is also in respect of any other dust-related condition).

mediation means mediation under this Part.

non-malignant claim means a claim in respect of an asbestos-related condition that is not asbestos induced carcinoma or mesothelioma (and that is not a malignant claim).

original defendant on a claim means a defendant on the claim before the joinder of any other person as a defendant and does not include any defendant to a cross-claim on the claim.

party to a claim includes any cross-defendant on the claim.

Registrar means the Registrar of the Tribunal.

required information exchange means the service on each defendant or cross-defendant of the statement of particulars of the claim against the defendant or cross-defendant and the service by each defendant or cross-defendant of the defendant's or cross-defendant's reply to the claim or cross-claim, as required under this Part.

Clause 13	Dust Diseases Tribunal Regulation 2007
Part 4	Claims resolution process for asbestos-related conditions

rules of court means rules under section 33 of the Act or uniform rules under the *Civil Procedure Act 2005* applicable to proceedings on a claim.

single claims manager means a single claims manager as provided for by Division 7.

- (2) Unless the parties otherwise agree, the period from the beginning of 25 December until the end of 9 January next following is to be ignored for the purpose of reckoning the time fixed by this Regulation for the doing by a party of any act in connection with the claims resolution process.
- (3) Subclause (2) does not prevent any business in connection with the claims resolution process from being conducted during the period referred to in that subclause.

13 Objectives of claims resolution process

The objectives of the claims resolution process are as follows:

- (a) to foster the early provision of information and particulars concerning claims in respect of asbestos-related conditions,
- (b) to encourage early settlement of those claims,
- (c) to reduce legal and administrative costs in connection with those claims.

14 Part applies only to asbestos-related claims

This Part applies to a claim in respect of an asbestos-related condition that is made by the person who is or was suffering from the asbestos-related condition (or by a person claiming through that person, including a compensation to relatives claim) or that is a cross-claim by a defendant on such a claim.

15 Service of statement of particulars on last of original defendants

A reference in this Part to the service of the plaintiff's statement of particulars on the last of the original defendants is a reference to service under Division 3 of the plaintiff's statement of particulars:

- (a) if there is only one original defendant—on that defendant, or
- (b) if there is more than one original defendant—on the last of the original defendants to be served.

16 Transitional

- (1) This Part applies only to the following claims:
 - (a) claims commenced by statement of claim filed on or after 1 July 2005,

Dust Diseases Tribunal Regulation 2007

Clause 16

Claims resolution process for asbestos-related conditions

Part 4

-
- (b) claims commenced by statement of claim filed before 1 July 2005 (*current claims*) but only if:
- (i) a hearing date for the claim has not been set before 1 July 2005 (but not if each of the parties to the claim has notified the Registrar in writing that the parties have agreed that this Part is not to apply to the claim), or
 - (ii) all of the parties to the claim have agreed that this Part is to apply to the claim.
- (2) If this Part applies to a current claim, the plaintiff must (when the plaintiff is ready to proceed) provide each defendant and cross-defendant with a proposal in writing (a *current claim proposal*) as to how this Part should apply to the claim.
- (3) The plaintiff's current claim proposal is to identify the following:
- (a) the steps already taken by the parties in connection with the claim that should be taken to constitute performance of particular steps in the claims resolution process,
 - (b) the point in the claims resolution process that the claim should be regarded as having reached,
 - (c) any further steps that need to be taken by the parties to bring the claim to a particular point in the claims resolution process (including a timetable for completing any required steps),
 - (d) any modifications to the timetable for completion of the claims resolution process that may be necessary to enable completion of the claims resolution process, while giving effect to the maximum extent possible to the timetable for completion of that process as set out in this Part.
- (4) The parties must act reasonably in trying to reach agreement on the plaintiff's current claim proposal.
- (5) If the parties have not reached agreement within 10 business days after the plaintiff's current claim proposal is provided to the last defendant or cross-defendant to be provided with the proposal, any party may notify the Registrar that agreement has not been reached and the Registrar is then to determine the matters in dispute.
- (6) The matters agreed by the parties or determined by the Registrar for the purposes of a current claim proposal have effect for the purpose of varying the requirements of this Part as to the time within which any

Clause 17	Dust Diseases Tribunal Regulation 2007
Part 4	Claims resolution process for asbestos-related conditions

relevant aspect of the claims resolution process must be completed, and this Part is varied accordingly in its application to the current claim concerned.

Note. Clause 22 (Removal of certain claims from claims resolution process) provides for claims that are determined to be urgent to be removed from the claims resolution process. This is available for current claims.

17 Procedural law of the State

The provisions of this Part form part of the procedural law of the State for the purposes of the determination of any claim.

Division 2 Claims subject to the claims resolution process

18 Which claims are subject to the claims resolution process

- (1) A claim to which this Part applies is subject to the claims resolution process once the claim is filed.

Note. Clause 22 provides for some claims to be removed from the claims resolution process.

- (2) A claim remains subject to the claims resolution process:
- until the claim is settled by mediation or otherwise and the Tribunal makes an order to give effect to the settlement, or
 - if the claim is not settled by the time mediation is concluded—until mediation is concluded and clause 37 (Unsuccessful mediation—agreement as to issues in dispute) has been complied with.
- (3) The parties to a claim can agree to extend the period for which the claim remains subject to the claims resolution process.
- (4) If a significant change in the medical condition of the plaintiff occurs after the claim is filed, the parties to the claim can agree (on one or more occasions) to suspend the claims resolution process for a period of up to:
- 10 business days for malignant claims, or
 - 20 business days for non-malignant claims,
- with the result that during any such suspension time does not run for the purposes of any period within which anything is required to be done by a party under the claims resolution process.

19 Effect of claim being subject to claims resolution process

- (1) While a claim is subject to the claims resolution process:
- the parties to the claim must comply with the provisions of this Part, and

Dust Diseases Tribunal Regulation 2007

Clause 20

Claims resolution process for asbestos-related conditions

Part 4

-
- (b) proceedings in the Tribunal to determine the claim are deferred and the claim is not subject to case management by the Tribunal, and
 - (c) the claim is not subject to the provisions of rules of court, or any direction or order of the Tribunal under a provision of the Act, any other Act or rules of court, as to any steps to be taken in proceedings on the claim or for the referral of the claim for alternative dispute resolution, such as mediation.

Note. Clause 22 provides for the removal of certain claims from the claims resolution process.

- (2) This clause does not affect the application of the practice and procedures of the Tribunal with respect to:
 - (a) the service of the statement of claim on the defendant, including the service of the statement of claim outside Australia, or
 - (b) the amendment of the statement of claim to join a party before the plaintiff's statement of particulars is served, or
 - (c) the amendment of the statement of claim to join a party to the claim at the request of the plaintiff where the Tribunal is satisfied that it is necessary to do so to preserve the plaintiff's cause of action, or
 - (d) the amendment of the statement of claim to add a compensation to relatives claim after the death of the plaintiff, or
 - (e) the making of cross-claims, except to the extent of any inconsistency with clause 25 (Cross-claims by defendant), or
 - (f) the making of orders to give effect to any agreement or arrangement between the parties, whether resulting from an offer of compromise or otherwise, or
 - (g) the issue and return of subpoenas, or
 - (h) the granting of leave to commence an action under section 6 of the *Law Reform (Miscellaneous Provisions) Act 1946*, or
 - (i) the amendment of the statement of claim to discontinue proceedings against a party.

Note. If a claim is not settled through the claims resolution process, proceedings in the Tribunal can proceed or the parties can decide to continue with attempts to settle the claim.

20 Suspension of claims resolution process if plaintiff dies

- (1) If the plaintiff dies, the claims resolution process is suspended until:
 - (a) the Tribunal amends the statement of claim to add a compensation to relatives claim, or

Clause 21	Dust Diseases Tribunal Regulation 2007
Part 4	Claims resolution process for asbestos-related conditions

(b) the claimant notifies the parties to the claim that the matter is ready to proceed,

with the result that during that suspension time does not run for the purposes of any period within which anything is required to be done by a party under the claims resolution process.

- (2) If the plaintiff dies, the person who represented the plaintiff in the proceedings or (if the plaintiff was not represented) the plaintiff's legal personal representative must notify each defendant and the Registrar in writing of the plaintiff's death as soon as practicable after becoming aware of the plaintiff's death (unless the death occurred before the commencement of this subclause).
- (3) The suspension of the claims resolution process under this clause does not apply to the operation of Division 5 (*the apportionment process*) and the apportionment process is to proceed, unless all the defendants agree that the apportionment process is to be suspended and the Registrar has been notified in writing of that agreement within 3 business days after the defendants received notice of the plaintiff's death or within 10 business days after the commencement of this subclause if the plaintiff died before that commencement.
- (4) It is the responsibility of the single claims manager or (if there is no single claims manager) the first defendant to notify the Registrar in writing (within the time required by subclause (3)) of an agreement by all the defendants that the apportionment process is to be suspended.
- (5) If the plaintiff died before the commencement of this subclause but the apportionment process proceeds pursuant to this clause, Division 5 applies for that purpose as if a requirement that anything be done by a party within a specified period after service of the plaintiff's statement of particulars were a requirement that the thing be done within that specified period after 26 March 2007.
- (6) Subclauses (2)–(6) commence on 12 March 2007.

21 Service of documents

- (1) Rules 10.5–10.19, 10.21 and 10.22 of the *Uniform Civil Procedure Rules 2005* apply to and in respect of the service of documents for the purposes of this Part in the same way as they apply to and in respect of the service of documents for the purposes of proceedings in the Tribunal.
- (2) In the case of a defendant who is outside Australia, any document to be served for the purposes of this Part may be served on the defendant:
 - (a) in the same manner as that in which the relevant statement of claim was served on the defendant, or

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(b) in such other manner as the parties may agree.

22 Removal of certain claims from claims resolution process

- (1) A claim is removed from (and is therefore not subject to) the claims resolution process if:
- (a) the Tribunal determines, on application by the claimant and on the basis of medical evidence presented for the claimant, that the claim is urgent, or
 - (b) all the parties to the claim agree, following the required information exchange, that the claim should not be the subject of the claims resolution process and notify the Registrar accordingly, or
- Note.** For example, the parties may consider that the claim raises novel issues (in the nature of a “test case”) that are unlikely to be resolved by the claims resolution procedures.
- (c) the Tribunal determines on application by a party (*the applicant*) that the claim should be removed from the claims resolution process because another party to the claim has failed to comply with a requirement of the claims resolution process and that failure has resulted in substantial prejudice to the applicant or substantial delay.
- (2) A claim is *urgent* only if the Tribunal is satisfied that, as a result of the seriousness of the claimant’s condition, the claimant’s life expectancy is so short as to leave insufficient time for the requirements of the claims resolution process to be completed and the claim finally determined by the Tribunal, if required, on an expedited basis.
- (3) If a non-malignant claim would not be urgent if it were to be treated for the purposes of the claims resolution process as a malignant claim, the Tribunal must (instead of determining that the claim is urgent) order that the claim is to be treated as a malignant claim for the purposes of the claims resolution process.
- (4) A non-malignant claim is also to be treated as a malignant claim for the purposes of the claims resolution process if all the parties to the claim agree that the claim should be treated as a malignant claim and notify the Registrar accordingly.
- (5) An application for a determination by the Tribunal that a non-malignant claim is urgent must not be made until the parties have used their best efforts to reach agreement as provided by subclause (4).

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- (6) The Tribunal is not to determine that a claim should be removed from the claims resolution process because a party to the claim has failed to comply with a requirement of the claims resolution process unless the Tribunal is satisfied that the failure is continuing and that the party has been notified of and requested to remedy the failure.

Note. A claim that is removed from the claims resolution process by agreement of the parties is required under clause 65 (Non-urgent claims to be subject of directions hearing) to be referred to the Tribunal for directions.

- (7) If a claim is removed from the claims resolution process because the Tribunal determines under this clause that the claim is urgent, the Tribunal must consider whether to order the application to the claim of the provisions of Divisions 4 (Compulsory mediation) and 5 (Apportionment), and:
- (a) if the Tribunal does so order:
 - (i) those provisions apply as if the claim were still subject to the claims resolution process (subject to any modifications ordered under subparagraph (ii)), and
 - (ii) the Tribunal may, in ordering the application of those provisions to the claim, order that those provisions apply subject to specified modifications, and
 - (iii) the Tribunal must by its order specify the period within which mediation or apportionment under the applied provisions must be completed, or
 - (b) if the Tribunal does not so order despite an application for such an order by a party to the claim, the Tribunal must give its reasons for not so ordering.

Division 3 Required information exchange

23 General obligations to update documents and information

A party to a claim who is required by a provision of this Part to provide documents or information to another party by way of a statement of particulars or reply must, while the claim is subject to the claims resolution process, update or notify any necessary changes to the documents and information provided (as and when any relevant new or changed documents or information becomes available).

24 Claimant to provide statement of particulars of claim

- (1) The plaintiff on a claim must file and serve on each original defendant (with the plaintiff's statement of claim) a statement of particulars of the plaintiff's claim.

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- (2) The plaintiff's statement of particulars:
- (a) must be in the form set out in Form 1 in Schedule 2, and
 - (b) must specify the information that is required to complete that form, and
 - (c) must be accompanied by such documents and information as that form requires (and is not required to be accompanied by any other documents or information).
- (3) If documents or information required to accompany the plaintiff's statement of particulars is not available to the plaintiff when the statement of particulars is filed and served:
- (a) the statement must indicate this, and
 - (b) the plaintiff must provide the documents or information to each original defendant as and when they become available to the plaintiff.

Note. The plaintiff should not obtain witness statements and expert or other reports before filing the statement of particulars. The defendant will indicate under clause 26 (7) whether further information is required, having regard to the issues that remain in dispute.

- (4) The plaintiff's statement of claim in the proceedings is not properly served on the defendant until the statement of particulars has been served on the defendant.
- Note.** Rules of court provide for the period for which a statement of claim remains valid for service after it is filed.
- (5) Within 5 business days after serving the plaintiff's statement of particulars on a defendant the plaintiff must notify the Registrar and each of the original defendants of the date on which the statement of particulars was served on the last of the original defendants.
- (6) A defendant is entitled to be informed by the Registrar, on request to the Registrar, of the date of service of the plaintiff's statement of particulars on the last of the original defendants.
- (7) This clause does not apply if the plaintiff's statement of claim is filed in conjunction with an application by the claimant under clause 22 (Removal of certain claims from claims resolution process) for a determination by the Tribunal that the claim is urgent and that application results in the making of such a determination by the Tribunal.

Note. When subclause (7) applies, the statement of claim will be regarded as having been served when it was actually served and a statement of particulars is not required.

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25 Cross-claims by defendant

- (1) An original defendant in proceedings must make any cross-claim as soon as practicable after being served with the plaintiff's claim in the proceedings.
- (2) Cross-claims by all defendants (including original defendants) must be filed and served within:
 - (a) 10 business days for malignant claims, or
 - (b) 30 business days for non-malignant claims,after service of the plaintiff's statement of particulars on the last of the original defendants.
- (3) An original defendant may request the plaintiff to extend the time for filing and serving a cross-claim but can only make such a request before the end of the period within which a cross-claim is required to be filed and served.
- (4) The time for filing and serving a cross-claim cannot be extended in total by more than:
 - (a) 10 business days for malignant claims, or
 - (b) 20 business days for non-malignant claims.
- (5) A plaintiff is required to consent to a request to extend the time for filing and serving a cross-claim unless the plaintiff is able to demonstrate that the extension requested would result in substantial prejudice to the claimant.

Note. A failure by the plaintiff to consent despite being required to do so constitutes a failure to comply with a provision of this Part and may be taken into account by the Tribunal in making an order for the payment of costs.
- (6) If the time for filing and serving a cross-claim is extended, the original defendant must notify the Registrar in writing of the extension without delay (but only if the cross-claim is filed and served after the commencement of this subclause). This subclause commences on 12 March 2007.
- (7) An extension of the time for filing and serving a cross-claim operates to extend (for the period of the extension) all subsequent time periods within which anything is required to be done under the claims resolution process in respect of the claim concerned.
- (8) If a person is identified as the insurer of a defendant only after expiry of the period within which a cross-claim is required under this clause to be filed and served on the insurer:
 - (a) a cross-claim may, with the consent of the plaintiff, be filed and served on that insurer after the expiry of that period, and

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- (b) the plaintiff must not refuse that consent unless the plaintiff can establish that the joining of the insurer will result in substantial prejudice to the plaintiff, and
 - (c) once joined, the insurer is entitled to update the defendant's reply, and
 - (d) the joining of the insurer does not affect the running of any time period for the purposes of the claims resolution process.
- (9) A cross-claim that is not filed and served as required by this clause cannot be made in the proceedings (but without affecting any right of a defendant to pursue the claim in separate proceedings commenced by the defendant).
 - (10) A defendant must serve a copy of the plaintiff's statement of claim and statement of particulars with the defendant's cross-claim. A defendant's cross-claim is not properly served until a copy of the plaintiff's statement of claim and statement of particulars is served.
 - (11) A defendant's cross-claim must notify the cross-defendant of the date on which the plaintiff's statement of particulars was served on the defendant (or on the last of the original defendants on the claim to be served if there was more than one original defendant) as required by this Division.

26 Defendant to provide reply to claim

- (1) A defendant in proceedings must file and serve on the claimant and each other party to the claim (including other defendants) a reply to the claim against the defendant.
- (2) The defendant's reply:
 - (a) must be in the form set out in Form 2 in Schedule 2, and
 - (b) must specify the information that is required to complete that form, and
 - (c) must be accompanied by such documents and information as that form requires (and is not required to be accompanied by any other documents or information), and
 - (d) in the case of the reply served on the plaintiff, need not specify the information required by Part 8 (Apportionment of liability among defendants) of that form.
- (3) If information or documents required to accompany a defendant's reply is not available to the defendant when the reply is filed and served:
 - (a) the statement must indicate this, and

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- (b) the defendant must provide the documents or information to the claimant and each other party as and when they become available to the defendant.
- (4) A reply by an original defendant must be served within:
- (a) 20 business days for malignant claims, or
 - (b) 30 business days for non-malignant claims,
- after the claim is served on the defendant.
- (5) A reply by a defendant other than an original defendant must be served within:
- (a) 30 business days for malignant claims, or
 - (b) 60 business days for non-malignant claims,
- after service of the plaintiff's statement of particulars on the last of the original defendants.
- (6) If the plaintiff's claim alleges that the asbestos-related condition with which the claim is concerned occurred in the course of employment, the plaintiff's statement of particulars can require an early response on that issue from a defendant who is alleged to be an employer, in which case the defendant must, within 10 days after the claim is served on the defendant, provide the response and attach the evidence required by 3.1–3.3 of Part 3 (Response to claim relating to employment) of Form 2 in Schedule 2.
- (7) A defendant's reply must indicate whether the defendant requires more information from the plaintiff about the plaintiff's claim and the nature of that information, and must indicate whether the defendant requires an opportunity to inspect any premises or place.
- (8) The plaintiff must comply with any reasonable requirement of the defendant for more information concerning the plaintiff's claim (whether made as part of the defendant's reply or subsequently) and must provide that information as soon as practicable and in any case no later than 5 business days before the start of mediation.
- (9) If 2 or more defendants to a claim are related bodies corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth) and represented in the proceedings by the same legal practitioner or firm of legal practitioners, those defendants may file and serve a joint reply to the claim (instead of each filing and serving individual replies) and are not required to serve the joint reply on each other.
- (10) In this clause:
claim includes a cross-claim.
defendant includes a cross-defendant.

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27 Requests for more information about dispute

- (1) If a defendant does not admit an issue, the plaintiff may request the defendant to provide the plaintiff with information not already provided to the plaintiff on which the defendant proposes to rely in respect of that issue, including documentary evidence, witness statements and a summary of expert medical opinions.
- (2) A defendant must comply with any reasonable requirement of the plaintiff under this clause and must provide that information as soon as practicable and in any case no later than 5 business days before the start of mediation.

28 Medical examinations

- (1) An original defendant who requires the plaintiff to attend for a medical examination in connection with the plaintiff's claim must notify the plaintiff of that requirement within:
 - (a) 10 business days for malignant claims involving only one defendant, or
 - (b) 20 business days for malignant claims involving more than one defendant, or
 - (c) 30 business days for non-malignant claims involving only one defendant, or
 - (d) 50 business days for non-malignant claims involving more than one defendant,after service of the plaintiff's statement of particulars on the last of the original defendants.
- (2) Any medical examination of the plaintiff that an original defendant requires must take place within:
 - (a) 20 business days for malignant claims involving only one defendant, or
 - (b) 30 business days for malignant claims involving more than one defendant, or
 - (c) 40 business days for non-malignant claims involving only one defendant, or
 - (d) 60 business days for non-malignant claims involving more than one defendant,after service of the plaintiff's statement of particulars on the last of the original defendants.

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- (3) The period within which a medical examination is required to take place under subclause (2) may be varied by agreement between all the parties to the claim. Any such variation has no effect on the running of any other time period for the purposes of the claims resolution process.
- (4) If more than one original defendant requires the plaintiff to attend for a medical examination in connection with the plaintiff's claim, the plaintiff is entitled to choose to have those medical examinations conducted as a joint examination (with one examination on one occasion by the medical practitioners concerned) as an alternative to attending each examination separately.
- (5) Subclause (4) does not apply to a medical examination required by a defendant if the defendant objects to the examination being conducted as part of a joint examination of the plaintiff.
- (6) An original defendant who obtains a report of the results of a medical examination of the plaintiff must on request by any cross-defendant provide the report to the cross-defendant.

Note. Once a claim is no longer subject to the claims resolution process, a cross-defendant can seek the leave of the Tribunal under rules of court to attend for a medical examination.

29 Party changing facts relied on

- (1) After serving the party's statement of particulars or reply on a claim, a party to a claim may only change the facts on which the party relies (whether by way of addition, deletion or correction) if the change is due to:
 - (a) the discovery by the party of facts that were not known to and not reasonably discoverable by the party before serving the party's statement of particulars or reply, or
 - (b) the plaintiff remembering facts only after serving the plaintiff's statement of particulars, or
 - (c) a change by another party to the facts on which that other party relies.
- (2) In determining whether facts were reasonably discoverable by a party, regard is to be had to what would be likely to be discovered by the party in the reasonable pursuit of the party's claim or defence.
- (3) A fact is not reasonably discoverable by a party if the only way in which it could be discovered is by the exercise of a power of the Tribunal.
- (4) A change to the facts on which a party relies must be notified to the other parties to the claim as soon as practicable after the party making the change becomes aware of the need for the change.

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- (5) This clause does not prevent a party changing the facts on which the party relies but any change that is not authorised by this clause constitutes a contravention of this clause for the purposes of clause 67 (Costs penalties).

30 Access by parties to Dust Diseases Board file

- (1) The Dust Diseases Board must, at the request of any party to a claim, give the party access to and allow the party to make a copy of, or provide the party with a copy of, any file of information maintained by the Board for the purpose of or in connection with a claim by the plaintiff for payment of compensation under the *Workers' Compensation (Dust Diseases) Act 1942*.
- (2) The Dust Diseases Board may require payment of a fee by a party to cover the Board's reasonable costs incurred under this clause.

Division 4 Compulsory mediation

31 Compulsory mediation

- (1) A claim that is subject to the claims resolution process must be referred for mediation under this Division.
- (2) Referral of a claim for mediation does not prevent or interfere with the parties pursuing settlement negotiations outside of mediation.

32 Timetable for referral for mediation

- (1) The claim must be referred for mediation within:
- (a) 30 business days for malignant claims involving only one defendant, or
 - (b) 50 business days for malignant claims involving more than one defendant, or
 - (c) 60 business days for non-malignant claims involving only one defendant, or
 - (d) 100 business days for non-malignant claims involving more than one defendant,
- after service of the plaintiff's statement of particulars on the last of the original defendants.
- (2) The parties must notify the Registrar in writing as soon as the claim is referred for mediation or the claim is settled.
- (3) If a claim is not referred for mediation within the time required by this clause, the Registrar is to refer the claim for mediation on the next business day following the end of that period.

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- (4) Until the Registrar has been notified that a claim has been settled the Registrar is to presume that the claim has not been settled and is to presume that a claim has not been referred for mediation unless the Registrar has been notified that the claim has been referred for mediation.
- (5) If a claim involves more than one defendant, the claim must not be referred for mediation until:
 - (a) the defendants have reached agreement as to the contribution that each is liable to make to the plaintiff's damages, or
 - (b) if the defendants cannot reach agreement as to that apportionment, until the Contributions Assessor has determined the matter.
- (6) The Registrar may, with the agreement of all the parties to a claim, defer referring the claim for mediation on one occasion only for the period agreed by the parties, but not exceeding:
 - (a) 5 business days for a malignant claim, or
 - (b) 20 business days for a non-malignant claim.
- (7) The period of any such deferral is to be added to the relevant period in clause 33 (1), so as to extend the period within which mediation of the claim concerned must be concluded.
- (8) The Registrar can delegate to any member of staff of the Tribunal any function of the Registrar under this clause (except this power of delegation).

33 Timetable for conclusion of mediation

- (1) Mediation of a claim must be concluded within:
 - (a) 45 business days for malignant claims involving only one defendant, or
 - (b) 60 business days for malignant claims involving more than one defendant, or
 - (c) 90 business days for non-malignant claims involving only one defendant, or
 - (d) 120 business days for non-malignant claims involving more than one defendant,after service of the plaintiff's statement of particulars on the last of the original defendants.

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- (2) A mediator may defer mediation (on one or more occasions) to allow the parties sufficient time to properly consider information provided before or during mediation or to allow time for information not yet available to be provided, but must not defer mediation if the mediator is of the opinion that deferral would result in substantial prejudice to a party or substantial delay.
 - (3) Deferral of mediation may be for a period not exceeding (on each occasion of deferral):
 - (a) 5 business days for a malignant claim, or
 - (b) 20 business days for a non-malignant claim.
 - (4) The period of any such deferral is to be added to the relevant period in subclause (1), so as to extend the period within which mediation of the claim concerned must be concluded.

34 Referral for mediation—appointment of mediator

- (1) A claim is referred for mediation by the appointment of a mediator to conduct the mediation.
- (2) A mediator can be appointed:
 - (a) by the parties by agreement, or
 - (b) by the Registrar at the request of the parties, or
 - (c) by the Registrar if the claim is referred for mediation by the Registrar.
- (3) A mediator appointed by the Registrar must be appointed from a list of mediators compiled by the President.
- (4) The President is to compile a list of persons considered by the President to be suitable to be mediators for the purposes of this Part. As far as practicable, mediators should be persons with experience in claims in respect of dust-related conditions.
- (5) The persons chosen by the President are to be chosen from among a list of persons nominated jointly by the Law Society of New South Wales and the New South Wales Bar Association or, failing such a nomination, of the President's own choosing.

35 Nature of mediation

- (1) Mediation for the purposes of this Part is a structured negotiation process in which the mediator, as a neutral and independent party:
 - (a) assists the parties to a claim to achieve their own resolution of the claim, and
 - (b) assists the parties to narrow the issues in dispute, and

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- (c) makes recommendations to the parties concerning the acceptance of offers and the likely outcome of proceedings.
- (2) It is the duty of each party to a claim that is referred for mediation to participate, in good faith, in the mediation.
- (3) A mediator may issue a certificate to the effect that in the mediator's opinion a party to a claim referred for mediation did not participate in good faith in the mediation.

Note. A defendant may impose a monetary limit on the authority of a single claims manager to settle a claim on behalf of the defendant but must act reasonably in imposing that limit. The imposition of such a limit is an aspect of participation by a defendant in mediation and can be the subject of a certificate of the mediator under this clause. See clause 62.

36 Representation at mediation sessions

- (1) Each defendant to a claim must be present or represented at a mediation session.
- (2) If there is a single claims manager for a claim:
 - (a) the single claims manager must be present or represented at a mediation session, and
 - (b) (despite subclause (1)) no other defendant for whom the single claims manager acts is required to be present or represented at a mediation session unless the mediator otherwise directs.
- (3) The plaintiff must be present at a mediation session (either in person or by telecommunications link) unless a medical practitioner has certified that the plaintiff is not fit to be present.
- (4) The mediator may control who is in attendance at a mediation session and may limit the number of representatives that a party has at a mediation session.
- (5) A party represented at a mediation session must be represented by a person with sufficient authority to make binding decisions on behalf of the party with respect to the claim. The mediator may refuse to allow a person to represent a party at the mediation unless satisfied that the person has that authority.
- (6) The mediator may require that a defendant be represented at a mediation session by a designated officer of the defendant whose functions include the management or control of the administration of claims against the defendant (such as the officer designated by the title of Claims Manager or a similar title).
- (7) In this clause:

defendant includes cross-defendant.

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37 Unsuccessful mediation—agreement as to issues in dispute

- (1) If a claim that is the subject of mediation is not settled before the mediation is required to be concluded, the mediator must:
 - (a) notify the Registrar that the claim has not been settled, and
 - (b) require the parties to the mediation to agree on which issues are in dispute between the parties and on the facts that are relevant to those issues.
- (2) The mediator is to certify as to what the parties have agreed as the issues in dispute and the facts relevant to those issues and is to file the certificate with the Registrar and provide a copy of the certificate to each of the parties.
- (3) When a claim that is the subject of a mediator's certificate under this clause is before the Tribunal for determination:
 - (a) the Tribunal must determine the claim on the basis that the issues agreed to be in dispute are the only issues in dispute between the parties and on the basis of the agreed facts, as certified by the mediator, and
 - (b) the parties are not permitted to raise any other issue as an issue in dispute between the parties.
- (4) If the parties to mediation do not agree on which issues are in dispute, each party must lodge with the Tribunal a statement of the issues that the party considers are in dispute and a statement of the facts as alleged by the party that are relevant to those issues.

38 Costs penalties for unmeritorious disputes

- (1) If a party to proceedings includes in its statement of the issues that the party considers are in dispute an issue that in the proceedings is not determined in favour of the party and that the Tribunal determines was unreasonably left in dispute, the party is liable to pay the costs of any other party to the proceedings, assessed on an indemnity basis, that are occasioned by establishing, or by preparation for the purpose of establishing, how the issue is to be determined.
- (2) In determining whether an issue was unreasonably left in dispute by a party, consideration must be given to the steps taken by the party to ascertain whether there was a reasonable basis for doing so.
- (3) For the purposes of this clause, when a party to proceedings admits that an issue is not an issue in dispute in the proceedings, the issue is considered to be an issue that has not been determined in favour of the party.

Clause 39	Dust Diseases Tribunal Regulation 2007
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- (4) If a party to proceedings disputes a fact and subsequently that fact is proved in the proceedings or admitted for the purpose of the proceedings by the disputing party, and the Tribunal determines that the fact was unreasonably left in dispute, the disputing party is liable to pay the costs of any other party to the proceedings, assessed on an indemnity basis, occasioned by proof of the fact or preparation for the purpose of proving the fact.

39 Challenge to defendant's contribution after successful mediation

- (1) If mediation of a claim results in settlement of the claim, the mediator may, on the application of a defendant who intends to dispute in subsequent proceedings the contribution that the defendant is liable to make to the damages recovered by the plaintiff, require the plaintiff to give evidence on oath before the mediator in respect of any matter that appears to the mediator to be relevant to the liability of any person to contribute in respect of damages payable on the claim.
- (2) If the plaintiff is to be required to give evidence under this clause, the mediator is to determine the arrangements for the taking of that evidence and advise the parties of those arrangements.
- (3) That evidence is to be given immediately following the conclusion of mediation unless the mediator determines that the giving of that evidence should be delayed.
- (4) A defendant who wants a plaintiff to give evidence pursuant to this clause must give notice to the mediator, the plaintiff and each other party to the claim.
- (5) That notice must be given at least 2 business days before the start of mediation. If the decision to require the plaintiff to give evidence is made after that (including after the start of mediation), the notice may still be given but this constitutes a failure to comply with this clause for the purposes of clause 67 (Costs penalties).
- (6) Once the plaintiff has given that evidence, the plaintiff cannot be required to give evidence in proceedings before the Tribunal in respect of the dispute unless the Tribunal is satisfied that a failure by the plaintiff to give the evidence concerned will cause substantial injustice to a defendant.
- (7) A record of the evidence given by the plaintiff before the mediator is admissible in proceedings before the Tribunal in respect of the dispute.
- (8) The hearsay rule (within the meaning of the *Evidence Act 1995*) does not prevent the admission of a record of that evidence of the plaintiff or the use of that record to prove the existence of a fact that the plaintiff intended to assert by a representation made in that evidence.

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- (9) For the purposes of this clause, the mediator may:
- (a) require the plaintiff to take an oath or to make an affirmation in a form approved by the mediator, and
 - (b) administer an oath to or take an affirmation of the plaintiff.
- (10) A defendant at whose request evidence is given by the plaintiff under this clause is liable for the costs of and associated with the taking of that evidence (including the costs of transcription services and costs for the time of the mediator but not including the costs of other parties). If more than one defendant makes the request, the defendants are liable in equal shares for those costs.
- (11) In this clause:
defendant includes cross-defendant.

40 Taking evidence by telecommunications link

- (1) This clause applies to a plaintiff, whether in New South Wales or elsewhere:
 - (a) who is the subject of a medical practitioner's certificate under clause 36 (3) to the effect that he or she is not fit to be present at a mediation session, or
 - (b) in respect of whom the parties are in agreement that he or she should be allowed to give evidence by means of a telecommunications link.
- (2) For the purposes of clause 39, a plaintiff to whom this clause applies may give evidence by means of a telecommunications link and, for that purpose, anything that needs to be done in order to enable the plaintiff's evidence to be so given (such as the administration and taking of an oath) may also be done by such means.

41 Taking evidence outside New South Wales

- (1) For the purposes of clause 39, a plaintiff may give evidence on oath before a mediator outside New South Wales, but only if:
 - (a) the plaintiff is the subject of a medical practitioner's certificate under clause 36 (3) to the effect that he or she is not fit to be present at a mediation session, and
 - (b) the defendant on whose application the plaintiff is required to give evidence requests that the plaintiff's evidence be so given, and
 - (c) the mediator is satisfied that it is appropriate in all of the circumstances for the plaintiff's evidence to be so given.

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- (2) Without limiting clause 39 (10), a defendant at whose request evidence is given by the plaintiff under this clause is liable for the costs incurred by the mediator and the plaintiff's legal representatives in travelling to the place at which the evidence is to be given. If more than one defendant makes the request, the defendants are liable in equal shares for those costs.

42 Application of Uniform Civil Procedure Rules 2005 to giving of evidence

Rules 24.9 and 24.11–24.15 of the *Uniform Civil Procedure Rules 2005* apply for the purposes of clause 39 in the same way as they apply for the purposes of proceedings in the Supreme Court, and so apply as if a reference in those rules to an examiner were a reference to a mediator.

43 Agreements and arrangements arising from mediation

- (1) The Tribunal may make orders to give effect to any agreement or arrangement arising out of the mediation of a claim.
- (2) The Tribunal is not to make an order entering judgment in favour of the plaintiff if the plaintiff has failed to provide any evidence that the plaintiff has been required to provide by the mediator under clause 39 (Challenge to defendant's contribution after successful mediation) and that failure is continuing, unless the failure is due to the death or permanent incapacity of the plaintiff.
- (3) This Division does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of mediation of a claim, in relation to the matters the subject of a mediation.

44 Liability of mediators

No matter or thing done or omitted to be done by a mediator subjects the mediator to any action, liability, claim or demand if the matter or thing was done or omitted to be done in good faith for the purposes of a mediation under this Part.

45 Privilege and secrecy

- (1) In this clause, *mediation session* means a meeting arranged for the mediation of a claim and includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of a session.
- (2) Subject to subclause (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to:
- (a) a mediation session, or

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- (b) a document or other material sent to or produced to a mediator, or sent to or produced at the Tribunal or the office of the Registrar, for the purpose of enabling a mediation session to be arranged.
- (3) The privilege conferred by subclause (2) only extends to a publication made:
- (a) at a mediation session, or
 - (b) as provided by subclause (2) (b), or
 - (c) as provided by subclause (7).
- (4) Evidence of anything said or of any admission made in a mediation session is not admissible in any proceedings before any court, tribunal or body except as is otherwise specifically provided by this Part.
- (5) Except as provided by this Part, a document prepared for the purposes of, or in the course of, or as a result of, a mediation session, or any copy of such a document:
- (a) is not admissible in evidence in any proceedings before any court, tribunal or body, and
 - (b) cannot be the subject of a subpoena issued in any proceedings before any court, tribunal or body.
- (6) Subclauses (4) and (5) do not apply with respect to any evidence or document:
- (a) if the persons in attendance at, or identified during, the mediation session and, in the case of a document, all persons identified in the document, consent to the admission of the evidence or document, or
 - (b) in proceedings instituted with respect to any act or omission in connection with which a disclosure has been made under subclause (7).
- (7) A mediator may disclose information obtained in connection with the administration or execution of this Part only in any one or more of the following circumstances:
- (a) with the consent of the person from whom the information was obtained,
 - (b) in connection with the administration or execution of this Part,
 - (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property,

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- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner,
- (e) in accordance with a requirement imposed by or under a law of the State (other than a requirement imposed by a subpoena or other compulsory process) or the Commonwealth.

46 Costs of mediation

- (1) The costs of mediation, including remuneration payable to the mediator, are to be borne by:
 - (a) the parties to the claim in such proportions as they may agree among themselves if mediation results in settlement of the claim or the claim is otherwise settled, or
 - (b) the defendant (or all the defendants in equal shares) if mediation does not result in settlement of the claim and the claim is not otherwise settled.
- (2) If there is a single claims manager for the claim, any costs of mediation payable by the defendants for whom the single claims manager acts are payable by the single claims manager, and any such payment by the single claims manager is to be reimbursed as a disbursement in accordance with clause 64 (Costs of the SCM).
- (3) Subclause (1) does not interfere with the power of the Tribunal to include costs of mediation in an award of costs to the party that is successful before the Tribunal but the Tribunal may decline to include costs of mediation in an award of costs if the Tribunal is satisfied that the party in whose favour the award is to be made did not participate in good faith in the mediation.

Division 5 Apportionment

47 Application to cross-defendants

- (1) A reference in this Division to a defendant includes a reference to a cross-defendant.
- (2) The settlement or determination of a plaintiff's claim (*the original claim*) does not affect the continued operation of this Division in relation to a cross-claim on that original claim and the apportionment of liability among cross-defendants on the cross-claim. For that purpose (and despite clause 18) the cross-claim remains subject to the claims resolution process.

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- (3) Subclause (2) extends to a case where the original claim was settled or determined before the commencement of this clause where the first directions hearing for the cross-claim had not been held as at that commencement but does not extend to such a case if all of the cross-defendants agree that it should not apply to the case and the Registrar is notified by the cross-claimant in writing of that agreement within 10 business days after the commencement of this clause.
 - (4) If subclause (2) extends to a case because of the operation of subclause (3), this Division applies to the case as if a requirement that anything be done by a party within a specified period after service of the plaintiff's statement of particulars were a requirement that the thing be done within that specified period after 16 March 2007.

48 Defendants to agree as to apportionment

- (1) The defendants to a claim who are alleged to be liable to contribute to any damages recovered by the plaintiff must agree among themselves as to the contribution that each is liable to make to those damages.
- (2) Agreement must be reached no later than:
 - (a) 35 business days for malignant claims, or
 - (b) 70 business days for non-malignant claims,after service of the plaintiff's statement of particulars on the last of the original defendants.
- (3) The first defendant must file with the Registrar an apportionment statement setting out details of the apportionment of liability that the defendants have agreed to.

49 Determination of apportionment failing agreement

- (1) If by the end of the period within which the defendants are required to reach agreement as to apportionment an apportionment statement setting out details of the apportionment of liability that the defendants have agreed to has not been filed with the Registrar, the Registrar is to refer the matter to a Contributions Assessor for determination on the next business day following the end of that period.
- (2) The Registrar can delegate to any member of staff of the Tribunal any function of the Registrar under this clause (except this power of delegation).
- (3) The Registrar is to notify each defendant of the referral of a matter to a Contributions Assessor.

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- (4) The Contributions Assessor to whom a matter is referred is to determine the contribution that each defendant is liable to make and is to make that determination on the assumption that the defendants are liable and solely on the basis of:
- (a) the plaintiff's statement of particulars and the defendants' replies on the claim, and
 - (b) standard presumptions as to apportionment determined by the Minister for the purposes of this clause by order published in the Gazette.

Editorial note. For the standard presumptions as to apportionment determined by the Minister see the *Dust Diseases Tribunal (Standard Presumptions—Apportionment) Order 2005*.

- (5) The defendants may agree that for the purposes of the Contribution Assessor's determination a particular defendant should not be assumed to be liable to contribute, in which case the defendant is not to be assumed to be liable for that purpose (including for the purposes of the application in that case of the standard presumptions as to apportionment). This subclause does not apply in a case in which the matter was referred to the Contributions Assessor before the commencement of this clause.
- (6) A Contributions Assessor's determination is to be made within:
- (a) 40 business days for malignant claims, or
 - (b) 80 business days for non-malignant claims,
- after service of the plaintiff's statement of particulars on the last of the original defendants.
- (7) Neither the referral of a matter for determination by a Contributions Assessor nor a determination of the matter by a Contributions Assessor prevents the defendants concerned from agreeing among themselves at any time as to the contribution that each is liable to make to the plaintiff's damages.
- (8) A determination of a Contributions Assessor under this Division cannot be challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings. This subclause does not prevent the subsequent taking, or determination by the Tribunal, of a dispute between defendants as to apportionment.
- (9) The Registrar is to provide each defendant with a copy of the Contribution Assessor's determination as soon as practicable after the determination is made.

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- (10) If there is a clerical mistake, or an error arising from an accidental slip or omission, in a determination of a Contributions Assessor (not being a mistake or error made before the commencement of this clause), the Contributions Assessor or another Contributions Assessor may correct the mistake or error:
- (a) of the Contributions Assessor's own motion within 7 business days after the determination is made, or
 - (b) on the application of any defendant (made to the Contributions Assessor whose determination is in question within 7 business days after the determination is made) as soon as practicable after the application for correction is made.
- (11) A defendant who applies for the correction of a mistake or error must give notice of the application to each other defendant.
- (12) If a mistake or error is corrected, the Contributions Assessor is to provide the corrected determination to the Registrar and the Registrar is to provide a copy of the corrected determination to each of the defendants.

50 Contributions Assessors

- (1) The Director-General of the Attorney General's Department is to appoint a panel of legal practitioners to be Contributions Assessors for the purposes of this Division.
- (2) A Contributions Assessor is entitled to such remuneration in connection with the exercise of functions as a Contributions Assessor as the Director-General may determine from time to time.
- (3) The amount of the remuneration of a Contributions Assessor is payable by the defendants in respect of whose liability to contribute the Contributions Assessor is making a determination, and is payable by each in proportion to their determined shares of contribution.
- (4) If there is a single claims manager for the claim, any remuneration of a Contributions Assessor that is payable by the defendants for whom the single claims manager acts is payable by the single claims manager, and any such payment by the single claims manager is to be reimbursed as a disbursement in accordance with clause 64 (Costs of the SCM).
- (5) If there is no single claims manager for the claim, the defendant whose determined share of contribution is greatest is required to pay to the Registrar the full amount of the Contributions Assessor's remuneration and has a right of contribution against the other defendants concerned for their proportionate shares of that remuneration.

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51 Contributions Assessors—special provision for conflict of interest

- (1) If the Contributions Assessor to whom a matter is referred has acted for any of the defendants to the claim, or for any person against any of the defendants, within the period of 12 months before the matter is referred, the Contributions Assessor must notify the Registrar and each of the defendants in writing by the end of the next business day following the day on which the matter was referred to the Contributions Assessor.
- (2) A defendant (*the objector*) may object to the referral of the matter to the Contributions Assessor on the ground that the Contributions Assessor has acted for any of the other defendants, or for any person against the objector, within that 12 month period but objection can only be made by giving notice in writing of the objection to the Registrar by the end of the next business day following the day on which the objector was notified of that fact by the Contributions Assessor.
- (3) If the Registrar receives such an objection, the Registrar must by the end of the next business day following the day on which the objection is received:
 - (a) refer the matter to another Contributions Assessor, and
 - (b) give notice in writing of that referral to each of the defendants and to the Contributions Assessor to whom the matter was previously referred.
- (4) When a matter is referred to another Contributions Assessor following an objection, the time periods provided for by the following provisions are each extended by 2 business days:
 - (a) clause 32 (1) (period within which claim must be referred for mediation),
 - (b) clause 33 (1) (period within which mediation must be concluded),
 - (c) clause 49 (6) (period within which Contributions Assessor's determination is to be made).
- (5) When a matter is referred to another Contributions Assessor following an objection, this clause applies to that referral in the same way as it applies to the original referral, with the result that if the matter is again referred to another Contributions Assessor following an objection the time periods referred to in subclause (4) are each further extended by 2 business days.
- (6) The Registrar can delegate to any member of staff of the Tribunal any function of the Registrar under this clause (except this power of delegation).

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- (7) This clause (except subclause (6)) commences on 12 March 2007 and does not apply in the case of a matter referred to a Contributions Assessor before that date.

52 Effect of agreement or determination as to apportionment

- (1) An agreement or determination as to apportionment among defendants for the purposes of this Division is conclusively binding on the defendants for the purposes of the settlement, or determination by the Tribunal, of the plaintiff's claim and payment of the plaintiff's damages.
- (2) The agreement or determination is not binding for the purposes of the subsequent taking, or determination by the Tribunal, of a dispute between defendants as to apportionment.
- (3) If a defendant disputes the contribution that the defendant is liable to make to damages recovered by the plaintiff and the judgment of the Tribunal in the dispute does not result in the defendant materially improving the defendant's position, the defendant is liable to pay the costs of each other party to the dispute occasioned by the dispute, assessed on an indemnity basis.
- (4) Even if the Tribunal's judgment does not result in the defendant materially improving the defendant's position, the defendant is not liable to pay costs under subclause (3) if:
 - (a) the Tribunal determines that the defendant is not liable on the claim, and
 - (b) the ground on which the Tribunal makes that determination is a ground on which the defendant disputed liability on the claim and of which the defendant provided evidence in the defendant's reply to the claim, and
 - (c) the Tribunal determines that the ground was the principal or only ground on which the defendant disputed liability on the claim.
- (5) Subclause (4) does not apply in a case in which the matter was referred to a Contributions Assessor before the commencement of this clause.
- (6) To the extent of any inconsistency between this clause and Part 6 (Offers of compromise), this clause prevails.
- (7) For the purposes of this clause, the defendant is considered to *materially improve* the defendant's position only if the Tribunal's determination of the dispute results in a reduction of the defendant's contribution of at least 10% of the amount of the defendant's agreed or determined contribution or \$20,000, whichever is the greater.

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53 Costs penalties where defendant disputes another defendant's defence

- (1) If the reply of a defendant (*the innocent defendant*) to a claim or cross-claim disputes liability on a ground that the innocent defendant's reply provides evidence of, any other defendant who disputes that ground is liable to pay the innocent defendant's costs, assessed on an indemnity basis, occasioned by the dispute if:
 - (a) subsequently that ground is established in the proceedings by the evidence provided in the reply or admitted for the purpose of the proceedings by the disputing defendant, and
 - (b) the Tribunal determines on that ground that the innocent defendant is not liable on the claim or cross-claim, and
 - (c) the Tribunal determines that the ground was the principal or only ground on which the innocent defendant disputed liability on the claim.

Note. The costs penalty provided by this clause does not apply if the innocent defendant escapes liability on a ground not raised in the innocent defendant's reply.
- (2) This clause does not apply in a case if, before the commencement of this clause:
 - (a) the defendants reached agreement as to apportionment, or
 - (b) the matter was referred to a Contributions Assessor.

Division 6 Special provision for apportionment claims commenced after plaintiff's claim finalised

54 Application and interpretation

- (1) This Division applies to a claim for contribution (*the new cross-claim*) made by a defendant (including a cross-defendant) to a claim (*the original claim*) when proceedings on the new cross-claim are commenced after the original claim has been settled or determined, but only if the original claim was commenced by statement of claim filed on or after 1 July 2005.
- (2) The plaintiff on the new cross-claim is referred to in this Division as the *initiating defendant* and a defendant on the new cross-claim is referred to as a *new defendant*. The defendants (including any cross-defendants) on the original claim are referred to as the *original claim defendants*.
- (3) This Division applies to a new cross-claim made before the commencement of this Division only in the following cases:
 - (a) if a first directions hearing in respect of the claim was not held before the commencement of this Division, this Division applies to the new cross-claim unless the initiating defendant and each

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new defendant agree that this Division is not to apply and the initiating defendant notifies the Registrar in writing of that agreement within 10 business days after the commencement of this Division,

- (b) if a first directions hearing in respect of the claim was held before the commencement of this Division, this Division applies to the new cross-claim only if the initiating defendant and each new defendant agree that this Division is to apply and the initiating defendant notifies the Registrar in writing of that agreement within 10 business days after the commencement of this Division.
- (4) The following modifications apply for the purposes of the application of this Division to a new cross-claim made before the commencement of this Division:
 - (a) the initiating defendant must give notice in writing under clause 57 (1) within 25 business days after the commencement of this Division, and
 - (b) any material required to be served by the initiating defendant with or at the same time as the statement of claim for the new cross-claim must instead be served within 25 business days after the commencement of this Division, and
 - (c) any action required to be taken within a specified period of time after the statement of claim for the new cross-claim is served must instead be taken within that period after material is served as provided by paragraph (b).

55 New cross-claim subject to claims resolution process

- (1) Despite clause 18, a new cross-claim to which this Division applies is subject to the claims resolution process once the claim is filed and until:
 - (a) the defendants to the claim agree as required by Division 5 to the contribution that each is liable to make to damages recovered by the plaintiff on the original claim, or
 - (b) failing agreement, a Contributions Assessor has determined under Division 5 the contribution that each defendant is liable to make.

Note. Under clause 19, proceedings in the Tribunal to determine the new cross-claim are deferred while the claim is subject to the claims resolution process. Under clause 26, a defendant to a cross-claim is required to file and serve a reply to the cross-claim, subject to subclause (2). Cross-claimants are not required to provide a statement of particulars for their cross-claim.
- (2) Despite clause 26 (5), a reply under clause 26 by a new defendant must be served within 30 business days after service of the new cross-claim statement of claim on the last of the new defendants.

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56 Copies of original claim particulars and replies to accompany new cross-claim statement of claim

- (1) The initiating defendant must serve with the statement of claim for the new cross-claim copies of each of the following:
 - (a) the statement of particulars of the plaintiff on the original claim, and
 - (b) the replies of each of the original claim defendants to the original claim, and
 - (c) an appropriately revised version of Part 8 (Apportionment of liability among defendants) of the initiating defendant's reply to the original claim against the defendant, and
 - (d) any agreement among the original claim defendants as to the contribution that each is liable to make to damages recovered on the original claim, and
 - (e) any determination by a Contributions Assessor as to the contribution that the original claim defendants are liable to make to damages recovered on the original claim.
- (2) If the plaintiff on the original claim did not file and serve a statement of particulars of the plaintiff's claim, the initiating defendant must (instead of serving a copy of the plaintiff's statement of particulars with the statement of claim for the new cross-claim) provide and serve with the statement of claim for the new cross-claim a statement that provides sufficient particulars of the original claim, based on information provided by the plaintiff in the plaintiff's statement of claim on the original claim and any other information provided by the plaintiff.
- (3) If the Tribunal determines that the initiating defendant failed to provide sufficient particulars of the original claim as required by subclause (2) and that as a result an issue was left in dispute between the initiating defendant and a new defendant in proceedings on the new cross-claim (being an issue subsequently determined in favour of the new defendant), the initiating defendant is liable to pay the new defendant's costs, assessed on an indemnity basis, occasioned by the dispute.

57 Notice to original claim defendants of new cross-claim

- (1) The initiating defendant must give notice in writing of the commencement of proceedings on the new cross-claim to each of the original claim defendants who was a party to the original claim at the time of the agreement or determination as to contribution on the original claim and must give that notice before or at the time that the statement of claim in the new cross-claim proceedings is served.

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- (2) The initiating defendant must also serve on each of those original claim defendants, at the same time as the statement of claim for the new cross-claim is served:
 - (a) a copy of the statement of claim for the new cross-claim, and
 - (b) a copy of the appropriately revised version of Part 8 (Apportionment of liability among defendants) of the initiating defendant's reply to the original claim against the defendant (as served with the statement of claim for the new cross-claim).
 - (3) Each original claim defendant may elect whether or not to be subject to a new apportionment of liability on the original claim among defendants including any new defendants.
 - (4) An election must be made within 10 business days after the original claim defendant is served with a copy of the statement of claim for the new cross-claim
 - (5) An election is made by giving notice of the election in writing to the Registrar, the initiating defendant and each of the other original claim defendants, accompanied by an appropriately revised version of Part 8 (Apportionment of liability among defendants) of the original claim defendant's reply to the original claim.
 - (6) Failure to elect within the required time constitutes an election not to be subject to a new apportionment of liability.
 - (7) If the initiating defendant or another original claim defendant did not file a reply to the original claim, an obligation under this Division to serve a copy of an appropriately revised version of Part 8 of the reply is to be read instead as an obligation to file and serve a reply under clause 26.

58 New apportionment under Division 5

- (1) The provisions of Division 5 apply again in respect of the original claim and the original claim defendants (with the new defendants included as defendants to the claim), subject to the following modifications and clarifications:
 - (a) agreement as to apportionment must be reached no later than 70 business days after service of the statement of claim for the new cross-claim on the last of the new defendants,
 - (b) agreement as to apportionment is only required to be reached by (and is only binding under clause 52 on) such of the original claim defendants as have elected to be subject to a new apportionment of liability on the original claim and the new defendants,

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- (c) a Contribution Assessor's determination as to apportionment under Division 5 is to be made within 80 business days after service of the statement of claim for the new cross-claim on the last of the new defendants,
 - (d) the Contribution Assessor's determination is to be a determination of the contribution that each defendant is liable to make, including (in addition to new defendants) all original claim defendants whether or not they have elected to be subject to a new apportionment of liability on the original claim but is not binding under clause 52 on an original claim defendant unless the defendant elected to be subject to the new apportionment of liability,
 - (e) the Contribution Assessor's determination cannot increase any contribution already determined by a Contribution Assessor in respect of an original claim defendant.
- (2) A reference in this clause to the service of the statement of claim for the new cross-claim on the last of the new defendants is a reference to service of that statement of claim:
- (a) if there is only one new defendant—on that defendant, or
 - (b) if there is more than one new defendant—on the last of the new defendants to be served.

Note. Clause 52 provides costs sanctions if a defendant disputes the contribution that the defendant is liable to make and the judgment of the Tribunal does not result in material improvement of the defendant's position.

Division 7 Multiple defendant claims—single claims manager

59 Application to cross-defendants

A reference in this Division to a defendant includes a reference to a cross-defendant.

60 Requirement for single claims manager

- (1) If there is more than one defendant to a plaintiff's claim, the defendants must use a claims manager to manage and negotiate the resolution of the plaintiff's claim on their behalf, and for that purpose the defendants must all use the same claims manager (a *single claims manager* or *SCM*).
- (2) The defendants are not required to use an SCM if all the defendants agree not to use an SCM.

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61 Selection of SCM

- (1) The defendants can agree on the selection of an SCM for the claim and for that purpose they can select one of the defendants or some other person (such as a claims management company).
- (2) Failing agreement between defendants on the selection of an SCM for a claim, the first defendant must notify the Registrar (before the end of the period within which the defendants are required to reach agreement on apportionment) that the defendants have not agreed on the selection of an SCM.
- (3) The selection of an SCM is then to be made by:
 - (a) the Registrar if the defendants have agreed (within the required period under the claims resolution process) on the apportionment of liability between them, or
 - (b) the Contributions Assessor when determining the apportionment of liability between the defendants if the defendants have not agreed within the required period on that apportionment.
- (4) The procedure for the selection of an SCM by the Registrar or a Contributions Assessor is as follows if there is no primary defendant:
 - (a) the selection of an SCM is to be made by selecting a defendant at random from among those defendants who each have an apportioned share of at least 15% or, if only one of the defendants has an apportioned share of at least 15%, by selecting that defendant,
 - (b) if none of the defendants has an apportioned share of at least 15%, the selection of an SCM is to be made by selecting a defendant at random from among all of the defendants.
- (5) The procedure for the selection of an SCM by the Registrar or a Contributions Assessor is as follows if there is a primary defendant:
 - (a) if no other defendant has an apportioned share of at least 15%, the primary defendant is selected as the SCM,
 - (b) if one or more of the other defendants has an apportioned share of at least 15%, the primary defendant becomes the first possible SCM and a second possible SCM is to be chosen,
 - (c) the second possible SCM is to be chosen by selecting a defendant at random from among the group of defendants comprising the primary defendant and such of the other defendants as each have an apportioned share of at least 15%,
 - (d) if the same defendant is both the first and second possible SCMs, that defendant is to be selected as the SCM for the claim,

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- (e) if the first and second possible SCMs are different defendants, the defendant who is first possible SCM is to be selected as the SCM but the selection of the defendant does not operate unless the defendant accepts selection by notifying each of the other defendants in writing within 2 business days after selection that the defendant will act as the SCM,
 - (f) if the first possible SCM does not accept selection as the SCM, the defendant who is second possible SCM is to be selected as the SCM.
- (6) The defendant who is finally selected under this clause as the SCM for a claim must act as the SCM for the claim.
 - (7) The person selected as the SCM for a claim must notify the plaintiff and each defendant in writing as soon as practicable after selection that the person will act as the SCM. Notification is required only to the plaintiff if the primary defendant has already notified each of the other defendants (as provided for by the SCM selection process) that the defendant will act as the SCM.
 - (8) For the purposes of determining a defendant's apportioned share for a claim in connection with the operation of this clause, the defendant may choose to have included in the defendant's share of responsibility any responsibility in connection with the claim of a related body corporate of the defendant (within the meaning of the *Corporations Act 2001* of the Commonwealth).
 - (9) In this clause:
 - apportioned share** for a claim means the proportion of the claim for which a defendant is responsible, determined on the basis of the apportionment of liability agreed to by the defendants or determined by the Contributions Assessor, whichever is applicable in the particular case.
 - primary defendant** for a claim means:
 - (a) the defendant whose apportioned share for the claim is more than 50%, or
 - (b) if there is no such defendant—the defendant with the largest apportioned share for the claim, being a share of responsibility that is at least 20 percentage points greater than that of the defendant with the next largest apportioned share for the claim.

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62 Role and functions of SCM

- (1) The role of the SCM is to manage and negotiate and seek to resolve the plaintiff's claim on behalf of all of the defendants and for that purpose the SCM has and may exercise on behalf of each defendant all the functions of a defendant.

Note. The SCM's role includes the selection of expert evidence on behalf of all the defendants but this does not prevent a defendant from obtaining their own expert reports.

- (2) Anything done or omitted to be done by the SCM in purported exercise of the functions of the SCM is taken to have been done or omitted to be done by the relevant defendant or defendants.
- (3) A defendant who is the SCM for a claim is entitled to perform the role of the SCM in accordance with the defendant's usual arrangements for managing claims (which can include managing the claim themselves or an arrangement whereby particular kinds of claim are managed on behalf of the defendant by an insurer).
- (4) Each defendant is taken to authorise the SCM to settle the matter with the plaintiff, both informally and at any formal mediation.
- (5) A defendant may impose a monetary limit on the authority of the SCM to settle a claim on behalf of the defendant but must act reasonably in imposing that limit.
- (6) The imposition of a monetary limit on the authority of the SCM to settle a claim on behalf of a defendant is, for the purposes of the mediation of the claim, an aspect of participation in mediation, and the power of a mediator to issue a certificate to the effect that in the mediator's opinion a defendant did not participate in good faith in the mediation extends to this aspect of the defendant's participation in mediation.
- (7) If a claim that is the subject of mediation is not settled before mediation is required to be completed, each defendant is taken to authorise the SCM to agree on its behalf on which issues are in dispute between the parties and on the facts that are relevant to those issues, unless in the case of any particular defendant the defendant has notified the SCM that the SCM is not authorised to do this on behalf of the defendant.

63 Limitations on SCM's role

- (1) The SCM does not have any role or functions in respect of apportionment of liability between defendants or any later dispute between the defendants as to apportionment of liability.
- (2) The role of the SCM does not limit or otherwise interfere with:
- (a) the responsibility of a defendant for preparing and serving the defendant's reply to the plaintiff's statement of particulars, or

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- (b) the right of a defendant to attend at and be represented at the mediation of a claim, or
 - (c) a defendant's responsibility to comply with a requirement by the mediator that a defendant be represented at mediation by a particular officer of the defendant, or
 - (d) a defendant's responsibility for questioning the plaintiff on issues relevant to contribution (if necessary) at the conclusion of a successful mediation.
- (3) The role of the SCM concludes:
- (a) if the plaintiff's claim is settled through mediation or otherwise before mediation of the claim is required to be completed—on final implementation of the settlement or on finalisation of any costs assessment in respect of the settlement, whichever is later, or
 - (b) if the plaintiff's claim is not settled before mediation of the claim is required to be completed—when the parties or the defendants reach agreement on which issues are in dispute between them or conclude their efforts to reach agreement.
- (4) The parties may agree to the use of an SCM beyond the time when the role of the SCM would otherwise conclude under this clause and any such agreement has effect to continue the operation of this Part in respect of the SCM (including clause 64 with respect to the costs of the SCM) in accordance with that agreement.

64 Costs of the SCM

- (1) If the SCM is not one of the defendants, the costs of the SCM are payable as agreed between the defendants and the SCM.
- (2) If the SCM is one of the defendants, each of the other defendants is liable to reimburse the SCM in respect of the SCM's costs an amount that is the sum of the following amounts:
 - (a) the amount calculated by dividing half the amount of the SCM's costs by the number of defendants (including the SCM),
 - (b) a share of half the amount of the SCM's costs in the same proportion as the defendant's apportioned share of responsibility for the plaintiff's claim.
- (3) For the purposes of this clause, the *costs* of the SCM are the costs and expenses incurred by the SCM in the exercise of functions as the SCM, including:
 - (a) any costs of mediation or the remuneration of a Contributions Assessor borne by the SCM, and

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- (b) in relation to an SCM who is not one of the defendants, the remuneration of the SCM, and
 - (c) in relation to an SCM who is a defendant, the defendant's operational costs (including internal legal costs) and its external costs (including expert reports and external legal costs).
- (4) The Minister may by order published in the Gazette establish a scale of costs for use in determining the operational costs of an SCM that are allowable for the purposes of this clause.
 - (5) The external legal costs of an SCM are subject to assessment under the *Legal Profession Act 2004* on the application of a defendant required under this clause to reimburse the SCM for any amount of those costs.

Division 8 Return of claims to the Tribunal

65 Non-urgent claims to be subject of directions hearing

- (1) This clause applies to the following claims:
 - (a) a claim that has completed the claims resolution process without being settled,
 - (b) a claim that has ceased under Division 2 to be part of the claims resolution process pursuant to the agreement of the parties,
 - (c) a claim that the Tribunal has determined under Division 2 should be removed from the claims resolution process because of a failure to comply with a requirement of the claims resolution process.
- (2) The following provisions apply to claims to which this clause applies except a claim described in subclause (1) (c):
 - (a) the Registrar must set the claim down for a directions hearing before the Tribunal to take place within 10 days for malignant claims or 20 days for non-malignant claims,
 - (b) the plaintiff or, if the plaintiff's claim has been settled and cross-claims remain to be determined, the first defendant must propose in writing to the remaining parties what further steps (if any) need to be taken to prepare the matter for hearing, together with a timetable for completing those steps,
 - (c) if the parties agree on those steps and the timetable, written notice of the agreement must be provided to the Registrar and the Tribunal must enter orders to give effect to that agreement.

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- (3) The following provisions apply to all claims to which this clause applies:
- (a) the Tribunal may, subject to this subclause, make orders and give directions to the parties as to the steps to be taken to prepare the claim for hearing and for that purpose may order the amendment of the plaintiff's statement of claim,
 - (b) a defence is taken to have been filed to the claim and to any cross-claims, unless the Tribunal orders that a defence must be filed,
 - (c) the Tribunal may only order that a defence be filed in relation to matters that remain in dispute and only if the Tribunal is satisfied that it is necessary to do so to ensure that the outstanding issues in dispute are properly tried,
 - (d) the parties to the claim cannot administer interrogatories, order discovery or issue requests for particulars unless leave to do so is granted by the Tribunal, and the Tribunal may only grant that leave where it is satisfied that:
 - (i) the information sought by the party has not been provided as part of the information exchange process, and
 - (ii) the information relates to issues that remain in dispute, and
 - (iii) the order is necessary to ensure that the outstanding issues in dispute are properly tried,
 - (e) rule 8A (Personal injuries cases; particulars) of Part 33 of the *Supreme Court Rules 1970* and rules 15.12 and 15.13 of the *Uniform Civil Procedure Rules 2005* do not apply to the claim,
 - (f) the plaintiff may file an affidavit (but only in relation to issues that remain in dispute) and for that purpose may rely on the plaintiff's statement of particulars,
 - (g) the Tribunal cannot require the plaintiff to file an affidavit if the plaintiff elects to rely on the plaintiff's statement of particulars served under Division 3 (or specified parts of that statement) as the plaintiff's affidavit (including any necessary changes made to that statement in the course of information exchange),
 - (h) the Tribunal may not refer the claim or any aspect of the claim to mediation or neutral evaluation and may not refer a dispute as to apportionment concerning the claim to arbitration.

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66 Procedures for urgent claims

If the Tribunal has determined that a claim is urgent on application by the claimant under Division 2, the statement of claim for the claim is, for the purposes of any provision of rules of court as to the serving of a defence, taken to have been served when the Tribunal made that determination.

Division 9 Costs

67 Costs penalties

- (1) In making an order as to the payment of costs in proceedings, the Tribunal must take into account any failure by a party to proceedings to comply with a provision of this Part.
- (2) In particular, the Tribunal must take into account any increase in the costs of the proceedings that is attributable to any such failure and may order the party responsible for the failure to pay the costs of each other party to the dispute occasioned by the failure, assessed on an indemnity basis.
- (3) The Tribunal may take into account a certificate issued by a mediator to the effect that in the mediator's opinion a party to a claim referred for mediation did not participate in good faith in the mediation.

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Part 5 Subpoenas

Part 5 Subpoenas

68 Interpretation and application

(1) In this Part:

access order, in relation to a subpoena requiring production, means an order of the Tribunal granting access to specified documents or things produced pursuant to the subpoena (whether with or without conditions).

person named means, in relation to a subpoena, the person to whom the subpoena is addressed.

privileged document or thing, in relation to a subpoena, means:

- (a) a document or thing of which evidence could not be adduced in an action over the objection of any person, by virtue of the operation of Part 3.10 (other than sections 128 and 130) of the *Evidence Act 1995*, or
- (b) if the party on whom the subpoena is served is a natural person—a document or thing the contents or production of which may tend to prove that the party:
 - (i) has committed an offence against or arising under an Australian law or a law of a foreign country, or
 - (ii) is liable to a civil penalty, within the meaning of the *Evidence Act 1995*, or
- (c) a document that relates to matters of state within the meaning of section 130 of the *Evidence Act 1995*, unless and until the Tribunal directs that it cease to be a privileged document.

requesting party for a subpoena means a person who is requesting, or who has requested, the issue of the subpoena.

return date for a subpoena means the date on which the subpoena is returnable.

- (2) This Part applies to subpoenas issued on or after the commencement of this Part.
- (3) The provisions of this Part apply to the exclusion of the equivalent provisions of rules of court.

Note. This Part applies to all claims, not just claims that are subject to the claims resolution process under Part 4.

69 Conduct money

- (1) A subpoena must not require the person named to attend or produce any document or thing on any day on which the person's attendance is required unless an amount sufficient to meet the reasonable expenses of

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the person named of complying with the subpoena in relation to that day is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that day.

- (2) The amount mentioned in section 20 (6) of the Act is to be, in respect of a person duly served with a subpoena in any proceedings, the amount which would be payable in respect of that person if the party issuing the subpoena were entitled to claim witness' expenses in respect of that person as costs in the proceedings.

70 Production by non-party

- (1) Where the person named in a subpoena for production of any document or thing is not a party to the proceedings, the subpoena must, unless the Tribunal otherwise orders, permit the person to produce the document or thing to the Registrar not later than the day before the first date on which the person's attendance is required, instead of attending and producing the document or thing as required by the subpoena.
- (2) Where a document or thing is produced to the Registrar pursuant to subclause (1), the Registrar must:
- (a) give a receipt to the person producing the document or thing, and
 - (b) produce the document or thing as the nature of the case requires or as the Tribunal may direct.
- (3) This clause does not apply to so much of a subpoena as requires the person named to attend to testify in any proceedings.

71 Return of exhibits

- (1) Exhibits in any proceedings must be returned to the persons who produced them (whether on subpoena or otherwise) to the Tribunal or the Registrar:
- (a) if the Tribunal makes no order that the exhibits be retained—immediately after judgment is given or a final order made, or
 - (b) if the Tribunal makes an order that the exhibits be retained—at the expiration of the period of 30 days after judgment is given or a final order made or such other period as may be specified in the order.
- (2) A person to whom exhibits may be returned under subclause (1) must obtain the return of, and give to the Registrar a receipt for, the exhibits as soon as practicable, and the Registrar is responsible for the safe custody of any exhibits in the Registrar's keeping for a period only of 14 days after the first day on which the exhibits may be so returned.

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72 Issue

- (1) On request by a party, the Registrar must issue a subpoena to give evidence or a subpoena for production or a subpoena both to give evidence and for production.
- (2) Subclause (1) does not prevent the issue of a subpoena to give evidence and a subpoena for production to the same person in the same proceedings.
- (3) Subject to subclause (4) a party requesting the issue of a subpoena must produce the subpoena to the Registrar in duplicate.
- (4) Where a party requests in any proceedings the issue of several subpoenas to give evidence in similar terms but addressed to different persons, the party need produce only one original, but that original must contain the name of each person to whom any of the subpoenas is addressed.
- (5) The Registrar is not required to place a copy of the subpoena on the Tribunal's file.
- (6) A subpoena for production may be made returnable on the day fixed for the hearing of the proceedings in which it is issued, or, with the leave of the Tribunal or the Registrar, on any other day.
- (7) While a claim is subject to the claims resolution process under Part 4, a subpoena for production of any document or thing:
 - (a) is to be made returnable on a day that is no later than 5 business days before the start of mediation on the claim under that Part, and
 - (b) must permit the person named in the subpoena (whether or not the person is a party) to produce the document or thing to the Registrar, and
 - (c) does not require leave under subclause (6) if a copy of the subpoena is served at least 10 business days before the return date of the subpoena.

73 Notice to be given to other parties concerning subpoenas requiring production

- (1) The requesting party for any subpoena requiring production must serve each other party who has an address for service in the proceedings with a copy of the subpoena:
 - (a) if the return date of the subpoena is on a day that is 14 days or more after the subpoena is issued—within the period of 7 days after the subpoena is issued, or

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- (b) if the return date of the subpoena is on a day that is less than 14 days after the subpoena is issued—within 24 hours after the subpoena is issued.
- (2) The requesting party for a subpoena requiring production who fails to comply with subclause (1) must notify the Tribunal of that failure at the next date on which the subpoena is returnable.
- (3) The requesting party for a subpoena requiring production must notify each other party to the proceedings who has an address for service in the proceedings of any new return date for the subpoena fixed after the subpoena is first issued:
- (a) if the return date of the subpoena is on a day that is 14 days or more after the new date is fixed—within the period of 7 days after the new date is fixed, or
- (b) if the return date of the subpoena is on a day that is less than 14 days after the new date is fixed—within 24 hours after the new date is fixed.
- (4) The Tribunal or the Registrar may make an order for costs against a requesting party for a subpoena requiring production if that party fails to comply with subclause (2) or (3), but only in respect of costs incurred by reason of that failure.
- (5) A requesting party for a subpoena requiring production need not comply with a requirement under subclause (1), (2) or (3) if the person named is excused from compliance with the subpoena by the requesting party under clause 81 (2) (Alteration to obligations) before the time when the requesting party had to comply with that requirement.
- (6) Nothing in this clause affects the operation of clause 78 (Subpoena to medical expert).

74 Access to subpoenaed material

- (1) The Tribunal may make an access order in relation to a subpoena requiring production at the time the subpoena is issued or at any time after it is issued.
- (2) If an access order has effect in relation to a subpoena for production, a party or the party's barrister or solicitor may (subject to the terms of the order):
- (a) inspect documents or things produced in compliance with the subpoena, and
- (b) take copies of any documents so inspected.

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75 Proposed access orders

- (1) Unless the Tribunal orders otherwise, the requesting party for a subpoena requiring production must endorse a proposed access order on the subpoena.
- (2) Without limiting clause 74 (Access to subpoenaed material), the Tribunal may:
 - (a) endorse a proposed access order on a subpoena requiring production if the requesting party has not endorsed such a proposed order, or
 - (b) endorse a proposed access order on a subpoena requiring production in different terms to a proposed order endorsed by the requesting party.
- (3) Unless the Tribunal orders otherwise, any such proposed access order has effect as an access order immediately after the next return date for the subpoena if:
 - (a) documents or things are produced in compliance with the subpoena on or before that date, and
 - (b) no person appears before the Registrar or Tribunal on the return date in opposition to the proposed order.
- (4) Without limiting subclause (3), the Tribunal may take into account a failure to comply with subclause (5) or (6) or clause 73 (1), (2) or (3) in determining whether a proposed access order should have effect according to its tenor or whether an order is to be made to modify or revoke the proposed access order.
- (5) A party or a person named in a subpoena requiring production who proposes to object to the proposed access order on the return date for the subpoena must notify the requesting party of the objection:
 - (a) if the party or person is served with a copy of the subpoena on a day that is 14 days or more before the return date—within the period of 3 days after the party or person is served, or
 - (b) if the party or person is served with a copy of the subpoena on a day that is less than 14 days before the return date—within the period of 24 hours after the party or person is served.
- (6) A requesting party who has received notice of an objection to a proposed access order must notify all of the other parties who have an address for service in the proceedings of the objection within 24 hours after receiving that notice.

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76 Exercise of functions by Registrar

The functions of the Tribunal under clauses 74 and 75 may, unless the Tribunal otherwise orders, be exercised by the Registrar.

77 Time for service

- (1) A subpoena must be served on the person named within a reasonable time.
- (2) Without affecting the generality of subclause (1), where a subpoena requires attendance or production or both on a specified date, the subpoena may not be served on the person named later than 5 days before the date so specified unless the Tribunal or Registrar otherwise orders.
- (3) Subject to subclause (4), service of a subpoena for production which requires production on a specified date, being a date not later than 21 days before the hearing of the proceedings in which the subpoena is issued, may be effected by sending a copy of the subpoena by pre-paid post addressed to the person named at that person's usual or last known residence or place of business.
- (4) Service pursuant to subclause (3) is not effective unless and until the subpoena is actually received by the person named.

78 Subpoena to medical expert

- (1) Where a subpoena requires a medical expert to attend in Sydney on a specified date for the purposes of giving evidence on medical matters, the subpoena may not be served on the expert later than 21 days before the date so specified unless the Tribunal otherwise orders.
- (2) A party may request the issue of a subpoena for production in the approved form requiring a medical expert to attend and produce medical records or clear sharp photocopies of them.
- (3) A subpoena requested under subclause (2) must not require the person named to attend or produce any document on any date specified unless the amount of \$28 is paid or tendered to the person at the time of service of the subpoena or not later than a reasonable time before that specified date.
- (4) Clause 69 (Conduct money) does not apply to a subpoena requested under subclause (2).
- (5) Clause 70 (Production by non-party) applies to the photocopies as it applies to the records.

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Part 5 Subpoenas

79 Setting aside

The Tribunal may, of its own motion or on the motion of any person having a sufficient interest, set aside a subpoena wholly or in part.

80 Expense and loss

Where a person named is not a party and, in consequence of service of the subpoena, reasonably incurs expense or loss substantially exceeding any sum paid under clause 69 (Conduct money), the Tribunal may order that the party who requested the issue of the subpoena pay to the person named an amount in respect of the expense or loss.

81 Alteration to obligations

- (1) A party who has requested the issue of a subpoena to give evidence may, by written or oral notice to the person named, alter the day specified in the subpoena for attendance to a day which is:
 - (a) later than the day specified in the subpoena and the day, if any, as last altered pursuant to this subclause, and
 - (b) the day of the hearing of the action.
- (2) Where the person named in any subpoena has not been called to give evidence, or produce documents, before the Tribunal in compliance with the subpoena, the party who requested the issue of the subpoena may, by written or oral notice to the person named, excuse that person from compliance with the subpoena.

82 Special powers of Tribunal

- (1) The Tribunal may, by order, dispense with any requirement of this Part if satisfied that it is appropriate to do so in the circumstances of the case.
- (2) The Tribunal may, by order, extend or abridge any time fixed under this Part.
- (3) The Tribunal may extend time under this clause, either before or after the time expires, and may do so after the time expires even if an application for extension is made after the time expires.

83 Application of Part 3.10 of Evidence Act 1995

Nothing in this Part compels a person on whom a subpoena is served to produce a privileged document or thing.

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84 Part displaces rules

This Part displaces any provision of rules of court with respect to the acceptance or rejection of an offer of compromise.

Note. This Part applies to all claims, not just claims that are subject to the claims resolution process under Part 4.

85 Definitions

In this Part:

defendant includes cross-defendant.

final deadline for an offer means the time at which the Tribunal begins to give its decision or its reasons for decision, whichever is the earlier, on a judgment (except an interlocutory judgment).

offer means an offer of compromise referred to in clause 86 (Making of offer).

plaintiff includes a cross-claimant.

period for acceptance for an offer means the period from when the offer is made until:

- (a) the expiration of the time limited by the offer or, if no time is limited, the expiration of 28 days after the offer is made, or
- (b) the final deadline for offers in respect of the claim to which the offer relates,

whichever first occurs.

86 Making of offer

- (1) In any proceedings, any party may, by notice in writing, make an offer to any other party to compromise any claim in the proceedings, either in whole or in part, on specified terms.

Note. This Part extends to offers between a cross-claimant and cross-defendant. An offer does not have to be made to all the parties to proceedings.

- (2) An offer must be exclusive of costs, except where it states that it is a verdict for the defendant and that the parties are to bear their own costs.
- (3) A notice of offer:
 - (a) must bear a statement to the effect that the offer is made in accordance with this clause, and
 - (b) if the offeror has made or been ordered to make an interim payment to the offeree, must state whether or not the offer is in addition to the payment so made or ordered.

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- (4) An offer made by the plaintiff or the defendant to the other to compromise a claim (other than a claim removed from the claims resolution process under clause 22) may be expressed to be limited as to the time it is open to be accepted but the time expressed cannot be less than:
 - (a) 28 days after the offer is made if the offer is made before the required information exchange under Part 4, or
 - (b) 14 days after the offer is made if the offer is made after the required information exchange under Part 4 but before mediation of the claim under the claims resolution process has been concluded, or
 - (c) 7 days after the offer is made if the offer is made after mediation of the claim under the claims resolution process has been concluded.
- (5) An offer made by the plaintiff or the defendant to the other to compromise any claim removed from the claims resolution process under clause 22 may be expressed to be limited as to the time it is open to be accepted but the time expressed cannot be less than:
 - (a) 14 days after the offer is made, unless paragraph (b) applies, or
 - (b) if the offer is made after an Issues and Listing Conference has been held in respect of the claim, 7 days after the offer is made.
- (6) Unless the notice of offer otherwise provides, an offer providing for the payment of money, or the doing of any other act, is taken to provide for the payment of that money, or the doing of that act, within 28 days after acceptance of the offer.
- (7) An offer is taken to have been made without prejudice, unless the notice of offer otherwise provides.
- (8) A party may make more than one offer in relation to the same claim.
- (9) Unless the Tribunal orders otherwise, an offer may not be withdrawn during the period of acceptance for the offer.
- (10) A notice of offer that purports to exclude, modify or restrict the operation of clauses 87 and 88 is of no effect for the purposes of this Part.

87 Where offer not accepted and judgment no less favourable to plaintiff

- (1) This clause applies if the offer concerned is made by the plaintiff, but not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim concerned no less favourable to the plaintiff than the terms of the offer.

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- (2) Unless the Tribunal orders otherwise in an exceptional case and for the avoidance of substantial injustice, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in respect of the claim:
- (a) assessed on a party and party basis up to the time from which those costs are to be assessed on an indemnity basis under paragraph (b), and
 - (b) assessed on an indemnity basis:
 - (i) if the offer was made before the first day of the trial, as from the beginning of the day following the day on which the offer was made, and
 - (ii) if the offer was made on or after the first day of the trial, as from 11 am on the day following the day on which the offer was made.
- (3) If the Tribunal in an exceptional case and for the avoidance of substantial injustice otherwise orders as referred to in subclause (1), the Tribunal must give its reasons for so ordering.

88 Where offer not accepted and judgment as or less favourable to plaintiff

- (1) This clause applies if the offer concerned is made by the defendant, but not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim concerned as favourable to the plaintiff, or less favourable to the plaintiff, than the terms of the offer.
- (2) Unless the Tribunal orders otherwise in an exceptional case and for the avoidance of substantial injustice:
- (a) the plaintiff is entitled to an order against the defendant for the plaintiff's costs in respect of the claim, to be assessed on a party and party basis, up to the time from which the defendant becomes entitled to costs under paragraph (b), and
 - (b) the defendant is entitled to an order against the plaintiff for the defendant's costs in respect of the claim, assessed on an indemnity basis:
 - (i) if the offer was made before the first day of the trial, as from the beginning of the day following the day on which the offer was made, and
 - (ii) if the offer was made on or after the first day of the trial, as from 11 am on the day following the day on which the offer was made.
- (3) If the Tribunal in an exceptional case and for the avoidance of substantial injustice otherwise orders as referred to in subclause (1), the Tribunal must give its reasons for so ordering.

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Part 6 Offers of compromise

89 Costs with respect to interest

- (1) If a plaintiff obtains an order or judgment for the payment of damages and:
 - (a) the amount payable under the order or for which judgment is given includes interest or damages in the nature of interest, or
 - (b) the Tribunal, by a separate order, awards the plaintiff interest or damages in the nature of interest in respect of the amount,then, for the purpose of determining the consequences as to costs referred to in clause 87 or 88, the Tribunal must disregard so much of the interest, or damages in the nature of interest, as relates to the period after the day on which the offer was made.
- (2) For the purpose only of this clause, the Tribunal may be informed of the fact that the offer was made, and of the date on which it was made, but must not be informed of its terms.

90 Acceptance of offer

- (1) A party may accept an offer by serving written notice of acceptance on the offeror at any time during the period of acceptance for the offer.
- (2) An offer may be accepted even if a further offer is made during the period of acceptance for the first offer.
- (3) If an offer is accepted in accordance with this clause, any party to the compromise may apply for judgment to be entered accordingly.

91 Withdrawal of acceptance

- (1) A party who accepts an offer may withdraw the acceptance in either of the following circumstances by serving written notice of withdrawal on the offeror:
 - (a) if the offer provides for payment of money, or the doing of any other act, and the sum is not paid to the offeree or into the Tribunal, or the act is not done, within 28 days after acceptance of the offer or within such other time as the offer provides,
 - (b) if the Tribunal grants the party leave to withdraw the acceptance.
- (2) If acceptance of an offer is withdrawn:
 - (a) except as provided by paragraphs (b) and (c), all steps in the proceedings that have been taken as a consequence of the offer having been accepted cease to have effect, and
 - (b) the Tribunal may give directions:
 - (i) to restore the parties as nearly as may be to their positions at the time of the acceptance, and

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- (ii) to give effect to any steps in the proceedings that have been taken as a consequence of the offer having been accepted, and
 - (iii) to provide for the further conduct of the proceedings, and may do so either after the offer is withdrawn or when granting leave to withdraw the offer, and
 - (c) if the claim was subject to the claims resolution process when the offer was accepted, the claim is once again subject to the claims resolution process at such stage and with such steps having been taken as part of that process as was the situation immediately before the offer was accepted.

92 Failure to comply with accepted offer

- (1) If the plaintiff, being a party to an accepted offer, fails to comply with the terms of the offer, the defendant is entitled:
 - (a) to such judgment or order as is appropriate to give effect to the terms of the accepted offer, or
 - (b) to an order that the proceedings be dismissed, and to judgment accordingly,as the defendant elects, unless the Tribunal orders otherwise.
- (2) If the defendant, being a party to an accepted offer, fails to comply with the terms of the offer, the plaintiff is entitled:
 - (a) to such judgment or order as is appropriate to give effect to the terms of the accepted offer, or
 - (b) to an order that the defence be struck out, and to judgment accordingly,as the plaintiff elects, unless the Tribunal orders otherwise.
- (3) If a party to an accepted offer fails to comply with the terms of the offer, and a defendant in the proceedings has made a cross-claim that is not the subject of the accepted offer, the Tribunal:
 - (a) may make such order or give such judgment under this clause, and
 - (b) may make such order as to the further conduct of proceedings on the cross-claim,as it thinks fit.

93 Disclosure of offer to Tribunal or arbitrator

- (1) No statement of the fact that an offer has been made may be contained in any pleading or affidavit.

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- (2) If an offer is not accepted, no communication with respect to the offer may be made to the Tribunal at the trial or, as the case may require, to the arbitrator.
- (3) Despite subclause (2), an offer may be disclosed to the Tribunal or, as the case may require, to the arbitrator:
 - (a) if a notice of offer provides that the offer is not made without prejudice, or
 - (b) to the extent necessary to enable the offer to be taken into account for the purpose of determining an amount of interest up to judgment, or
 - (c) after all questions of liability and relief have been determined, to the extent necessary to determine questions as to costs.

94 Offer to contribute

- (1) If in any proceedings:
 - (a) one party (*the first party*) stands to be held liable to another party (*the second party*) to contribute towards any damages which may be recovered against the second party in the proceedings, and
 - (b) the first party, at any time after entering an appearance, makes an offer to the second party to contribute to a specified extent to the damages, and
 - (c) the offer is made without prejudice to the first party's defence, the offer must not be brought to the attention of the Tribunal or any arbitrator until all questions of liability or amount of damages have been decided.
- (2) In subclause (1), *damages* includes any interest up to judgment claimed on any damages.

Dust Diseases Tribunal Regulation 2007

Clause 95

Miscellaneous

Part 7

Part 7 Miscellaneous

95 Legal practitioners to provide information about claims

- (1) This clause applies to a claim in respect of an asbestos-related condition (within the meaning of Part 4) settled or determined on or after 1 July 2005.
- (2) For the purposes of section 32I of the Act, a legal practitioner who acts for a party to a claim to which this clause applies that is settled or determined by judgment must:
 - (a) within 30 business days after the claim is finalised, provide to the Registrar the required information concerning the claim, and
 - (b) within 30 business days after any appeal in respect of the claim is finalised, provide to the Registrar any revision of the required information provided under paragraph (a) made necessary by changes resulting from the appeal.
- (3) The *required information* is the information required to complete Form 3 in Schedule 2. The required information and any revision of the required information must be provided using that Form.
- (4) A claim is *finalised*:
 - (a) when the claim is settled or determined, unless the claim is settled or determined on the basis that costs are to be agreed or assessed, or
 - (b) if the claim is settled or determined on the basis that costs are to be agreed or assessed—when costs have been agreed or assessed.
- (5) If a party's costs are assessed after the claim is finalised and the assessment results in the information provided under subclause (2) by a legal practitioner acting for the party being incorrect, the legal practitioner must, within 30 business days after the assessment, provide to the Registrar any necessary revision of the required information.

96 Costs assessment

The provisions of the *Legal Profession Act 1987* and the *Legal Profession Act 2004* are modified in their application to the assessment of costs in respect of a claim as follows:

- (a) a reference to the Manager, Costs Assessment, is to be read as a reference to the Registrar of the Tribunal,
- (b) a reference in sections 208S and 208SA of the *Legal Profession Act 1987* to the Chief Justice of New South Wales is to be read as a reference to the President of the Tribunal,

Clause 97 Dust Diseases Tribunal Regulation 2007

Part 7 Miscellaneous

- (c) a reference in sections 390 and 391 of the *Legal Profession Act 2004* to the Chief Justice of New South Wales is to be read as a reference to the President of the Tribunal.

97 Repeal and savings

- (1) The *Dust Diseases Tribunal Regulation 2001* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Dust Diseases Tribunal Regulation 2001* had effect under that Regulation continues to have effect under this Regulation.
- (3) A provision of this Regulation extends to a claim that is pending immediately before the commencement of the provision, except as otherwise provided by this Regulation.

Dust Diseases Tribunal Regulation 2007

Fees

Schedule 1

Schedule 1 Fees

(Clause 4)

	\$
1 Filing an initiating process	294 (in the case of a corporation) or 147 (in any other case)
2 Filing a cross-claim	294 (in the case of a corporation) or 147 (in any other case)
3 Filing request for first directions hearing (for a claim or cross-claim)	1,142 (in the case of a corporation) or 571 (in any other case)
4 Filing notice of motion	294 (in the case of a corporation) or 147 (in any other case)
5 To open or keep open the registry or part of the registry:	
(a) on a Saturday, Sunday or public holiday	1,012 (in the case of a corporation) or 506 (in any other case)
(b) on any other day:	
(i) before 8.30 am or after 4.30 pm	1,012 (in the case of a corporation) or 506 (in any other case)
(ii) between 8.30 and 9 am or 4 and 4.30 pm	106 (in the case of a corporation) or 53 (in any other case)
6 To furnish a copy of the written opinion or reasons for opinion of any member of the Tribunal:	
(a) for a printed copy	50
(b) for any other kind of copy	31
Note. A party to proceedings before the Tribunal is entitled to one copy of the opinion or reasons for opinion in relation to the proceedings without charge.	
7 Making a copy of any document, otherwise than as provided for by item 5, for each page (minimum fee of \$10)	2
8 Supply of duplicate tape recording of sound-recorded evidence, for each cassette	36

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Dust Diseases Tribunal Regulation 2007

Schedule 1 Fees

		\$
9	For each copy of the transcript of any proceedings:	
	(a) for each page, where the matter being transcribed is under 3 months old (minimum fee for 1 to 8 pages of \$66)	7.90
	(b) for each page, where the matter being transcribed is 3 months old or older (minimum fee for 1 to 8 pages of \$78)	9
10	To issue a subpoena for production	114 (in the case of a corporation) or 57 (in any other case)
11	To issue a subpoena for production and to give evidence	114 (in the case of a corporation) or 57 (in any other case)
12	To issue a subpoena to give evidence	56 (in the case of a corporation) or 28 (in any other case)
13	To issue a notice to produce under Part 34 of the <i>Uniform Civil Procedure Rules 2005</i>	114 (in the case of a corporation) or 57 (in any other case)
14	The fee for a service not otherwise provided for in this Schedule Note. This fee is chargeable only with the approval of the Registrar.	60 (in the case of a corporation) or 30 (in any other case)

Dust Diseases Tribunal Regulation 2007

Forms

Schedule 2

Schedule 2 Forms

Form 1 Plaintiff's statement of particulars

(Clause 24)

Instructions for completing this form

You must complete Parts 1 to 4 and 6 to 8 of this form. Part 5 must also be completed unless the condition in respect of which you are claiming is mesothelioma.

You must create a covering index which lists each Part you have completed.

Where the form indicates that material must be attached to the statement of particulars, you should number each attachment sequentially and identify the number of that attachment in the relevant answer. You must also list the attachments in the covering index.

If you do not know the answer to a particular question you should state this in your answer.

You have a continuing obligation to provide information. In the event that you remember additional facts or information, you should update your answers.

It is not necessary for you to obtain and provide material with this form (such as documentary evidence and reports) on which you would generally rely in proceedings before the Tribunal, except where the form indicates that specific material is required to be attached.

By providing comprehensive answers to the questions in this form, the defendant will be able to make an assessment of the answers provided and can then make a decision as to whether further material (such as documentary evidence or an expert report) is required to assess the claim. Where further material is required by a defendant, you should provide that further material as soon as practicable.

If you already have additional material such as documentary evidence or expert reports then you may wish to provide that material now, or indicate that you have that material.

Where specific material is required to be attached to this form, but you do not have the material requested available to you at the time you complete the form you must indicate that you will forward this material to the defendant/s when it becomes available to you. You must provide an indication of when you expect this further material to be available.

Your solicitor may complete this form on your behalf, however, you must still swear or affirm the statutory declaration at the end of this form.

If your claim is made under the *Compensation to Relatives Act 1897*, you should complete the Exposure section in respect of the person as a result of whose death you are claiming.

Part 1 Claimant's personal details

Family name:

Given names:

Title:

Date of birth:

Place of birth:

Gender:

Have you been known by any other name? If so, provide in full the name(s) by which you were known:

Solicitor:

Solicitor's address:

Solicitor's phone and fax number:

Dust Diseases Tribunal Regulation 2007

Schedule 2 Forms

Please complete the details below if you are not represented by a solicitor:

Home address of claimant:

Postal address (if different to home address):

Home and mobile telephone numbers:

Part 2 Medical evidence**Medical condition**

- 2.1 What asbestos-related condition have you been diagnosed with (*your condition*)?
- 2.2 When was your condition diagnosed?
- 2.3 What is the name of the medical practitioner who diagnosed your condition?
- 2.4 Attach a short report from the medical practitioner who diagnosed your condition and any medical evidence which relates to your current condition (including X-rays, pathology reports, ultrasounds etc) on which you intend to rely and which is currently available to you.
- 2.5 What disabilities has your condition resulted in?
- 2.6 What treatments have been prescribed for you and what operations have you had for your condition? Describe in detail or attach any reports on which you intend to rely in proceedings that you have obtained to date which set out this information.
- 2.7 Do you have any other continuing medical conditions? If so, describe in detail.
- 2.8 Do you have any disabilities that have not arisen from your condition?

Treating medical practitioners

- 2.9 Provide the following details for all medical practitioners or other health care providers (including all medical experts, surgeons and rehabilitation providers) who have treated you for your condition:
 - Name of practitioner
 - Name of practice
 - Address
 - Telephone number
 - Period of consultation
 - Treatment provided

Other medical practitioners or health care providers

- 2.10 Provide details of all other medical practitioners or health care providers who have consulted you for any condition in the last five years:
 - Name of provider
 - Name of practice
 - Occupation
 - Address

Dust Diseases Tribunal Regulation 2007

Forms

Schedule 2

- Telephone number
- Period of consultation

2.11 Do you authorise the persons against whom you bring this claim to access your medical records? If so, complete the following authority as a separate document and attach it to this statement:

Medical authority

I, [Name], authorise any medical practitioner or other health care professional who has treated or examined me to give [Insert all defendants' names], and any other person who is joined as a party to the proceedings commenced by me, photocopy access to my medical records to assist in the proof and settlement of my claim. A photocopy or faxed copy of this authority can be acted upon as if it were the original.

Signature:

Date:

2.12 Do you authorise a medical practitioner nominated by the defendant to access your pathological and histopathological material for the purpose of confirming your diagnosis? If so, complete the following authority as a separate document and attach it to this statement:

Authority to access pathology results

I, [Name], authorise a pathologist nominated by each defendant and cross-defendant to the proceedings commenced by me to be given access to my pathological and histopathological material for the purpose of confirming my diagnosis.

Signature:

Date:

Part 3 Summary of work and exposure history

3.1 Complete the following details relating to all employment and work, including periods where you were self-employed or employed as a contractor. Include ALL interstate and overseas employment details. Include additional rows in the Table as required.

Start Date	End Date	Name and address of employer (including any other names by which the employer may have been known)	Employer's industry	Occupation, a brief description of duties and status (eg full time, part-time, casual)	Exposure to asbestos (Yes or No)

Dust Diseases Tribunal Regulation 2007

Schedule 2 Forms

- 3.2 Complete the following details relating to all non-work related exposure (including interstate and overseas exposures). Include additional rows in the Table as required.

Start date of exposure period	End date of exposure period	Address where exposure occurred	Brief description of activity you were engaged in (eg home renovation, washing clothes)

Part 4 Detailed exposure history

Complete an exposure history for each separate period of exposure listed in Part 3 (including work and non-work related exposures).

You must answer all of the general questions. You must also answer the specific questions relevant to your circumstances.

4A General questions (To be answered for each exposure period)

- 4.1 How were you exposed to asbestos?
- 4.2 What were you doing at the time you were exposed to asbestos?
- 4.3 What is the address of the premises where exposure occurred, if different from that specified in Part 3? If the address is unknown, please describe the premises and their general location.
- 4.4 Do you know who owned the premises where exposure occurred?
- 4.5 How often were you exposed to asbestos during the period of exposure (including the number of occasions and/or the frequency with which this occurred)?
- 4.6 Describe the level or intensity of exposure as you perceived it (including whether you consider the level or intensity was low, medium or high). Where there are multiple premises you should do this for each location, unless there is no material difference in the level or intensity of exposure at the different sites (for example, where as a contractor you attended multiple sites and the level or intensity of exposure was about the same at a number of the sites). You should indicate whether the exposure changed over time and if so, describe how it changed.
- 4.7 If you have had more than one exposure period, estimate (if you can reliably do so) as a percentage the proportion that this period of exposure constitutes of your total exposure?
- 4.8 What asbestos products were you exposed to, including the product trade-name if known? If you do not know the trade-name of the product, describe the product.
- 4.9 Do you know who was the manufacturer and/or supplier of those asbestos products?
- 4.10 Do you know where the products were purchased from?

Dust Diseases Tribunal Regulation 2007

Forms

Schedule 2

4.11 If there was more than one product during this period, estimate (if you can reliably do so) as a percentage the relative exposure to each product.

4.12 Do you recall any identifying features or markings on those asbestos products?

4B Specific questions—to be completed for each exposure which is work-related

4.13 Did your exposure result from working directly with asbestos or from working in the vicinity of others who were working with asbestos?

4.14 What specific activities or duties were you engaged in at the time you were exposed to asbestos?

4.15 How often did you engage in these duties or activities?

4.16 If your exposure occurred whilst you were working in the vicinity of others who were using asbestos, what activities were the others who were working with asbestos engaged in?

4.17 Were there any persons other than your employer who directed or controlled the work at those premises such as the owner or occupier of the premises or a contractor?

4.18 Were you provided with any relevant protective gear? If so, describe the gear you were provided with.

4.19 Were you required to wear protective gear whilst exposed to asbestos?

4.20 Did you comply with this requirement? If not, why not?

4.21 Did your employer advise you of any safety measures to protect you from being exposed to asbestos? If so, describe these measures.

4.22 Did the employer or occupier take any precautions to minimise the generation or dissemination of dust?

4.23 Do you know whether any companies other than your employer:

(a) specified the use of the asbestos products to which you were exposed?

(b) designed or installed plant or equipment containing the asbestos to which you were exposed?

4.24 Were you using or working on particular plant or equipment which contained asbestos when the exposure to asbestos occurred? Please identify the plant or equipment and state what you were doing?

4.25 Did any products you handled, or the machinery you used, have any instructions or guidance as to safe usage to avoid exposure to asbestos?

4.26 What was the date of your last exposure to asbestos, if this was not your last date of employment?

Attach documents you currently hold evidencing your employment with this employer (eg tax returns, references etc)

4C Specific questions—exposure while self-employed

4.27 If you were engaged as an independent contractor, identify the principal contractor?

4.28 Do you know who controlled the work which you were undertaking?

Dust Diseases Tribunal Regulation 2007

Schedule 2 Forms

4.29 Did you have any insurance, including workers compensation insurance?

4.30 Did you employ any other people?

4D Specific questions—secondary exposure as a result of the work of another member of your family or household

4.31 Were you exposed to asbestos as a result of the work of another member of your family or household?

4.32 What was the name of the other person?

4.33 What was your relationship with that other person?

In addition to providing the above information, you must complete Part 4A and/or Part 4B in respect of the member of your family or household through whose work you were exposed (in addition to completing Part 4A in relation to your own exposure). In completing these Parts you should construe a reference to you as a reference to the person who it is alleged was exposed during the course of employment and/or self-employment. You are only required to provide detailed information about their exposure if you are able to do so.

Part 5 Smoking history

You do not need to complete this Part of the form if the condition from which you suffer is mesothelioma.

5.1 Do you currently or did you ever smoke? If so, provide the following information:

- Over what period have you smoked?
- What brand(s) of cigarettes or other tobacco products have you smoked?
- Provide the following information for each brand of cigarette or other tobacco product you have smoked:
 - How often have you smoked?
 - How many cigarettes or other tobacco products have you smoked a day?
 - Has your smoking pattern changed over time? If so, how?
 - Have you sustained any illnesses as a result of smoking?
 - Have your illnesses been treated by a medical practitioner? If so, what is the name of the medical practitioner?

Part 6 Compensation

In completing this Part you should not obtain medical or occupational therapist's reports to support your answers. The defendant may subsequently indicate that they require such material to assess your claim. You may also need to obtain these reports for proceedings in the Tribunal.

6.1 If you are claiming compensation for any of the damages categories listed below, provide brief particulars of your claim. You may be requested by the defendant to provide further detailed particulars, including setting out in detail the facts, circumstances and evidence on which you intend to rely. The information provided should include the details listed below each category:

- General damages (pain and suffering, loss of expectation of life)
 - Include details on your prognosis

Dust Diseases Tribunal Regulation 2007

Forms

Schedule 2

-
- Past economic loss and future loss of earning capacity including:
 - Per weekly loss alleged
 - Period of time over which the loss has occurred, or will continue to occur
 - The personal expenditure of the plaintiff if the plaintiff had not been injured (if the claim relates to mesothelioma or lung cancer)
 - Attach any tax returns, wage slips invoices or other documentation that may be relevant to your claim.
 - Cost of future medical care
 - Out of pocket expenses
 - Personal care costs
 - Specify the nature of the care required
 - Include details of the provider, including their relationship to you
 - Specify how often the care is to be provided
 - Damages for services provided to third parties
 - Specify the nature of the services provided
 - Identify to whom the services are to be provided
 - The nature of the recipient's relationship to you
 - The nature of the services
 - How long you have provided the services
 - The frequency with which you have provided these services
 - Home modifications
- 6.2 If you are claiming economic loss, are you receiving any Government benefit? If yes, please specify the benefit and the date on which that benefit commenced.
- 6.3 Have you received any compensation from a workers compensation or other insurer in respect of your condition? If yes, please specify the benefit paid and the date received.
- 6.4 Although you are not required at this stage to provide a notice of past benefits from the Health Insurance Commission, have you requested such a notice? If you have received this information you should attach it.

Part 7 Dust Diseases Board claims

- 7.1 Have you previously or are you currently making a claim in relation to your condition with the Dust Diseases Board? If so, provide the following information:
- Date of claim
 - Was the claim accepted?
 - If yes, what benefit was awarded?

Dust Diseases Tribunal Regulation 2007

Schedule 2 Forms

Part 8 Statutory declaration

I, [Name], of [Address], solemnly declare that the answer to each and every question on this form and the particulars contained therein or attached hereto, are true. I make this declaration in accordance with the *Oaths Act 1900*, and subject to the punishment by law provided for the making of any wilfully false statement in any such declaration.

Claimant's signature:

Date:

Declared before me:

Title:

Signature:

Date:

Form 2 Defendant's reply

(Clause 26)

Instructions for completing this form

All defendants must complete Parts 1, 2, 7, 9 and 10 of this form. Part 8 of the form only needs to be completed where there is more than one defendant.

You must complete and submit the remaining Parts of the form which are relevant to the claim made against you.

You must create a covering index which lists the Parts of the form which you have completed and which identifies those Parts of the form which have not been completed.

Where the form indicates that material must be attached to the Reply, you should number each attachment sequentially and identify the number of that attachment in the relevant answer. You must also list the attachments in the covering index.

Where you require further information from the claimant in order to answer a particular question, you must state this in your answer and specify what information you require in order to answer the question.

You have a continuing obligation to provide information and update your answers as new information becomes available.

If you answer a question with "Do Not Know" and you are undertaking further investigations you must clearly indicate this and state when you expect those investigations to be complete. Once complete you must update your answer and the information in the form as soon as practicable.

You are not required to obtain and provide material (such as expert reports) with this form, except where the form indicates that specific material is required to be attached.

By providing comprehensive answers to the questions in this form, the plaintiff and other defendants will be able to make an assessment of the answers provided and will then be able to make a decision as to whether further material (such as documentary evidence or an expert report) is required to assess your defence. Where further material is required by a claimant or other defendant, you must provide that further material as soon as practicable.

Where this form requires you to summarise the type of evidence on which you intend to rely to support your position, you must describe that evidence in sufficient detail for the plaintiff and other defendants to fully understand the basis of your position. A response that refers to material in general terms which may be obtained through other processes (such as discovery or interrogatories) is not considered adequate.

The term "evidence" in this form includes statements of witnesses, documents over which you have custody or control, documents you have obtained from third parties, verified answers to interrogatories provided in other claims and expert reports.

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Forms

Schedule 2

In some cases the form requires you to attach evidence. Where the form indicates that evidence must be attached you are only required to provide evidence that is available to you at the time you complete this form. You are, however, required to provide details of all evidence that you are aware of or that is reasonably discoverable by you. You should indicate if you intend on obtaining further evidence (such as an expert report). If so, you should specify when you expect to receive the further evidence.

If you are the insurer for a person against whom the claim is made you must complete this form and construe a reference to you as a reference to the insured. If you do not know the answer to any of the questions because you have been unable to obtain this information specify this and indicate whether you expect that further information will become available to you, and if so when. You should update your answer at that time.

Part 1 Defendant details

Name of defendant:

ABN/ACN:

Postal address:

Address for Service:

Email address:

Phone:

Fax:

Name of claimant:

Date of service of the statement of particulars on you:

Were proceedings commenced against you directly by the claimant or are you a cross-defendant?

Have you made any cross-claims in this matter? If yes, list those cross-defendants.

Do you need to inspect particular premises or a place where the exposure is alleged to have occurred in order to respond to the claimant's claim? If yes, please specify those premises.

Note. Where a request to inspect premises or a place is made, you still must answer all of the questions in this reply.

Part 2 Diagnosis of the claimant's injury

- 2.1 Do you admit that the claimant has the alleged condition?
- 2.2 Do you accept the medical evidence on the claimant's diagnosis that the claimant has provided with his or her Statement of Particulars? If you only accept some of the evidence provided by the claimant, specify those parts which you accept.
- 2.3 Do you admit that the alleged condition was caused by exposure to asbestos?
- 2.4 Do you admit that the claimant has the disabilities claimed? If you only admit that the claimant has some of the disabilities claimed please specify which disabilities you admit the claimant suffers from.
- 2.5 If you did not answer yes to questions 2.1 to 2.4, do you have any medical evidence to support your position? Attach the evidence. If you do not have evidence to support your position but you have arranged for such evidence to be obtained you should indicate when you expect to receive this evidence and provide that evidence as soon as it is received.

Dust Diseases Tribunal Regulation 2007

Schedule 2 Forms

Part 3 Response to claim relating to employment

To be completed by a defendant who is alleged to have employed the claimant.

Note: If the claimant alleges that his or her condition was caused by exposure to asbestos which occurred as a result of contact with another person whom the claimant alleges was employed by you, you should also complete this Part.

In so doing you should construe a reference to the claimant as a reference to the person who it is alleged you employed except in relation to questions 3.7 to 3.13 where you should answer each question with respect to both the claimant and the person you employed.

3.1 Do you admit that you employed the claimant, as alleged?

Yes No Do not know

If yes, proceed to question 3.2.

If no, set out the basis on which you do not admit that you employed the claimant. What evidence do you have and what evidence do you intend to obtain to contradict the claimant's or other defendant's version of events? If you know who employed the claimant during the period, identify that person. Any evidence which you have at present should be attached to this form.

If you do not know, do you have any evidence to contradict the claimant's allegation? Any evidence which you have at present should be attached to this form.

3.2 Did you occupy or control the premises at which the claimant alleges he or she was exposed to asbestos?

Yes No Do not know

If you answered yes to this question you must also complete Part 4 of this form.

If you do not know or do not admit the allegation, on what basis do you assert that you do not know or do not admit to the allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.3 Do you admit that the time period during which the claimant is alleged to have been employed by you is correct?

Yes No Do not know

If yes, proceed to question 3.4.

If no:

- (a) do you admit that you employed the claimant in another period and, if so, what period?
 (b) what evidence do you have to support this admission?

If you do not know or do not admit you employed the claimant in any period, on what basis do you assert that you do not know or do not admit that you employed the claimant? Do you have any evidence to contradict the claimant's allegation?

Attach all relevant evidence.

Dust Diseases Tribunal Regulation 2007

Forms

Schedule 2

3.4 Do you admit that the claimant was exposed to asbestos in the course of or arising out of employment by you?

Yes No Do not know

If yes, proceed to question 3.5.

If no, on what basis do you dispute the claimant's allegation that he or she was exposed to asbestos arising out of or in the course of employment by you. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

3.5 Do you agree with the claimant's description of:

(a) the circumstances in which exposure occurred (including the duties or activities engaged in by the claimant and the frequency with which exposure occurred);

Yes No Do not know

(b) the intensity and duration of exposure;

Yes No Do not know

(c) the products to which the claimant was exposed?

Yes No Do not know

If you answered yes to all of the above questions, proceed to question 3.6.

If you answered no to one or more of the above questions, set out the basis on which you disagree with the claimant's description for each question to which you answered no. Summarise the type of evidence on which you intend to rely to support your position.

If you answered that you do not know the answer to one or more of the above questions, do you have any evidence to contradict the claimant's allegation? If so, summarise the type of evidence on which you intend to rely to support your position.

3.6 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other personal injury) at the time of the alleged exposure?

Yes No

If yes, proceed to question 3.7 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

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Schedule 2 Forms

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

- 3.7 Do you admit that you owed a common law duty of care to the claimant as an employer during the period of alleged exposure?

Yes No

If yes, proceed to question 3.8.

If no, on what basis do you claim that you did not have a duty?

- 3.8 Regardless of whether or not you admit that you had a duty, did you discharge the common law duty to the standard of a reasonable person, for example, by having a safe system of work, by providing instructions on the safe use and handling of asbestos or by taking reasonable precautions?

Yes No Do not know

If yes, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the steps taken which you consider discharged the duty of care. Summarise the type of evidence on which you intend to rely to support your position.

If no, proceed to question 3.9.

If you do not know, do you have any evidence to contradict the claimant's allegation? If so, summarise the evidence on which you intend to rely to support your position.

- 3.9 Do you admit that you owed a statutory duty to the claimant as an employer or otherwise during the alleged period of exposure?

Yes No Do not know

Note: A statutory duty may otherwise arise if you:

- employed persons in the premises where the claimant was carrying out the work that he or she alleges exposed him or her to asbestos;
- the premises at which you were carrying out work were a factory within the meaning of the *Factories and Shops Act 1912* or the *Factories, Shops and Industries Act 1962*;
- a person was carrying out building or construction work within the meaning of the *Construction Safety Act 1912*;
- the claimant was engaged in building or construction work within the meaning of the *Construction Safety Act 1912*.

If yes, proceed to question 3.10.

If no or do not know, on what basis do you claim that you did not have a duty?

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Schedule 2

3.10 Do you admit that you failed to discharge the statutory duty said to apply to you?

Yes No Do not know

If yes, proceed to question 3.11.

If no, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the steps taken which you consider discharged the duty of care. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? If so, summarise the type of evidence on which you intend to rely to support your position.

3.11 Do you admit that your breach of duty (whether common law or statutory) is a cause of the alleged asbestos related injury?

Yes No Do not know

If yes, proceed to question 3.12.

If no, set out the basis of your argument as to why you do not admit the breach caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? If so, summarise the type of evidence on which you intend to rely to support your position.

3.12 Regardless of whether you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty (whether common law or statutory) or whether or not you admit that you breached that duty, do you admit that the conduct alleged by the claimant to have been engaged in by you is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 3.13.

If no, set out the basis of your argument as to why you do not admit that the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? If so, summarise the type of evidence on which you intend to rely to support your position.

Dust Diseases Tribunal Regulation 2007

Schedule 2 Forms

3.13 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 4.

If yes, provide details of that defence and summarise the type of evidence on which you intend to reply.

Part 4 Response to claim as an occupier

To be completed by a defendant who is alleged to have occupied premises at which the claimant was alleged to have been injured

Note:

- 1 If you answered yes to question 3.2, you must also complete this Part. If you also employed the claimant, and have completed all of Part 3, you only need to answer questions 4.1–4.4, and 4.7 to 4.10.
- 2 If the claimant alleges that his or her injury was caused by exposure to asbestos which occurred as a result of contact with another person whom the claimant alleges was exposed to asbestos at premises occupied or controlled by you, you should also complete this Part. In completing this Part you should construe a reference to the claimant as a reference to the person who it is alleged you employed except in relation to questions 4.7 to 4.12 where you should answer each question with respect to both the claimant and the person you employed.

4.1 What are the premises to which the claim relates?

4.2 Do you admit that you occupied or controlled the premises at the time of the alleged exposure?

Yes No Do not know

If yes, proceed to question 4.3.

If no, what evidence do you have and what evidence do you intend to obtain to support your position? If you know who occupied the premises during the period, identify that person. Any evidence which you have at present should be attached to this form.

If you do not know, do you have any evidence to contradict the claimant's allegation? Any evidence which you have at present should be attached to this form.

4.3 Do you admit that you occupied the premises for the whole of the period during which exposure is alleged to have occurred?

Yes No Do not know

If yes, proceed to question 4.4.

If no:

- (a) for what period do you admit that you occupied the premises?
- (b) what evidence do you have to support this admission?

Dust Diseases Tribunal Regulation 2007

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If you do not know or do not admit you occupied the premises during any period, on what basis do you assert that you do not know or do not admit that you employed the claimant? Do you have any evidence to contradict the claimant's allegation.

Any evidence which you have at present should be attached to this form.

4.4 Do you admit that the claimant was exposed to asbestos at the premises occupied or controlled by you?

Yes No Do not know

If yes, proceed to question 4.5.

If no, on what basis do you dispute the allegation that the claimant was exposed to asbestos at premises controlled or occupied by you? Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

4.5 Do you agree with the claimant's description of:

(a) the circumstances in which exposure occurred (including the duties or activities engaged in by the claimant and the frequency with which exposure occurred);

Yes No Do not know

(b) the intensity and duration of exposure;

Yes No Do not know

(c) the products to which the claimant was exposed?

Yes No Do not know

If you answered yes to all of the above questions, proceed to question 4.6.

If you answered no to one or more of the above questions, set out the basis on which you disagree with the claimant's description for each question. Summarise the type of evidence on which you intend to rely to support your position.

If you answered that you do not know the answer to one or more of the above questions, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

4.6 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other person injury) at the time of the alleged exposure?

Yes No

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If yes, proceed to question 4.7 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

- 4.7 Do you admit that you owed a common law duty of care to the claimant as an occupier during the period of alleged exposure?

Yes No

If yes, proceed to question 4.8

If no, on what basis do you claim that you did not have a duty?

- 4.8 Regardless of whether or not you admit that you had a duty, did you discharge the common law duty to the standard of a reasonable person, for example, by providing instructions on the safe use and handling of asbestos or by taking reasonable precautions?

Yes No Do not know

If yes, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the steps taken which you consider discharged the duty of care. Summarise the type of evidence on which you intend to rely to support your position.

If no, proceed to question 4.9.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 4.9 Do you admit that you owed a statutory duty to the claimant as an occupier or otherwise during the alleged period of exposure?

Yes No Do not know

Note: A statutory duty may otherwise arise if you:

- employed persons in the premises where the claimant was carrying out the work that he or she alleges exposed him or her to asbestos;
- the premises at which you were carrying out work were a factory within the meaning of the *Factories and Shops Act 1912* or the *Factories, Shops and Industries Act 1962*;
- a person was carrying out building or construction work within the meaning of the *Construction Safety Act 1912*;
- the claimant was engaged in building or construction work within the meaning of the *Construction Safety Act 1912*.

If yes, proceed to question 4.10.

If no or do not know, on what basis do you claim that you did not have a duty?

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- 4.10 Do you admit that your breach of duty (whether common law or statutory) is a cause of the alleged asbestos related injury?

Yes No Do not know

If yes, proceed to question 4.11.

If no, set out the basis on which you assert that you discharged your duty and provide detailed information concerning the reasons why you do not admit the breach of duty caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 4.11 Regardless of whether you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty (whether common law or statutory) or whether or not you admit that you breached that duty, do you admit that the conduct alleged by the claimant to have been engaged in by you is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 4.12.

If no, set out the basis of your argument as to why you do not admit that the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 4.12 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 5.

If yes, provide details of that defence and summarise the type of evidence on which you intend to rely to support your position.

Part 5 Response to claim as a manufacturer or supplier of asbestos

To be completed by a defendant who is alleged to have manufactured or supplied asbestos which has injured the claimant. This includes products which are manufactured or supplied as part of plant or equipment.

Note: If the claimant alleges that his or her injury was caused by exposure to asbestos which occurred as a result of contact with another person whom the claimant alleges was exposed to asbestos manufactured or supplied by you, you should also complete this Part. In completing this Part you should construe a reference to the claimant as a reference to the person who it is alleged was exposed to the product manufactured or supplied by you.

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Schedule 2 Forms

5.1 What are the asbestos products to which is it alleged that the claimant was exposed as set out in the claimant's statement of particulars?

5.2 Do you admit that you manufactured or supplied those products at any time?

Yes No Do not know

If yes, proceed to question 5.3.

If no, on what basis do you assert that you did not manufacture or supply those products? If you know who supplied or manufactured those products, identify that person. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

5.3 Do you admit that the claimant was exposed to products manufactured or supplied by you in the circumstances alleged by the claimant or otherwise.

Yes No Do not know

If yes, proceed to question 5.4.

If no, on what basis do you disagree with the claimant's version of events? Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

5.4 What was the composition of each asbestos product you admit to manufacturing or supplying, including the type and quantity of asbestos?

5.5 Do you agree with the description of:

(a) the circumstances in which exposure occurred (including the duties or activities engaged in by the claimant and the frequency with which exposure occurred);

Yes No Do not know

(b) the intensity or duration of exposure?

Yes No Do not know

If you answered yes or do not know to both of the above questions, proceed to question 5.6.

If you answered no to one or both of the above questions, set out the basis on which you disagree with the claimant's description. Summarise the type of evidence on which you intend to rely to support your position.

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If you do not know, do you have any evidence to contradict the claimant's allegation?
Summarise the type of evidence on which you intend to rely to support your position.

- 5.6 Do you admit in the period alleged that you failed to provide to the persons who used your products instructions as to the steps to be taken to handle asbestos in a safe manner or warnings as to the risks associated with asbestos?

Yes No

If yes, proceed to question 5.7.

If no, set out in detail the instructions or warnings which you say were provided, including details on how or by what means those instructions were conveyed to the user of the product. Specify for each relevant product the date on which you claim that warnings or instructions first appeared. Summarise the type of evidence on which you intend to rely to support your position.

- 5.7 Do you admit that you owed a common law duty of care to the claimant during the period of alleged exposure?

Yes No

If yes, proceed to question 5.8.

If no, why do you believe that you did not have a duty?

- 5.8 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other person injury) at the time of the alleged exposure?

Yes No

If yes, proceed to question 5.9 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

- 5.9 Do you admit that you failed to discharge your common law duty of care to the standard of a reasonable person?

Yes No Do not know

If yes, proceed to question 5.10.

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If no, provide a detailed response setting out how you discharged the duty to the standard of a reasonable person, for example, by providing instructions on the safe use and handling of asbestos or by providing warnings. Provide a detailed description of those measures and summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 5.10 Do you admit that your breach of duty of care is a cause of the alleged asbestos related injury?

Yes No Do not know

If yes, proceed to question 5.11.

If no, provide detailed information concerning the reasons why you do not admit the breach of duty caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 5.11 Regardless of whether or not you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty of care and whether or not you admit that you breached any duty of care, do you admit that the conduct alleged by the claimant to have been engaged in by you (in particular the manufacture or supply of the products) is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 5.12.

If no, provide detailed information concerning the reasons why you do not admit the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 5.12 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 7.

If yes, provide details of that defence and summarise the type of evidence on which you intend to rely to support your position.

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Schedule 2

Part 6 Response to other claims

This part is to be completed by a defendant who does not fit within the categories in Part 3, 4 or 5. You do not have to complete this Part if you have completed Part 3, 4 or 5.

6.1 Do you admit that the claimant was exposed to asbestos in the manner alleged by the claimant?

Yes No Do not know

If yes, proceed to question 6.2.

If no, on what basis do you dispute the claimant's allegation that they were exposed to asbestos in the manner alleged. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

6.2 Do you agree with the claimant's description of:

(a) the circumstances in which exposure occurred (including the frequency with which exposure occurred)?

Yes No Do not know

(b) the intensity and duration of exposure?

Yes No Do not know

(c) the products to which the claimant was exposed?

Yes No Do not know

If you answered yes to all of the above questions, proceed to question 6.3.

If you answered no to one or more of the above questions, set out the basis on which you disagree with the claimant's description for each question. Summarise the type of evidence on which you intend to rely to support your position.

If you answered that you do not know the answer to one or more of the above questions, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

6.3 Do you admit that you knew or ought to have known that exposure to asbestos gave rise to a risk of personal injury (either of the kind suffered by the claimant or other person injury) at the time of the alleged exposure?

Yes No

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If yes, proceed to question 6.4 (although you may provide further information on your knowledge at the time of the alleged exposure if you consider this to be relevant).

If no, set out in detail your basis (including the evidence on which you intend to rely) for not admitting that you had such knowledge, including references to any decided cases which support your position.

- 6.4 Do you admit that you owed a duty to the claimant (either common law or statutory) during the period of alleged exposure?

Yes No

If yes, proceed to question 6.5.

If no, on what basis do you claim that you did not have a duty?

- 6.5 Regardless of whether or not you admit that you had a duty, did you discharge the duty?

Yes No Do not know

If yes, set out the basis on which you assert that you discharged the duty and provide detailed information concerning the steps taken which you consider discharged the duty. Summarise the type of evidence on which you intend to rely to support your position.

If no, proceed to question 6.6.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 6.6 Do you admit that your breach of duty is a cause of the alleged asbestos related injury?

Yes No Do not know

If yes, proceed to question 6.7.

If no, set out the basis for your reasons as to why you do not admit the breach of duty caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 6.7 Regardless of whether you admit that the claimant has an asbestos related injury, whether or not you admit that you owed a duty or whether or not you admit that you breached that duty, do you admit that the conduct alleged by the claimant to have been engaged in by you is a cause of the asbestos related injury alleged by the claimant?

Yes No Do not know

If yes, proceed to question 6.8.

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If no, set out the basis for your reasons as to why you do not admit that the conduct caused the injury. Summarise the type of evidence on which you intend to rely to support your position.

If you do not know, do you have any evidence to contradict the claimant's allegation? Summarise the type of evidence on which you intend to rely to support your position.

- 6.8 Do you intend to rely on any other defence which you say defeats the claimant's claim in whole or in part (such as a limitation defence or that the risk of injury to the claimant was not foreseeable)?

Yes No

If no, proceed to Part 7.

If yes, provide details of that defence and summarise the type of evidence on which you intend to rely to support your position.

Part 7 Insurance

Do you believe that you may be entitled to recover all or part of the damages from your former or current insurer?

Yes No Do not know

If yes, specify the insurer, the type of insurance, the period of cover and whether there is any limit to the cover provided. If you answered that you do not know you should indicate when you expect to be in a position to answer this question.

Part 8 Apportionment of liability among defendants

A standard presumption set out in the Table in clause 5 (1) of the *Dust Diseases Tribunal (Standard Presumptions—Apportionment) Order 2005* will be used to apportion liability among the defendants if the defendants cannot agree on apportionment.

A standard presumption will be used to assign a share of liability to each defendant depending on which category it falls into. The standard presumptions vary according to the period in which the exposure occurred and the category of defendant. The Contributions Assessor may vary the standard presumption applying to a claim having regard to the factors set out in clause 5 (5) and (6) of the Order, but the Contributions Assessor may not vary the standard presumptions outside of the permitted range.

Answer the following questions.

- 8.1 Into which category should each defendant be placed?
- 8.2 How should the standard presumptions be varied to take account of the level of knowledge which you believe should be assigned to each Category 2 defendant, (including yourself if relevant)? Set out the basis for your position.

Note. Please note, the standard presumptions have been prepared on the basis that Category 1 defendants are presumed to have had actual knowledge of the risks of asbestos, so it cannot be argued that the presumption should be varied against a Category 1 defendant on the basis of its level of knowledge.

Dust Diseases Tribunal Regulation 2007

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- 8.3 What level of knowledge should be attributed to each Category 2 defendant, including yourself, as to the risks of asbestos (either of the kind suffered by the claimant or other personal injury) at the time of the alleged exposure? Set out the basis for your position, including references to any cases on which you intend to rely to support your position.
- 8.4 If other findings have been made in relation to your knowledge of the risks of asbestos at the time of the alleged exposure, provide details of those cases. Do you intend to rely on or dispute those findings? If you intend to dispute those findings, on what basis?
- 8.5 Should the standard presumptions be varied on the basis of the identity, capacity, size or state of sophistication of a particular defendant (including yourself), including the industry, and nature of the industry in which the defendant was engaged? Set out the basis for your position.
- 8.6 Should the standard presumptions be varied on the basis of the number of defendants identified in each category as being at fault in connection with the claim? Set out the basis for your position.
- 8.7 Should the standard presumptions be varied having regard to the steps which a particular defendant (including yourself) took, ought to have taken and/or was capable of taking to minimise the risk of harm? Set out the basis for your position.
- 8.8 Should the standard presumptions be varied for any other reason? Set out the basis for your position.
- 8.9 If there are more than two defendants in any one category, are there any particular factors relating to the blameworthiness of those defendants which would justify sharing the apportioned liability between those defendants other than on an equal basis? Set out the basis of your position.

Part 9 Compensation

To be completed by all defendants, including cross-defendants

Provide a detailed response to each question indicating whether you agree with the claimant's assessment of damages. If you disagree with the claimant's assessment, you must specify the facts and circumstances on which you rely on to establish your position.

- 9.1 Are there any other conditions or injuries which you believe contributed to the claimant's damage?

Yes

No

If yes, specify the other conditions or injuries.

- 9.2 Set out the facts and circumstances on which you say the level of general damages should be calculated and the amount which should be awarded. Your response should indicate the extent to which you say other conditions or injuries contribute to the claimant's pain and suffering and loss of enjoyment of life, whether you dispute the claimant's evidence as to prognosis and details of any previous awards of the Tribunal which you think are relevant. Summarise the type of evidence on which you intend to rely to support your position.

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9.3 Do you agree with the claimant's assessment of:

- (a) the alleged per weekly loss;
- (b) the period of time over which such loss is alleged to occur;
- (c) the assessment of the personal expenditure of the claimant?

Yes No Not applicable

If yes, proceed to question 9.4.

If no, set out the basis on which you dispute each of the matters set out above. Summarise the type of evidence on which you intend to rely to support your position.

9.4 Do you agree with the claimant's assessment of the cost of future medical care?

Yes No Not applicable

If yes, proceed to question 9.5.

If no, set out the basis on which you say future medical care should be assessed. Summarise the type of evidence on which you intend to rely to support your position.

9.5 Do you agree with the claimant's assessment of out of pocket expenses?

Yes No Not applicable

If yes, proceed to question 9.6.

If no, set out the basis on which you say out of pocket expenses should be assessed. Summarise the type of evidence on which you intend to rely to support your position.

9.6 Do you agree with the claimant's assessment of personal care costs, both past and future?

Yes No Not applicable

If yes, proceed to question 9.7.

If no, set out the basis on which you say personal care costs should be assessed, with particular attention to the nature and level of care required and the cost of that care. Summarise the type of evidence on which you intend to rely to support your position.

9.7 Do you agree with the claimant's assessment of the cost of services provided to third parties?

Yes No Not applicable

If yes, proceed to question 9.8.

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If no, set out the basis on which you say the cost of services provided to third parties should be assessed, with particular attention to the nature of the services and the claimant's circumstances. Summarise the type of evidence on which you intend to rely to support your position.

9.8 Do you agree with the claimant's assessment of the cost of home modifications?

Yes No Not applicable

If yes, proceed to Part 10.

If no, set out the basis on which you say the cost of home modifications should be assessed. Set out the evidence on which you intend to rely to support your position.

Part 10 Certification

The form must be completed by the defendant's claims manager or a solicitor acting for the defendant.

I, [name], [position], [company/solicitor's firm], certify that I reasonably believe on the basis of provable facts and a reasonably arguable view of the law that the defence set out in this reply has reasonable prospects of success if the matter were to be litigated before the Tribunal.

Claims manager's or defendant's solicitor's signature:

Date:

Title:

Date:

Form 3 Claims information

(Clause 95)

Information concerning claims

Claim details	
Proceedings number	
Name of claimant	
Name of each defendant	
Name of each cross-defendant	
If you are a solicitor, party for which you acted	
If you are a solicitor, name of your firm and solicitor on the record	

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Nature of claimant’s injury	<input type="checkbox"/> Mesothelioma <input type="checkbox"/> Asbestosis <input type="checkbox"/> Asbestos related cancer <input type="checkbox"/> Asbestos related pleural diseases
Compensation awarded or agreed	
Was the claim settled or determined by the Tribunal?	<input type="checkbox"/> Settled <input type="checkbox"/> Judgment (Tick the appropriate box)
At what stage was the claim settled or determined	<input type="checkbox"/> After filling the statement of claim but before serving the statement of claim and statement of particulars <input type="checkbox"/> After serving the statement of claim and statement of particulars but before the defendant or defendants file a reply <input type="checkbox"/> Where there is only one defendant, after the reply is filed but before the claim is referred for mediation <input type="checkbox"/> Where there is more than one defendant, after the defendants file their replies but before they agreed on contribution or the claim is referred to a Contributions Assessor <input type="checkbox"/> Where there is more than one defendant, if the defendants agree on contribution, after that agreement but before the claim is referred for mediation <input type="checkbox"/> Where there is more than one defendant, if the claim is referred to a contributions assessor, after that referral but before the Contributions Assessor makes a determination <input type="checkbox"/> Where there is more than one defendant, if the claim is referred to a Contributions Assessor, after the Contributions Assessor makes a determination but before the claim is referred to mediation

Dust Diseases Tribunal Regulation 2007

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	<input type="checkbox"/> After the claim is referred for mediation but before the mediation occurs <input type="checkbox"/> During mediation <input type="checkbox"/> After an unsuccessful mediation but before the claim is returned to the Tribunal <input type="checkbox"/> After the claim is referred to the Tribunal but before the Tribunal makes a determination <input type="checkbox"/> Judgment by the Tribunal
If the claim was settled, state the amount for which the claim was settled (including the amount of any costs included in the statement or assessed separately)	Total amount (including costs): Costs (if separately agreed or assessed):
If the claim was not settled, state the quantum of damages awarded at judgment (including the amount of any costs agreed or assessed)	Total amount (including costs): Costs (if separately agreed or assessed):
Have you previously been awarded provisional damages for an asbestos related injury	
Legal costs and disbursements	
Total solicitor/client costs (including amounts recovered from the defendants)—excluding disbursements	
Counsel's fees	
Cost of expert reports obtained (list each report separately, identifying the nature of the report including specialty (eg medical report (pathology), occupational therapist, industrial hygienist) and the cost of each report	
Other disbursements	
Costs recovered	
Specify the amount of legal costs recovered. List the amount recovered from each other party separately and identify that party.	
Specify the amount of disbursements recovered. List the amount recovered from each other party separately and identify that party.	

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Were costs recovered on an indemnity basis? List the amount recovered from each other party separately and identify that party.	
If costs were recovered on an indemnity basis, describe the circumstances in which this order was made	
If a defendant, the amount paid to a single claims manager (whether another defendant or an independent claims manager)	
Contributions Assessor	
Was any matter referred to a Contributions Assessor for determination?	
Single claims manager	
Was a single claims manager used or did all the defendants decide not to use a single claims manager?	
Name of single claims manager	
Who selected the single claims manager (defendants, Registrar or Contributions Assessor)?	
Single claims manager costs and disbursements (to be completed by those acting as a single claims manager only)	
Operational costs—excluding disbursements	
External legal costs—excluding disbursements	
Counsel's fees	
Cost of expert reports obtained (list each report separately, identifying the nature of the report including specialty (eg medical report (pathology), occupational therapist, industrial hygienist) and the cost of each report	
Other disbursements	

Signature:



New South Wales

Electricity Supply Amendment (Miscellaneous) Regulation 2007

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*.

JOSEPH TRIPODI, M.P.,
Minister for Energy

Explanatory note

The object of this Regulation is:

- (a) to extend the scheme for the determination of electricity tariffs by the Independent Pricing and Regulatory Tribunal and the operation of the Electricity Tariff Equalisation Fund to 30 June 2010, and
- (b) to update a reference to the corporate name of an electricity supplier.

This Regulation is made under the *Electricity Supply Act 1995*, including sections 43EJ, 43ES and 106 (the general regulation-making power).

Clause 1 Electricity Supply Amendment (Miscellaneous) Regulation 2007

Electricity Supply Amendment (Miscellaneous) Regulation 2007

under the

Electricity Supply Act 1995

1 Name of Regulation

This Regulation is the *Electricity Supply Amendment (Miscellaneous) Regulation 2007*.

2 Amendment of Electricity Supply (General) Regulation 2001

The *Electricity Supply (General) Regulation 2001* is amended as set out in Schedule 1.

Electricity Supply Amendment (Miscellaneous) Regulation 2007

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 2)

[1] Clause 68 Exemptions from sec 98

Insert “Queensland” after “Ergon Energy” in clause 68 (2) (g).

[2] Clause 121A Date on which Divisions 5 and 6 of Part 4 of Act cease to have effect

Omit “30 June 2007” wherever occurring.

Insert instead “30 June 2010”.



New South Wales

Firearms Amendment (Disqualifying Offences) Regulation 2007

under the

Firearms Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Firearms Act 1996*.

JOHN WATKINS, M.P.,
Minister for Police

Explanatory note

The object of this Regulation is to amend the *Firearms Regulation 2006* to specify further offences (being offences relating to the participation in criminal groups and recruiting persons to engage in criminal activity) that disqualify a person from applying for a firearms licence or permit or from being involved in a firearms dealing business.

This Regulation is made under the *Firearms Act 1996*, including sections 11, 29, 44A and 88 (the general regulation-making power).

Clause 1 Firearms Amendment (Disqualifying Offences) Regulation 2007

Firearms Amendment (Disqualifying Offences) Regulation 2007

under the

Firearms Act 1996

1 Name of Regulation

This Regulation is the *Firearms Amendment (Disqualifying Offences) Regulation 2007*.

2 Amendment of Firearms Regulation 2006

The *Firearms Regulation 2006* is amended as set out in Schedule 1.

Firearms Amendment (Disqualifying Offences) Regulation 2007

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 2)

[1] Clause 5 Offences that disqualify applicants

Insert after clause 5 (g):

(h) **Offences involving organised criminal groups and recruitment**

An offence committed under section 93IK or 351A of the *Crimes Act 1900*.

[2] Clause 44 Offences that prevent persons from being involved in firearms dealing business

Insert after clause 44 (g):

(h) **Offences involving organised criminal groups and recruitment**

An offence committed under section 93IK or 351A of the *Crimes Act 1900*.



New South Wales

Liquor Amendment (On-licence Exception) Regulation 2007

under the

Liquor Act 1982

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Liquor Act 1982*.

GRANT McBRIDE, M.P.,
Minister for Gaming and Racing

Explanatory note

Under section 23 (3A) of the *Liquor Act 1982*, the business carried on under a hotelier's licence, a nightclub licence or certain on-licences must be a business of selling and supplying liquor to the public and must not (except as prescribed by the regulations) be limited at any time to selling or supplying liquor only to persons invited to resort to the premises or to a particular class of persons resorting to the premises.

The object of this Regulation is to except the business carried on under an on-licence relating to the premises used and operated by Morris Corporation Pty Ltd (being the mess facilities at the Bemax-Gingko Mine Site near Pooncarie) from the requirements of section 23 (3A). As a result of the Regulation, the business carried on at the licensed premises may be limited to selling and supplying liquor only to the staff of the mine and to other persons permitted to use the mess facilities.

This Regulation is made under the *Liquor Act 1982*, including sections 23 (3A) and 156 (the general regulation-making power).

Clause 1 Liquor Amendment (On-licence Exception) Regulation 2007

Liquor Amendment (On-licence Exception) Regulation 2007

under the

Liquor Act 1982

1 Name of Regulation

This Regulation is the *Liquor Amendment (On-licence Exception) Regulation 2007*.

2 Amendment of Liquor Regulation 1996

The *Liquor Regulation 1996* is amended by inserting at the end of the Table to clause 83 (Exceptions from section 23 (3A) of the Act), in Column 1 and Column 2, respectively, the following matter:

The business carried on under an on-licence relating to premises used and occupied by Morris Corporation (Aust) Pty Ltd, being the mess facilities at the Bemax-Gingko Mine Site near Pooncarie.	The class of persons resorting to the premises comprising the staff of the mine and other persons permitted to use the mess facilities.
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New South Wales

Liquor Amendment (Sunday Trading) Regulation 2007

under the

Liquor Act 1982

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Liquor Act 1982*.

GRANT McBRIDE, M.P.,
Minister for Gaming and Racing

Explanatory note

The object of this Regulation is to prescribe Easter Sunday 8 April 2007 as a date on which hotels can stay open until midnight.

This Regulation is made under the *Liquor Act 1982*, including section 24B (Hotel trading hours on Sundays when special events are held).

Clause 1 Liquor Amendment (Sunday Trading) Regulation 2007

Liquor Amendment (Sunday Trading) Regulation 2007

under the

Liquor Act 1982

1 Name of Regulation

This Regulation is the *Liquor Amendment (Sunday Trading) Regulation 2007*.

2 Amendment of Liquor Regulation 1996

The *Liquor Regulation 1996* is amended by inserting the following at the end of clause 83A (Dates prescribed for special events Sunday trading):

8 April 2007



New South Wales

Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

under the

Marine Parks Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Parks Act 1997*.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

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

Explanatory note

The *Marine Parks Act 1997* and the *Marine Parks Regulation 1999* (the **principal Regulation**) provide for the classification of areas within marine parks for different uses by means of zoning plans. Currently, the principal Regulation provides for four classes of zones in marine parks (sanctuary zones, habitat protection zones, general use zones and special purpose zones) and sets out objects and special provisions applying to those zones.

The object of this Regulation is to provide for a zoning plan for the Port Stephens–Great Lakes Marine Park. The zoning plan, which is to be included in Schedule 1 to the principal Regulation, divides the Port Stephens–Great Lakes Marine Park into the various zones and contains special provisions regulating and prohibiting the carrying out of certain activities in those zones.

This Regulation also makes a number of other amendments to the principal Regulation. These include amendments that enable the relevant Ministers to grant consent to the carrying out of certain activities, including activities carried out for the purposes of an ecologically sustainable use, to which consent cannot currently be given.

This Regulation also makes some amendments in the nature of law revision.

This Regulation also makes a consequential amendment to the *Fisheries Management (Aquatic Reserves) Regulation 2002*.

This Regulation is made under the *Marine Parks Act 1997*, including sections 15, 16, 17 and 48 (the general regulation-making power) and Schedule 3.

Clause 1 Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

under the

Marine Parks Act 1997

1 Name of Regulation

This Regulation is the *Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007*.

2 Commencement

This Regulation commences on 21 April 2007.

3 Amendment of Marine Parks Regulation 1999

The *Marine Parks Regulation 1999* is amended as set out in Schedule 1.

4 Amendment of Fisheries Management (Aquatic Reserves) Regulation 2002

The *Fisheries Management (Aquatic Reserves) Regulation 2002* is amended by omitting Part 7 and Schedule 6.

Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

vessel has the same meaning as it has in the *Marine Safety Act 1998*.

[2] Clause 3 (2)

Insert at the end of the clause:

- (2) For the purposes of Schedule 1, a zone of a marine park does not adjoin another zone of the marine park if the zone only has a single corner point on its boundary that is common to the boundary of the other zone.

[3] Clause 11 Protection of animals, plants and habitat in habitat protection zone

Omit clause 11 (2). Insert instead:

- (2) Consent is only to be given under subclause (1):
- (a) for research, environmental protection, public health, traditional use or public safety purposes, or
 - (b) for the purposes of an ecologically sustainable use that does not have a significant impact on fish populations within the zone and has a negligible impact on other animals, plants and habitat.

[4] Clause 15 Protection of animals, plants and habitat in general use zone

Omit clause 15 (2). Insert instead:

- (2) Consent is only to be given under subclause (1):
- (a) for research, environmental protection, public health, traditional use or public safety purposes, or
 - (b) for the purposes of an ecologically sustainable use.

[5] Clause 18A Protection of animals, plants and habitat in special purpose zone

Omit clause 18A (2). Insert instead:

- (2) Consent is only to be given under subclause (1):
- (a) for research, environmental protection, public health, traditional use or public safety purposes, or

Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

Schedule 1 Amendments

(b) for the purposes of an ecologically sustainable use.

[6] Clause 19 Possession of animals or plants or of equipment used to take animals or plants

Insert after clause 19 (1):

(1A) A person who is in possession of an animal or plant in a part of a marine park in which the possession of the animal or plant is prohibited by the zoning plan for the marine park is guilty of an offence.

Maximum penalty: 100 penalty units.

[7] Clause 19 (2B)

Insert “and any plant or animal found in the boat” after “in the boat”.

[8] Clause 19 (2D)

Insert after clause 19 (2C):

(2D) It is a defence to a prosecution for an offence under subclause (1A) in respect of an animal or plant found in a boat if the person charged satisfies the court that the person could not reasonably have known that the animal or plant was on board the boat concerned.

[9] Clause 19 (3) (a)

Insert “or from” after “to” where firstly occurring.

[10] Clause 19 (3) (b)

Insert “or from” after “to” where firstly occurring.

[11] Clause 19 (3) (b1)

Insert after clause 19 (3) (b):

(b1) if the equipment concerned was a fishing line—that the fishing line was on board a vessel within a sanctuary zone, the vessel was anchored, moored or aground and the fishing line was in the unrigged state, or

Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

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[12] Clause 19 (5)

Insert after clause 19 (4):

- (5) For the purposes of subclause (3) (b1), the *unrigged state*, in relation to a fishing line, means no part of the fishing line is attached to any hook, artificial lure, artificial fly, swivel or other piece of fishing tackle (other than any reel the fishing line was spooled on).

[13] Clause 22 Domesticated animals

Insert at the end of clause 22 (1):

Note. Section 59 of the *Companion Animals Act 1998* entitles a person with a disability to be accompanied by an assistance animal being used bona fide by the person to assist the person into or onto any place open to or used by the public.

[14] Clause 27 Use, mooring or anchoring of vessels, motorised vehicles and motorised equipment

Omit “motorised” from clause 27 (1) where firstly occurring.

[15] Clause 27 (2)

Omit “motorised” where firstly occurring.

[16] Clause 32N Consent by relevant Ministers not required for certain activities

Insert at the end of clause 32N (2) (b):

, or

- (c) approval to the carrying out of a project under Part 3A of the *Environmental Planning and Assessment Act 1979*.

[17] Schedule 1 Zoning plans for marine parks

Omit clause 28 (3) (a) of Part 1, clause 22 (3) (a) of Part 2, clause 16 (2) (a) of Part 3 and clause 20 (3) (a) of Part 4.

[18] Schedule 1, clause 28 of Part 1

Insert at the end of the clause:

Note. Section 59 of the *Companion Animals Act 1998* entitles a person with a disability to be accompanied by an assistance animal being used bona fide by the person to assist the person into or onto any place open to or used by the public.

[19] Schedule 1, clause 29 of Part 1 and clauses 23–25 of Part 2

Omit “motorised” wherever occurring in the notes to those clauses (relating to clause 27 of the Regulation).

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[20] Schedule 1, clause 22 of Part 2

Insert at the end of the clause (in the note):

- 3 Section 59 of the *Companion Animals Act 1998* entitles a person with a disability to be accompanied by an assistance animal being used bona fide by the person to assist the person into or onto any place open to or used by the public.

[21] Schedule 1, clause 16 of Part 3

Insert at the end of the clause:

Note. Section 59 of the *Companion Animals Act 1998* entitles a person with a disability to be accompanied by an assistance animal being used bona fide by the person to assist the person into or onto any place open to or used by the public.

[22] Schedule 1, Division 8 of Part 3 and Division 9 of Part 4

Omit “motorised vessel or” wherever occurring in the notes to those Divisions (relating to clause 27 of the Regulation).

Insert instead “vessel or motorised”.

[23] Schedule 1, clause 5 (2) of Part 4

Omit “under”. Insert instead “in respect of a contravention of”.

[24] Schedule 1, clause 13 (2) of Part 4

Omit “However, a person may carry out oyster aquaculture in that zone in accordance with a permit issued under the *Fisheries Management Act 1994*.”.

[25] Schedule 1, clause 13A of Part 4

Insert after clause 13 of Part 4 of Schedule 1:

13A Aquaculture in Marshalls Creek Oyster Leases

Despite clause 18C of this Regulation, a person may carry out aquaculture in special purpose zone 2 (Marshalls Creek Oyster Leases) in accordance with a permit issued under the *Fisheries Management Act 1994*.

[26] Schedule 1, clause 20 of Part 4

Insert at the end of the clause:

Note. Section 59 of the *Companion Animals Act 1998* entitles a person with a disability to be accompanied by an assistance animal being used bona fide by the person to assist the person into or onto any place open to or used by the public.

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[27] Schedule 1, Division 10 of Part 4, note

Omit “draft”.

[28] Schedule 1, Part 5

Insert after Part 4 of Schedule 1:

Part 5 Port Stephens–Great Lakes Marine Park

Note. The GPS coordinates used in this Part to describe the boundaries of the zones of the Port Stephens–Great Lakes Marine Park are given in degrees and decimal minutes using the Geocentric Datum of Australia 1994 (GDA 94).

Division 1 Preliminary

1 Definitions

(1) In this Part:

Chart AUS 362 means the charts published under that title by the Australian Hydrographic Service on 4 February 1992.

extensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2002*.

hand held line has the same meaning as it has in clause 12 of this Regulation.

intensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2002*.

map means a map set out in Division 8.

marine park means the Port Stephens–Great Lakes Marine Park described in Part 2 of the Proclamation made under sections 6 and 7 of the Act and published in Gazette No 147 on 1 December 2005 at page 9851 (as varied by the Proclamation made under section 9 of the Act and published in Gazette No 63 on 12 May 2006 at page 3016).

oyster depuration means the extraction of seawater from the waters of the marine park, the discharge of seawater into the waters of the marine park and the conveyance of seawater across tidal waters or tidal lands of the marine park by way of depuration lines for the purposes of depuration of oysters.

regulatory authority means each of the following:

- (a) the council of an area (within the meaning of the *Local Government Act 1993*) that adjoins the marine park,
- (b) the Department of Primary Industries,
- (c) the Department of Environment and Conservation,
- (d) the Department of Planning,

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- (e) NSW Police,
- (f) the Maritime Authority of NSW,
- (g) the Department of Lands.

spear gun includes a spear, bow and arrow or other similar device.

table means a table set out in Division 9.

tidal lands means any area of land that is covered from time to time by tidal waters, and that is above the lowest astronomical tide level.

tidal waters means any area of waters of the sea or subject to tidal influence.

- (2) In this Part, a reference to a net, line or trap that is also referred to in the *Fisheries Management (General) Regulation 2002* is a reference to that net, line or trap within the meaning of that Regulation.

2 General defence of emergency

It is a defence to a prosecution for an offence in respect of a contravention of this Part if the person charged satisfies the court that the conduct constituting the offence was carried out in an emergency and was necessary to protect life or property.

Division 2 Sanctuary zones

3 Description of sanctuary zones

The sanctuary zones of the marine park are comprised of the following areas:

The Pinnacle sanctuary zone (map 2)

An area bounded as follows:

- (a) commencing on Cape Hawke at the point (point 2a) on the mean high water mark nearest to 32°12.991'S, 152°34.257'E,
- (b) then due east approximately 500 metres to 32°12.991'S, 152°34.533'E (point 2b),
- (c) then generally north-west to 32°12.516'S, 152°34.280'E (point 2c),
- (d) then due east to the intersection of latitude 32°12.516'S with the eastern boundary of the marine park (point 2d), at or about 32°12.516'S, 152°37.763'E,

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- (e) then generally south, along the boundary of the marine park, to 32°15.180'S, 152°37.116'E (point 2e),
 - (f) then generally north-west to Cape Hawke at the point (point 2f) on the mean high water mark nearest to 32°13.742'S, 152°34.005'E,
 - (g) then generally north along the mean high water mark to the point of commencement,
- as shown on map 2.

Smiths Lake sanctuary zone (map 3)

An area bounded as follows:

- (a) commencing at the western entrance to Tarbuck Bay at the point (point 3a) on the mean high water mark nearest to 32°22.399'S, 152°28.508'E,
 - (b) then due east to Little Island at the point (point 3b) on the mean high water mark nearest to 32°22.399'S, 152°28.813'E,
 - (c) then generally south and south-east, along the mean high water mark of the south-western shore of Little Island, to the southern tip of Little Island at the point (point 3c) on the mean high water mark nearest to 32°22.672'S, 152°29.035'E,
 - (d) then generally south-west to Horse Point at the point (point 3d) on the mean high water mark nearest to 32°23.643'S, 152°28.750'E,
 - (e) then generally south-west to the point on the mean high water mark nearest to 32°23.975'S, 152°28.453'E (point 3e),
 - (f) then generally west, north and east, along the mean high water mark, to the point of commencement,
- as shown on map 3.

Celito South sanctuary zone (map 4)

An area bounded as follows:

- (a) commencing on the coast south of Sandbar at the point (point 4a) on the mean high water mark nearest to 32°24.124'S, 152°31.163'E,
- (b) then due east to 32°24.124'S, 152°31.422'E (point 4b),
- (c) then due south to 32°25.343'S, 152°31.422'E (point 4c),

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- (d) then due west to the point (point 4d) on the mean high water mark nearest to 32°25.343'S, 152°31.107'E,
 - (e) then generally north along the mean high water mark to the point of commencement,
- as shown on map 4.

Seal Rocks sanctuary zone (map 5)

An area bounded as follows:

- (a) commencing approximately 500 metres due east of Sugarloaf Point, at 32°26.477'S, 152°32.696'E (point 5a),
 - (b) then due east to the point (point 5b) on the marine park boundary nearest to 32°26.477'S, 152°36.419'E,
 - (c) then generally south and south-west, along the marine park boundary, to the intersection of longitude 152°31.239'E with the eastern boundary of the marine park (point 5c), at or about 32°31.155'S, 152°31.239'E,
 - (d) then due north to 32°27.566'S, 152°31.239'E (point 5d), approximately 500 metres south of Treachery Head,
 - (e) then generally north-east to 32°26.923'S, 152°32.696'E (point 5e), approximately 200 metres generally south-east of Seagull Island,
 - (f) then due north to the point of commencement,
- as shown on map 5.

Fiona Beach sanctuary zone (map 6)

An area bounded as follows:

- (a) commencing on Fiona Beach at the point (point 6a) on the mean high water mark nearest to 32°27.492'S, 152°29.415'E,
- (b) then due south to 32°27.773'S, 152°29.415'E (point 6b),
- (c) then generally south-west to 32°29.488'S, 152°24.721'E (point 6c),
- (d) then generally north-west to the point (point 6d) on the mean low water mark nearest to 32°29.292'S, 152°24.563'E,
- (e) then generally north-east along the mean low water mark to the point (point 6e) on the mean low water mark nearest to 32°27.753'S, 152°28.501'E,
- (f) then due north to the point (point 6f) on the mean high water mark nearest to 32°27.739'S, 152°28.501'E,

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- (g) then along the mean high water mark to the point of commencement,
as shown on map 6.

Myall Lake No 1 sanctuary zone (map 7)

An area bounded as follows:

- (a) commencing on the eastern side of Corrigans Bay at the point (point 7a) on the mean high water mark nearest to 32°24.111'S, 152°26.799'E,
- (b) then generally west to the eastern side of Corrigans Head at the point (point 7b) on the mean high water mark nearest to 32°24.235'S, 152°25.285'E,
- (c) then generally north-west, east and south-east along the mean high water mark to the point of commencement,
as shown on map 7.

Myall Lake No 2 sanctuary zone (map 7)

An area bounded as follows:

- (a) commencing at Reedy Point at the point (point 7c) on the mean high water mark nearest to 32°25.723'S, 152°26.770'E,
- (b) then generally south-west and north-west along the mean high water mark of Kataway Bay to the point (point 7d) on the mean high water mark nearest to 32°26.162'S, 152°24.792'E,
- (c) then generally north-east to the point of commencement,
as shown on map 7.

Myall Lake No 3 sanctuary zone (map 7)

An area bounded as follows:

- (a) commencing on Boulders Point at the point (point 7e) on the mean high water mark nearest to 32°24.722'S, 152°22.778'E,
- (b) then generally south-west to, adjacent to McGraths Bay, the point (point 7f) on the mean high water mark nearest to 32°25.879'S, 152°20.317'E,
- (c) then generally north, east and south along the mean high water mark to the point of commencement,
as shown on map 7.

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Boolambayte Lake sanctuary zone (map 8)

An area bounded as follows:

- (a) commencing adjacent to Violet Hill Campground at the point (point 8a) on the mean high water mark nearest to 32°28.335'S, 152°19.353'E,
- (b) then generally south-east, across Violet Hill Passage, to the point (point 8b) on the mean high water mark nearest to 32°28.492'S, 152°19.623'E on the opposite shore,
- (c) then along the mean high water mark of the southern shore of Boolambayte Lake to the point (point 8c) on the mean high water mark nearest to 32°26.586'S, 152°17.427'E,
- (d) then due west to, adjacent to the northern side of Korsemans Landing jetty, the point (point 8d) on the mean high water mark nearest to 32°28.586'S, 152°17.164'E,
- (e) then generally north and east along the mean high water mark of Boolambayte Lake, including the tidal waters and tidal lands to the mean high water mark of Boolambayte Creek and its creeks, bays and tributaries, to the point of commencement,

as shown on map 8.

Bombah Broadwater sanctuary zone (map 9)

An area bounded as follows:

- (a) commencing on the western shore of Bombah Point at the point (point 9a) on the mean high water mark nearest to 32°30.487'S, 152°18.302'E,
- (b) then due east to port navigation marker No 431 (point 9b) at or about 32°30.487'S, 152°18.447'E,
- (c) then generally south-west to the port navigation marker No 428 (point 9c) at or about 32°31.189'S, 152°18.015'E,
- (d) then generally south-west to port navigation marker No 426 (point 9d) at or about 32°31.608'S, 152°17.686'E,
- (e) then generally south-west to port navigation marker No 422 (point 9e) at or about 32°31.962'S, 152°17.406'E,
- (f) then generally west to port navigation marker No 420 (point 9f) at or about 32°32.081'S, 152°16.937'E,
- (g) then generally west to isolated danger mark No 419 (point 9g) at or about 32°32.102'S, 152°16.812'E,
- (h) then generally west to starboard navigation marker No 418 (point 9h) at or about 32°32.106'S, 152°16.706'E,

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- (i) then generally west to starboard navigation marker No 417 (point 9i) at or about 32°32.062'S, 152°16.431'E,
 - (j) then generally west to starboard navigation marker No 416 (point 9j) at or about 32°31.912'S, 152°16.054'E,
 - (k) then generally west to starboard navigation marker No 457 (point 9k) at or about 32°31.735'S, 152°15.350'E,
 - (l) then generally north-west to the southern end of Bulahdelah Point at the point (point 9l) on the mean high water mark nearest to 32°31.473'S, 152°15.207'E,
 - (m) then generally east along the mean high water mark to the point of commencement,
- as shown on map 9.

Broughton Island sanctuary zone (map 10)

An area bounded as follows:

- (a) commencing on the northern shore of Broughton Island at the point (point 10a) on the mean high water mark nearest to 32°36.909'S, 152°19.421'E,
- (b) then generally north-east to 32°36.045'S, 152°20.292'E (point 10b),
- (c) then generally east to 32°36.000'S, 152°20.962'E (point 10c),
- (d) then due south to 32°37.502'S, 152°20.962'E (point 10d),
- (e) then generally south to 32°37.800'S, 152°20.917'E (point 10e),
- (f) then generally south-west to 32°38.148'S, 152°20.614'E (point 10f),
- (g) then generally south-west to 32°38.500'S, 152°19.896'E (point 10g),
- (h) then generally north-west to 32°37.854'S, 152°18.847'E (point 10h),
- (i) then due north to Broughton Island at the point (point 10i) on the mean high water mark nearest to 32°37.453'S, 152°18.847'E,
- (j) then generally east, north, east and south-east along the mean high water mark of Broughton Island to 32°37.677'S, 152°19.151'E (point 10j),
- (k) then generally north-east to 32°37.525'S, 152°20.151'E (point 10k), off Little Broughton Island,

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- (l) then generally north-west to Little Broughton Island at the point on the mean high water mark nearest to 32°37.490'S, 152°20.131'E (point 10l),
 - (m) then generally east, north and west, along the mean high water mark of the eastern side of Little Broughton Island, to the point on the mean high water mark nearest to 32°37.138'S, 152°19.846'E (point 10m),
 - (n) then generally north-west to Broughton Island at the point (point 10n) on the mean high water mark nearest to 32°37.047'S, 152°19.718'E,
 - (o) then generally north-west, along the mean high water mark of Broughton Island, to the point of commencement,
- as shown on map 10.

Cabbage Tree Island sanctuary zone (map 11)

An area bounded as follows:

- (a) commencing on the northern end of Cabbage Tree Island at the point on the mean high water mark (point 11a) nearest to 32°41.036'S, 152°13.404'E,
 - (b) then due north approximately 500 metres to 32°40.761'S, 152°13.404'E (point 11b),
 - (c) then due east approximately 1 kilometre to 32°40.761'S, 152°14.031'E (point 11c),
 - (d) then due south to 32°42.082'S, 152°14.031'E (point 11d),
 - (e) then due east to Yacaaba Head at the point (point 11e) on the mean high water mark nearest to 32°42.082'S, 152°12.295'E,
 - (f) then generally north-east and north-west, along the mean high water mark of Yacaaba Head, to the point (point 11f) on the mean high water mark nearest to 32°41.646'S, 152°12.233'E,
 - (g) then due north approximately 200 metres to 32°41.543'S, 152°12.233'E (point 11g),
 - (h) then due east to the southern end of Cabbage Tree Island at the point (point 11h) on the mean high water mark nearest to 32°41.543'S, 152°13.455'E,
 - (i) then generally east, north and north-west, along the mean high water mark of the eastern side of Cabbage Tree Island, to the point of commencement,
- as shown on map 11.

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Zenith Beach sanctuary zone (map 12)

An area bounded as follows:

- (a) commencing on Zenith Beach at the point (point 12a) on the mean high water mark nearest to 32°43.121'S, 152°11.129'E,
- (b) then generally south-east to 32°43.192'S, 152°11.296'E (point 12b),
- (c) then generally south-west to the southern headland of Wreck Beach at the point (point 12c) on the mean high water mark nearest to 32°43.636'S, 152°11.075'E,
- (d) then generally north along the mean high water mark to the point of commencement,

as shown on map 12.

Fingal Island sanctuary zone (map 13)

An area bounded as follows:

- (a) commencing on Fingal Island at the point (point 13a) on the mean high water mark nearest to 32°44.932'S, 152°12.122'E,
- (b) then due south to the point (point 13b) on the 40 metre depth contour line, as shown on Chart AUS 362, nearest to 32°45.666'S, 152°12.122'E,
- (c) then generally south-west, along the 40 metre depth contour line, to the point on the 40 metre depth contour line nearest to 32°46.087'S, 152°11.097'E (point 13c),
- (d) then due north to Fingal Island at the point on the mean high water mark nearest to 32°44.977'S, 152°11.097'E (point 13d),
- (e) then generally east and north-east along the mean high water mark of Fingal Island to the point of commencement,

as shown on map 13.

Jimmys Beach sanctuary zone (map 14)

An area bounded as follows:

- (a) commencing at 32°40.810'S, 152°09.919'E (point 14a),
- (b) then due south to 32°41.130'S, 152°09.919'E (point 14b),
- (c) then due west to 32°41.130'S, 152°09.554'E (point 14c),
- (d) then due north to 32°40.915'S, 152°09.554'E (point 14d),

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(e) then generally north-east to the point of commencement, as shown on map 14.

Fly Point—Corrie Island sanctuary zone (map 15)

An area bounded as follows:

- (a) commencing on the western side of Fly Point at the point (point 15a) on the mean high water mark nearest to 32°42.892'S, 152°09.052'E,
- (b) then generally north-west to starboard navigation marker No 007 (point 15b) at or about 32°42.652'S, 152°08.719'E,
- (c) then generally north-west to starboard navigation marker No 008 (point 15c) at or about 32°42.516'S, 152°08.351'E,
- (d) then generally north-west to starboard navigation marker No 014 (point 15d) at or about 32°42.377'S, 152°07.963'E,
- (e) then generally north-west to starboard navigation marker No 015 (point 15e) at or about 32°42.273'S, 152°07.556'E,
- (f) then generally north to starboard navigation marker No 064 (point 15f) at or about 32°41.736'S, 152°07.374'E,
- (g) then generally north to starboard navigation marker No 062 (point 15g) at or about 32°41.143'S, 152°07.203'E,
- (h) then generally north to starboard navigation marker No 063 (point 15h) at or about 32°40.530'S, 152°07.430'E,
- (i) then generally north-east to starboard navigation marker No 065 (point 15i) at or about 32°40.346'S, 152°07.859'E,
- (j) then generally east to starboard navigation marker No 69 (point 15j) at or about 32°40.259'S, 152°08.102'E,
- (k) then generally east to starboard navigation marker No 201 (point 15k) at or about 32°40.237'S, 152°08.318'E,
- (l) then generally east to starboard navigation marker No 202 (point 15l) at or about 32°40.224'S, 152°08.429'E,
- (m) then generally east to starboard navigation marker No 203 (point 15m) at or about 32°40.243'S, 152°08.535'E,
- (n) then generally south-east to starboard navigation marker No 204 (point 15n) at or about 32°40.287'S, 152°08.760'E,
- (o) then generally south-east to starboard navigation marker No 205 (point 15o) at or about 32°40.319'S, 152°08.893'E,

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- (p) then due south to the north-eastern end of Corrie Island at the point (point 15p) on the mean high water mark nearest to 32°40.326'S, 152°08.893'E,
 - (q) then generally south-east and south, along the mean high water mark of the eastern shore of Corrie Island, to the point (point 15q) on the mean high water mark nearest to 32°40.570'S, 152°08.719'E,
 - (r) then generally south-west to 32°40.625'S, 152°08.644'E (point 15r),
 - (s) then generally south-west to 32°40.953'S, 152°08.406'E (point 15s),
 - (t) then generally south-west to 32°41.082'S, 152°08.297'E (point 15t),
 - (u) then generally south-east to cardinal mark No 005 (point 15u) at or about 32°42.199'S, 152°09.454'E,
 - (v) then generally south-east to Nelson Head at the point (point 15v) on the mean high water mark nearest to 32°42.582'S, 152°09.702'E,
 - (w) then generally south-west, along the mean high water mark, to the point of commencement,

as shown on map 15, but not including the Little Beach habitat protection zone, the Fly Point Cove special purpose zone or the Little Beach special purpose zone as described in Division 3 or 4.

Salamander Bay sanctuary zone (map 16)

An area bounded as follows:

- (a) commencing on Salamander Bay at the point (point 16a) on the mean high water mark nearest to 32°43.635'S, 152°06.092'E,
- (b) then generally west, along the mean high water mark, to the point (point 16b) on the mean high water mark nearest to 32°43.654'S, 152°05.338'E,
- (c) then generally north-east to 32°43.547'S, 152°05.655'E (point 16c),
- (d) then due east to 32°43.547'S, 152°05.955'E (point 16d),
- (e) then generally south-east to the point of commencement, as shown on map 16.

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Cromartys Bay sanctuary zone (map 17)

An area bounded as follows:

- (a) commencing on the northernmost tip of Mud Point at the point (point 17a) on the mean high water mark nearest to 32°42.969'S, 152°03.528'E,
- (b) then due east to the eastern bank of Cromartys Bay at the point on the mean high water mark nearest to 32°42.969'S, 152°03.913'E (point 17b),
- (c) then generally south, west and north, along the mean high water mark of Cromartys Bay, to the point of commencement (including along the mean high water mark of all intervening creeks, bays and tributaries),

as shown on map 17.

Wallis and Fenninghams Island Creeks sanctuary zone (map 18)

An area bounded as follows:

the tidal waters and tidal lands to the mean high water mark of Wallis Creek and its creeks, bays and tributaries and Fenninghams Island Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point (point 18a) on the mean high water mark nearest to 32°44.457'S, 152°03.458'E on Taylors Beach, and
- (b) the point (point 18b) on the mean high water nearest to 32°44.600'S, 152°03.133'E on the northern end of Fenninghams Island,

as shown on map 18, but not including the Port Stephens Fisheries Centre special purpose zone as described in Division 4.

Mallabula sanctuary zone (map 19)

An area bounded as follows:

- (a) commencing west of Mallabula Point at the point (point 19a) on the mean high water mark nearest to 32°43.289'S, 152°01.013'E,
- (b) then generally north-east to the navigation marker (also used as a sailing turn buoy) at or about 32°43.059'S, 152°01.120'E (point 19b),
- (c) then due east to 32°43.059'S, 152°01.766'E (point 19c),
- (d) then due south to the point (point 19d) on the mean high water mark nearest to 32°43.391'S, 152°01.766'E,

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- (e) then generally west along the mean high water mark to the point of commencement,
as shown on map 19.

Twelve Mile Creek sanctuary zone (map 20)

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Twelve Mile Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point (point 20a) on the mean high water mark nearest to 32°44.218'S, 151°56.337'E on the eastern shoreline, and
(b) the point (point 20b) on the mean high water mark nearest to 32°44.205'S, 151°56.220'E on the western shoreline,

as shown on map 20 but not including the area removed from the marine park by the Proclamation made under section 9 of the Act and published in Gazette No 63 on 12 May 2006 at page 3016.

Little Swan Bay sanctuary zone (map 21)

An area bounded as follows:

- (a) commencing on the western shore of the Karuah River, north of Swan Island, at the point (point 21a) on the mean high water mark nearest to 32°40.049'S, 151°57.981'E,
(b) then due east to the northern end of Swan Island at the point (point 21b) on the mean high water mark nearest to 32°40.049'S, 151°58.196'E,
(c) then generally south-west, along the mean high water mark of the western shore of Swan Island, to the southern end of Swan Island at the point (point 21c) on the mean high water mark nearest to 32°40.815'S, 151°58.489'E,
(d) then generally south-east to port navigation marker No 038 (point 21d) at or about 32°41.416'S, 152°59.383'E,
(e) then generally south-east to the northern end of Snapper Island at the point (point 21e) on the mean high water mark nearest to 32°42.000'S, 151°59.855'E,
(f) then generally south and south-east, along the mean high water mark along the western shore of Snapper Island, to the southern end of Snapper Island at the point on the mean high water mark nearest to 32°42.345'S, 152°00.202'E (point 21f),

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- (g) then generally south to starboard navigation marker No 121 (point 21g) at or about 32°42.488'S, 152°00.179'E,
 - (h) then generally west to starboard navigation marker No 151 (point 21h) at or about 32°42.552'S, 151°59.705'E,
 - (i) then generally west to the southern tip of Orobillah Island at the point (point 21i) on the mean high water mark nearest to 32°42.530'S, 151°58.862'E,
 - (j) then generally south-west to Cockle Shell Point at the point (point 21j) on the mean high water mark nearest to 32°41.888'S, 151°58.156'E,
 - (k) then generally north, east, north, west, north and north-east, along the mean high water mark, to the point of commencement (including along the mean high water mark of all intervening creeks, bays and tributaries),

but not including the Evens Point habitat protection zone as described in Division 3.

Note. The Evens Point habitat protection zone is not shown on map 21.

Karuah River sanctuary zone (map 22)

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Karuah River and its creeks, bays and tributaries upstream of the line between:

- (a) the point (point 22a) on the mean high water mark nearest to 32°31.804'S, 151°58.257'E on the eastern bank, and
- (b) the point (point 22b) on the mean high water mark nearest to 32°31.804'S, 151°58.127'E on the western bank,

as shown on map 22.

Little Branch Creek sanctuary zone (map 23)

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Little Branch Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point (point 23a) on the mean high water mark nearest to 32°34.850'S, 151°59.723'E on the northern bank, and
- (b) the point (point 23b) on the mean high water mark nearest to 32°34.881'S, 151°59.673'E on the southern bank,

as shown on map 23.

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Number One Cove sanctuary zone (map 24)

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Yalimbah Creek (also known as Number One Cove) and its creeks, bays and tributaries, upstream of the line between:

- (a) the point (point 24a) on the mean high water mark nearest to 32°39.828'S, 151°59.403'E on the eastern bank, and
- (b) the point (point 24b) on the mean high water mark nearest to 32°39.767'S, 151°59.169'E on the western bank,

as shown on map 24.

North Arm Cove sanctuary zone (map 25)

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of North Arm Cove and its creeks, bays and tributaries, upstream of the line between:

- (a) the point (point 25a) on the mean high water mark nearest to 32°39.555'S, 152°03.617'E on the eastern bank, and
- (b) the point (point 25b) on the mean high water mark nearest to 32°39.216'S, 152°03.002'E on the western bank,

as shown on map 25.

Pindimar sanctuary zone (map 26)

An area bounded as follows:

- (a) commencing on the western end of Piggys Beach at the point (point 26a) on the mean high water mark nearest to 32°41.348'S, 152°04.327'E,
- (b) then generally east, along the mean high water mark, to the point (point 26b) on the mean high water mark nearest to 32°41.252'S, 152°04.970'E,
- (c) then due south to starboard navigation marker No 129 (point 26c) at or about 32°41.421'S, 152°04.970'E,
- (d) then due south to 32°41.682'S, 152°04.970'E (point 26d),
- (e) then due west to 32°41.682'S, 152°04.327'E (point 26e),
- (f) then due north to the point of commencement,

as shown on map 26.

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Fame Cove sanctuary zone (map 27)

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of that much of Fame Cove and its creeks, bays and tributaries (including Nanabah Creek) upstream of the line between:

- (a) the point (point 27a) on the mean high water mark nearest to 32°41.033'S, 152°03.967'E on the eastern shore of Fame Cove, and
- (b) port navigation marker No 054 (point 27b) at or about 32°41.033'S, 152°03.833'E, and
- (c) the point (point 27c) on the mean high water mark nearest to 32°40.980'S, 152°03.787'E on the western shore of Fame Cove,

as shown on map 27.

Myall River sanctuary zone (map 28)

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Myall River and its creeks, bays and tributaries, that are both:

- (a) downstream of the line between:
 - (i) the point (point 28a) on the mean high water mark nearest to 32°37.050'S, 152°11.777'E on the southern bank, and
 - (ii) the point (point 28b) on the mean high water mark nearest to 32°37.014'S, 152°11.777'E on the northern bank, and
- (b) upstream of the line between:
 - (i) the point (point 28c) on the mean high water mark nearest to 32°38.221'S, 152°10.217'E on the southern bank, and
 - (ii) the point (point 28d) on the mean high water mark nearest to 32°38.179'S, 152°10.217'E on the northern bank,

as shown on map 28 but not including the Myall River Camp habitat protection zone described in Division 3.

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4 Oyster depuration

- (1) Despite clause 7 of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in a sanctuary zone of the marine park if the oyster depuration is carried out in a designated area and in accordance with the *Food Act 2003*.
- (2) For the purposes of this clause, a *designated area* means any tidal waters and tidal lands of a sanctuary zone of the marine park on which, immediately before the commencement of this Part, depuration lines were being used for oyster depuration by the holder of a licence under the *Food Act 2003* that authorised the operation of a depuration plant.

5 Fish cleaning

- (1) Despite clauses 7 and 19 of this Regulation, a person may clean fish or fishing gear while in a sanctuary zone of the marine park at a fish cleaning facility (if any) designated by the relevant Ministers for that purpose.
- (2) Despite clauses 7 and 19 of this Regulation, a person may clean a fishing net in a sanctuary zone of the marine park while:
 - (a) the net is being transported to or from any place where the net could lawfully be used for commercial fishing, and
 - (b) the cod-end of the net is open, and
 - (c) none of the otter boards of the net are in the water.

6 Sanctuary zone speed restrictions

- (1) A person must not operate a vessel within a speed restricted area at a speed exceeding 4 knots.
- (2) For the purposes of this clause, each of the following areas is a *speed restricted area*:
 - (a) the Jimmys Beach sanctuary zone,
 - (b) the area within the Fly Point—Corrie Island sanctuary zone bounded as follows:
 - (i) commencing at starboard navigation marker No 064 (point 15f as shown on map 15) at or about 32°41.736'S, 152°07.374'E,
 - (ii) then due east to the point on the eastern boundary of the sanctuary zone nearest to 32°41.736'S, 152°08.978'E,

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- (iii) then generally south-east to cardinal mark No 005 (point 15u as shown on map 15) at or about 32°42.199'S, 152°09.454'E,
 - (iv) then generally west to starboard navigation marker No 015 (point 15e as shown on map 15) at or about 32°42.273'S, 152°07.556'E,
 - (v) then generally north to the point of commencement.
- (3) This clause does not apply to an officer or employee of a regulatory authority operating a vessel in the course of the regulatory authority's business.

7 Permissible uses

- (1) Without limiting clause 6 of this Regulation, a further object of a sanctuary zone in the marine park is, where consistent with clause 6 (a) of this Regulation, to allow any activity to be carried out in the zone if it is a permissible use with respect to the sanctuary zone.
- (2) For the purposes of this clause, each of the following activities is a *permissible use* with respect to each of the sanctuary zones in the marine park:
 - (a) an activity that is necessary for the purposes of replacing a work used before the commencement of this Part with a work that has the same or less environmental impact and that is capable of safe and ecologically sustainable use,
 - (b) an activity that is necessary for the purposes of maintaining a work used before the commencement of this Part in a state that enables safe and ecologically sustainable use of the work.
- (3) Despite clause 7 of this Regulation, the consent of the relevant Ministers may be given for an activity that would otherwise contravene that clause if that activity is a permissible use with respect to the sanctuary zone.
- (4) In this clause:

work includes a jetty, wharf, pontoon, groyne, retaining wall, boat ramp, mooring, aquaculture facility, boardwalk, navigation marker, regulatory authority sign and stormwater drain.

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Division 3 Habitat protection zones

8 Description of habitat protection zones

The habitat protection zones of the marine park are comprised of the following areas:

Coastal habitat protection zone (map 1)

An area bounded as follows:

- (a) commencing at the southern end of One Mile Beach at the intersection of the coastal mean high water mark and the segment of the marine park boundary that follows latitude 32°11.793'S,
- (b) then due east, along the northern boundary of the marine park, to the intersection of the northern boundary with the eastern boundary of the marine park,
- (c) then generally south along the eastern boundary of the marine park to the point on the marine park boundary nearest to 32°15.830'S, 152°36.574'E,
- (d) then generally north-west to the point on the 40 metre depth contour line, as shown on Chart AUS 362, nearest to 32°14.772'S, 152°34.300'E,
- (e) then generally south-west, along the 40 metre depth contour line, as shown on Chart AUS 362, to, due south of the northern end of Stockton Beach, the intersection of the contour line with the boundary of the marine park,
- (f) then due north, along the segment of the marine park boundary that follows longitude 152°04.417'E, to the northern end of Stockton Beach at the intersection of that segment of the boundary with the coastal mean high water mark,
- (g) then generally east and north-east along the coastal mean high water mark to the point on the mean high water mark of Tomaree Head nearest to 32°42.669'S, 152°11.151'E,
- (h) then generally north-east to the point on the mean high water mark of Yacaaba Head nearest to 32°41.995'S, 152°11.435'E,
- (i) then generally north-east along the coastal mean high water mark to the point of commencement,

as shown on map 1, but not including any sanctuary zone or special purpose zone of the marine park as described in Division 2 or 4 and not including the Smiths Lake, Sawtooth, Edith

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Breakers, Fiona Beach, Broughton Island, Open Ocean or Cabbage Tree Island habitat protection zone as described in this Division.

Tarbuck Bay habitat protection zone

An area bounded as follows:

- (a) commencing at the western entrance to Tarbuck Bay at the point on the mean high water mark nearest to 32°22.399'S, 152°28.508'E,
- (b) then generally north, east and south, along the mean high water mark of Tarbuck Bay, to the point on the mean high water mark nearest to 32°22.414'S, 152°29.027'E,
- (c) then due west to Little Island at the point on the mean high water mark nearest to 32°22.414'S, 152.28.942'E,
- (d) then generally west, along the mean high water mark, to the point on the mean high water mark nearest to 32°22.399'S, 152°28.813'E,
- (e) then due west to the point of commencement.

Smiths Lake habitat protection zone

An area bounded as follows:

- (a) commencing on the southern shore of Smiths Lake at the point on the mean high water mark nearest to 32°23.755'S, 152°30.338'E,
- (b) then generally north to the northern shore of Smiths Lake at the point on the mean high water mark nearest to 32°23.407'S, 152°30.370'E,
- (c) then generally north, east, south and west, along the mean high water mark of the closed lake, to the point of commencement.

Sawtooth habitat protection zone

An area bounded as follows:

- (a) commencing on Sugarloaf Point at the point on the mean high water mark nearest to 32°26.477'S, 152°32.381'E,
- (b) then due east, approximately 500 metres, to 32°26.477'S, 152°32.696'E,
- (c) then due south to 32°26.923'S, 152°32.696'E, approximately 200 metres generally south-east of Seagull Island,

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- (d) then generally south-west to 32°27.117'S, 152°32.258'E,
 - (e) then due north to Sugar Loaf Point (Lighthouse Beach) at the point on the mean high water nearest to 32°26.537'S, 152°32.258'E,
 - (f) then generally east and north, along the mean high water mark, to the point of commencement.

Edith Breakers habitat protection zone

An area bounded as follows:

- (a) commencing at 32°27.566'S, 152°31.239'E, approximately 500 metres south of Treachery Head,
- (b) then due south to the point on the 40 metre depth contour line, as shown on Chart AUS 362, nearest to 32°29.255'S, 152°31.239'E,
- (c) then generally west along the contour line to the point on the line nearest to 32°29.549'S, 152°29.414'E,
- (d) then due north to 32°27.773'S, 152°29.414'E,
- (e) then generally east, along a line parallel to, but 500 metres seaward of, the coastal mean high water mark to the point of commencement.

Fiona Beach habitat protection zone

An area bounded as follows:

- (a) commencing on Fiona Beach at the point on the mean high water mark nearest to 32°27.739'S, 152°28.501'E,
- (b) then due south to the point on the mean low water mark nearest to 32°27.753'S, 152°28.501'E,
- (c) then generally south-west along the mean low water mark to the point on the mean low water mark nearest to 32°29.292'S, 152°24.563'E,
- (d) then generally north-west to the point on the mean high water mark nearest to 32°29.278'S, 152°24.552'E,
- (e) then generally north-east along the mean high water mark to the point of commencement.

Nerong Creek habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Nerong Creek and its creeks, bays and tributaries, upstream of the line between:

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- (a) the point on the mean high water mark nearest to 32°31.300'S, 152°14.476'E on the eastern shoreline of the entrance of Nerong Creek, and
 - (b) the point on the mean high water mark nearest to 32°31.335'S, 152°14.413'E on the western shoreline of the entrance of Nerong Creek,
- but not including the Nerong Harbour special purpose zone as described in Division 4.

Myall River at Bombah Broadwater habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Myall River and its creeks, bays and tributaries, upstream of the line between:

- (a) the point on the mean high water mark nearest to 32°31.213'S, 152°14.835'E on the western shoreline of the Myall River, and
- (b) the point on the mean high water mark nearest to 32°31.236'S, 152°14.935'E on the eastern shoreline of the Myall River.

Broughton Island habitat protection zone

An area bounded as follows:

- (a) commencing on Broughton Island at 32°37.677'S, 152°19.151'E,
- (b) then generally north, along the mean high water mark, to the point on the mean high water mark nearest to 32°37.422'S, 152°19.067'E,
- (c) then generally north-east across Esmeralda Cove to the north-eastern shoreline of Esmeralda Cove at the point on the mean high water mark nearest to 32°37.313'S, 152°19.222'E,
- (d) then generally east and north, along the mean high water mark of Broughton Island, to the point on the mean high water mark nearest to 32°37.047'S, 152°19.718'E,
- (e) then generally south-east to Little Broughton Island at the point on the mean high water mark nearest to 32°37.138'S, 152°19.846'E,

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- (f) then generally south-east, along the mean high water mark of the western side of Little Broughton Island, to the point on the mean high water mark nearest to 32°37.490'S, 152°20.131'E,
 - (g) then generally south-east to 32°37.525'S, 152°20.151'E, off Little Broughton Island,
 - (h) then generally west to the point of commencement.

Open Ocean habitat protection zone

An area bounded as follows:

- (a) commencing at 32°36.568'S, 152°20.962'E,
- (b) then generally east to the point on the eastern boundary of the marine park boundary nearest to 32°36.770'S, 152°23.724'E,
- (c) then generally south along the eastern boundary of the marine park to the point on the boundary nearest to 32°39.945'S, 152°22.251'E,
- (d) then generally north-west to 32°38.500'S, 152°19.896'E,
- (e) then generally east to 32°38.148'S, 152°20.614'E,
- (f) then generally north-east to 32°37.800'S, 152°20.917'E,
- (g) then generally north to 32°37.502'S, 152°20.962'E,
- (h) then due north to the point of commencement.

Cabbage Tree Island habitat protection zone

An area bounded as follows:

- (a) commencing on the northern end of Cabbage Tree Island at the point on the mean high water mark nearest to 32°41.036'S, 152°13.404'E,
- (b) then generally south, along the mean high water mark of the western side of Cabbage Tree Island, to the southern end of Cabbage Tree Island at the point on the mean high water mark nearest to 32°41.543'S, 152°13.455'E,
- (c) then due west approximately 1,000 metres to 32°41.543'S, 152°12.814'E,
- (d) then due north to 32°40.761'S, 152°12.814'E,
- (e) then due east to 32°40.761'S, 152°13.404'E,
- (f) then due south to the point of commencement.

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Little Beach habitat protection zone (map 29)

An area bounded as follows:

- (a) commencing on Little Beach, adjacent to the disabled access jetty, at the point on the mean high water mark nearest to 32°42.816'S, 152°09.443'E (point 29a),
- (b) then due north approximately 15 metres to the marine pile (point 29b), adjacent to the northern end of the disabled access jetty, at or about 32°42.808'S, 152°09.443'E,
- (c) then generally north-east to the marine pile (point 29c) at or about 32°42.790'S, 152°09.449'E,
- (d) then generally north-east to 32°42.675'S, 152°09.491'E (point 29d),
- (e) then due east to Little Beach at the point (point 29e) on the mean high water mark nearest to 32°42.675'S, 152°09.526'E,
- (f) then generally south-west, along the mean high water mark of Little Beach, to the point of commencement,

as shown on map 29.

Dutchmans Beach habitat protection zone

An area bounded as follows:

- (a) commencing on the western side of Fly Point at the point on the mean high water mark nearest to 32°42.892'S, 152°09.052'E,
- (b) then generally south-west and west, along the mean high water mark, to, adjacent to the western side of Redpatch Point, the point on the mean high water mark nearest to 32°43.207'S, 152°07.786'E,
- (c) then generally north to starboard navigation marker No 015 at or about 32°42.273'S, 152°07.556'E,
- (d) then generally south-east to starboard navigation marker No 014 at or about 32°42.377'S, 152°07.963'E,
- (e) then generally south-east to starboard navigation marker No 008 at or about 32°42.516'S, 152°08.351'E,
- (f) then generally south-east to starboard navigation marker No 007 at or about 32°42.652'S, 152°08.719'E,
- (g) then generally south-east to the point of commencement, but not including the Nelson Bay Marina special purpose zone as described in Division 4.

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Tilligerry Creek habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Tilligerry Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 32°44.600'S, 152°03.133'E on the northern end of Fenninghams Island, and
- (b) the point on the mean high water mark nearest to 32°34.305'S, 152°02.455'E on the southern entrance to Lemon Tree Passage.

Evens Point habitat protection zone

An area bounded as follows:

- (a) commencing on the shore of Swan Bay south of Carcair Point at the point on the mean high water mark nearest to 32°41.887'S, 151°58.706'E,
- (b) then to the point 100m due east of the point described in paragraph (a),
- (c) then generally south parallel to the shoreline 100 metres seaward of the mean high water to the point 100 metres due east of the point on the mean high water mark nearest to 32°42.356'S, 151°58.681'E on Evens Point,
- (d) then due west to the point on the mean high water mark nearest to 32°42.356'S, 151°58.681'E on Evens Point,
- (e) then generally north following the mean high water mark to the point of commencement.

Karuah River habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Karuah River and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 32°37.323'S, 151°57.485'E on the western bank, and
- (b) the point on the mean high water mark nearest to 32°37.274'S, 151°57.723'E on the eastern bank,

but not including the Karuah River or Little Branch Creek sanctuary zone as described in Division 2.

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Soldiers Point habitat protection zone

An area bounded as follows:

- (a) commencing at the eastern entrance to Fame Cove at the point on the mean high water mark nearest to 32°41.156'S, 152°03.508'E,
- (b) then generally east, along the mean high water mark, to the western end of Piggys Beach at the point on the mean high water mark nearest to 32°41.348'S, 152°04.327'E,
- (c) then due south to Kangaroo Point at the point on the mean high water mark nearest to 32°42.423'S, 152°04.327'E,
- (d) then generally west and north, along the mean high water mark of Soldiers Point, to the point on the mean high water mark nearest to 32°41.913'S, 152°03.800'E,
- (e) then due west to 32°41.913'S, 152°03.508'E,
- (f) then due north to the point of commencement.

Tea Gardens habitat protection zone

An area bounded as follows:

- (a) commencing on the western shoreline of the Myall River at the point on the mean high water mark nearest to 32°39.521'S, 152°09.561'E,
- (b) then generally south-east to the eastern shoreline of the Myall River at the point on the mean high water mark nearest to 32°39.624'S, 152°09.889'E,
- (c) then generally south-west and south-east along the mean high water mark to the point on the mean high water mark nearest to 32°40.073'S, 152°10.126'E,
- (d) then generally south-west to 32°40.146'S, 152°10.003'E,
- (e) then generally north-west, along a line parallel to, but 40 metres east of, the mean high water mark of the western bank of the Myall River to the point on that line nearest to 32°39.616'S, 152°09.473'E,
- (f) then due west to the point on the mean high water mark of the western bank of the Myall River nearest to 32°39.616'S, 152°09.473'E,
- (g) then generally north, along the mean high water mark, to the point of commencement.

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Myall River Camp habitat protection zone

An area bounded as follows:

- (a) commencing at the point on the mean high water mark nearest to 32°38.105'S, 152°10.753'E,
- (b) then due east to the eastern shoreline of the Myall River at the point on the mean high water mark nearest to 32°38.105'S, 152°10.850'E,
- (c) then generally south, along the mean high water mark of the eastern shoreline of the Myall River, to the point on the mean high water mark nearest to 32°38.425'S, 152°10.495'E,
- (d) then due north to the point on the mean high water mark nearest to 32°38.385'S, 152°10.495'E,
- (e) then generally east and north-east along the mean high water mark to the point of commencement.

9 Taking of certain plants permitted in habitat protection zones

- (1) Despite clause 11 of this Regulation, a person may take a plant of a species listed in table A, by the method of hand picking (whether or not while wearing a glove), for recreational purposes, in a habitat protection zone of the marine park.
- (2) Despite clause 11 of this Regulation, a person may take marine seaweed (in quantities not exceeding 20 litres per person per day), for recreational purposes, from above the mean low water mark on a beach in a habitat protection zone of the marine park.
Note. Clause 11 of this Regulation makes it an offence to harm a plant or damage, take or interfere with any part of the habitat in a habitat protection zone except with the consent of the relevant Ministers.
- (3) Despite subclauses (1) and (2), a person must not, while in the Little Beach or the Fiona Beach habitat protection zone, take or attempt to take any plant.

10 Habitat protection zone permitted fishing activities

Note. Clause 12 of this Regulation makes it an offence to take or attempt to take fish in a habitat protection zone unless the person is engaging in a permitted fishing activity referred to in that clause. A permitted fishing activity includes the taking of fish by a method that is permitted by the zoning plan for a marine park. This clause sets out such permitted fishing activities (in addition to those described in clause 12).

- (1) Clause 12 (1) of this Regulation (relating to permitted fishing activities) applies to a habitat protection zone of the marine park subject to the provisions of this Part. Accordingly, that subclause

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is not to be construed as authorising any fishing activity that would contravene this clause.

- (2) Subject to clause 11 of this Part, the following fishing activities are permitted in a habitat protection zone of the marine park:

(a) **Netting—general**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of one of the following nets, if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*:

- (i) push or scissors net (prawns),
- (ii) hoop or lift net.

(b) **Submersible lift net (bait) and purse seine net**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a submersible lift net (bait) or a purse seine net, if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*, but only in the following locations within a habitat protection zone of the marine park:

- (i) that part of the Coastal habitat protection zone that is within 1 kilometre of the mean high water mark around Broughton Island,
- (ii) the Cabbage Tree Island habitat protection zone,
- (iii) within 1 kilometre of the mean high water mark of Elizabeth Beach,
- (iv) coastal waters, lying between 32°42.669'S and 32°43.121'S (near Tomaree Head) that are not more than 500 metres seaward of the coastal mean high water mark,
- (v) within 2 kilometres of 32°44.900'S, 152°12.066'E (Point Stephens).

(c) **Prawn net (set pocket)**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a prawn net (set pocket), if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*, but only in the following habitat protection zones:

- (i) the Smiths Lake habitat protection zone,
- (ii) the Myall River Camp habitat protection zone.

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(d) **Haul netting**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a hauling net (general purpose) or a pilchard, anchovy and bait net (hauling), if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*, but only from the following beaches:

- (i) Boat Harbour Beach,
- (ii) One Mile Beach,
- (iii) Samurai Beach,
- (iv) Fingal Beach,
- (v) Fingal Spit,
- (vi) Bennetts Beach,
- (vii) Mungo Beach,
- (viii) Boat Beach,
- (ix) Number One Beach,
- (x) Shelly Beach,
- (xi) Elizabeth Beach,
- (xii) Seven Mile Beach,
- (xiii) Lighthouse Beach.

(e) **Garfish net**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a garfish net (hauling), if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*, but only in habitat protection zone waters that are not estuarine waters.

(f) **Fish and lobster trapping**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a fish trap or lobster trap, if the use of the trap to take that fish is lawful under the *Fisheries Management Act 1994*.

(g) **Eel and crab trapping**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of an eel trap or crab trap, if the use of the trap to take that fish is lawful under the *Fisheries Management Act 1994*.

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(h) Collecting

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by hand picking (within the meaning of the *Estuary General Share Management Plan*, as set out in the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*), if the use of that method to take that fish is lawful under the *Fisheries Management Act 1994*.

Note. The taking of fish in a habitat protection zone of the marine park is subject to the provisions of the *Fisheries Management Act 1994* and the regulations under that Act. Part 3 of the *Fisheries Management (General) Regulation 2002* also sets out requirements in relation to the lawful use of fishing gear such as traps and nets.

11 Prohibited activities relating to fishing**Note.**

- 1 Clause 12 (2) of this Regulation makes it an offence to take or attempt to take fish while in the habitat protection zone unless the person complies with any restrictions imposed on that activity by the zoning plan for the marine park. This clause imposes such restrictions.
 - 2 Clause 12 (3) of this Regulation provides that a person does not commit an offence under clause 12 for anything done with the consent of the relevant Ministers.
- (1) A person must not, while in a habitat protection zone of the marine park, take or attempt to take any fish of a species not listed in table B.
 - (2) A person must not, while in the Cabbage Tree Island habitat protection zone, take or attempt to take any fish of a species not listed in table C.
 - (3) A person must not, while in the Edith Breakers habitat protection zone, take or attempt to take fish other than by way of artificial lure, artificial fly, fish trap, lobster trap, hand picking or spear gun.
 - (4) A person must not, while in the Sawtooth or Broughton Island habitat protection zone, take or attempt to take fish other than by way of artificial lure, artificial fly, fish trap, lobster trap, hand picking or spear gun.
 - (5) A person must not, while in the Sawtooth or Broughton Island habitat protection zone, take or attempt to take fish if the person is using a vessel in connection with the taking, or the attempt to take, fish and the vessel is anchored or moored in the Sawtooth or Broughton Island habitat protection zone.

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- (6) A person must not, while in the Fiona Beach habitat protection zone, take or attempt to take any fish other than by way of hand picking for commercial purposes.
- (7) A person must not, while in the Dutchmans Beach habitat protection zone, take or attempt to take any invertebrate fish by hand picking.
- (8) A person must not, while in the Little Beach habitat protection zone:
- (a) take or attempt to take any invertebrate fish by hand picking, or
 - (b) take or attempt to take fish other than by use of a hook and hand held line used while the person is on either of the 2 public jetties on Little Beach or on tidal lands between the jetties, or
 - (c) berley the waters of the zone.
- (9) A person must not, while in the Open Ocean habitat protection zone, take or attempt to take fish unless the person does so by trolling while engaged in recreational fishing.
- (10) A person must not, while in the Open Ocean habitat protection zone, take or attempt to take fish by any method between 1 May and 30 November (inclusive) in any year.
- (11) In this clause:
- hand picking** has the same meaning as it has in the *Estuary General Share Management Plan*, as set out in the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*.
- trolling** means the method of taking fish by trailing a hand held line behind an underway vessel.

12 Cabbage Tree Island habitat protection zone fish possession prohibition

Note. Clause 19 (1A) of this Regulation makes it an offence to be in possession of an animal in a part of the marine park in which the possession of the animal is prohibited. This clause imposes such a prohibition.

- (1) A person must not, while in the Cabbage Tree Island habitat protection zone, be in possession of any fish of a species not listed in table C unless the person is engaged in commercial fishing.

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- (2) It is a defence to a prosecution for an offence in respect of a contravention of subclause (1) if the person charged satisfies the court that the person brought the fish into the zone as packaged bait.

13 Aquaculture

Intensive cultivation of fish or marine vegetation and fish ranching, within the meaning of clause 30 of the *Fisheries Management (Aquaculture) Regulation 2002*, are not permissible in the estuarine waters of a habitat protection zone of the marine park.

14 Oyster depuration

Despite clause 11 of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in a habitat protection zone of the marine park if the oyster depuration is carried out in accordance with the *Food Act 2003*.

15 Use of lights in Cabbage Tree Island habitat protection zone

- (1) A person must not, within the Cabbage Tree Island habitat protection zone, use a light or lights for longer than 5 minutes in any 60 minute period between sunset and sunrise.
- (2) The use of the following lights does not contravene subclause (1):
- (a) a light required to be used under the *Navigation Act 1901* or the *Marine Safety Act 1998*,
 - (b) a permitted light.
- (3) For the purposes of this clause, a *permitted light* is a light that is situated no higher than 5 metres above sea-level and shrouded or otherwise designed so that the beam of light it projects is:
- (a) projected downwards, and
 - (b) no greater than 20 metres wide at its widest point.

Division 4 Special purpose zones**16 Area descriptions**

The special purpose zones of the marine park are comprised of the zones and groups of zones set out in this Division.

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Group 1 (Aquaculture)**Class 1 lease special purpose zone**

An area comprised of the following areas:

- (a) the leased area of any class 1 lease, within the meaning of the *Fisheries Management (Aquaculture) Regulation 2002*, in force immediately before the commencement of this Part that is bounded by a sanctuary zone of the marine park,
- (b) any priority oyster aquaculture area, within the meaning of the *NSW Oyster Industry Sustainable Aquaculture Strategy* as adopted by *State Environmental Planning Policy No 62—Sustainable Aquaculture*, that is bounded by a sanctuary zone of the marine park.

Class 3 lease special purpose zone

An area comprised of the leased area of any class 3 lease, within the meaning of the *Fisheries Management (Aquaculture) Regulation 2002*, in force immediately before the commencement of this Part.

Group 2 (Fish feeding)**Fly Point Cove special purpose zone**

An area bounded as follows:

- (a) commencing in the vicinity of Fly Point at the point on the mean high water mark nearest to 32°42.839'S, 152°09.184'E,
- (b) then generally south-west along the mean high water mark to the point on the mean high water mark nearest to 32°42.864'S, 152°09.088'E,
- (c) then generally north-east to the point of commencement.

Group 3 (Vessel related facilities)**Little Beach special purpose zone**

An area bounded as follows:

- (a) commencing on the coast of Little Beach adjacent to the Little Beach disabled access jetty at the point on the mean high water mark nearest to 32°42.822'S, 152°09.418'E,
- (b) then generally west along the mean high water mark to, adjacent to the western side of the Little Beach Marina, the

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point on the mean high water mark nearest to 32°42.818'S,
152°09.382'E,

- (c) then due north to 32°42.791'S, 152°09.382'E,
- (d) then due east to 32°42.791'S, 152°09.418'E,
- (e) then due south to the point of commencement.

Nelson Bay Marina special purpose zone

An area bounded as follows:

- (a) commencing immediately outside the eastern wall of the D'Albora marina at the point on the mean high water mark nearest to 32°43.077'S, 152°08.923'E,
- (b) then generally west, along the mean high water mark, to, immediately outside the western wall of the marina, the point on the mean high water mark nearest to 32°43.083'S, 152°08.460'E,
- (c) then due north to 32°43.013'S, 152°08.460'E,
- (d) then due east to 32°43.013'S, 152°08.923'E,
- (e) then due south to the point of commencement.

Anchorage Marina special purpose zone

An area bounded as follows:

- (a) commencing immediately outside the eastern wall of Anchorage Marina Port Stephens at the point on the mean high water mark nearest to 32°43.074'S, 152°06.387'E,
- (b) then generally west along the mean high water mark to, immediately outside the western wall of the marina, the point on the mean high water mark nearest to 32°43.041'S, 152°06.182'E,
- (c) then due north to 32°42.964'S, 152°06.182'E,
- (d) then due east to 32°42.964'S, 152°06.387'E,
- (e) then due south to the point of commencement.

Soldiers Point special purpose zone

An area bounded as follows:

- (a) commencing on Soldiers Point at the point on the mean high water mark nearest to 32°41.913'S, 152°03.800'E,
- (b) then generally south-west and south along the mean high water mark to immediately south of 'The Moorings' jetty

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at the point on the mean high water mark nearest to 32°42.330'S, 152°03.774'E,

- (c) then due west to 32°42.330'S, 152°03.506'E,
- (d) then generally north-east to 32°42.125'S, 152°03.577'E,
- (e) then generally north-west to 32°41.913'S, 152°03.508'E,
- (f) then due east to the point of commencement.

Lemon Tree Passage special purpose zone

An area bounded as follows:

- (a) commencing at the point on the mean high water mark nearest to 32°43.701'S, 152°02.378'E,
- (b) then due east to 32°43.701'S, 152°02.564'E,
- (c) then generally south along the western edge of the mangrove trees of Bulls Island to 32°44.120'S, 152°02.640'E,
- (d) then due west to the point on the mean high water mark nearest to 32°44.120'S, 152°02.513'E,
- (e) then generally north along the mean high water mark to the point of commencement.

Oyster Cove special purpose zone

An area bounded as follows:

- (a) commencing at the point on the mean high water mark nearest to 32°44.004'S, 151°57.147'E,
- (b) then generally south-west, along the mean high water mark, to the point on the mean high water mark nearest to 32°44.298'S, 151°56.847'E,
- (c) then generally north-west to 32°44.218'S, 151°56.790'E,
- (d) then generally north-east to the starboard navigation marker at or about 32°44.169'S, 151°56.889'E,
- (e) then generally north-east to the starboard navigation marker at or about 32°44.116'S, 151°56.970'E,
- (f) then generally north-east to the starboard navigation marker at or about 32°43.963'S, 151°57.110'E,
- (g) then generally south-east to the point of commencement.

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Group 4 (Commercial and residential precincts)**Tea Gardens special purpose zone**

An area bounded as follows:

- (a) commencing on the western bank of the Myall River at the point on the mean high water mark nearest to 32°39.616'S, 152°09.473'E,
- (b) then due east to the point 40 metres due east of the point of commencement,
- (c) then generally south-east, along a line parallel to, but 40 metres east of, the mean high water mark of the western bank of the Myall River to the point on that line nearest to 32°40.146'S, 152°10.003'E,
- (d) then generally north-east to the eastern bank of the Myall River at the point on the mean high water mark nearest to 32°40.073'S, 152°10.126'E,
- (e) then generally south-east along the mean high water mark of the eastern bank of the Myall River to the point on the mean high water mark nearest to 32°40.116'S, 152°10.166'E,
- (f) then generally south-west to the western bank of the Myall River at the point on the mean high water mark nearest to 32°40.216'S, 152°09.995'E,
- (g) then generally north, north-east and north-west along the mean high water mark of the western bank of the Myall River to the point of commencement.

Nerong Harbour special purpose zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Nerong Harbour and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 32°30.566'S, 152°12.976'E on the eastern bank, and
- (b) the point on the mean high water mark nearest to 32°30.583'S, 152°12.921'E on the western bank.

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Group 5 (Fisheries and aquaculture research)**Port Stephens Fisheries Centre special purpose zone**

An area bounded as follows:

- (a) commencing at the point on the mean high water mark nearest to 32°44.816'S, 152°03.329'E,
- (b) then to the point 50 metres due west of the point of commencement,
- (c) then generally north, east and south, along a line parallel to, but 50 metres seaward of, the coastal mean high water mark to 32°44.676'S, 152°03.559'E,
- (d) then generally east to the point on the mean high water mark nearest to 32°44.683'S, 152°03.628'E,
- (e) then generally south-east, south, north-west and south along the mean high water mark to the point of commencement.

Group 6 (Education)**Smiths Lake special purpose zone**

An area bounded as follows:

- (a) commencing on Horse Point at the point on the mean high water mark nearest to 32°23.643'S, 152°28.750'E,
- (b) then generally south and south-west, along the mean high water mark, to the point on the mean high water mark nearest to 32°23.975'S, 152°28.453'E,
- (c) then generally north-east to the point of commencement.

17 Special purpose zones—objects

- (1) The object of the special purpose zones that comprise group 1, as referred to in clause 16, is to provide for the management of the kinds of aquaculture in respect of which a class 1, 2, or 3 lease may be granted under the *Fisheries Management (Aquaculture) Regulation 2002*.
- (2) The object of the special purpose zone that comprises group 2, as referred to in clause 16, is to provide for fish feeding.
- (3) The object of the special purpose zones that comprise group 3, as referred to in clause 16, is to provide for marinas and other maritime facilities and for the management of the kinds of aquaculture in respect of which a class 1 or 2 lease may be

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granted under the *Fisheries Management (Aquaculture) Regulation 2002*.

- (4) The object of the special purpose zone that comprises group 4, as referred to in clause 16, is to provide for commercial and residential facilities of the type and scale provided, in the relevant zone, immediately before the commencement of this Part.
- (5) The object of the special purpose zone that comprises group 5, as referred to in clause 16, is to provide for fisheries and aquaculture research.
- (6) The object of the special purpose zone that comprises group 6, as referred to in clause 16, is to provide for educational activities.

18 Oyster depuration

Despite clause 18A of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in a special purpose zone of the marine park if the oyster depuration is carried out in accordance with the *Food Act 2003*.

19 Special purpose zones—plants

Despite clause 18A of this Regulation, a person may take a plant by a particular method while in a special purpose zone of the marine park if the person is permitted under this Part to take that species of plant by that method in a zone that adjoins the special purpose zone concerned.

Note. Clause 18A of this Regulation makes it an offence to harm a plant or damage, take or interfere with any part of the habitat in a special purpose zone except with the consent of the relevant Ministers.

20 Special purpose zones—fishing

For the purposes of clause 18B of this Regulation, a person must not take or attempt to take fish in a special purpose zone unless the taking of that species of fish by the method used is permitted in a zone that adjoins the special purpose zone concerned.

Note. Clause 18B of this Regulation creates an offence of taking or attempting to take fish in a special purpose zone in contravention of the zoning plan for a marine park. However, a person may obtain the consent of the relevant Ministers to take or attempt to take fish.

21 Intensive aquaculture and fish ranching not permissible in estuarine waters in special purpose zones

Despite clause 18C of this Regulation, intensive cultivation of fish or marine vegetation and fish ranching, within the meaning of clause 30 of the *Fisheries Management (Aquaculture)*

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Regulation 2002, are not permissible in the estuarine waters of a special purpose zone of the marine park.

Division 5 General use zone**22 Description of general use zone**

The general use zone of the marine park is comprised of all parts of the marine park that are not included in a sanctuary zone, a habitat protection zone or a special purpose zone.

23 Oyster depuration

Despite clause 15 of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in a general use zone of the marine park if the oyster depuration is carried out in accordance with the *Food Act 2003*.

24 Taking of certain plants permitted in general use zone

- (1) Despite clause 15 of this Regulation, a person may take a plant of a species listed in table A, by the method of hand picking (whether or not while wearing a glove), for recreational purposes, in the general use zone of the marine park.
- (2) Despite clause 15 of this Regulation, a person may take marine seaweed (in quantities not exceeding 20 litres per person per day), for recreational purposes, from above the mean low water mark on a beach in the general use zone of the marine park.

Note. Clause 15 of this Regulation makes it an offence to harm a plant or damage, take or interfere with any part of the habitat in the general use zone except with the consent of the relevant Ministers.

25 Fishing permitted in general use zone

- (1) A person must not take or attempt to take fish in the general use zone of the marine park unless the taking of the fish, and the method used to take the fish, is lawful under the *Fisheries Management Act 1994*.
- (2) This clause is subject to the other provisions of this Regulation. Accordingly, this clause is not to be construed as authorising any fishing activity that would contravene another provision of this Regulation.

Note. Division 6 of this Part sets out some general restrictions on fishing in the marine park. Those provisions apply to the general use zone.

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26 Seasonal closure to netting in Bombah Broadwater

A person must not take or attempt to take fish, in the course of commercial fishing, by way of any net between 1 May and 31 August (inclusive) in any year in the area within the general use zone bounded as follows:

- (a) commencing on the western shoreline of the entrance of Nerong Creek at the point on the mean high water mark nearest to 32°31.335'S, 152°14.413'E,
- (b) then generally east to the eastern shoreline of the entrance of Nerong Creek at the point on the mean high water mark nearest to 32°31.300'S, 152°14.476'E,
- (c) then generally north-east, along the mean high water mark, to the western shoreline of the Myall River at the point on the mean high water mark nearest to 32°31.213'S, 152°14.835'E,
- (d) then generally east to the eastern shoreline of the Myall River at the point on the mean high water mark nearest to 32°31.236'S, 152°14.935'E,
- (e) then generally south-east, along the mean high water mark, to the southern end of Bulahdelah Point at the point on the mean high water mark nearest to 32°31.473'S, 152°15.207'E,
- (f) then generally south-east to starboard navigation marker No 457 at or about 32°31.735'S, 152°15.350'E,
- (g) then generally west to the point on the mean high water mark nearest to 32°31.744'S, 152°15.403'E,
- (h) then generally north along the mean high water mark of Bombah Broadwater to the point of commencement.

27 Trawling prohibited in estuarine waters in general use zone

A person must not take or attempt to take fish in estuarine waters within the general use zone of the marine park by way of trawling.

28 Intensive aquaculture and fish ranching not permissible in estuarine waters in general use zone

Despite clause 17 of this Regulation, intensive cultivation of fish or marine vegetation and fish ranching, within the meaning of clause 30 of the *Fisheries Management (Aquaculture) Regulation 2002*, are not permissible in estuarine waters within the general use zone of the marine park.

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Division 6 General permissions and prohibitions**29 Permits not required for 12 months after commencement of zoning plan**

A person does not commit an offence against clause 24 of this Regulation if the person carries out an activity described in clause 24 (1) (a) or (b) of this Regulation in the marine park without the consent of the relevant Ministers within 12 months after the commencement of this Part.

Note. Clause 24 (1) of this Regulation makes it an offence to sell or hire any thing or service or conduct any activity for money in a marine park, except with the consent of the relevant Ministers. Clause 24 (2) excludes commercial fishing from the prohibition.

30 Taking fish or plants for aquarium collection prohibited

- (1) A person must not, while in any part of the marine park, take or attempt to take any fish or plant for aquarium collection purposes.
- (2) A person does not commit an offence in respect of a contravention of subclause (1) if the activity was carried out with the consent of the relevant Ministers.

31 Shell collection for recreational purposes

- (1) Despite any other provision of this Regulation, a person may collect shells (in quantities not exceeding 5 shells per species per person per day or as otherwise permitted under the *Fisheries Management Act 1994*) for recreational purposes while in the following zones:
 - (a) a habitat protection zone (other than the Cabbage Tree Island habitat protection zone),
 - (b) the general use zone,
 - (c) a special purpose zone that adjoins a habitat protection zone or the general use zone.
- (2) This clause does not permit the taking of shells by hand picking (within the meaning of clause 11 of this Part) in the Dutchmans Beach or Little Beach habitat protection zones.

32 Set lining and droplining

A person must not, while in any part of the marine park, take or attempt to take fish by use of a set line or dropline.

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33 Cultivation of Pacific oysters

The cultivation of Pacific oysters (*Crassostrea gigas*) that is carried out:

- (a) in waters of the marine park in which such aquaculture is permitted by this Regulation, and
- (b) in accordance with an aquaculture permit or other authority issued under the *Fisheries Management Act 1994*,

and any activity reasonably incidental to such cultivation is not a contravention of clause 21 of this Regulation.

34 Identification of protected species

For the purposes of clause 22A of this Regulation, any species of fish:

- (a) not listed in table B, or
- (b) the taking or harming of which is prohibited under section 19 or 220ZA of the *Fisheries Management Act 1994*,

is identified as a protected species for the purposes of the marine park.

Note. Clause 22A of this Regulation prohibits a person in a marine park from taking or harming, or attempting to take or harm, any species identified in a zoning plan as a protected species. A contravention of that prohibition is designated as a serious offence.

35 Prohibition on domesticated animals

Despite clause 22 (1) of this Regulation, a person may bring a domesticated animal into the following parts of the marine park:

- (a) tidal lands of the marine park that are not directly seaward from lands reserved under the *National Parks and Wildlife Act 1974*,
- (b) waters of the marine park that are not part of lands reserved under the *National Parks and Wildlife Act 1974*.

Division 7 Use, mooring and anchoring of vessels and vehicles

Note. Clause 27 of this Regulation makes it an offence to use, anchor or moor any vessel or motorised vehicle in a marine park in contravention of the zoning plan for the marine park.

36 Anchoring within a sanctuary zone

- (1) Despite clause 9 (1) of this Regulation, a person may anchor a vessel within a sanctuary zone of the marine park.

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- (2) A person who is anchoring, or has anchored, a vessel within a sanctuary zone must not cause or allow the anchor or any other part of the vessel or its gear to come into contact with a seagrass bed.
 - (3) It is a defence to a prosecution for an offence in respect of a contravention of subclause (2) if the person charged satisfies the court that the person took all reasonable steps to satisfy himself or herself that no part of the vessel or its gear would come into contact with a seagrass bed.

37 Hovercraft and airboats

- (1) A person must not, except with the consent of the relevant Ministers, use a hovercraft or airboat in any part of the marine park.
- (2) Subclause (1) does not apply to:
 - (a) an officer or employee of a regulatory authority using the hovercraft or airboat in the course of the regulatory authority's business, or
 - (b) a person carrying out an activity referred to in clause 26 (1) (a), (b), (c) or (d) of this Regulation with the consent of the relevant Ministers.

38 Sea-planes

- (1) A person must not, except with the consent of the relevant Ministers, use a sea-plane in any part of the marine park.
- (2) Subclause (1) does not apply to:
 - (a) a sea-plane that is airborne, or
 - (b) an officer or employee of a regulatory authority using the sea-plane in the course of the regulatory authority's business, or
 - (c) a person carrying out an activity referred to in clause 26 (1) (a), (b), (c) or (d) of this Regulation with the consent of the relevant Ministers.

39 Motorised water-sport

- (1) A person must not engage in motorised water-sport in a sanctuary zone of the marine park.

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- (2) Subclause (1) does not apply to:
- (a) a person engaging in motorised water-sport in the Smiths Lake sanctuary zone or the Boolambayte Lake sanctuary zone, or
 - (b) a person engaging in motorised water-sport with the consent of the relevant Ministers in that part of the Fly Point—Corrie Island sanctuary zone that is south of the speed restricted area, within the meaning of clause 6 of this Part, or
 - (c) an officer or employee of a regulatory authority engaging in motorised water-sport in the course of the regulatory authority's business, or
 - (d) a person carrying out an activity referred to in clause 26 (1) (a), (b), (c) or (d) of this Regulation with the consent of the relevant Ministers.

- (3) In this clause:

aquaplaner means a person who is being conveyed on, in or above waters by maintaining himself or herself on flotation or aerial equipment, whether or not such person or equipment is at the time in contact with or directly over the waters.

irregular driving means driving a motorised vessel otherwise than generally in a straight line, and includes:

- (a) driving in a circle or other pattern, and
- (b) weaving or diverting, and
- (c) surfing down, or jumping over or across, any swell, wave or wash,

but does not include making any necessary turn or diversion.

motorised water-sport means the following:

- (a) irregular driving,
- (b) towing a water skier or aquaplaner with a motorised vessel.

water skier means a person who is engaged in maintaining himself in motion on, in, or above waters whether or not such person makes use of any flotation or aerial equipment and whether or not such person or equipment is at the relevant time in contact with or directly over the waters.

40 Personal watercraft prohibited in certain waters

- (1) A person must not use a personal watercraft on the waters of the Dutchmans Beach habitat protection zone that are within 200 metres of the mean high water mark.

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- (2) Subclause (1) does not apply to:
- (a) a person using personal watercraft within the Nelson Bay Marina special purpose zone, or
 - (b) an officer or employee of a regulatory authority using a personal watercraft in the course of the regulatory authority's business.

41 Areas in which use of vehicles prohibited

- (1) A person must not use a motorised vehicle in the marine park, except for the purpose of launching and retrieving vessels from a designated boat-launching facility.
- (2) This clause does not apply to or in respect of the following:
- (a) an authorised vehicle, a police vehicle or an emergency vehicle,
 - (b) a commercial fisher (within the meaning of the *Fisheries Management Act 1994*) lawfully using a vehicle on a beach in connection with his or her fishing activities,
 - (c) a person who has been issued with a permit by the Port Stephens Council or the Great Lakes Council authorising the use of a motorised vehicle and who is using the vehicle in accordance with that permit,
 - (d) a person using a vehicle on a road, track, trail or area designated for vehicular use by the public in a nature reserve or national park dedicated or reserved under the *National Parks and Wildlife Act 1974*.
- (3) In this clause:
- authorised vehicle*** means a vehicle being used by an officer, employee or other authorised person acting on behalf of any of the following:
- (a) a regulatory authority,
 - (b) any other government department or public or local authority,
 - (c) a surf life saving club.
- designated boat-launching facility*** means a facility in the marine park designated by the Authority or another relevant government department or public or local authority as appropriate for boat-launching.

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emergency vehicle has the meaning given by the *Road Transport (Vehicle Registration) Regulation 1998*.

police vehicle has the meaning given by the *Road Transport (Vehicle Registration) Regulation 1998*.

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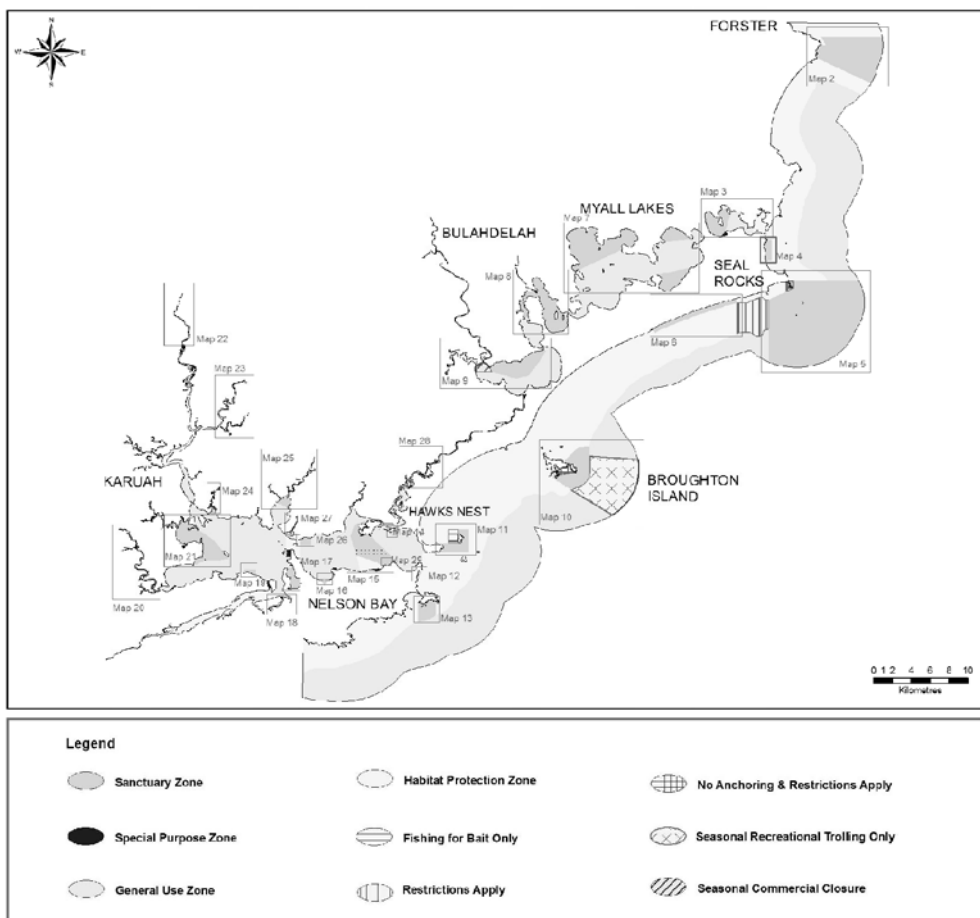
Amendments

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Division 8 Maps

Note. Map 1 provides an overview of the zoning scheme for the Port Stephens–Great Lakes Marine Park. Maps 2–29 provide additional detail.

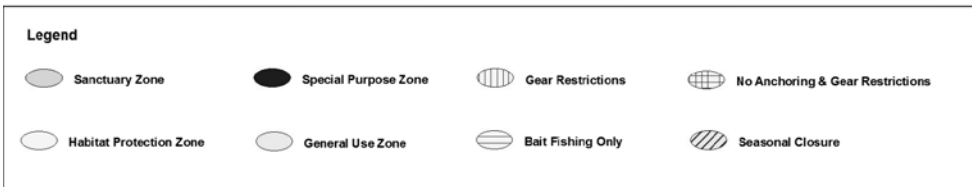
Map 1 Zoning plan overview



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Map 2 The Pinnacle

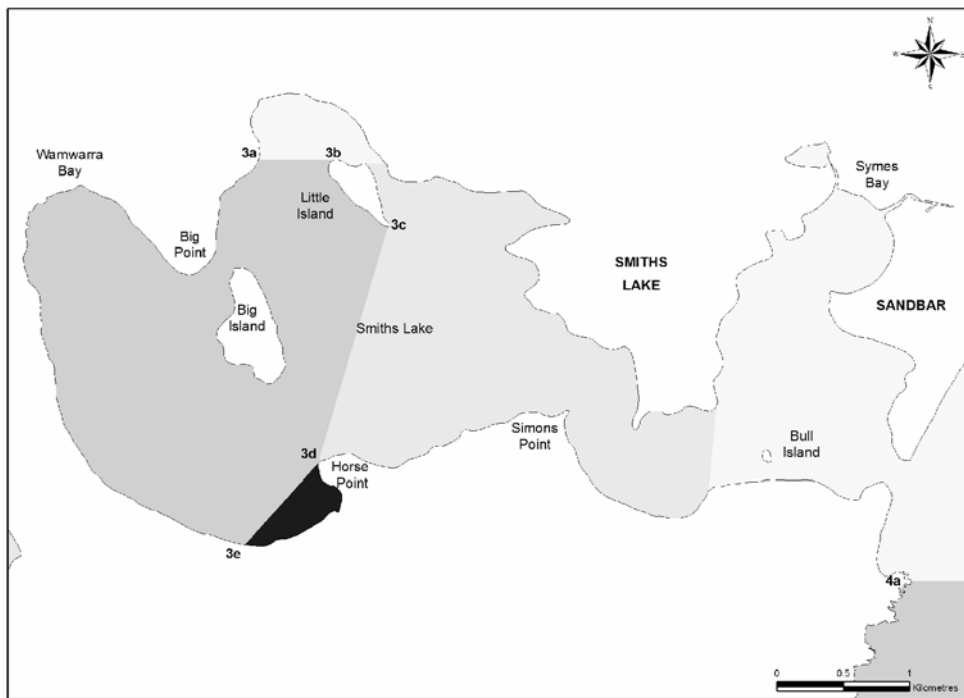


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Map 3 Smiths Lake

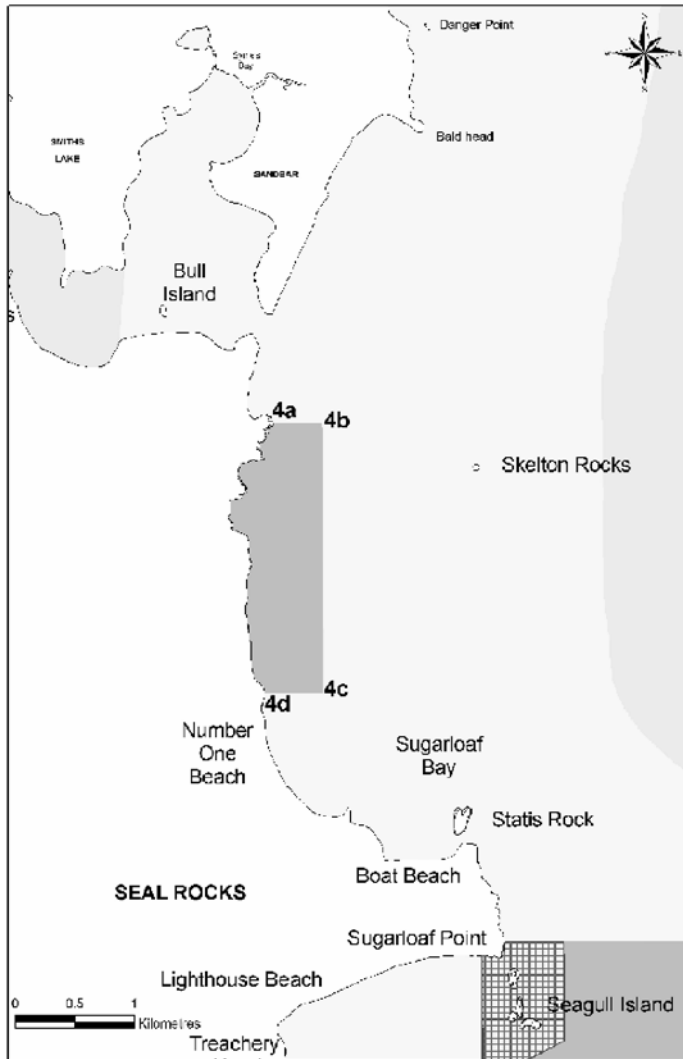


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Map 4 Celito South

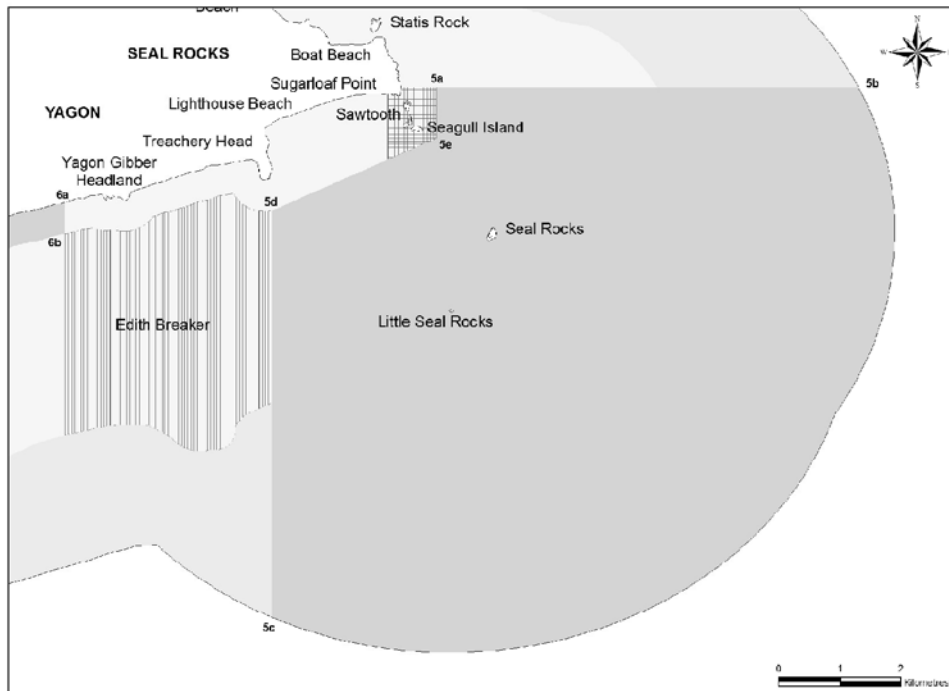


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Map 5 Seal Rocks

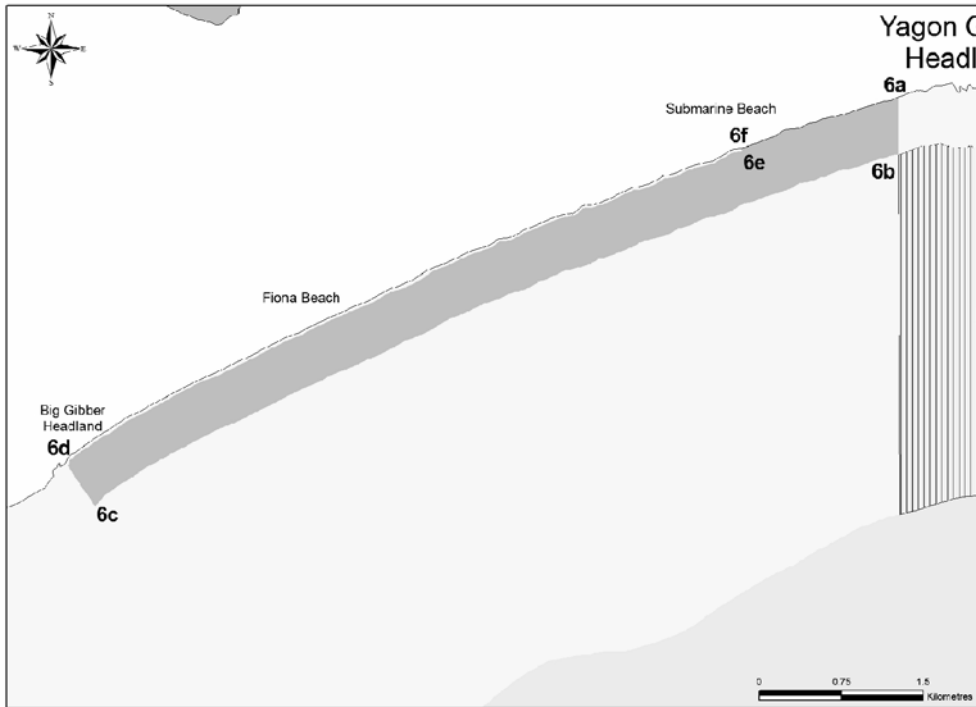


Legend			
Sanctuary Zone	Special Purpose Zone	Gear Restrictions	No Anchoring & Gear Restrictions
Habitat Protection Zone	General Use Zone	Bait Fishing Only	Seasonal Closure

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Map 6 Fiona Beach



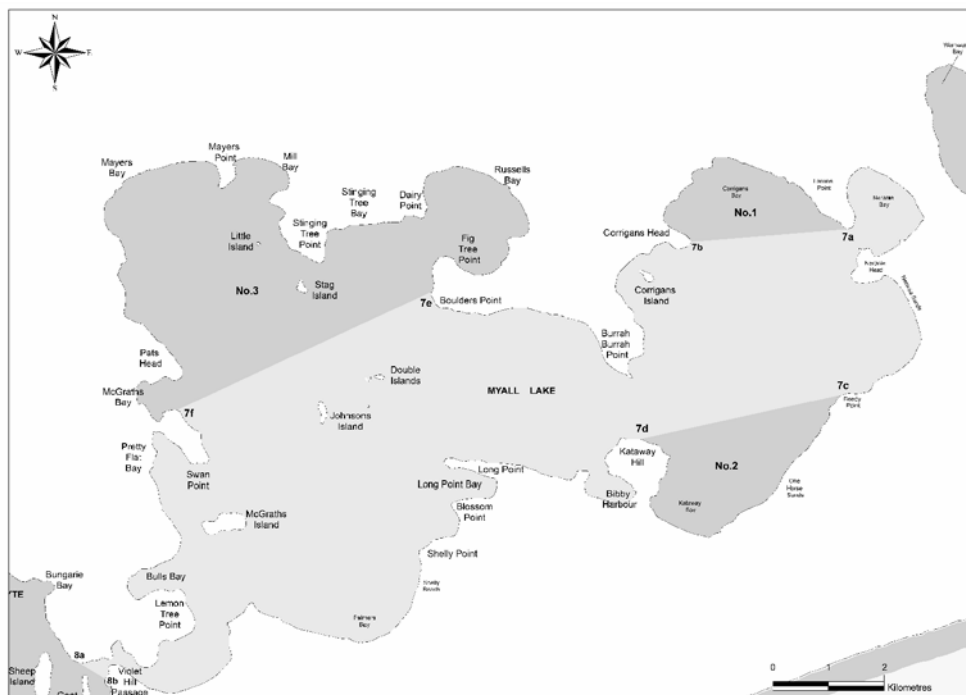
Legend			
Sanctuary Zone	Special Purpose Zone	Gear Restrictions	No Anchoring & Gear Restrictions
Habitat Protection Zone	General Use Zone	Bait Fishing Only	Seasonal Closure

Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

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Map 7 Myall Lake

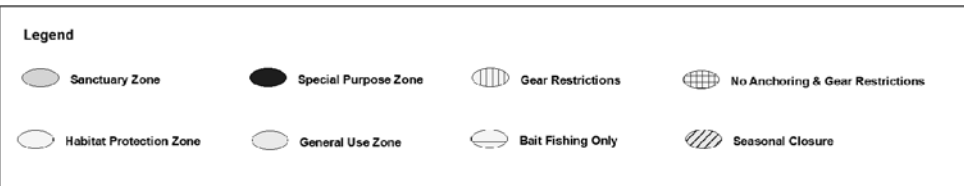
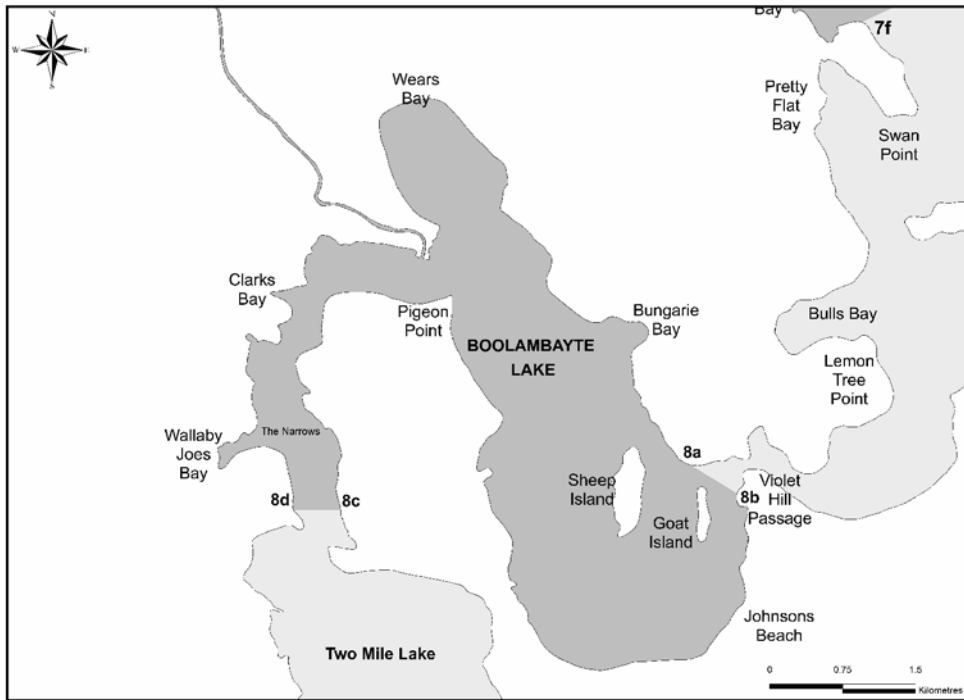


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Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

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Map 8 Boolambayte Lake

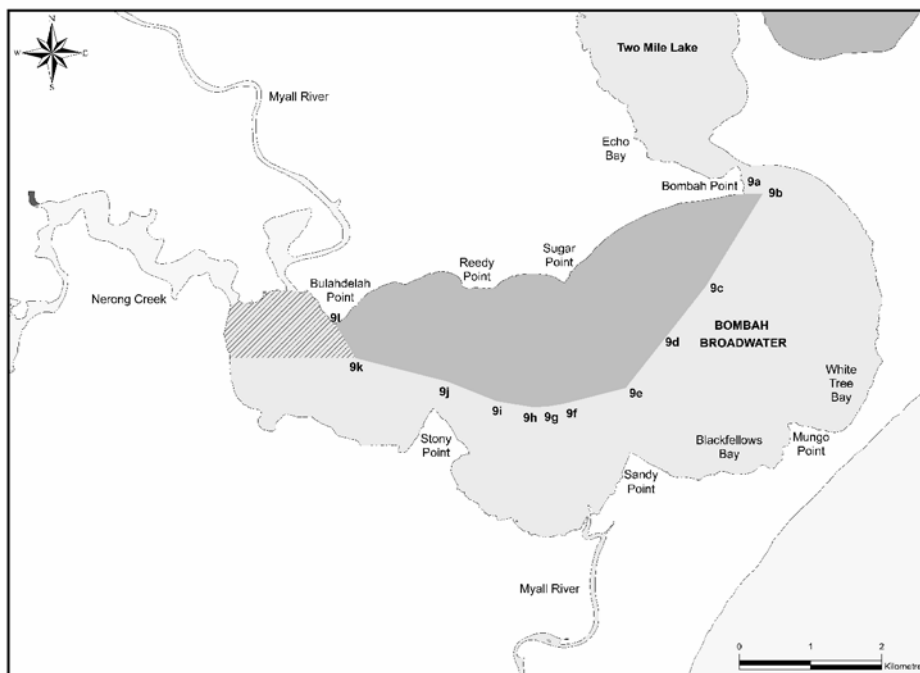


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Map 9 Bombah Broadwater

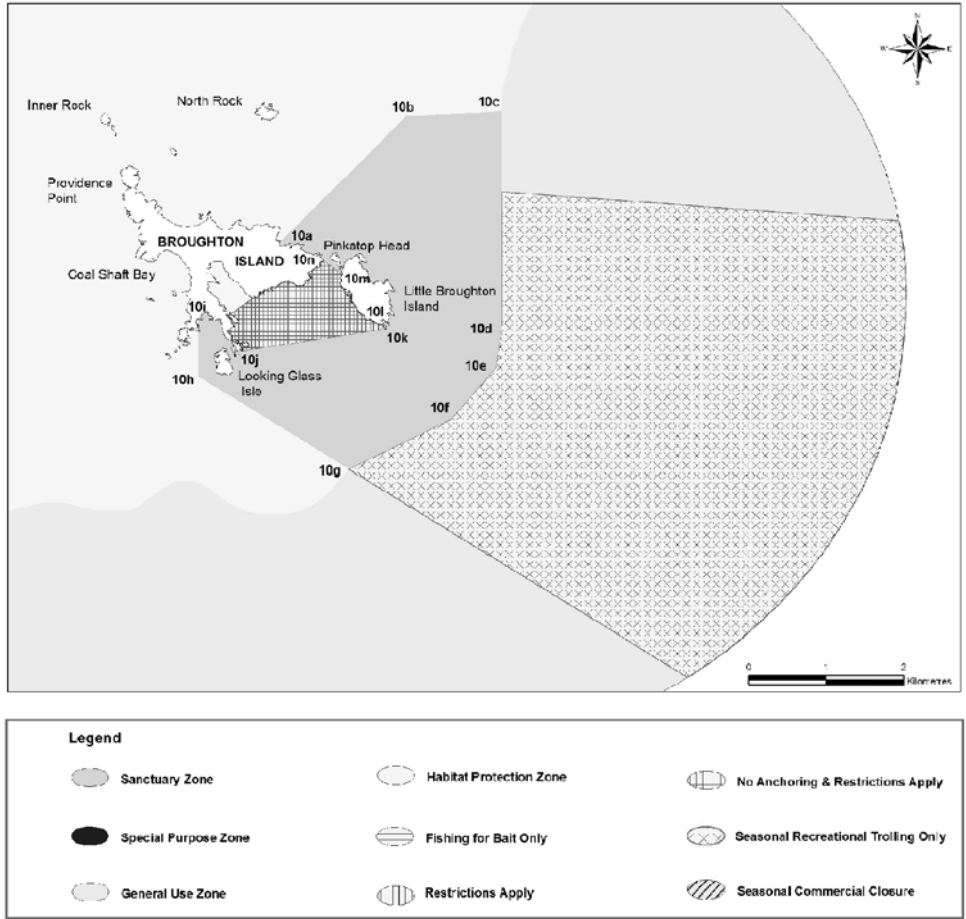


Legend			

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Map 10 Broughton Island

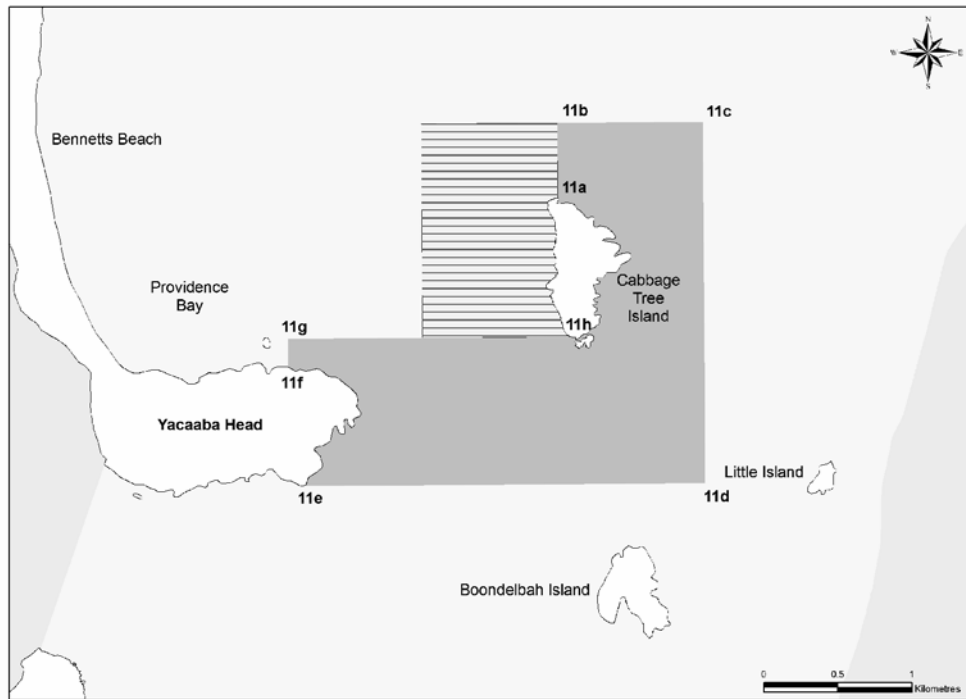


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Map 11 Cabbage Tree Island

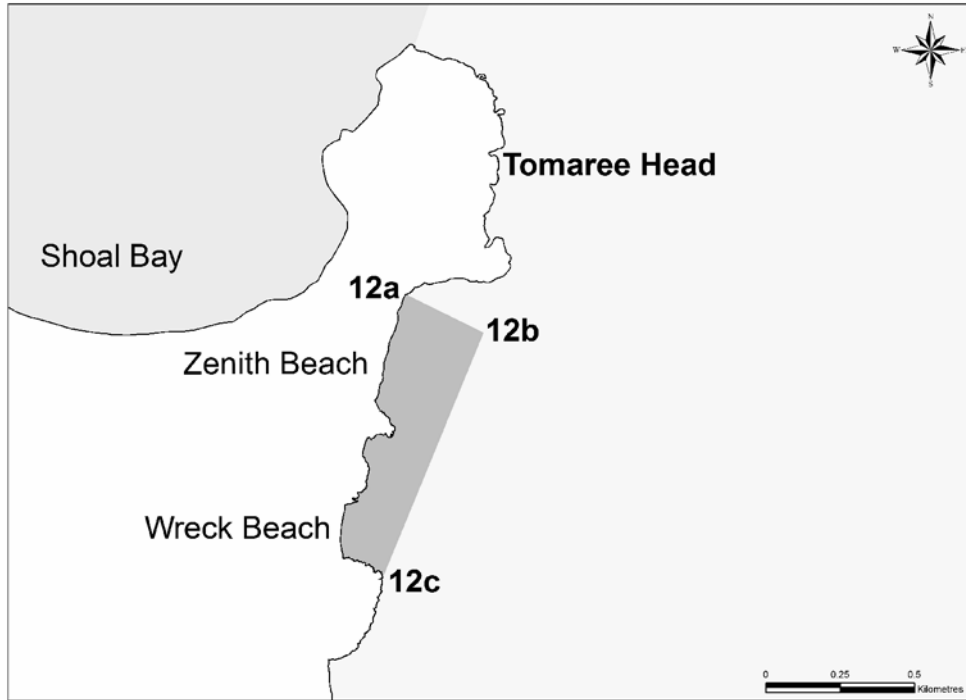


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Map 12 Zenith Beach



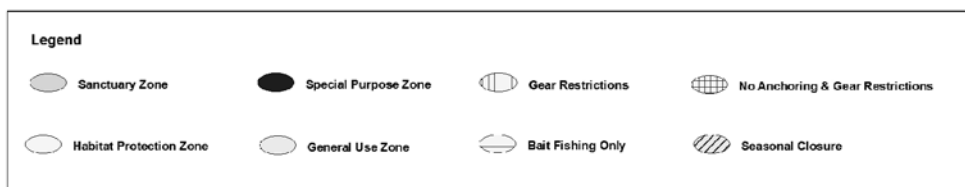
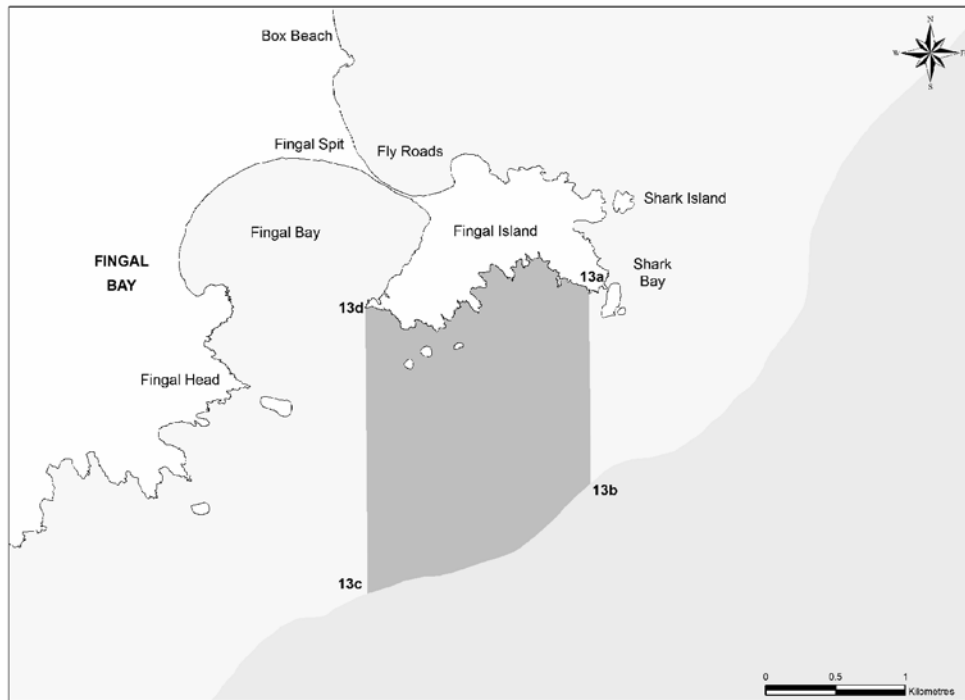
Legend			
	Sanctuary Zone		Special Purpose Zone
	Gear Restrictions		No Anchoring & Gear Restrictions
	Habitat Protection Zone		Bait Fishing Only
	General Use Zone		Seasonal Closure

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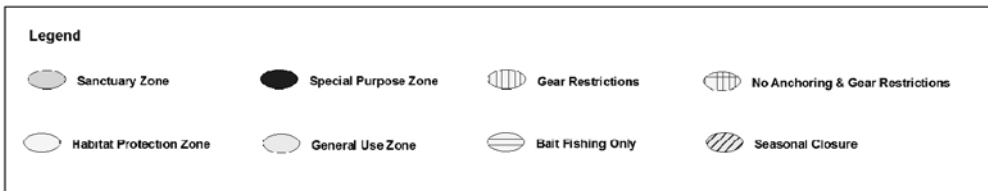
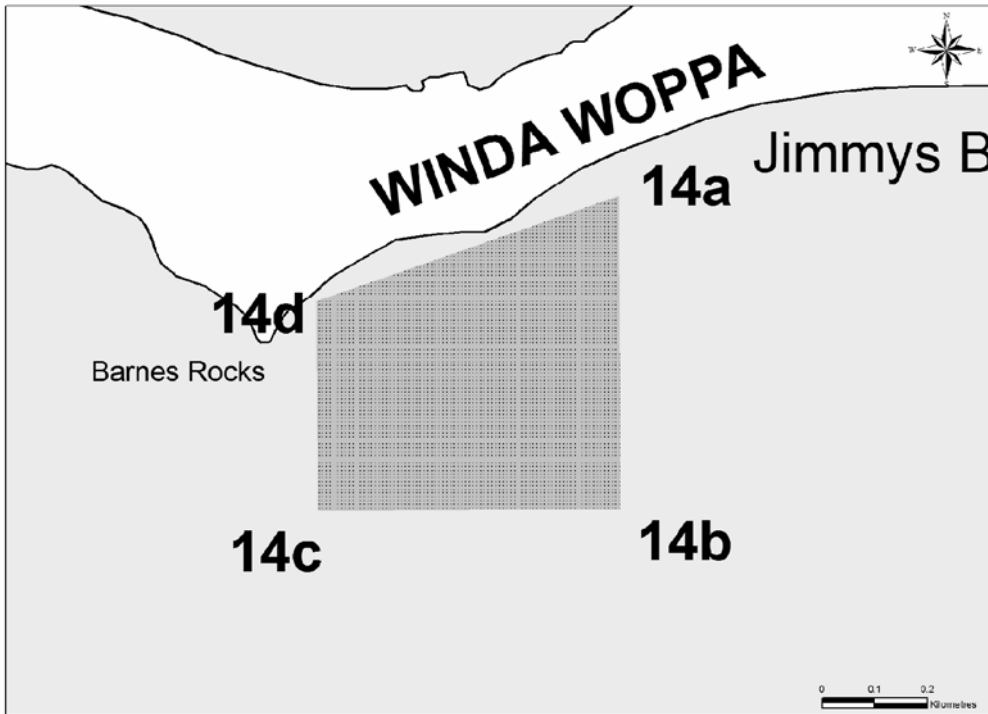
Map 13 Fingal Island



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Map 14 Jimmys Beach

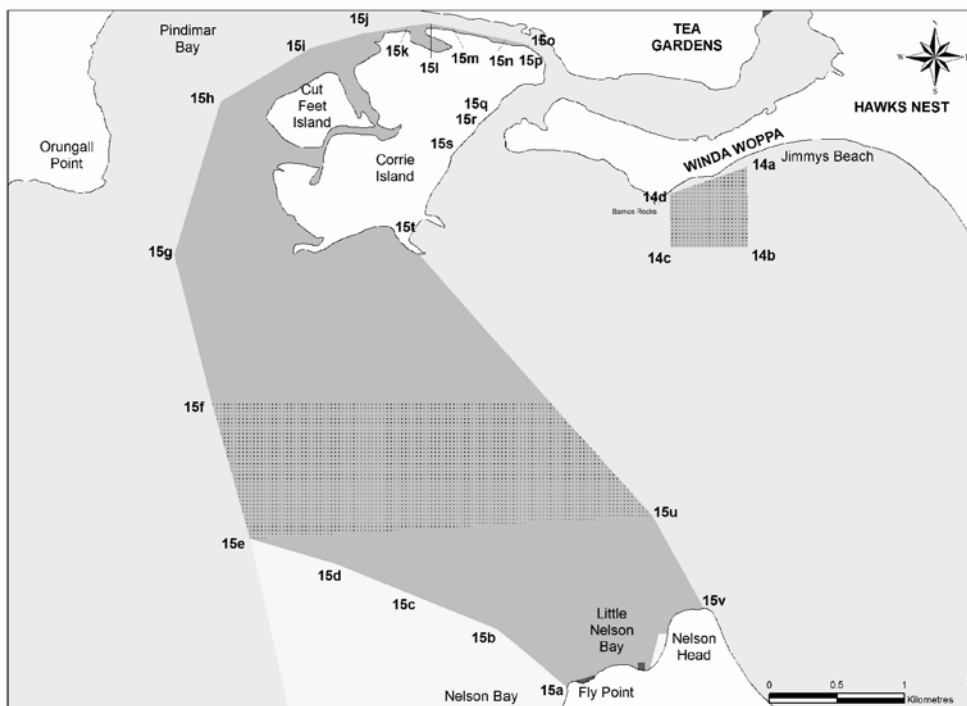


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Map 15 Corrie Island

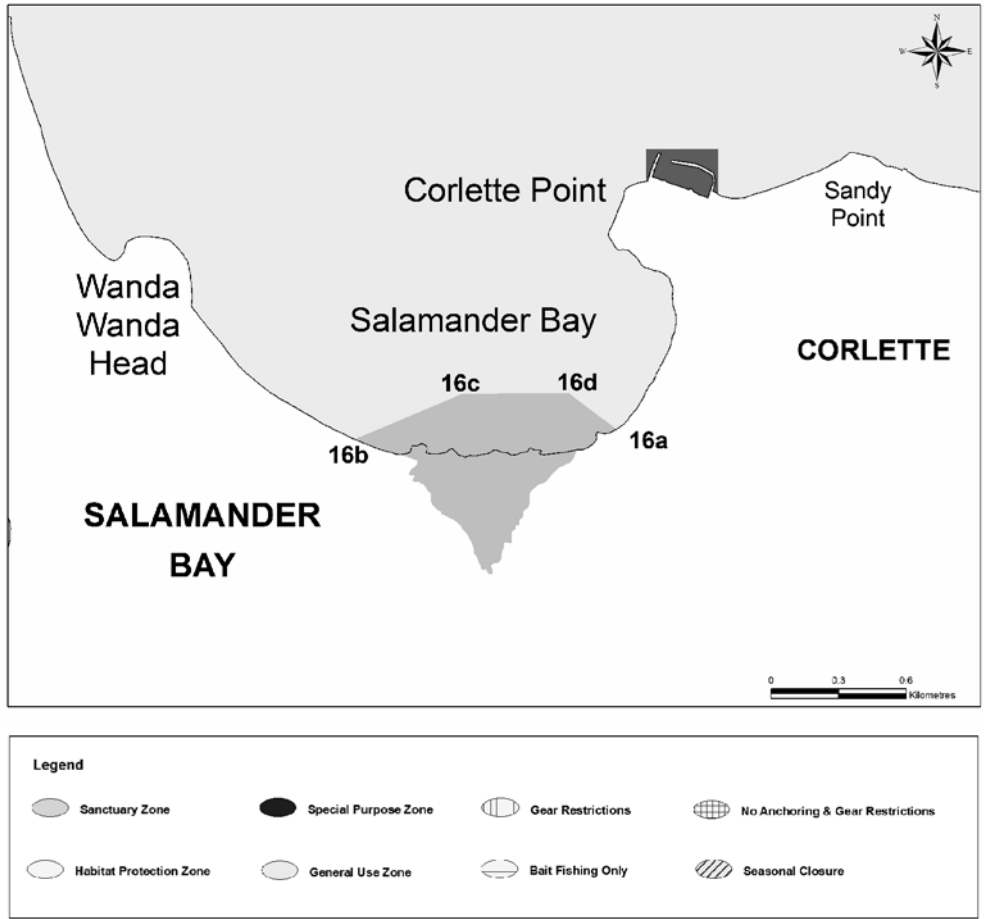


Legend			
Sanctuary Zone	Special Purpose Zone	Gear Restrictions	No Anchoring & Gear Restrictions
Habitat Protection Zone	General Use Zone	Bait Fishing Only	Seasonal Closure

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Map 16 Salamander Bay

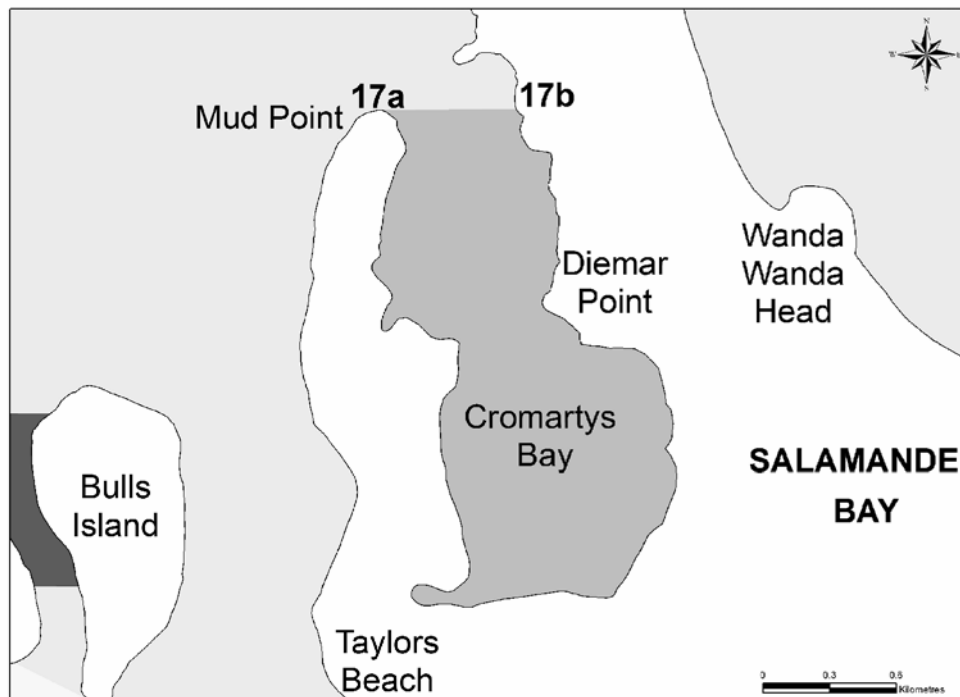


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Map 17 Cromartys Bay

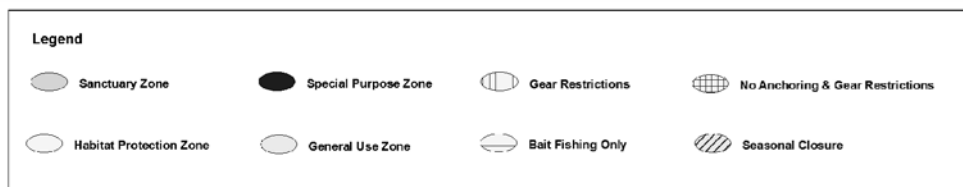
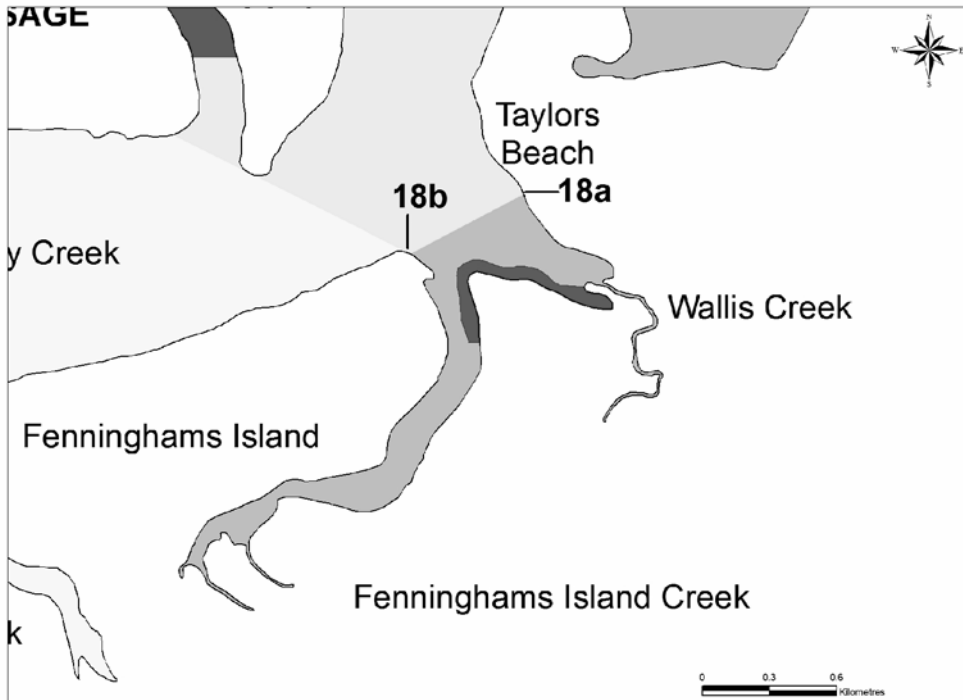


Legend			
Sanctuary Zone	Special Purpose Zone	Gear Restrictions	No Anchoring & Gear Restrictions
Habitat Protection Zone	General Use Zone	Bait Fishing Only	Seasonal Closure

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Map 18 Wallis Creek and Fenninghams Island Creek

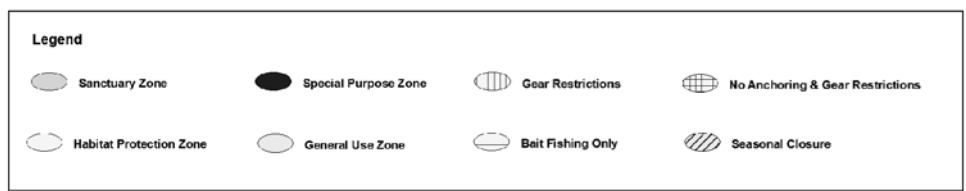
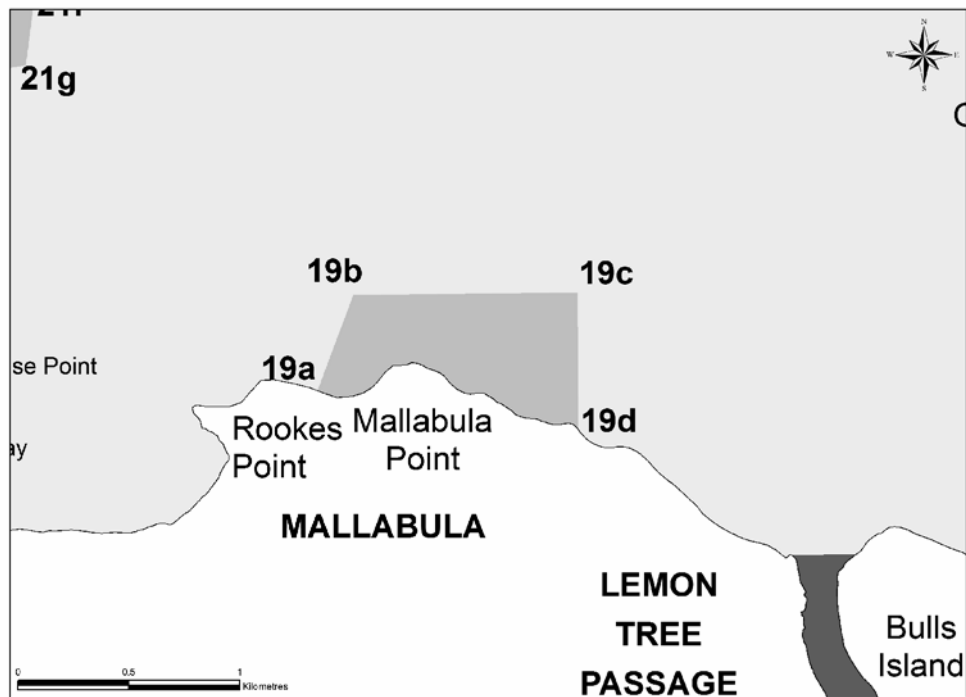


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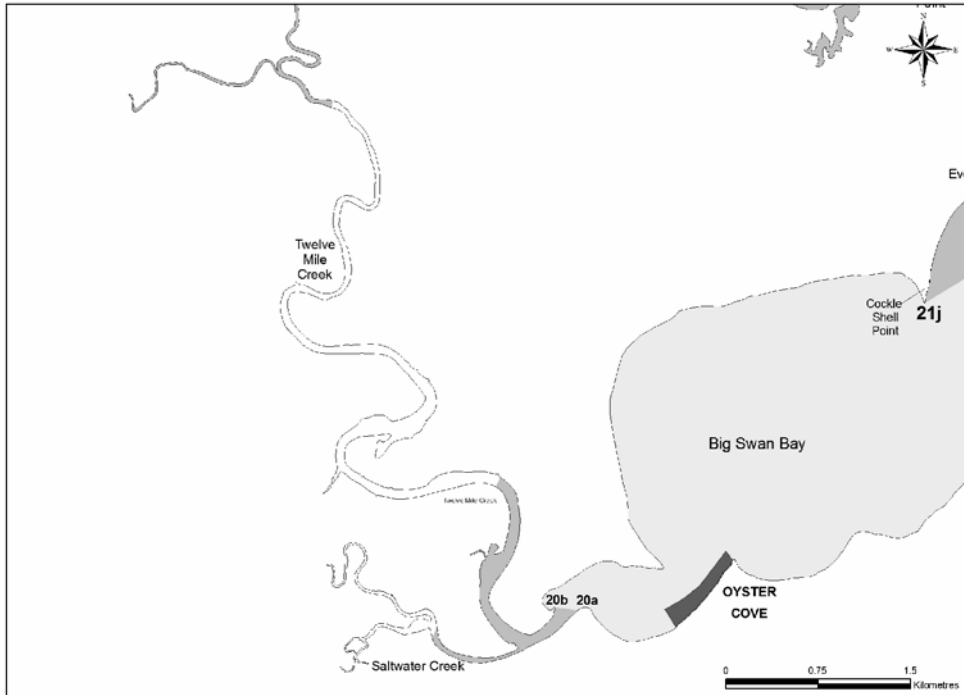
Map 19 Mallabula



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Map 20 Twelve Mile Creek



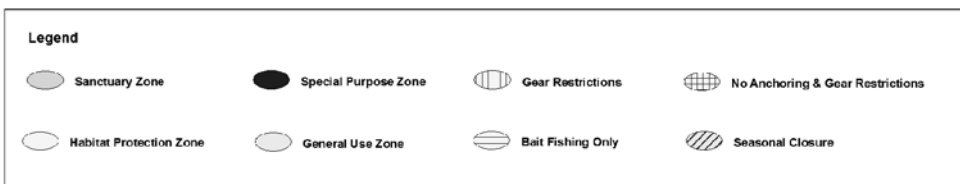
Legend			
Sanctuary Zone	Special Purpose Zone	Gear Restrictions	No Anchoring & Gear Restrictions
Habitat Protection Zone	General Use Zone	Bait Fishing Only	Seasonal Closure

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Map 21 Little Swan Bay

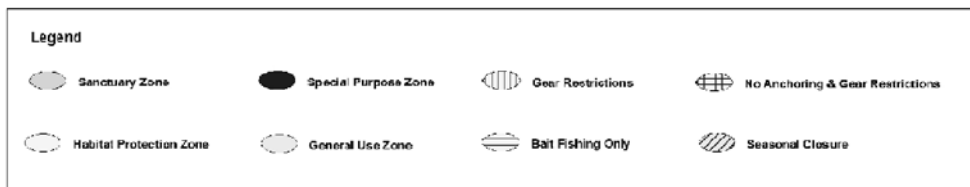
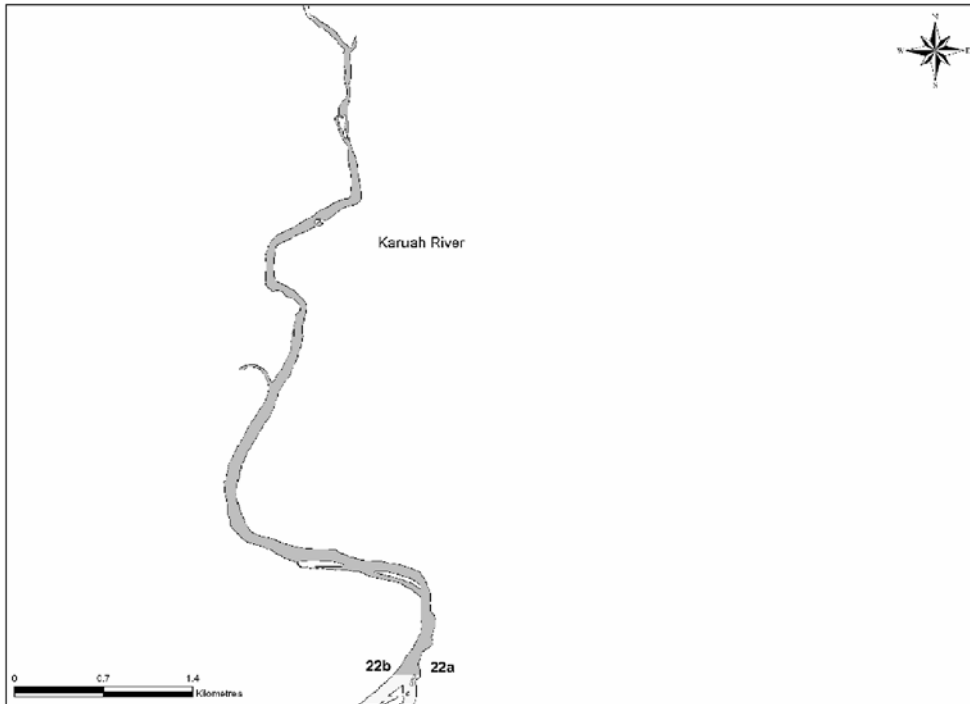


Note. This map does not show the Evens Point habitat description zone as described in Division 3.

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Map 22 Karuah River

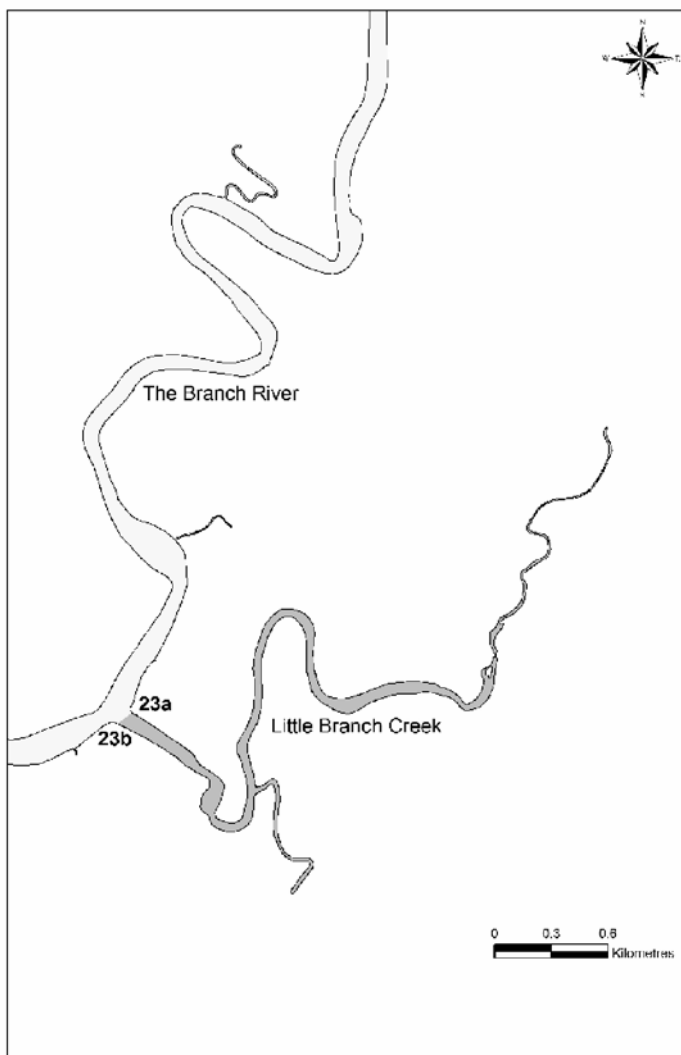


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Map 23 Little Branch Creek

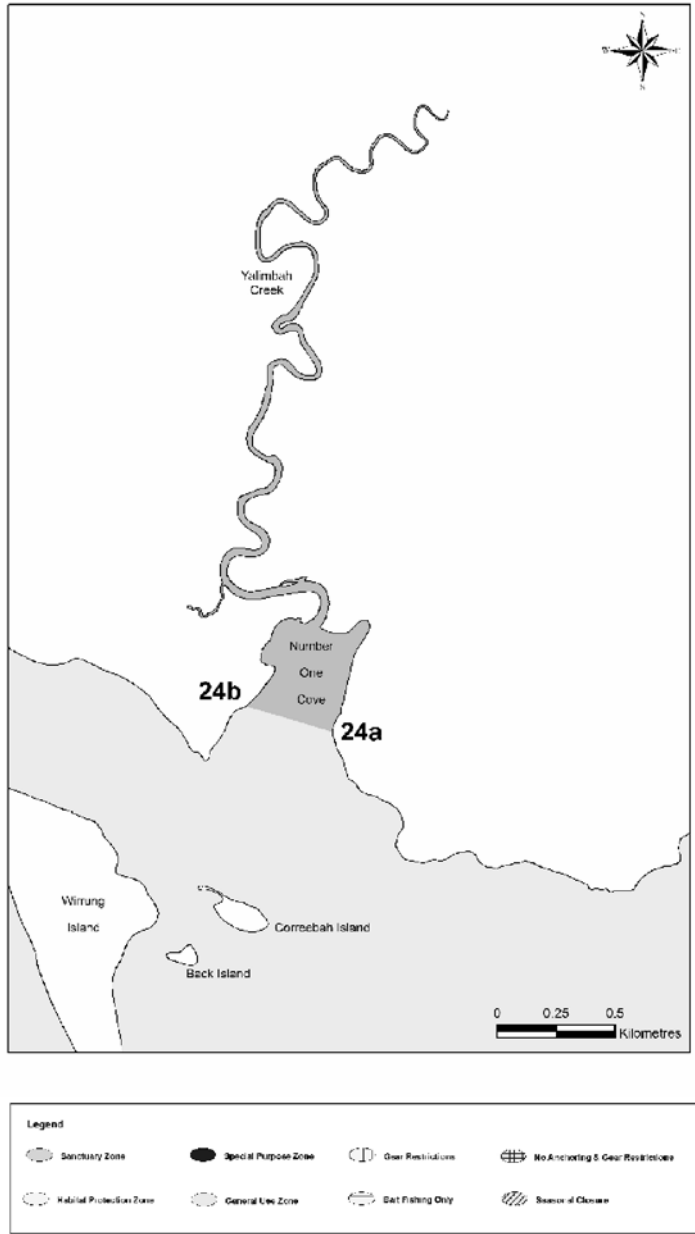


Legend			
Sanctuary Zone	Special Purpose Zone	Open Water Areas	No Anchoring & Gear Restrictions
Marine Protection Zone	General Use Zone	Sea Fishing Only	Seasonal Closure

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Map 24 Number One Cove



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Map 25 North Arm Cove

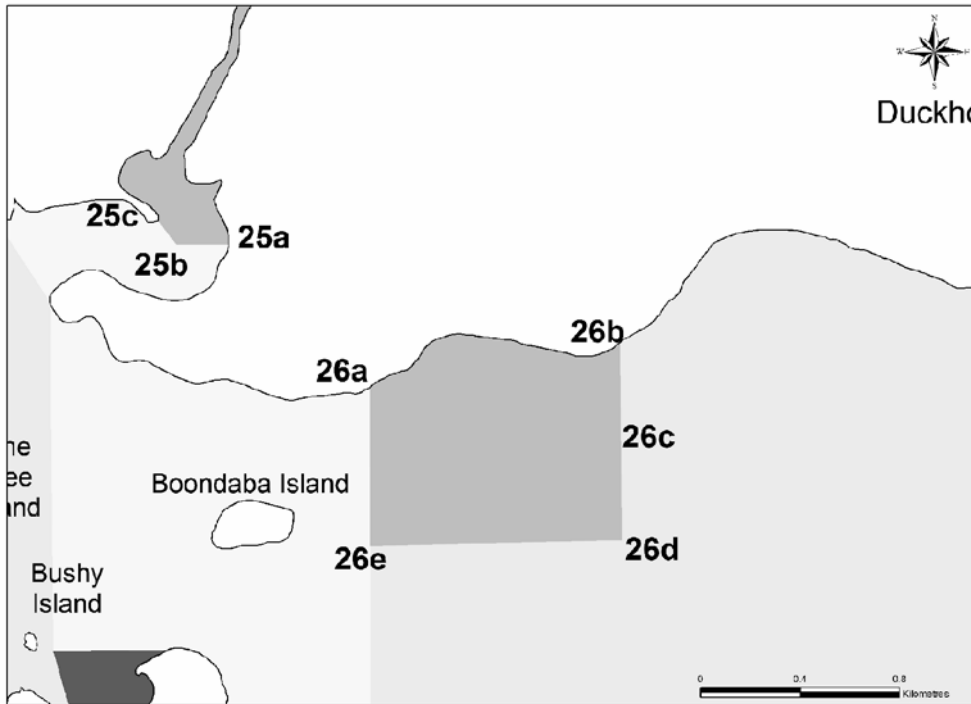


Legend			
Sanctuary Zone	Special Purpose Zone	Gear Restrictions	No Anchoring & Gear Restrictions
Habitat Protection Zone	General Use Zone	Bait Fishing Only	Seasonal Closure

Marine Parks Amendment (Port Stephens–Great Lakes) Regulation 2007

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Map 26 Pindimar

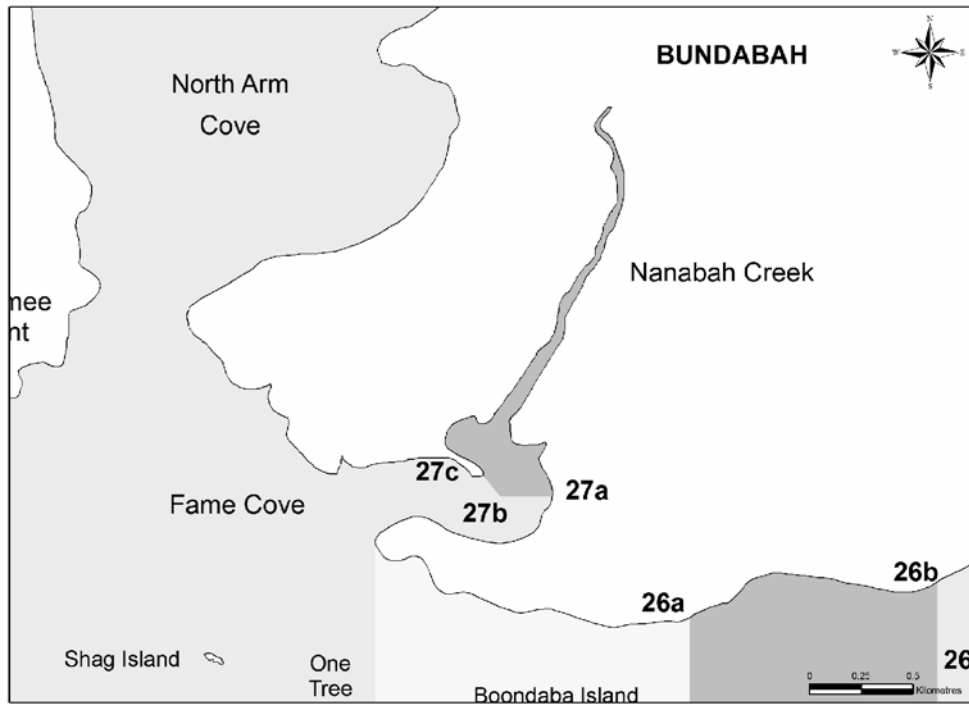


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Map 27 Fame Cove

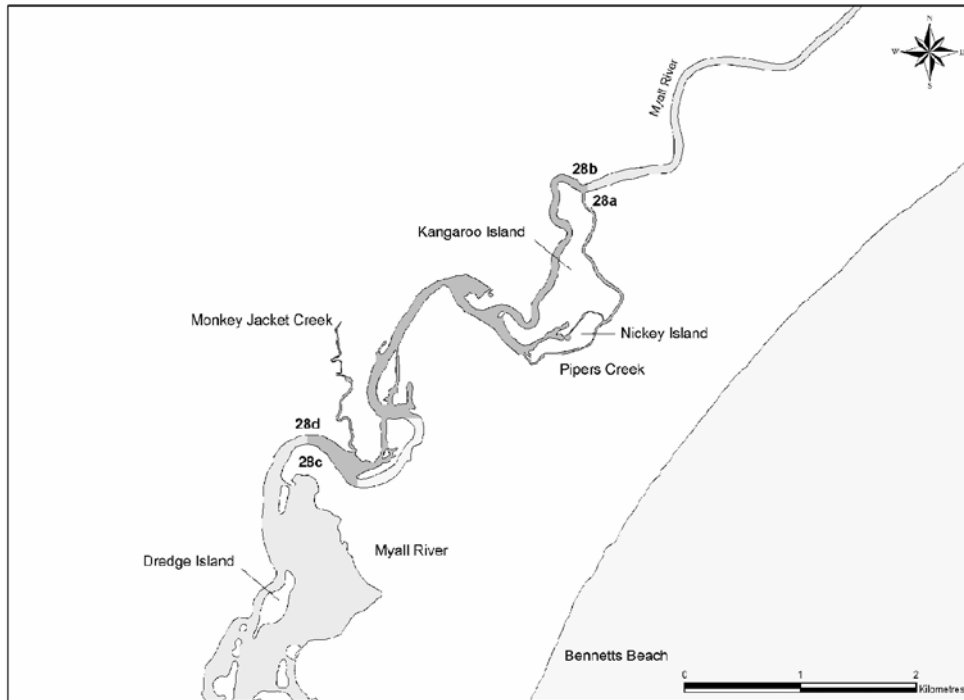


Legend			
	Sanctuary Zone		Special Purpose Zone
	Habitat Protection Zone		Gear Restrictions
	General Use Zone		Bait Fishing Only
	No Anchoring & Gear Restrictions		Seasonal Closure

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Map 28 Myall River



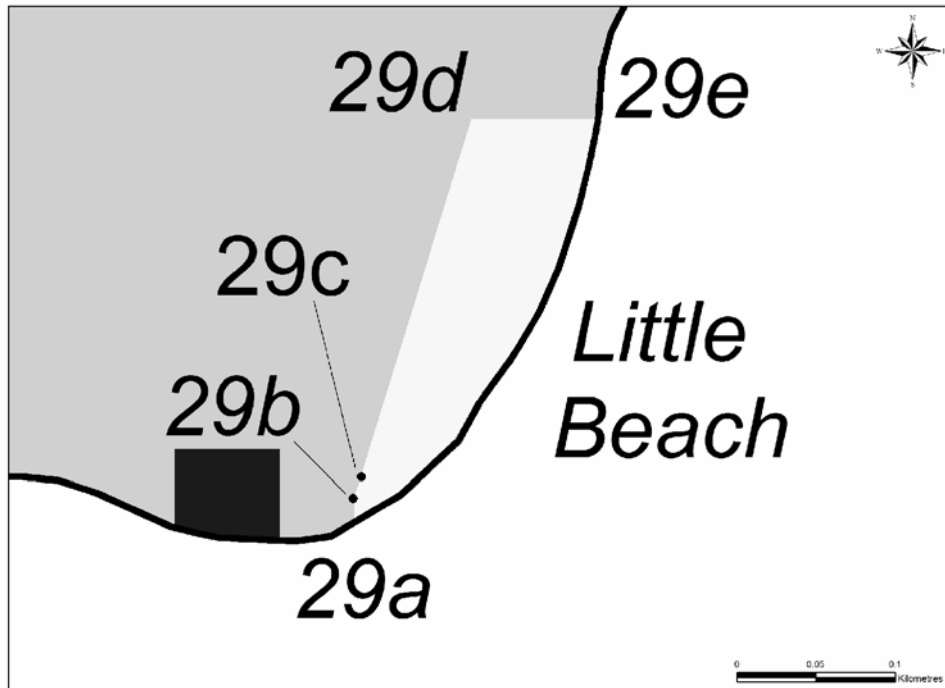
Legend			
Sanctuary Zone	Special Purpose Zone	Gear Restrictions	No Anchoring & Gear Restrictions
Habitat Protection Zone	General Use Zone	Bait Fishing Only	Seasonal Closure

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Map 29 Little Beach



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Division 9 Tables**Table A—Habitat protection zone permissible plant species**

Common name	Class/Family	Species
Sea lettuce	Family Ulvaceae	<i>Ulva lactuca</i>
Bait weed	Family Ulvaceae	<i>Enteromorpha intestinalis</i>

Table B—Habitat protection zone permissible fish species

Common name	Class/Family	Species
Finfish	Class Osteichthyes	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Shark, ray	Class Chondrichthyes	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Lobster, crayfish	Family Palinuridae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Slipper lobster	Family Scyllaridae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Prawn	Family Penaeidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Squid	Family Sepiidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Cuttlefish	Family Spirulidae, Sepiidae and Sepiadariidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Beach worm	Family Onuphidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)

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Common name	Class/Family	Species
Ghost shrimp, marine yabby (nipper)	Family Callinassidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Mud crab	Family Portunidae	<i>Scylla serrata</i>
Blue swimmer crab	Family Portunidae	<i>Portunus pelagicus</i>
Rock crab	Family Grapsidae	All species
Oyster	Family Ostreidae	<i>Saccostrea</i> spp. and <i>Crassostrea</i> spp.
Akoya pearl oyster	Family Pteriidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Pipi	Family Donacidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Cockle	Family Orcidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Clams	Family Veneridae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Mussel	Family Mytilidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Scallop	Family Pectinidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Sea urchin	Family Strongylocentrotidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Cunjevoi	Family Pyuridae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)

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Common name	Class/Family	Species
Turban shell	Family Turbinadae	<i>Turbo</i> spp.
Abalone	Family Haliotidae	<i>Haliotis rubra</i>
Periwinkle	Family Trochidae	<i>Austrocochlea</i> spp.

Note. Bag and size limits apply and are specified in the *Fisheries Management Act 1994*.

Table C—Fish that may be taken from Cabbage Tree Island habitat protection zone

Common name	Family	Species
Yellowtail scad	Family Carangidae	<i>Trachurus novaezelandiae</i>
Slimy mackerel	Family Scombridae	<i>Scomber australasicus</i>
Garfish	Family Hemiramphidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)

Note. Bag and size limits apply and are specified in the *Fisheries Management Act 1994*.



New South Wales

Marine Parks Amendment (Batemans) Regulation 2007

under the

Marine Parks Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Marine Parks Act 1997*.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

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

Explanatory note

The *Marine Parks Act 1997* and the *Marine Parks Regulation 1999* (the **principal Regulation**) provide for the classification of areas within marine parks for different uses by means of zoning plans. Currently, the principal Regulation provides for four classes of zones in marine parks (sanctuary zones, habitat protection zones, general use zones and special purpose zones) and sets out objects and special provisions applying to those zones.

The object of this Regulation is to provide for a zoning plan for the Batemans Marine Park. The zoning plan, which is to be included in Schedule 1 to the principal Regulation, divides the Batemans Marine Park into the various zones and contains special provisions regulating and prohibiting the carrying out of certain activities in those zones.

The Regulation also makes amendments to the provisions applying to marine parks generally. This Regulation is made under the *Marine Parks Act 1997*, including sections 15, 16, 17 and 48 (the general regulation-making power).

Clause 1 Marine Parks Amendment (Batemans) Regulation 2007

Marine Parks Amendment (Batemans) Regulation 2007

under the

Marine Parks Act 1997

1 Name of Regulation

This Regulation is the *Marine Parks Amendment (Batemans) Regulation 2007*.

2 Commencement

This Regulation commences on 30 June 2007.

3 Amendment of Marine Parks Regulation 1999

The *Marine Parks Regulation 1999* is amended as set out in Schedule 1.

Marine Parks Amendment (Batemans) Regulation 2007

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(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order in the definitions:

bait means any animal or plant, or part of any animal or plant, rigged on a fishing hook but does not include an artificial lure or artificial fly.

[2] Clause 20 Protection of marine park moorings, buoys, signs and facilities

Insert “(unless the placement is authorised by an occupation licence or other authorisation issued under the *Maritime Services Act 1935*)” after “park” in clause 20 (1) (c).

[3] Clause 22 Domesticated animals

Insert after clause 22 (2):

(3) This clause does not apply to a dog being used by a police officer on official duty.

[4] Clause 22A Protected species

Insert “or plant” after “fish” wherever occurring in clause 22A (1) (a) and (b).

[5] Clause 32N Consent by relevant Ministers not required for certain activities

Insert “in accordance with section 19 of the Act” after “that activity” in clause 32N (1).

[6] Schedule 1 Zoning plans for marine parks

Omit clause 6 (2) (a1) of Part 2 of Schedule 1. Insert instead:

(a1) the person is the holder of a current commercial fishing licence endorsed for the taking of fish in the ocean hauling fishery under the *Fisheries Management Act 1994* who is taking or attempting to take fish while assisting, and in the presence of, a person referred to in paragraph (a), or

Marine Parks Amendment (Batemans) Regulation 2007

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[7] Schedule 1, Part 2, clause 6 (3) (a1)

Omit the paragraph. Insert instead:

- (a1) the person is the holder of a current commercial fishing licence endorsed for the taking of fish in the ocean hauling fishery under the *Fisheries Management Act 1994* who is taking or attempting to take fish while assisting, and in the presence of, a person referred to in paragraph (a), or

[8] Schedule 1, Part 4, clause 13 (2) and (2A)

Omit clause 13 (2) of Part 4 of Schedule 1. Insert instead:

- (2) A person must not take or attempt to take fish in special purpose zone 2 (Marshall's Creek Oyster Leases).
- (2A) A person may carry out oyster aquaculture in special purpose zone 2 (Marshall's Creek Oyster Leases) in accordance with a permit issued under the *Fisheries Management Act 1994*.

[9] Schedule 1, Part 4, clause 19

Insert "of fish" after "any species".

[10] Schedule 1, Part 4, clause 23 (2) (c) and (d)

Omit clause 23 (2) (c) of Part 4 of Schedule 1. Insert instead:

- (c) a vehicle being used in an area in the marine park in respect of which the use of such a vehicle has been authorised by a council (within the meaning of the *Local Government Act 1993*),
- (d) a person using a vehicle in the marine park who has been authorised by a council (within the meaning of the *Local Government Act 1993*) to use such a vehicle within the marine park.

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[11] **Schedule 1, Part 6**

Insert in Schedule 1 as Part 6:

Part 6 Batemans Marine Park Zoning Plan

Note. The GPS coordinates used in this Part to describe the boundaries of the zones of the Batemans Marine Park are given in degrees and decimal minutes using the Geocentric Datum of Australia 1994 (GDA 94).

Division 1 Preliminary

1 Definitions

(1) In this Part:

Chart AUS 191 means the charts published under that title by the Australian Hydrographic Service on 20 August 2004.

estuary includes the waters of any lake, river, creek, lagoon or like body of water that is periodically or intermittently closed to the sea.

extensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2002*.

intensive aquaculture has the same meaning as it has in the *Fisheries Management (Aquaculture) Regulation 2002*.

marine park means the Batemans Marine Park as described in Part 2 of the Proclamation made under sections 6 and 7 of the Act and published in Gazette No 49 on 7 April 2006 at page 2021.

oyster depuration means the extraction of seawater from the waters of the marine park, the discharge of seawater into the waters of the marine park and the conveyance of seawater across tidal waters or tidal lands of the marine park by way of depuration lines.

regulatory authority means each of the following:

- (a) the council of an area (within the meaning of the *Local Government Act 1993*) that adjoins the marine park,
- (b) the Department of Primary Industries,
- (c) the Department of Environment and Conservation,
- (d) the Department of Planning,
- (e) NSW Police,
- (f) the Maritime Authority of NSW,
- (g) the Department of Lands.

spear gun includes a spear, bow and arrow or other similar device.

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table means a table set out in Division 10.

tidal lands means any area of land that is covered from time to time by tidal waters, and that is above the lowest astronomical tide level.

tidal waters means any area of waters of the sea or subject to tidal influence.

- (2) In this Part, a reference to a line, net, trap or other method that is also referred to in the *Fisheries Management (General) Regulation 2002* is a reference to that line, net, trap or method within the meaning of that Regulation.

Division 2 Sanctuary zones

2 Description of sanctuary zones

The sanctuary zones of the marine park are comprised of the following areas:

Brush Island sanctuary zone

An area bounded as follows:

- (a) commencing on the north-eastern extremity of Brush Island at the point on the mean high water mark nearest to 35°31.593'S, 150°25.055'E,
- (b) then due north to the intersection of longitude 150°25.055'E with the northern boundary of the marine park (at latitude 35°31.086'S),
- (c) then due east to the intersection of the northern boundary of the marine park and the eastern boundary of the marine park,
- (d) then generally south along the eastern boundary of the marine park to the intersection of the boundary with latitude 35°32.629'S (at or about longitude 150°28.866'E),
- (e) then due west for a distance of approximately 6.3 kilometres to 35°32.629'S, 150°24.687'E (a point due south of the western-most extremity of Brush Island),
- (f) then due north for a distance of approximately 1.4 kilometres to the western-most extremity of Brush Island at the point on the mean high water mark nearest to 35°31.833'S, 150°24.687'E,
- (g) then generally east and north along the mean high water mark of the south-eastern coast of Brush Island to the point of commencement.

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Murramarang sanctuary zone

An area bounded as follows:

- (a) commencing at 35°34.698'S, 150°21.916'E (off the south-eastern tip of O'Hara Island),
- (b) then due east to the intersection of latitude 35°34.698'S with the eastern boundary of the marine park,
- (c) then generally south-west along the eastern boundary of the marine park to the intersection of latitude 35°36.543'S and the eastern boundary of the marine park,
- (d) then due west to 35°36.543'S, 150°20.626'E,
- (e) then generally north-east to the point of commencement.

Upper Durras Lake sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Durras Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°38.204'S, 150°16.446'E, on the north-eastern bank of Durras Lake, and
- (b) the point on the mean high water mark nearest to 35°38.513'S, 150°16.326'E, on the southern bank of Durras Lake.

North Durras Lake sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Durras Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°38.234'S, 150°17.076'E, on the western bank of Durras Lake, and
- (b) the point on the mean high water mark nearest to 35°38.234'S, 150°17.158'E, on the eastern bank of Durras Lake.

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North Head sanctuary zone

An area bounded as follows:

- (a) commencing at the tip of Yellow Rock at the point on the mean high water mark nearest to 35°43.413'S, 150°15.894'E,
- (b) then due east for a distance of approximately 1.9 kilometres to 35°43.413'S, 150°17.127'E,
- (c) then due north for a distance of approximately 2.9 kilometres to the point on the mean high water mark nearest to 35°42.117'S, 150°17.127'E,
- (d) then generally south-west along the mean high water mark to the point of commencement.

Tollgate Islands sanctuary zone

An area bounded as follows:

- (a) commencing at 35°44.282'S, 150°14.750'E,
- (b) then due east to the intersection of latitude 35°44.282'S and the eastern boundary of the marine park,
- (c) then generally south along the eastern boundary of the marine park to 35°46.797'S, 150°18.734'E (a point on the boundary),
- (d) then due west for a distance of approximately 6 kilometres to 35°46.797'S, 150°14.750'E,
- (e) then due north to the point of commencement.

Cullendulla Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Cullendulla Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°42.096'S, 150°12.506'E, on the western bank of the entrance to Cullendulla Creek, and
- (b) the point on the mean high water mark nearest to 35°42.277'S, 150°12.561'E, on the eastern bank of the entrance to Cullendulla Creek.

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Waterfall Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Waterfall Creek and its creeks, bays and tributaries that are upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°42.675'S, 150°08.114'E, on the western shore of Waterfall Creek, and
- (b) the point on the mean high water mark nearest to 35°42.719'S, 150°08.287'E, on the eastern shore of Waterfall Creek.

Buckenbowra River sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Buckenbowra River and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°41.494'S, 150°07.559'E, on the northern bank of the Buckenbowra River, and
- (b) the point on the mean high water mark nearest to 35°41.644'S, 150°07.651'E, on the southern bank of the Buckenbowra River.

Pelican Inlet sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Pelican Inlet and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°42.003'S, 150°08.943'E, on the western bank of the mouth of Pelican Inlet, and
- (b) the point on the mean high water mark nearest to 35°41.969'S, 150°09.715'E, on the eastern bank of the mouth of Pelican Inlet.

Burrewarra sanctuary zone

An area bounded as follows:

- (a) commencing at the southern end of Rosedale Beach at the point on the mean high water mark nearest to 35°49.030'S, 150°13.749'E,

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- (b) then generally east for a distance of approximately 900 metres to 35°49.027'S, 150°14.341'E, (approximately 260 metres east of the north-eastern edge of Jimmies Island),
 - (c) then due south to 35°50.246'S, 150°14.342'E (a point generally east of the southern-most extremity of Burrewarra Point),
 - (d) then generally west along a line that is tangential to both the southern-most extremity of Burrewarra Point and the point, on Long Nose Point, on the mean high water mark nearest to 35°50.131'S, 150°12.613'E,
 - (e) then generally north-east along the mean high water mark to the point of commencement.

Candlagan Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Candlagan Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°50.476'S, 150°10.749'E, on the northern bank of the entrance to Candlagan Creek, and
- (b) the point on the mean high water mark nearest to 35°50.513'S, 150°10.705'E, on the southern bank of the entrance to Candlagan Creek.

Broulee Island sanctuary zone

An area bounded as follows:

- (a) commencing in the proximity of the sand bar in Boat Harbour at the point on the mean high water mark nearest to 35°51.428'S, 150°11.115'E,
- (b) then due north for a distance of approximately 400 metres to 35°51.207'S, 150°11.115'E,
- (c) then due east for a distance of approximately 2.25 kilometres to 35°51.207'S, 150°12.611'E (a point due south of the southern-most extremity of Long Nose Point),
- (d) then due south for a distance of approximately 900 metres to 35°51.684'S, 150°12.611'E,
- (e) then due west for a distance of approximately 2.25 kilometres to 35°51.684'S, 150°11.115'E,

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- (f) then due north to the southern coast of Broulee Island at the point on the mean high water mark nearest to 35°51.549'S, 150°11.115'E,
 - (g) then generally east along the mean high water mark around Broulee Island to the point of commencement.

Bengello Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Bengello Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°52.043'S, 150°09.762'E, on the northern bank of the entrance to Bengello Creek, and
- (b) the point on the mean high water mark nearest to 35°52.066'S, 150°09.741'E, on the southern bank of the entrance to Bengello Creek.

Malabar Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Malabar Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point the mean high water mark on the western bank of the entrance to Malabar Creek intersects latitude 35°54.227'S (at or about longitude 150°06.492'E), and
- (b) the point the mean high water mark on the eastern bank of the entrance to Malabar Creek intersects latitude 35°54.185'S (at or about longitude 150°06.549'E).

Mullimburra sanctuary zone

An area bounded as follows:

- (a) commencing on the southern shore of Congo Beach at the point the mean high water mark intersects latitude 35°57.725'S,
- (b) then due east to the point the eastern boundary of the marine park intersects latitude 35°57.725'S,
- (c) then generally south-west and then generally south-east, along the eastern boundary of the marine park to the point the boundary intersects latitude 36°01.689'S,

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(d) then due west to the point the mean high water mark intersects latitude $36^{\circ}01.689'S$,

(e) then following the mean high water mark north to the point of commencement,

but not including the Meringo-Mullimburra Point habitat protection zone as described in Division 3.

Meringo Lake sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Meringo Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point the mean high water mark on the northern shore of Meringo Lake intersects latitude $35^{\circ}58.658'S$ (at or about longitude $150^{\circ}09.093'E$), and
- (b) the point the mean high water mark on the southern shore of Meringo Lake intersects latitude $35^{\circ}58.715'S$ (at or about longitude $150^{\circ}09.093'E$).

Kellys Lake sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Kellys Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point the mean high water mark on the northern shore of Kellys Lake intersects latitude $36^{\circ}00.394'S$ (at or about longitude $150^{\circ}09.435'E$), and
- (b) the point the mean high water mark on the southern shore of Kellys Lake intersects latitude $36^{\circ}00.419'S$ (at or about longitude $150^{\circ}09.433'E$).

Coila Lake and Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Coila Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to $36^{\circ}00.986'S$, $150^{\circ}06.952'E$, on the south-western bank, and
- (b) the point on the mean high water mark nearest to $36^{\circ}00.497'S$, $150^{\circ}06.903'E$, on the north-eastern bank.

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Brou Beach sanctuary zone

An area bounded as follows:

- (a) commencing on the mean high water mark on the eastern-most point of Jemisons Point at 36°06.172'S, 150°08.260'E,
- (b) then due east for a distance of approximately 300 metres to 36°06.172'S, 150°08.480'E (a point due south of the eastern-most extremity of Potato Point),
- (c) then due south for a distance of approximately 2.5 kilometres to 36°07.540'S, 150°08.480'E,
- (d) then due west for a distance of approximately 1.4 kilometres to Brou Breach at the point on the mean high water mark nearest to 36°07.540'S, 150°07.546'E,
- (e) then generally north along the mean high water mark of Brou Beach and then Jemisons Point to the point of commencement,

and including the whole of the tidal waters and tidal lands to the mean high water mark of Lake Tarouga and its creeks, bays and tributaries.

Brou Lake North sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Brou Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point the mean high water mark on the north-western bank of Brou Lake intersects latitude 36°07.151'S (at or about longitude 150°07.337'E), and
- (b) the point the mean high water mark on the north-eastern bank of Brou Lake intersects latitude 36°07.308'S (at or about longitude 150°07.441'E).

Brou Lake South sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Brou Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°07.960'S, 150°06.714'E, on the western bank of Brou Lake, and

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- (b) the point on the mean high water mark nearest to 36°07.969'S, 150°06.775'E, on the eastern bank of Brou Lake.

Kianga Lake sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Kianga Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the northern bank of Kianga Lake at 36°11.476'S, 150°07.936'E, and
- (b) the point on the southern bank of Kianga Lake at 36°11.551'S, 150°07.936'E.

Clarks Bay—Freshwater Bay sanctuary zone

An area bounded as follows:

- (a) commencing on the northern shore of Clarks Bay at the point on the mean high water mark nearest to 36°12.674'S, 150°06.161'E,
- (b) then due south to 36°12.887'S, 150°06.161'E,
- (c) then generally south-west to 36°13.455'S, 150°05.530'E,
- (d) then due west to the point on the mean high water mark nearest to 36°13.455'S, 150°05.278'E,
- (e) then generally north-east along the mean high water mark to the point of commencement,

but not including the Black Bream Point habitat protection zone, the Clarks Bay habitat protection zone or the Freshwater Bay habitat protection zone as described in Division 3.

Punkalla Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Punkalla Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°13.538'S, 150°04.326'E, on the western bank of Punkalla Creek, and
- (b) the point on the mean high water mark nearest to 36°13.581'S, 150°04.460'E, on the eastern bank of Punkalla Creek.

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Forsters Bay sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Forsters Bay and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°13.578'S, 150°06.900'E, on the northern bank of Forsters Bay, and
- (b) the point on the mean high water mark nearest to 36°13.761'S, 150°06.809'E, on the southern bank of Forsters Bay.

Bullengella Lake—Corunna Lake sanctuary zone

An area bounded as follows:

- (a) commencing south of Glasshouse Rocks at 36°14.300'S, 150°08.803'E,
- (b) then due east for a distance of approximately 2.5 kilometres to 36°14.300'S, 150°10.620'E,
- (c) then due south for a distance of approximately 5.8 kilometres to 36°17.222'S, 150°10.620'E,
- (d) then due west to the northern side of the entrance to Corunna Lake at the point on the mean high water mark nearest to 36°17.222'S, 150°07.894'E,
- (e) then north along the mean high water mark to the point of commencement,

and including the whole of the tidal waters and tidal lands to the mean high water mark of Nangudga Lake and Bullengella Lake and their creeks, bays and tributaries but not including the Handkerchief Beach habitat protection zone as described in Division 3.

Montague Island East sanctuary zone

An area bounded as follows:

- (a) commencing on the eastern coast of Montague Island at the point on the mean high water mark nearest to 36°14.678'S, 150°13.846'E,
- (b) then due south for a distance of approximately 546 metres to the eastern-most point of Montague Island at the point on the mean high water mark nearest to 36°14.973'S, 150°13.846'E,

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- (c) then generally north along the mean high water mark of the eastern coast of Montague Island to the point of commencement.

Montague Island South sanctuary zone

An area bounded as follows:

- (a) commencing on the south-eastern coast of Montague Island at the point on the mean high water mark nearest to 36°15.243'S, 150°13.793'E,
- (b) then due east for a distance of approximately 1.6 kilometres to 36°15.243'S, 150°14.848'E,
- (c) then due south for a distance of approximately 1.7 kilometres to 36°16.143'S, 150°14.848'E,
- (d) then due west for a distance of approximately 1.9 kilometres to 36°16.143'S, 150°13.607'E (a point due south of the southern-most extremity of Montague Island),
- (e) then due north to the southern-most extremity of Montague Island at the point on the mean high water mark nearest to 36°15.558'S, 150°13.607'E,
- (f) then generally south-east then north along the mean high water mark of the southern coast of Montague Island to the point of commencement.

Couria Bay sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Couria Bay and its creeks, bays and tributaries upstream of the line between:

- (a) the point, on the north-eastern shore of Couria Bay, the mean high water mark intersects latitude 36°21.084'S (at or about longitude 150°03.440'E), and
- (b) the point, on the south-western shore of Couria Bay, the mean high water mark intersects latitude 36°21.252'S (at or about longitude 150°03.440'E),

but not including the Couria Bay habitat protection zone as described in Division 3.

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Dignams Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Dignams Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°21.211'S, 150°02.079'E, on the northern bank of Wallaga Lake, and
- (b) the point on the mean high water mark nearest to 36°21.345'S, 150°02.171'E, on the southern bank of Wallaga Lake at the mouth of Dignams Creek,

but not including the Snake Island special purpose zone as described in Division 4.

Meads Bay sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Meads Bay and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°23.109'S, 150°02.813'E, on the western bank of Meads Bay, and
- (b) the point on the mean high water mark nearest to 36°22.921'S, 150°03.053'E, on the eastern bank of Meads Bay.

Narira Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Narira Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°23.506'S, 150°02.673'E, on the western bank of Narira Creek, and
- (b) the point on the mean high water mark nearest to 36°23.506'S, 150°02.685'E, on the eastern bank of Narira Creek.

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Merriwunga Creek sanctuary zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Merriwunga Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°21.613'S, 150°04.770'E, on the western bank of the entrance to Merriwunga Creek, and
- (b) the point on the mean high water mark nearest to 36°21.622'S, 150°04.775'E, on the eastern bank of the entrance to Merriwunga Creek.

3 Fish cleaning

Despite clause 7 of this Regulation, a person may clean fish or fishing gear while in a sanctuary zone of the marine park at a fish cleaning facility (if any) designated by the relevant Ministers for that purpose.

4 Oyster depuration

- (1) Despite clause 7 of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in a sanctuary zone of the marine park if the oyster depuration is carried out in a designated area and in accordance with the *Food Act 2003*.
- (2) For the purposes of this clause, a *designated area* means any tidal waters and tidal lands of a sanctuary zone of the marine park on which, immediately before the commencement of this Part, depuration lines were being used for oyster depuration by the holder of a licence under the *Food Act 2003* that authorised the operation of a depuration plant.

5 Permissible uses

- (1) Without limiting clause 6 of this Regulation, a further object of a sanctuary zone in the marine park is, where consistent with clause 6 (a) of this Regulation, to allow any activity to be carried out in the zone if it is a permissible use with respect to the sanctuary zone.

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- (2) For the purposes of this clause, each of the following activities is a *permissible use* with respect to each of the sanctuary zones in the marine park:
- (a) an activity that is necessary for the purposes of replacing a work used before the commencement of this Part with a work that has the same or less environmental impact and that is capable of safe and ecologically sustainable use,
 - (b) an activity that is necessary for the purposes of maintaining a work used before the commencement of this Part in a state that enables safe and ecologically sustainable use of the work.
- (3) Despite clause 7 of this Regulation, the consent of the relevant Ministers may be given for an activity that would otherwise contravene that clause if that activity is a permissible use with respect to the sanctuary zone.
- (4) In this clause:
work includes a jetty, wharf, pontoon, groyne, retaining wall, boat ramp, mooring, aquaculture facility, boardwalk, navigation marker, regulatory authority sign and stormwater drain.

Division 3 Habitat protection zones

6 Description of habitat protection zones

The habitat protection zones of the marine park are comprised of the following areas:

Kioloa Creek habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Kioloa Creek and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark on the northern shore of Kioloa Creek at 35°33.084'S, 150°22.938'E, and
- (b) the point on the mean high water mark on the southern shore of Kioloa Creek at 35°33.137'S, 150°22.938'E.

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Durras Beach creek habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the unnamed creek, landward of Durras Beach, that runs between Skid Ridge Road and Old Coast Road, and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°39.460'S, 150°17.776'E, on the western bank of the entrance to the creek, and
- (b) the point on the mean high water mark nearest to 35°39.460'S, 150°17.785'E, on the eastern bank of the entrance to the creek.

Durras Lake habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Durras Lake and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 35°38.310'S, 150°18.450'E, on the northern bank of the Durras Lake entrance, and
- (b) the point on the mean high water mark nearest to 35°38.394'S, 150°18.369'E, on the southern bank of the Durras Lake entrance.

but not including the Upper Durras Lake sanctuary zone or the North Durras Lake sanctuary zone as described in Division 2.

Batemans Bay habitat protection zone

An area bounded as follows:

- (a) commencing at the southern end of South Durras Beach at the point on the mean high water mark nearest to 35°40.095'S, 150°18.414'E,
- (b) then due east to the intersection of latitude 35°40.095'S with the eastern boundary of the marine park,
- (c) then generally south along the eastern boundary of the marine park to the intersection of latitude 35°50.246'S with the boundary,
- (d) then due west to 35°50.246'S, 150°14.342'E (a point generally east of the southern-most extremity of Burrewarra Point),

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- (e) then due north, along the eastern boundary of the Burrewarra sanctuary zone, to 35°49.027'S, 150°14.341'E, approximately 260 metres east of the north-eastern edge of Jimmies Island,
 - (f) then due west to the southern end of Rosedale Beach at the point on the mean high water mark nearest to 35°49.030'S, 150°13.749'E,
 - (g) then along the mean high water mark to 35°32.374'S, 150°11.991'E (a point on the mean high water mark on the northern bank of the Clyde River),
 - (h) then to 35°32.418'S, 150°11.991'E (a point on the mean high water mark on the southern bank of the Clyde River),
 - (i) then downstream along the mean high water mark to the point of commencement,

but not including the Pelican Inlet sanctuary zone, the Waterfall Creek sanctuary zone, the Buckenbowra River sanctuary zone, the Tollgate Islands sanctuary zone, the North Head sanctuary zone or the Cullendulla Creek sanctuary zone as described in Division 2 or the Batemans Bay special purpose zone as described in Division 4.

Shallow Crossing habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Clyde River and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark on the northern bank of the Clyde River at 35°32.374'S, 150°11.991'E, and
- (b) the point on the mean high water mark on the southern bank of the Clyde River at 35°32.418'S, 150°11.991'E.

Tomaga River habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Tomaga River and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the northern shore of the mouth of the Tomaga River at 35°50.226'S, 150°11.070'E, and
- (b) the point on the southern shore of the mouth of the Tomaga River at 35°50.305'S, 150°11.070'E.

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Toragy Point-Congo habitat protection zone

An area bounded as follows:

- (a) commencing at the eastern-most extremity of Toragy Point at the point on the mean high water mark nearest to 35°54.474'S, 150°09.610'E,
- (b) then due east to the intersection of latitude 35°54.474'S with the eastern boundary of the marine park,
- (c) then generally south along the eastern boundary of the marine park to the point the eastern marine park boundary intersects latitude 35°57.725'S,
- (d) then due west, along the northern boundary of the Mullimburra sanctuary zone, to the southern shore of Congo Beach, at the point the mean high water mark intersects latitude 35°57.725'S,
- (e) then generally north along the mean high water mark to the point of commencement,

including the whole of the tidal waters and tidal lands to the mean high water mark of Congo Creek and its creeks, bays and tributaries.

Meringo-Mullimburra Point habitat protection zone

An area bounded as follows:

- (a) commencing at the eastern-most extremity of Mullimburra Point at the point on the mean high water mark nearest to 35°59.628'S, 150°09.850'E,
- (b) then due east for a distance of approximately 200 metres to 35°59.628'S, 150°09.974'E,
- (c) then generally north along a line parallel to, but 200 metres seaward of, the mean high water mark, to 35°58.715'S, 150°09.170'E,
- (d) then due west to the southern side of the entrance to Meringo Lake at the point on the mean high water mark nearest to 35°58.715'S, 150°09.237'E,
- (e) then generally south following the mean high water mark to the point of commencement.

Tuross-Coila habitat protection zone

An area bounded as follows:

- (a) commencing on the northern bank of the entrance to Tuross Lake at the point on the mean high water mark nearest to 36°03.966'S, 150°08.097'E,

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- (b) then generally north along the mean high water mark to the southern side of the entrance to Coila Lake at the point on the mean high water mark nearest to 36°03.028'S, 150°08.518'E,
 - (c) then generally north to the northern side of the entrance to Coila Lake at the point on the mean high water mark nearest to 36°02.889'S, 150°08.535'E,
 - (d) then generally north along the mean high water mark to the point the mean high water mark intersects latitude 36°01.689'S,
 - (e) then due east, along the southern boundary of the Mullimburra sanctuary zone, to the point the eastern boundary of the marine park intersects latitude 36°01.689'S,
 - (f) then generally south along the eastern boundary of the marine park to the intersection of the eastern boundary of the marine park and latitude 36°03.966'S,
 - (g) then due west to the point of commencement.

Tuross Lake and River habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Tuross Lake, the Tuross River system and their creeks, bays and tributaries upstream of the line between:

- (a) the point on the northern shore of the opening to Tuross Lake at 36°03.967'S, 150°08.097'E, and
- (b) the point on the southern shore of the opening to Tuross Lake at 36°04.051'S, 150°08.097'E.

Lake Brunderee habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Lake Brunderee and its creeks, bays and tributaries upstream of the line between:

- (a) the point the mean high water mark on the western shore of Lake Brunderee intersects latitude 36°05.640'S (at or about longitude 150°08.218'E), and
- (b) the point the mean high water mark on the eastern shore of Lake Brunderee intersects latitude 36°05.640'S (at or about longitude 150°08.236'E).

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Jemisons Beach creek habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the unnamed creek that is landward of Jemisons Beach and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°06.050'S, 150°08.149'E, on the northern bank of the entrance to the creek, and
- (b) the point on the mean high water mark nearest to 36°06.053'S, 150°08.147'E, on the southern bank of the entrance to the creek.

Lake Dalmeny (Mummaga Lake) habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Lake Dalmeny and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the northern shore of the opening to Lake Dalmeny at 36°09.720'S, 150°07.550'E, and
- (b) the point on the southern shore of the opening to Lake Dalmeny at 36°09.744'S, 150°07.597'E.

Wagonga Inlet habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the Wagonga Inlet and its creeks, bays and tributaries that are upstream of the line between:

- (a) the point the mean high water mark on the western shore of Wagonga Inlet intersects latitude 36°12.684'S (at or about longitude 150°07.968'E), and
- (b) the point the mean high water mark on the eastern shore of Wagonga Inlet intersects latitude 36°12.684'S (at or about longitude 150°08.037'E),

but not including the Clarks Bay—Freshwater Bay sanctuary zone or the Forsters Bay sanctuary zone as described in Division 2, the Black Bream Point habitat protection zone as described in this Division, the Mill Bay Boat Ramp special purpose zone, the Forsters Bay special purpose zone or the Narooma Wharf special purpose zone as described in Division 4.

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Black Bream Point habitat protection zone

An area bounded as follows:

- (a) commencing on the western shore of Clarks Bay at the point on the mean high water mark nearest to 36°12.861'S, 150°05.732'E,
- (b) then due north to 36°12.832'S, 150°05.732'E,
- (c) then due east to 36°12.832'S, 150°05.792'E,
- (d) then due south to the western shore of Clarks Bay at the point on the mean high water mark nearest to 36°12.858'S, 150°05.792'E,
- (e) then generally west along the mean high water mark to the point of commencement.

Clarks Bay habitat protection zone

An area bounded by the circle of 20 metres radius centred on 36°12.784'S, 150°05.567'E, a point near the mean high water mark on the shore of Wagonga Inlet.

Freshwater Bay habitat protection zone

An area bounded by the circle of 20 metres radius centred on 36°13.158'S, 150°05.316'E, a point near the mean high water mark on the shore of Wagonga Inlet.

Wagonga Head habitat protection zone

An area bounded as follows:

- (a) commencing at the point the mean high water mark south of the entrance to Wagonga Inlet intersects latitude 36°12.769'S (at or about longitude 150°08.136'E),
- (b) then due east to 36°12.769'S, 150°08.234'E,
- (c) then south-east to the point the mean high water mark intersects latitude 36°12.945'S (at or about longitude 150°08.371'E),
- (d) then along the mean high water mark to the point of commencement.

Little Lake (north) habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the lake named Little Lake that lies between Wagonga Inlet and Nangudga Lake, and its creeks, bays and tributaries upstream of the line between:

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- (a) the point the mean high water mark on the northern shore of the lake intersects latitude 36°13.423'S (at or about longitude 150°08.453'E), and
 - (b) the point the mean high water mark on the southern shore of the lake intersects latitude 36°13.443'S (at or about longitude 150°08.456'E).

Handkerchief Beach habitat protection zone

An area bounded as follows:

- (a) commencing south of the entrance to Bullengella Lake at the point on the mean high water mark nearest to 36°14.623'S, 150°08.659'E,
- (b) then due east to 36°14.623'S, 150°08.726'E,
- (c) then generally south along a line parallel to, but 100 metres seaward of, the mean high water mark to 36°15.206'S, 150°08.790'E,
- (d) then due west to the point on the mean high water mark nearest to 36°15.206'S, 150°08.730'E,
- (e) then along the mean high water mark to the southern side of the entrance to Nangudga Lake at the point on the mean high water mark nearest to 36°15.139'S, 150°08.673'E,
- (f) then due west to the northern side of the entrance to Nangudga Lake at the point on the mean high water mark nearest to 36°15.139'S, 150°08.601'E,
- (g) then generally north along the mean high water mark to the point of commencement.

Montague Island habitat protection zone

An area bounded as follows:

- (a) commencing south of the entrance to Kianga Lake at the point on the mean high water mark nearest to 36°11.536'S, 150°07.994'E,
- (b) then due east to the intersection of latitude 36°11.536'S with the eastern boundary of the marine park,
- (c) then generally south along the eastern boundary of the marine park to 36°18.342'S, 150°12.099'E (a point east of Mystery Bay),
- (d) then due west to the southern side of Mystery Bay at the point on the mean high water mark nearest to 36°18.342'S, 150°08.195'E,

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- (e) then generally north along the mean high water mark to the point of commencement,

but not including the Bullengella Lake—Corunna Lake sanctuary zone, the Montague Island East sanctuary zone or the Montague Island South sanctuary zone as described in Division 2, the Montague Island (Inner) habitat protection zone, the Wagonga Head habitat protection zone, the Handkerchief Beach habitat protection zone, the Wagonga Inlet habitat protection zone or the Little Lake (north) habitat protection zone as described in this Division.

Montague Island (Inner) habitat protection zone

An area bounded as follows:

- (a) commencing at the point the mean high water mark on the west coast of Montague Island intersects latitude $36^{\circ}14.636'S$ (at or about longitude $150^{\circ}13.428'E$),
- (b) then generally north for approximately 350 metres to $36^{\circ}14.448'S$, $150^{\circ}13.428'E$,
- (c) then due east for approximately 630 metres to $36^{\circ}14.448'S$, $150^{\circ}13.846'E$,
- (d) then due south to the point the mean high water mark on the north-eastern extremity of Montague Island intersects latitude $36^{\circ}14.609'S$ (at or about longitude $150^{\circ}13.846'E$),
- (e) then west along the mean high water mark to the point of commencement.

Little Lake (south) habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of the lake named Little Lake that lies between Tilba Tilba Lake and Wallaga Lake, and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to $36^{\circ}20.325'S$, $150^{\circ}06.107'E$, on the northern entrance to the lake, and
- (b) the point on the mean high water mark nearest to $36^{\circ}20.352'S$, $150^{\circ}06.035'E$, on the southern entrance to the lake.

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Wallaga Lake Entrance habitat protection zone

An area bounded as follows:

- (a) commencing on the northern bank of Wallaga Lake (near the eastern edge of Wallaga Lake Road) at the point on the mean high water mark nearest to 36°21.524'S, 150°04.572'E,
- (b) then generally south-east along the mean high water mark of Wallaga Lake to the northern bank of the entrance to Wallaga Lake at the point nearest to 36°22.131'S, 150°04.781'E,
- (c) then due south to the southern bank of Wallaga Lake at the point on the mean high water mark nearest to 36°22.189'S, 150°04.781'E,
- (d) then generally west along the mean high water mark of the southern bank of Wallaga Lake to 36°21.549'S, 150°04.502'E (a point near the eastern edge of Wallaga Lake Road),
- (e) then north along the mean high water mark, generally parallel to the eastern edge of Wallaga Lake Road, to the point of commencement,

but not including the Merriwina Creek sanctuary zone as described in Division 2.

Couria Bay habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Couria Bay and its creeks, bays and tributaries upstream of the line between:

- (a) the point on the mean high water mark nearest to 36°20.649'S, 150°03.187'E, on the eastern shore of Couria Bay, and
- (b) the point on the mean high water mark nearest to 36°20.649'S, 150°03.100'E, on the western shore of Couria Bay.

Meads Bay habitat protection zone

An area bounded as follows:

the whole of the tidal waters and tidal lands to the mean high water mark of Meads Bay and its creeks, bays and tributaries upstream of the line between:

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- (a) the point on the mean high water mark nearest to 36°22.642'S, 150°03.741'E, on the eastern bank of Meads Bay, and
 - (b) the point on the mean high water mark nearest to 36°22.921'S, 150°03.053'E, on the western bank of Meads Bay.

7 Taking of certain plants permitted in habitat protection zones

- (1) Despite clause 11 of this Regulation, a person may take a plant of a species listed in table A, by the method of hand picking (whether or not while wearing a glove), for recreational purposes, in a habitat protection zone of the marine park.
- (2) Despite clause 11 of this Regulation, a person may take marine seaweed (in quantities not exceeding 20 litres per person per day), for recreational purposes, from above the mean low water mark on a beach in a habitat protection zone of the marine park.
Note. Clause 11 of this Regulation makes it an offence to harm a plant or damage, take or interfere with any part of the habitat in a habitat protection zone except with the consent of the relevant Ministers.
- (3) Despite subclauses (1) and (2), a person must not, while in a habitat protection zone listed in table D, take or attempt to take any plant.

8 Permitted fishing activities

Note. Clause 12 of this Regulation makes it an offence to take or attempt to take fish in a habitat protection zone unless the person is engaging in a permitted fishing activity referred to in that clause. A permitted fishing activity includes the taking of fish by a method that is permitted by the zoning plan for a marine park. This clause sets out such permitted fishing activities (in addition to those described in clause 12).

- (1) Clause 12 (1) of this Regulation (relating to permitted fishing activities) applies to the habitat protection zone of the marine park subject to the provisions of this Part. Accordingly, that subclause is not to be construed as authorising any fishing activity that would contravene this clause.
- (2) Subject to clause 9 of this Part, the following fishing activities are permitted in a habitat protection zone of the marine park:
 - (a) **Netting—general**
The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of one of the following nets, if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*:
 - (i) push or scissors net (prawns),

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(ii) hoop or lift net.

(b) **Haul netting**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a hauling net (general purpose) or a pilchard, anchovy and bait net (hauling), if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*, but only from the beaches set out in table C.

(c) **Garfish net**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a garfish net (bullringing), if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*, but only from water not within an estuary.

(d) **Hand-hauled prawn netting**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a hand-hauled prawn net, if the use of the net to take that fish is lawful under the *Fisheries Management Act 1994*, but only in the following habitat protection zones:

- (i) the Tomaga River habitat protection zone,
- (ii) the Tuross Lake and River habitat protection zone,
- (iii) the Lake Brunderee habitat protection zone,
- (iv) the Lake Dalmeny (Mummaga Lake) habitat protection zone,
- (v) the Little Lake (south) habitat protection zone.

(e) **Fish and lobster trapping**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of a fish trap or lobster trap, if the use of the trap to take that fish is lawful under the *Fisheries Management Act 1994*.

(f) **Eel and crab trapping**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by use of an eel trap or crab trap, if the use of the trap to take that fish is lawful under the *Fisheries Management Act 1994*.

(g) **Collecting**

The taking of any fish of a kind that may lawfully be taken in the habitat protection zone by hand picking (within the meaning of the *Estuary General Share Management Plan*,

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as set out in the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*), if the use of that method to take that fish is lawful under the *Fisheries Management Act 1994*.

Note. The taking of fish in a habitat protection zone of the marine park is subject to the provisions of the *Fisheries Management Act 1994* and the regulations under that Act. Part 3 of the *Fisheries Management (General) Regulation 2002* also sets out requirements in relation to the lawful use of fishing gear such as traps and nets.

9 Prohibited fishing activities

Note.

- 1 Clause 12 (2) of this Regulation makes it an offence to take or attempt to take fish while in a habitat protection zone of the marine park unless the person complies with any restrictions imposed on that activity by the zoning plan for the marine park. This clause imposes such restrictions.
 - 2 Clause 12 (3) of this Regulation provides that a person does not commit an offence under clause 12 for anything done with the consent of the relevant Ministers.
 - 3 Clause 21 of this Part sets out various general fishing prohibitions.
- (1) A person must not, while in a habitat protection zone of the marine park, take or attempt to take any fish of a species not listed in table B.
 - (2) A person must not, while in the Shallow Crossing habitat protection zone, take or attempt to take fish between 1 May and 30 November in any year (both dates inclusive).
 - (3) A person must not, while in the Handkerchief Beach habitat protection zone, take or attempt to take fish unless the person does so:
 - (a) for recreational purposes only, and
 - (b) while situated on the shore.
 - (4) A person must not, while in the Montague Island (Inner) habitat protection zone, take or attempt to take fish between 1 November and 30 April in any year (both dates inclusive) by use of the following methods:
 - (a) a fishing line rigged with bait,
 - (b) a wire trace line,
 - (c) any net (other than a landing net),
 - (d) any method carried out from a vessel at anchor.

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- (5) A person must not, while in a habitat protection zone set out in table D, take or attempt to take invertebrate fish by hand picking (within the meaning of the *Estuary General Share Management Plan*, as set out in the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*).

10 Aquaculture

Despite clause 13 of this Regulation, aquaculture is not permissible in a habitat protection zone of the marine park, except within the leased area of any class 1 lease within the meaning of the *Fisheries Management (Aquaculture) Regulation 2002*.

11 Oyster depuration

Despite clause 11 of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in a habitat protection zone of the marine park if the oyster depuration is carried out in accordance with the *Food Act 2003*.

Division 4 Special purpose zones**12 Description of special purpose zones**

The special purpose zones of the marine park are comprised of the following areas:

Murramarang Coast special purpose zone

An area bounded as follows:

- (a) commencing on Island Beach at the point the mean high water mark intersects latitude 35°34.698'S (at or about longitude 150°21.387'E),
- (b) then due east to 35°34.698'S, 150°21.916'E (a point south of the southern-most extremity of O'Hara Island),
- (c) then generally south-west to 35°36.543'S, 150°20.626'E,
- (d) then due west to the point the mean high water mark intersects latitude 35°36.543'S,
- (e) then generally north-east along the mean high water mark to the point of commencement.

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Batemans Bay special purpose zone

An area bounded as follows:

- (a) commencing at the eastern side of the Batemans Bay bridge at the point on the mean high water mark nearest to 35°42.188'S, 150°10.632'E,
- (b) then generally north for a distance of 50 metres to 35°42.175'S, 150°10.658'E,
- (c) then along a line parallel to, but 60 metres seaward of, the mean high water mark generally south-east to 35°43.131'S, 150°12.002'E,
- (d) then generally south to 35°43.205'S, 150°11.976'E,
- (e) then generally west to the southern shore of Batemans Bay at the point on the mean high water mark nearest to 35°43.158'S, 150°11.849'E,
- (f) then generally north-west along the mean high water mark to the point of commencement.

Mill Bay Boat Ramp special purpose zone

An area bounded as follows:

- (a) commencing on the western shore of Mill Bay (on the north side of Wagonga Inlet) on the mean high water mark at 36°12.451'S, 150°07.484'E,
- (b) then due east to 36°12.451'S, 150°07.514'E,
- (c) then due south to 36°12.544'S, 150°07.514'E,
- (d) then due west to 36°12.544'S, 150°07.262'E,
- (e) then due north to the point on the mean high water mark nearest to 36°12.513'S, 150°07.262'E,
- (f) then generally north-east along the mean high water mark of the northern bank of Wagonga Inlet to the point of commencement.

Narooma Wharf special purpose zone

An area bounded as follows:

- (a) commencing on the western edge of Narooma Town Wharf at 36°12.897'S, 150°07.835'E,
- (b) then generally north-east for a distance of approximately 30 metres to 36°12.885'S, 150°07.842'E,
- (c) then generally south-east to the point on the mean high water mark nearest to 36°12.951'S, 150°08.005'E,

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- (d) then following the mean high water mark generally west to the point of commencement.

Forsters Bay special purpose zone

An area bounded as follows:

- (a) commencing on the southern bank of Wagonga Inlet (on the eastern bank of Forsters Bay) at the point on the mean high water mark nearest to 36°12.696'S, 150°07.357'E,
- (b) then generally south along the mean high water mark to the point on the mean high water mark nearest to 36°13.387'S, 150°07.326'E,
- (c) then due north to 36°13.326'S, 150°07.325'E (a point approximately 100 metres from the mean high water mark),
- (d) then generally north along a line parallel to, but 100 metres seaward of, the mean high water mark of the eastern bank of Forsters Bay, to 36°12.639'S, 150°07.331'E,
- (e) then generally east to the point of commencement.

Snake Island special purpose zone

An area bounded as follows:

- (a) commencing at the point the mean high water mark on the southern shore of Wallaga Lake intersects latitude 36°21.369'S (at or about longitude 150°02.139'E),
- (b) then generally south-west along the mean high water mark of the southern shore of Wallaga Lake to the point the mean high water mark on the southern shore of Wallaga Lake intersects latitude 36°21.620'S (at or about longitude 150°01.546'E),
- (c) then generally north-east to the western tip of Snake Island at the point the mean high water mark on the western tip of Snake Island intersects latitude 36°21.574'S (at or about longitude 150°01.604'E),
- (d) then generally east along the mean high water mark of the southern side of Snake Island to the point the mean high water mark on the eastern tip of Snake Island intersects latitude 36°21.381'S (at or about longitude 150°02.106'E),
- (e) then generally east to the point of commencement.

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Class 1 special purpose zone

An area comprised of the following areas:

- (a) the leased area of any class 1 lease, within the meaning of the *Fisheries Management (Aquaculture) Regulation 2002*, in force immediately before the commencement of this Part that is bounded by a sanctuary zone of the marine park, and
- (b) any priority oyster aquaculture area, within the meaning of the *NSW Oyster Industry Sustainable Aquaculture Strategy* as adopted by *State Environmental Planning Policy No 62—Sustainable Aquaculture*, that is bounded by a sanctuary zone of the marine park.

13 Special purpose zones—objects

- (1) The object of the Murramarang Coast special purpose zone is to provide a high level of biodiversity conservation whilst allowing for the sustainable commercial harvest of abalone in areas of critical importance to the abalone fishery in the marine park.
- (2) The object of the Batemans Bay, Mill Bay Boat Ramp, Narooma Wharf and Forsters Bay special purpose zones is to provide for foreshore and maritime facilities and infrastructure in Batemans Bay and Narooma.
- (3) The object of the Snake Island special purpose zone is to provide for traditional Aboriginal use.
- (4) The object of the Class 1 special purpose zone is to provide for the management of the kinds of aquaculture in respect of which a Class 1 lease may be granted under the *Fisheries Management (Aquaculture) Regulation 2002*.

Note. Clauses 18A and 18B of this Regulation create offences relating to the taking or harming of plants, animals, fish and other materials in a special purpose zone.

14 Special purpose zones—fishing

- (1) A person must not, while in the Murramarang Coast special purpose zone, take or attempt to take fish.
- (2) Despite subclause (1), the harvesting, in the course of commercial fishing, of abalone is permitted in the Murramarang Coast special purpose zone.

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- (3) A person must not, while in the Batemans Bay, Mill Bay Boat Ramp, Narooma Wharf or Forsters Bay special purpose zone, take or attempt to take fish unless the taking of that species of fish by the method used is permitted in a zone that adjoins the special purpose zone concerned.
 - (4) A person must not, while in the Snake Island special purpose zone, take or attempt to take fish.
 - (5) A person must not, while in any area within the Class 1 special purpose zone that is the subject of an aquaculture lease and adjoins a sanctuary zone, take or attempt to take fish.

15 Aquaculture in Class 1 special purpose zone

Despite clause 18C of this Regulation, a person may carry out aquaculture in the Class 1 special purpose zone in accordance with a permit issued under the *Fisheries Management Act 1994*.

16 Oyster depuration

Despite clause 18A of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in a special purpose zone of the marine park if the oyster depuration is carried out in accordance with the *Food Act 2003*.

Division 5 General use zone**17 Description of general use zone**

The general use zone of the marine park is comprised of all parts of the marine park that are not included in a sanctuary zone, a habitat protection zone or a special purpose zone.

18 Oyster depuration

Despite clause 15 of this Regulation, a person may carry out oyster depuration (other than the operation of a depuration tank) in the general use zone of the marine park if the oyster depuration is carried out in accordance with the *Food Act 2003*.

19 Taking of certain plants permitted in general use zone

- (1) Despite clause 15 of this Regulation, a person may take a plant of a species listed in table A, by the method of hand picking (whether or not while wearing a glove), for recreational purposes, in the general use zone of the marine park.

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- (2) Despite clause 15 of this Regulation, a person may take marine seaweed (in quantities not exceeding 20 litres per person per day), for recreational purposes, from above the mean low water mark on a beach in the general use zone of the marine park.

Note. Clause 15 of this Regulation makes it an offence to harm a plant or damage, take or interfere with any part of the habitat in the general use zone except with the consent of the relevant Ministers.

20 Fishing permitted in general use zone

- (1) A person must not take, or attempt to take, fish in the general use zone of the marine park unless the taking of the fish, and the method used to take the fish, is lawful under the *Fisheries Management Act 1994*.
- (2) This clause is subject to the other provisions of this Regulation. Accordingly, this clause is not to be construed as authorising any fishing activity that would contravene another provision of this Regulation.

Note. Division 6 of this Part sets out some general restrictions on fishing in the marine park. Those provisions apply to the general use zone.

Division 6 General permissions and prohibitions**21 Fishing prohibitions**

- (1) A person must not, while in the marine park, take or attempt to take fish by trawling.
- (2) A person must not, while in the marine park, take or attempt to take fish by use of a wire trace line unless the line is a hand held line.
- (3) A person must not, while in the marine park, take or attempt to take fish by use of a line that has more than 6 hooks attached.
- (4) A person must not, while in the marine park, take or attempt to take fish by use of a dredge or any device similar to a dredge (excluding any instrument used in the course of hand picking within the meaning of the *Estuary General Share Management Plan*, as set out in the *Fisheries Management (Estuary General Share Management Plan) Regulation 2006*).
- (5) This clause has effect despite any other provision of this Regulation.

22 Taking fish or plants for aquarium collection prohibited

- (1) A person must not, while in any part of the marine park, take or attempt to take any fish or plant for aquarium collection purposes.

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- (2) A person does not commit an offence in respect of a contravention of subclause (1) if:
- (a) the fish or plant the subject of the charge was taken while in a habitat protection zone or general use zone, and
 - (b) the activity was carried out with the consent of the relevant Ministers.

23 Collection of no more than 10 kg of shell and shell grit

- (1) Despite any other provision of this Regulation, a person may collect no more than 10 kilograms of shell or shell grit for recreational purposes while in any of the following zones:
- (a) a habitat protection zone,
 - (b) the general use zone,
 - (c) a special purpose zone that adjoins a habitat protection zone or the general use zone,
- but only if any shell collected is not living and is not occupied by any living animal.
- (2) Nothing in this clause permits a person to collect shell or shell grit in any part of a national park, national reserve or Aboriginal area dedicated or reserved under the *National Parks and Wildlife Act 1974*.

24 Collection of seaweed

A person must not, while in the marine park, take seaweed from a beach that is, or is part of, a nature reserve, national park or Aboriginal area dedicated or reserved under the *National Parks and Wildlife Act 1974* except with the consent of the relevant Ministers.

25 Permits not required for 12 months after commencement of zoning plan

A person does not commit an offence against clause 24 of this Regulation if the person carries out an activity described in clause 24 (1) (a) or (b) in the marine park without the consent of the relevant Ministers within 12 months after the commencement of this Part.

Note. Clause 24 (1) of this Regulation makes it an offence to sell or hire any thing or service or conduct any activity for money in a marine park, except with the consent of the relevant Ministers. Clause 24 (2) excludes commercial fishing from the prohibition.

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Division 7 Species protection

26 Identification of protected species

- (1) For the purposes of clause 22A of this Regulation, any species of fish:
 - (a) not listed in table B, or
 - (b) the taking or harming of which is prohibited under section 19 or 220ZA of the *Fisheries Management Act 1994*,
is identified as a protected species for the purposes of the marine park.
Note. Clause 22A of this Regulation prohibits a person in a marine park from taking or harming, or attempting to take or harm, any species identified in a zoning plan as a protected species. A contravention of that prohibition is designated as a serious offence.
- (2) Despite subclause (1), cunjevoi (*Pyura stolonifera*) is not a protected species.

Division 8 Domesticated animals

27 Restrictions on domesticated animals

Despite clause 22 (1) of this Regulation, a person may bring a domesticated animal into the following parts of the marine park:

- (a) tidal lands of the marine park if those tidal lands are not directly seaward of:
 - (i) a nature reserve, national park or Aboriginal area dedicated or reserved under the *National Parks and Wildlife Act 1974*, or
 - (ii) a place in which the animal is prohibited under the *Companion Animals Act 1998*,
- (b) waters of the marine park that are not part of a nature reserve or national park dedicated or reserved under the *National Parks and Wildlife Act 1974* if the animal remains confined to a vessel,
- (c) tidal lands of the marine park that are directly seaward of a nature reserve, national park or Aboriginal area dedicated or reserved under the *National Parks and Wildlife Act 1974* if permitted under a plan of management under that Act.

Note. Clause 22 of this Regulation makes it an offence, subject to certain exceptions, to bring a domesticated animal into a marine park except with the consent of the relevant Ministers.

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Division 9 Use, mooring and anchoring of vessels and vehicles

Note. Clause 27 of this Regulation makes it an offence to use, anchor or moor any vessel or motorised vehicle in a marine park in contravention of the zoning plan for the marine park.

28 Anchoring within a sanctuary zone

- (1) Despite clause 9 (1) of this Regulation, a person may anchor a vessel within a sanctuary zone of the marine park.
- (2) A person who is anchoring, or has anchored, a vessel within a sanctuary zone must not cause or allow the anchor or any other part of the vessel or its gear to come into contact with a seagrass bed.
- (3) It is a defence to a prosecution for an offence in respect of a contravention of subclause (2) if the person charged satisfies the court that the person took all reasonable steps to satisfy himself or herself that no part of the vessel or its gear would come into contact with a seagrass bed.

29 Areas in which use of vehicles prohibited

- (1) A person must not use a motorised vehicle in the marine park, except for the purpose of launching or retrieving a vessel from a designated boat-launching facility.
- (2) This clause does not apply to or in respect of the following:
 - (a) an authorised vehicle, a police vehicle or an emergency vehicle,
 - (b) a person who has been issued with a permit by the council of an area (within the meaning of the *Local Government Act 1993*) that adjoins the marine park, authorising the use of a motorised vehicle and who is using the vehicle in accordance with that permit,
 - (c) a commercial fisher using the vehicle in the course of commercial fishing.
- (3) In this clause:

authorised vehicle means a vehicle being used by an officer, employee or other authorised person acting on behalf of any of the following:

 - (a) a regulatory authority,
 - (b) any other government department or public or local authority,
 - (c) a surf life saving club.

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designated boat-launching facility means a facility in the marine park designated by the Authority or another relevant government department or public or local authority as appropriate for boat-launching.

emergency vehicle has the meaning given by the *Road Transport (Vehicle Registration) Regulation 1998*.

police vehicle has the meaning given by the *Road Transport (Vehicle Registration) Regulation 1998*.

Note. Clause 27 of this Regulation makes it an offence to use any motorised vehicle in a marine park in contravention of the zoning plan for the marine park.

Division 10 Tables**Table A—Plants that may be taken in habitat protection zones**

Common name	Class/Family	Species
Sea lettuce	Family Ulvaceae	<i>Ulva lactuca</i>
Bait weed	Family Ulvaceae	<i>Enteromorpha intestinalis</i>

Table B—Fish that may be taken in habitat protection zones

Common name	Class/Family	Species
Finfish	Class Osteichthyes	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Gummy sharks, school sharks	Family Triakidae	<i>Mustelus antarticus</i> , <i>Galeorhinus galeus</i>
Eastern rock lobsters, southern rock lobsters	Family Palinuridae	<i>Jasus verreauxi</i> , <i>Jasus edwardsii</i>
Prawns	Family Penaeidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Octopus	Family Octopodidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Squid, cuttlefish	Family Sepiidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)

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Common name	Class/Family	Species
Arrow squid, southern calamari	Family Loliginidae	<i>Nototodarus gouldi</i> , <i>Sepioteuthis australis</i>
Commercial scallops, doughboy scallops	Family Pectinidae	<i>Pecten fumatus</i> , <i>Chlamys asperrimus</i>
Blue mussels	Family Mytilidae	<i>Mytilus planulatus</i>
Sydney cockles	Family Arcidae	<i>Anadara trapezia</i>
Mud oysters	Family Osteridae	<i>Ostrea angasi</i>
Sea urchins	Class Echinoidea	<i>Centrostephanus rogersii</i> , <i>Heliocidaris erythrogramma</i>
Beach worms	Family Onuphidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Ghost shrimp, marine yabbies (nippers)	Family Callianassidae	<i>Callianassa</i> spp.
Mud crabs, blue swimmer crabs	Family Portunidae	<i>Scylla serrata</i> , <i>Portunus pelagicus</i>
Rock crabs	Family Grapsidae	All species
Oysters	Family Ostreidae	<i>Saccostrea</i> spp., <i>Crassostrea</i> spp.
Pipis	Family Donacidae	All species (except any specified in Schedule 4 to the <i>Fisheries Management Act 1994</i>)
Turban shell	Family Turbinadae	<i>Turbo</i> spp.
Abalone	Family Haliotidae	<i>Haliotis rubra</i>
Periwinkles	Family Trochidae	<i>Austrocochlea</i> spp.
Bloodworms	Family Opheliidae	<i>Armandia</i> spp.

Note. Bag and size limits apply and are specified in the *Fisheries Management Act 1994*.

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Table C—Designated beaches in which hauling is permitted in habitat protection zones

Long Beach

Wimbie Beach

Rosedale Beach

Barlings Beach

All beaches along the coast that are between Mullimburra Point and the mouth of Meringo Lake

Shark Bay Beach between Broulee Island and Broulee Head

Maloneys Beach (east of Long Beach in Batemans Bay)

Tuross Beach

Table D—Habitat protection zones in which handpicking is prohibited

Meringo-Mullimburra Point habitat protection zone

Black Bream Point habitat protection zone

Clarks Bay habitat protection zone

Freshwater Bay habitat protection zone

Wagonga Head habitat protection zone

Handkerchief Beach habitat protection zone



New South Wales

Native Vegetation Amendment Regulation 2007

under the

Native Vegetation Act 2003

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Native Vegetation Act 2003*.

IAN MACDONALD, M.L.C.,
Minister for Natural Resources

Explanatory note

Under the *Native Vegetation Act 2003*, the clearing of native vegetation is permitted to be carried out without the authority of a development consent or property vegetation plan if it is done for routine agricultural management activities. The object of this Regulation is to extend routine agricultural management activities to include the construction, operation or maintenance of certain infrastructure by local or county councils. The Regulation also updates the Assessment Methodology approved by the Minister for the purpose of assessing broadscale clearing.

This Regulation is made under the *Native Vegetation Act 2003*, including sections 11 (2), 28 (g) and 51 (the general regulation-making power).

Clause 1 Native Vegetation Amendment Regulation 2007

Native Vegetation Amendment Regulation 2007

under the

Native Vegetation Act 2003

1 Name of Regulation

This Regulation is the *Native Vegetation Amendment Regulation 2007*.

2 Amendment of Native Vegetation Regulation 2005

The *Native Vegetation Regulation 2005* is amended as set out in Schedule 1.

Native Vegetation Amendment Regulation 2007

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 2)

[1] Clause 3 Definitions

Insert in alphabetical order:

council means a council, or a county council, within the meaning of the *Local Government Act 1993*.

managed area means an area of land set aside by a council for the purposes of protecting native vegetation in connection with a routine agricultural management activity as referred to in clause 18A.

[2] Clause 9 Content of PVPs

Insert at the end of clause 9 (1) (i):

, and

- (j) include details of any other proposals for the protection and management of native vegetation provided for by the PVP, whether or not financial incentives have been or are to be provided.

[3] Clause 9 (2)

Omit “or (i)”. Insert instead “, (i) or (j)”.

[4] Clause 18A

Insert after clause 18:

18A Infrastructure works by councils

- (1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the construction, operation or maintenance of any of the following (referred to in this clause as *infrastructure works*) by a council:
 - (a) sewerage treatment works,
 - (b) waste disposal landfill operations,
 - (c) waste management facilities,
 - (d) water supply works,
 - (e) gravel pits,
 - (f) cemeteries.

Native Vegetation Amendment Regulation 2007

Schedule 1 Amendments

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- (2) This clause authorises the clearing of native vegetation only if:
- (a) the clearing is, in each case, limited to a single area of land of no more than 2 hectares, and
 - (b) the native vegetation does not comprise (or is not likely to comprise):
 - (i) a threatened species, or a component of a threatened population or threatened ecological community, under the *Threatened Species Conservation Act 1995*, or
 - (ii) habitat of threatened species, populations or ecological communities of fish under the *Fisheries Management Act 1994*, and
 - (c) the native vegetation does not comprise an overcleared vegetation type as determined in accordance with the Assessment Methodology, and
 - (d) the catchment management authority (*CMA*) for the area of operations in which the relevant areas are situated is satisfied that arrangements are in place to ensure that the native vegetation on the managed area set aside by the council in connection with the routine agricultural management activity will be protected in perpetuity.
- (3) Before any clearing that is authorised by this clause is carried out, the council must:
- (a) provide detailed information to the *CMA* of:
 - (i) the alternative areas of land on which the infrastructure works could be constructed, operated or maintained, and
 - (ii) the proposed managed area (including the means by which it will be protected), and
 - (b) consult with the *CMA* as to the following:
 - (i) the location of the relevant areas,
 - (ii) the presence of any overcleared vegetation types in the relevant areas,
 - (iii) the presence of any threatened species, populations or ecological communities (including in relation to fish) in the relevant areas, and
 - (c) provide to the *CMA* the Global Positioning System (*GPS*) coordinates, and a statement of the location and size (expressed in hectares), of the relevant areas, and

Native Vegetation Amendment Regulation 2007

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- (d) provide evidence to the CMA that all approvals or licences required under relevant legislation for the construction, operation or maintenance of the infrastructure works have been obtained, and
 - (e) obtain from the CMA a statement in writing to the effect that the managed area proposed is appropriate and that it is satisfied as to the arrangements referred to in subclause (2) (d).
- (4) The Minister is to make publicly available on the Internet the following information as to the clearing authorised under this clause:
- (a) the name of the council involved,
 - (b) the type of infrastructure works involved,
 - (c) the Global Positioning System (**GPS**) coordinates, and a statement of the location and size (expressed in hectares), of the relevant areas,
 - (d) the means by which the relevant managed area set aside by the council is to be protected.
- (5) Subclauses (2) (b) and (c) and (3) (a) (i) and (b) do not apply if:
- (a) the area of land on which the infrastructure works are to be constructed, operated or maintained was owned by the council on or before 31 August 2006, and
 - (b) that area was identified, on or before 31 August 2006, by the council as the area of land on which the infrastructure works are to be constructed, operated or maintained, and
 - (c) the council provides evidence to the CMA of any such ownership and identification.
- (6) In this clause, the *relevant areas* means:
- (a) the area of land on which the infrastructure works are to be constructed, operated or maintained, and
 - (b) the area of land that is to be cleared, and
 - (c) the area of land comprising the managed area.

Native Vegetation Amendment Regulation 2007

Schedule 1 Amendments

[5] Clause 24 Adoption of Minister's Assessment Methodology

Omit clause 24 (2). Insert instead:

(2) In this Part:

Assessment Methodology means the methodology titled *Environmental Outcomes Assessment Methodology* approved by the Minister for the purpose of providing a methodology for assessing and determining whether proposed broadscale clearing will improve or maintain environmental outcomes, as in force and as published in the Gazette on 2 March 2007.



New South Wales

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

under the

Pawnbrokers and Second-hand Dealers Act 1996

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pawnbrokers and Second-hand Dealers Act 1996*.

DIANE BEAMER, M.P.,
Minister for Fair Trading

Explanatory note

The object of this Regulation is to amend the *Pawnbrokers and Second-hand Dealers Regulation 2003* (*the Principal Regulation*):

- (a) to prescribe global positioning system equipment as a class of goods for the purposes of the definition of *second-hand goods* in the *Pawnbrokers and Second-hand Dealers Act 1996* (*the Act*), and
- (b) to clarify requirements of the Principal Regulation relating to the making and keeping of records and the tagging of goods, and
- (c) to correct some minor errors in a form prescribed by the Principal Regulation, and
- (d) to provide an exemption in particular circumstances from a requirement for second-hand goods to be retained by licensees, and
- (e) to prescribe the Commissioner for Fair Trading as an officer whose certification of the number of demerit points that have accrued to a licensee for offences prescribed by the Principal Regulation is to be taken as evidence, in any proceedings, of the particulars certified, and
- (f) to remove the allocation of a demerit point for an offence under section 14 of the Act (which relates to the display of prescribed information by the holder of a licence under that Act), and

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

Explanatory note

- (g) to prescribe additional offences under the Act as offences for which penalty notices may be issued and allocate demerit points for some of those additional offences, and
- (h) for the purposes of minor law revision.

This Regulation is made under the *Pawnbrokers and Second-hand Dealers Act 1996*, including sections 3, 11 (2), 15, 16, 21, 26, 27, 28 and 43 (the general regulation-making power).

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

Clause 1

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

under the

Pawnbrokers and Second-hand Dealers Act 1996

1 Name of Regulation

This Regulation is the *Pawnbrokers and Second-hand Dealers Amendment Regulation 2007*.

2 Amendment of Pawnbrokers and Second-hand Dealers Regulation 2003

The *Pawnbrokers and Second-hand Dealers Regulation 2003* is amended as set out in Schedule 1.

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 2)

[1] Clause 5 Meaning of “second-hand goods”

Insert after clause 5 (1) (n):

- (o) global positioning system equipment.

[2] Clauses 11 and 11A

Omit clause 11. Insert instead:

11 Records generally

- (1) Records that are required to be kept for the purposes of the Act must be kept:
 - (a) if they are records to which a licence condition under clause 11A applies, in the form required by that condition, or
 - (b) if they are other records, electronically or in a bound (not loose-leaf) book.
Note. Clause 12 enables a licence to be issued or renewed, in some circumstances, without a condition of the kind referred to in clause 11A.
- (2) Any such records must:
 - (a) be in the English language, and
 - (b) have consecutively numbered pages, and
 - (c) permanently record the date on which each record was first compiled and the date on which each entry was made, and
 - (d) include the contract number referred to in clause 13 (1) (c) and (2) (c) for each item taken in trade or pawn.
- (3) Despite subclause (1) and any condition imposed on a licence under clause 11A:
 - (a) any hard copy of a written statement as to the ownership of goods obtained from a customer under clause 18 (4) may be kept in loose-leaf form, and
 - (b) any hard copy of the record of an agreement by which goods were pawned under section 28 of the Act may be kept in loose-leaf form so long as the record includes the contract number referred to in clause 13 (1) (c) and (2) (c) for each item taken in pawn and is kept in order of contract number.

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

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11A Licence condition about record creation and storage

The Director-General is to require the licensee, by way of a condition of the licence, to use electronic means of creation and storage of records kept for the purposes of section 16, 28 or 29A of the Act using software specified, or of a kind specified, in the condition.

[3] Clause 12 Special provisions relating to keeping of records by certain licensees

Omit “clause 11 (2)” from clause 12 (2). Insert instead “clause 11A”.

[4] Clause 18 Evidence of identity and title of supplier of goods

Omit “on A4 double-sided paper” from clause 18 (4) (b).

[5] Clause 18A Contract or stock number to be reproduced on tag, label or other attachment

Insert “that is attached on the day on which the item is taken in trade or pawn” after “to the item” in clause 18A (1).

[6] Clause 19 Retention of goods by licensee

Insert after clause 19 (1) (b):

- (ba) goods purchased by the licensee from another licensee if before the purchase the goods have already been kept by the other licensee for any period for which the other licensee was required to keep them by section 21 of the Act or any notice under that section, or

[7] Clause 23 Pawnbroker’s record of pledges

Insert at the end of clause 23 (1) (a):

Note. The expression “compact (laser-read) disc” includes compact discs, digital video discs (DVDs) and mini discs—see clause 5 (1) (i).

[8] Clause 30

Omit the clause. Insert instead:

30 Certification of number of demerit points

For the purposes of section 27 (6) of the Act, the Commissioner for Fair Trading, Department of Commerce is a prescribed officer.

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

Schedule 1 Amendments

[9] Schedule 1 Forms

Omit Form 3. Insert instead:

Form 3 Pawnbrokers and Second-hand Dealers Act 1996

(Clause 23A of Pawnbrokers and Second-hand Dealers Regulation 2003)

Notice to person pawning goods

Note. The information contained in this notice is to be treated only as a guide to your rights and obligations. In order to fully ascertain your legal rights and obligations you should refer to the relevant legislation.

Pawn ticket

- (1) You must sign an original record of your pawn agreement that contains all the required information.
- (2) You must be given a copy of this record (a pawn ticket) and this ticket must include the following information:
 - (a) The total amount lent on the goods.
 - (b) The date the pawn was made and the agreement signed.
 - (c) The date that the redemption period ends.
 - (d) If the goods consist of more than one item, whether or not the items can be separately redeemed.
 - (e) The interest that you will be charged and the fees and charges that you will or may have to pay including any that may be deducted from the sale of your goods and how those fees and charges are calculated. Note that the interest rate and the fees and charges must not be more than those that are displayed on a sign in the pawnbroking shop.
 - (f) The equivalent annual interest rate.
 - (g) How often interest will be charged with an option to pay interest monthly if you want to.
 - (h) The address of where the goods will be kept during the redemption period.
 - (i) A fair and reasonable description of your goods, including serial numbers or other identifying numbers of every component.
 - (j) The name and residential address of the owner of the goods and any agent through whom they are pawned.
 - (k) By what method your goods may be sold if you were not to redeem them, for example, sold on the shelf or by auction at the pawnbroking shop or sold by auction at other premises.

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

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Schedule 1

Redemption of goods

- (1) You may reclaim the goods that you have pawned by paying the outstanding amount of the loan, and any interest due and any fees and charges payable, as stated on your pawn ticket. You must also produce your pawn ticket to the pawnbroker and reproduce the signature on the ticket. If you have lost your ticket, you can provide evidence of your identity and a declaration that you are the owner of the goods instead. If you wish an agent to collect the goods on your behalf they will need an authorisation from you or evidence that you are unable to collect the goods yourself or provide an authorisation.
- (2) You may reclaim the goods at any time before the pawnbroker sells or disposes of them, even if the period of the loan has passed. The pawnbroker cannot charge interest after the end of the loan period but may charge you a safekeeping fee (this must be on your pawn ticket). This safekeeping fee cannot be more than that stated on the pawn ticket and the sign in the pawnbroking shop.

Period of loan and payments

- (1) The pawnbroker must provide you with a minimum 3-month loan period. The period of the loan commences on the day the goods are pawned.
- (2) You have a right to pay your interest charges on a monthly basis, the interest does not all have to be paid at the end of the loan period and you can make an interest payment to the pawnbroker at any time during business hours.
- (3) Any person may make an interest payment on your behalf.

Lost or stolen pawn ticket

If the pawn ticket is lost or stolen you have a right to redeem the goods if you give the pawnbroker proof of your identity and:

- (a) a declaration stating that you are the owner of the goods, or
- (b) an authority from the owner to collect the goods, or
- (c) reasonable evidence of the owner's death, incapacity or inability to sign an authority.

Sale of unredeemed goods and payment of surplus

The following provisions apply if the period of the loan expires and you have not reclaimed the pawned goods:

- (a) The pawnbroker must, if the loan is greater than \$50, offer the goods for sale as soon as possible in a way that will get the best price possible.
- (b) The only fees and charges that may be taken off the price paid for the goods are those that are stated on your pawn agreement (these must also be shown on a sign in the pawnbroking shop).

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

Schedule 1 Amendments

-
- (c) If the goods are sold for more than the loan and any interest or charges payable, then that excess money (or surplus) is payable to you. It is your right to collect that money within 12 months of the sale.
 - (d) If there is a surplus which is greater than \$50, then not more than 21 days after the goods are sold the pawnbroker must send you a notice (unless you have requested the pawnbroker not to send you a notice) stating that the goods have been sold and there is a surplus due to you and that you have 12 months to collect it.
 - (e) The pawnbroker, an employee of the pawnbroker or a person acting on behalf of a pawnbroker cannot buy the goods. If they do so they will not have legal ownership of the goods.

Pawn agreement cannot be varied other than to extend

- (1) You and the pawnbroker cannot vary the original agreement to pawn your goods other than to extend the loan period (this can be done even if the original loan period has already finished).
- (2) You must sign the agreement to extend and be provided with a copy of that agreement. The copy must:
 - (a) include a reference to the original agreement and state the date the extension agreement is made and what the new redemption period is, and
 - (b) state any new fees, charges or interest payable as a result of the extension agreement and include the date on which the extension agreement was entered into.

What happens if the pawnbroking shop closes or the pawnbroker sells the business?

- (1) If the pawnbroker sells the pawnbroking shop, the pawnbroker must write to you within 14 days of the sale, at the address that you have supplied, and notify you as to who has bought the business and will be in charge of the pawn.
- (2) If a pawnbroker surrenders the pawnbroker's licence, the Office of Fair Trading may require the pawnbroker to advise you as to where you can redeem your goods.

[10] Schedule 2 Penalty notice offences and demerit points

Omit the matter relating to section 14 of the Act from Column 3 of the Schedule.

Insert instead "Nil".

[11] Schedule 2

Omit the matter relating to section 30 (2) of the Act.

Pawnbrokers and Second-hand Dealers Amendment Regulation 2007

Amendments

Schedule 1

[12] Schedule 2

Insert in appropriate order in Columns 1, 2 and 3, respectively, in the matter relating to the Act:

Section 12B (2)	300	2
Section 29A (11)	300	2
Section 29B (2)	500	2
Section 30 (1)	300	2
Section 30 (3)	300	2
Section 31A (1)	500	2
Section 32C	300	Nil
Section 32L	300	Nil

[13] Schedule 4 Amendment of this Regulation

Omit the Schedule.



New South Wales

Police Amendment (Promotion Reviews) Regulation 2007

under the

Police Act 1990

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Police Act 1990*.

JOHN WATKINS, M.P.,
Minister for Police

Explanatory note

The amendments made to the *Police Act 1990* and the *Police Regulation 2000* by the *Police Amendment (Police Promotions) Act 2006* implemented a new promotion and appointment system for police officers (other than constables and executive officers) based on selection for, and appointment from, promotion lists for particular ranks or grades within ranks. An integral part of the new promotion system involves persons attempting and successfully completing certain eligibility requirements for placement on a promotion list. The eligibility requirements comprise pre-qualifying assessments, promotion examinations, management performance reviews and eligibility programs.

The object of this Regulation is to make provision for the reviewing of a person's performance (or of a person's results) in relation to the eligibility requirements for placement on a promotion list. In the case of a pre-qualifying assessment, a promotion examination or an eligibility program, the review will be conducted by the Executive Director, Corporate Services, NSW Police Force. In the case of a decision made in relation to a person's management performance review, the review of the decision will be conducted by a Management Performance Review Panel convened by the Executive Director.

The Regulation also provides for a Promotions Review Committee to review decisions as to the ranking of persons on promotion lists. The Review Committee may review a decision made in relation to an eligibility requirement, but only if the person concerned has been disadvantaged by the failure to comply with the procedural requirements at the previous stage of the review process.

The Regulation also provides for a Ministerially appointed person to review decisions to remove or suspend persons from a promotion list on integrity grounds as well as decisions to refuse, on integrity grounds, persons the right to participate in the process to obtain placement on a promotion list.

Police Amendment (Promotion Reviews) Regulation 2007

Explanatory note

This Regulation is made under the *Police Act 1990*, including sections 70 (2) and 219 (the general regulation-making power).

Police Amendment (Promotion Reviews) Regulation 2007

Clause 1

Police Amendment (Promotion Reviews) Regulation 2007

under the

Police Act 1990

1 Name of Regulation

This Regulation is the *Police Amendment (Promotion Reviews) Regulation 2007*.

2 Commencement

This Regulation commences on 2 March 2007.

3 Amendment of Police Regulation 2000

The *Police Regulation 2000* is amended as set out in Schedule 1.

Police Amendment (Promotion Reviews) Regulation 2007

Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Part 2, Division 2D, heading

Omit “and reviews”.

[2] Part 2, Division 2E

Insert after Division 2D:

Division 2E Reviews in relation to promotion lists**Subdivision 1 Preliminary****18O Definitions**

In this Division:

eligibility program means a program relating to a person’s eligibility for placement on a promotion list.*Executive Director* means the Executive Director, Corporate Services, NSW Police Force.*management performance review* means a performance review relating to a person’s eligibility for placement on a promotion list.*pre-qualifying assessment* means an assessment relating to a person’s eligibility for placement on a promotion list.*promotion examination* means an examination relating to a person’s eligibility for placement on a promotion list.*Review Committee* means the Promotions Review Committee established under clause 18Y.*Review Panel* means a Management Performance Review Panel convened under clause 18U.**18P Delegation**

The Executive Director may delegate the exercise of any function of the Executive Director under this Division (other than this power of delegation) to any other member of the NSW Police Force.

Subdivision 2 Pre-qualifying assessments**18Q Review of performance in pre-qualifying assessment**

- (1) A person may apply to the Executive Director for a review of the person’s performance in a pre-qualifying assessment.

Police Amendment (Promotion Reviews) Regulation 2007

Amendments

Schedule 1

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- (2) A person who attempts a pre-qualifying assessment must be advised that the person is entitled to apply for a review of the person's performance in the assessment.
 - (3) The grounds for applying for a review under this clause are limited to the following matters:
 - (a) the assessment process (including matters such as the date and timing of the assessment, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when attempting the assessment),
 - (b) the form and content of the assessment,
 - (c) the mark awarded for the assessment based on the answers or assignment provided by the person.
 - (4) An application for a review under this clause must:
 - (a) be in writing and state the grounds on which the application for review is made, and
 - (b) be made no later than 72 hours after the person is notified of the person's results in the pre-qualifying assessment.
 - (5) However, an application may be made before the person is notified of the person's results.
 - (6) After reviewing the applicant's performance in the pre-qualifying assessment, the Executive Director may:
 - (a) affirm the person's results in the pre-qualifying assessment, or
 - (b) vary the person's results, or
 - (c) allow the person to attempt the pre-qualifying assessment again.
 - (7) The applicant is to be notified in writing of the Executive Director's decision within 72 hours after the Executive Director receives the application for the review. However, failure to notify the applicant within that 72-hour period does not invalidate the Executive Director's decision in relation to the review.
 - (8) Except as provided by clause 18Z (2), the decision of the Executive Director in relation to a review under this clause is final and is not subject to any further review.

Police Amendment (Promotion Reviews) Regulation 2007

Schedule 1 Amendments

Subdivision 3 Promotion examinations**18R Review of performance in promotion examination**

- (1) A person may apply to the Executive Director for a review of the person's performance in a promotion examination.
- (2) A person who attempts a promotion examination must be advised that the person is entitled to apply for a review of the person's results in the examination.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
 - (a) the process of the examination (including matters such as the date and timing of the examination, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when sitting the examination),
 - (b) the form and content of the examination,
 - (c) the mark awarded for the examination based on the answers provided by the person.
- (4) An application for a review under this clause must:
 - (a) be in writing and state the grounds on which the application for review is made, and
 - (b) be made no later than 72 hours after the person is notified of the person's results.
- (5) However, an application may be made before the person is notified of the person's results.
- (6) If an application for a review is made on the ground referred to in subclause (3) (c), the person's examination is to be remarked by 2 independent markers (with the average of those marks being the result of the remark).
- (7) After reviewing the applicant's results in the promotion examination, the Executive Director may:
 - (a) affirm the person's results in the examination, or
 - (b) vary the person's results by adopting the results of the remark under subclause (6), or
 - (c) allow the person to resit the examination.

Police Amendment (Promotion Reviews) Regulation 2007

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- (8) The applicant is to be notified in writing of the Executive Director's decision within 72 hours after the Executive Director receives the application for review. However, failure to notify the applicant within that 72-hour period does not invalidate the Executive Director's decision.
 - (9) Except as provided by clause 18Z (2), the decision of the Executive Director in relation to a review under this clause is final and is not subject to any further review.

Subdivision 4 Management performance reviews**18S Application for review of performance management decision**

- (1) A person who is subject to a management performance review may apply to the Executive Director for a review of any decision made in relation to the management performance review.
- (2) A person who is subject to a management performance review must be advised that the person is entitled to apply for a review of any decision made in relation to the management performance review.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
 - (a) the management performance review process (including matters such as work requirements, the applicant's health and any circumstances that disadvantaged the applicant when undertaking the management performance review),
 - (b) the mark awarded for the management performance review,
 - (c) the calling into question of the applicant's conduct in connection with the management performance review.
- (4) An application for a review under this clause must:
 - (a) be in writing and state the grounds on which the application for review is made, and
 - (b) be made no later than 7 days after the person is given notice of any mark for the management performance review.
- (5) However, an application may be made before the person is given such notice.

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Schedule 1 Amendments

18T Referral of application to Review Panel

The Executive Director is to refer any application under clause 18S to a Review Panel within 48 hours after the Executive Director receives the application.

18U Convening of Management Performance Review Panels

- (1) The Executive Director may convene such number of Management Performance Review Panels as the Executive Director considers appropriate to deal with applications for reviews under this Subdivision.
- (2) A Review Panel consists of the following members:
 - (a) a representative of the Police Association of NSW appointed by the President of the Police Association of NSW,
 - (b) a Superintendent appointed by the Commissioner,
 - (c) a police officer who is a Human Resources Manager and who is appointed by the Executive Director, Human Resources, NSW Police Force as the Chairperson of the Review Panel.
- (3) Subject to this clause, a member of a Review Panel holds office for such period (not exceeding 12 months) as is specified in the member's instrument of appointment, but is eligible for re-appointment.
- (4) Each person who is responsible for appointing a member of a Review Panel may appoint a person as an alternate member to act during the absence or illness of the member concerned. An alternate member has and may exercise, while acting as a member, the functions of the person for whom he or she is the alternate member.
- (5) A member (including any alternate member) may be removed from office at any time by the person who appointed the member.

18V Procedure for conducting review

- (1) The procedure for conducting a review by a Review Panel is, subject to the Act and this Subdivision, to be determined by the Commissioner.
- (2) A review by a Review Panel is not to be conducted by way of a hearing that involves any person appearing before the Review Panel.

Police Amendment (Promotion Reviews) Regulation 2007

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Schedule 1

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- (3) In conducting a review, the Review Panel may consider any information that is relevant to the management performance review concerned.
 - (4) The Chairperson of a Review Panel is to preside at a meeting of the Review Panel.
 - (5) A decision supported by a majority of the votes cast at a meeting of a Review Panel is the decision of the Panel concerned.
 - (6) A person who was involved in a decision the subject of a review may not be a member of the Review Panel considering the decision concerned.

18W Decision of Review Panel

- (1) The Review Panel may, following its review of a decision made in relation to a management performance review:
 - (a) affirm the decision, or
 - (b) vary the decision, or
 - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) The applicant is to be notified in writing of the Review Panel's decision within 72 hours after the decision is made. However, failure to notify the applicant within that 72-hour period does not invalidate the Review Panel's decision.
- (3) Except as provided by clause 18Z (2), the decision of the Review Panel is final and is not subject to review by any person or body.

Subdivision 5 Eligibility programs**18X Review of eligibility program results**

- (1) A person may apply to the Executive Director for a review of the results obtained by the person in an eligibility program.
- (2) A person who undertakes an eligibility program must be advised that the person is entitled to apply for a review of the person's results in the program.
- (3) The grounds for applying for a review under this clause are limited to the following matters:
 - (a) the process of the eligibility program (including matters such as the date and timing of the program, work requirements, the applicant's health and any circumstances that disadvantaged the applicant when undertaking the program),

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Schedule 1 Amendments

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- (b) the form and content of the program,
 - (c) the mark awarded for the program based on the answers or assignments provided by the person.
- (4) An application for a review under this clause must:
- (a) be in writing and state the grounds on which the application for review is made, and
 - (b) be made no later than 7 days after the person is notified of the person's results.
- (5) However, an application may be made before the person is notified of the person's results.
- (6) If an application for a review is made on the ground referred to in subclause (3) (c), the work provided by the person in relation to the eligibility program is to be remarked by 2 independent markers (with the average of those marks being the result of the remark).
- (7) After reviewing the applicant's results in the eligibility program, the Executive Director may:
- (a) affirm the person's results in the program, or
 - (b) vary the person's results by adopting the results of the remark under subclause (6), or
 - (c) allow the person to undertake all or any part of the program again.
- (8) The applicant is to be notified in writing of the Executive Director's decision within 7 days after the Executive Director receives the application for review. However, failure to notify the applicant within the 7-day period does not invalidate the Executive Director's decision.
- (9) Except as provided by clause 18Z (2), the decision of the Executive Director in relation to a review under this clause is final and is not subject to any further review.

Subdivision 6 Promotions Review Committee**18Y Establishment and composition of Promotions Review Committee**

- (1) A Promotions Review Committee is established.
- (2) The Review Committee consists of the following members:
 - (a) an employer representative appointed by the Commissioner,

Police Amendment (Promotion Reviews) Regulation 2007

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- (b) an employee representative appointed by the President of the Police Association of NSW,
 - (c) an independent person appointed by the Minister as the Chairperson of the Promotions Review Committee.
- (3) Subject to this clause, a member of the Review Committee holds office for such period (not exceeding 2 years) as is specified in the member's instrument of appointment, but is eligible for re-appointment.
 - (4) Each person who is responsible for appointing a member of the Review Committee may appoint a person as an alternate member to act during the absence or illness of the member concerned. An alternate member has and may exercise, while acting as a member, the functions of the person for whom he or she is the alternate member.
 - (5) A member (including any alternate member) may be removed from office at any time by the person who appointed the member.

18Z Application for review by Review Committee

- (1) A person may apply to the Review Committee for a review of a decision as to the ranking of the person on a promotion list.
- (2) A person may apply to the Review Committee for a review of a decision in relation to the person's performance in an eligibility requirement, but only on the ground that the person has been disadvantaged by a failure to comply with the procedural requirements at the previous stage of the review process (including, for example, failing to be notified of the decision of the relevant person or body within the required time period).
- (3) An application under this clause:
 - (a) is to be in writing and state the grounds on which the application is made, and
 - (b) is to be made not later than 7 days after the person is notified of the decision concerned (or within such longer period as the Review Committee may allow in a particular case).
- (4) In this clause, *eligibility requirement* means any of the following:
 - (a) a pre-qualifying assessment,
 - (b) a promotion examination,
 - (c) a management performance review,
 - (d) an eligibility program.

Police Amendment (Promotion Reviews) Regulation 2007

Schedule 1 Amendments

18ZA Procedure for conducting review

- (1) The procedure for conducting a review under this Subdivision is, subject to the Act and this Subdivision, to be determined by the Review Committee.
- (2) A review by the Review Committee is not to be conducted by way of a hearing involving persons appearing before the Review Committee.
- (3) In conducting a review, the Review Committee is to consider:
 - (a) any written information provided by the applicant, and
 - (b) any information provided by the Commissioner.
- (4) The Review Committee may:
 - (a) require the applicant to provide further information in relation to the application, and
 - (b) obtain expert advice in relation to any matter that is subject to the review, and
 - (c) inform itself in such other manner as the Committee thinks appropriate.
- (5) The Commissioner must, if requested to do so by the Review Committee, provide to the Committee any information that is relevant to the decision concerned.
- (6) The Chairperson of the Review Committee is to preside at a meeting of the Review Committee.
- (7) A decision supported by a majority of the votes cast at a meeting of the Review Committee is the decision of the Committee.
- (8) A person who was involved in a decision the subject of a review may not be a member of the Review Committee considering the decision concerned.

18ZB Decision of Review Committee

- (1) The Review Committee may, following its review:
 - (a) affirm the decision the subject of the review, or
 - (b) vary the decision, or
 - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) Any such review must be completed not later than 14 days after the application for the review is made.

Police Amendment (Promotion Reviews) Regulation 2007

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- (3) The Review Committee must notify the Commissioner and the applicant of its decision, and the reasons for the decision, as soon as practicable after making the decision.
 - (4) The decision of the Review Committee is taken to be the decision of the Commissioner and is to apply accordingly.
 - (5) The decision of the Review Committee is final and is not subject to review by any person or body.

Subdivision 7 Other reviews**18ZC Review of decisions made on integrity grounds**

- (1) A person may apply to the Commissioner for a review of the decision:
 - (a) to suspend or remove the person from a promotion list on integrity grounds, or
 - (b) to refuse, on integrity grounds, the person the right to participate, or continue to participate, in any part of the process to obtain placement on a promotion list.
- (2) An application for a review under this clause must:
 - (a) be in writing and state the grounds on which the application is made, and
 - (b) be made no later than 7 days after the person is notified of the decision concerned.
- (3) If an application under this clause is made, the Commissioner is to refer the application within 48 hours to a person who is appointed by the Minister for the purpose of conducting the review (referred to in this Subdivision as the *appointed person*).

18ZD Procedure for conducting review

- (1) The procedure for conducting a review under this Subdivision is, subject to the Act and this Subdivision, to be determined by the appointed person.
- (2) Any such review is not to be conducted by way of a hearing involving persons appearing before the appointed person.
- (3) In conducting the review, the appointed person may have regard to:
 - (a) any written information provided by the applicant, and

Police Amendment (Promotion Reviews) Regulation 2007

Schedule 1 Amendments

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- (b) any information provided by the Commissioner (including any information as to the integrity of the applicant, being information in respect of which the decision the subject of the review was based).
 - (4) The Commissioner is authorised to provide any such information to the appointed person.
 - (5) The appointed person may:
 - (a) require the applicant to provide further information in relation to the application, and
 - (b) obtain expert advice in relation to any matter that is subject to the review, and
 - (c) inform himself or herself in such other manner as the appointed person thinks appropriate.
 - (6) The Commissioner must, if requested to do so by the appointed person, provide to the person any information that is relevant to the decision concerned.

18ZE Decision of appointed person

- (1) The appointed person may, following his or her review of the decision the subject of review:
 - (a) affirm the decision, or
 - (b) vary the decision, or
 - (c) set aside the decision and make a decision in substitution for the decision set aside.
- (2) The appointed person must notify the Commissioner and the applicant of the appointed person's decision, and the reasons for the decision, as soon as practicable after making the decision.
- (3) The decision of the appointed person is taken to be the decision of the Commissioner and is to apply accordingly.
- (4) The decision of the appointed person is final and is not subject to review by any person or body.



New South Wales

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

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

Section 207 of the *Protection of the Environment Operations Act 1997* provides, among other things, that an authorised officer may require an article (which includes a motor vehicle) to be tested or inspected at a place approved by the Environment Protection Authority (*the EPA*) by a person approved by the EPA for the purpose of determining whether the vehicle complies with the requirements of that Act or the regulations made under that Act.

The object of this Regulation is to amend the *Protection of the Environment Operations (General) Regulation 1998* to prescribe the procedure for issuing approvals in relation to such vehicle testing or inspection. The testing or inspection can only be carried out by approved mechanics at approved inspection stations. Approved mechanics must complete a vehicle inspection report in relation to the vehicle testing or inspection.

This Regulation also amends:

- (a) the *Protection of the Environment Operations (Noise Control) Regulation 2000* to extend the defences available to certain motor vehicle noise-related offences under that Regulation in cases where the relevant motor vehicle is being taken directly to an approved inspection station for testing or inspection by an approved mechanic, and
- (b) the *Protection of the Environment Operations (Penalty Notices) Regulation 2004* to enable certain offences to be dealt with by the issue of penalty notices, including offences in relation to the use of premises not approved for the testing or inspection of vehicles, holding out as an approved mechanic and the issuing of vehicle inspection reports.

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Explanatory note

This Regulation is made under the *Protection of the Environment Operations Act 1997*, including section 207, Division 3 of Part 8.2, section 323 (the general regulation-making power) and clauses 3 and 4 of Schedule 2.

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Clause 1

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

under the

Protection of the Environment Operations Act 1997

1 Name of Regulation

This Regulation is the *Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007*.

2 Amendment of Protection of the Environment Operations (General) Regulation 1998

The *Protection of the Environment Operations (General) Regulation 1998* is amended as set out in Schedule 1.

3 Consequential amendment of other regulations

The regulations specified in Schedule 2 are amended as set out in that Schedule.

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Schedule 1 Amendment of Protection of the Environment Operations (General) Regulation 1998

Schedule 1 Amendment of Protection of the Environment Operations (General) Regulation 1998

(Clause 2)

Part 4.8

Insert after Part 4.7:

Part 4.8 Vehicle testing and inspection

Division 1 Preliminary

70 Definitions

In this Part:

approved inspection station means premises approved under clause 73.

approved mechanic means an individual approved under clause 72.

proprietor, in relation to premises, means a person who:

- (a) carries on or proposes to carry on a business at the premises, or
- (b) is the occupier of the premises.

vehicle inspection report means a vehicle inspection report referred to in clause 75.

71 Application of Part

This Part applies in relation to the testing or inspection of motor vehicles required to be carried out in accordance with a notice given for the purposes of section 207 (2) (c) of the Act.

Note. Section 207 of the Act provides that an authorised officer may issue a notice requiring articles (which include motor vehicles) to be tested or inspected for the purpose of determining whether the article complies with the requirements of the Act or regulations made under the Act. Under section 207 (2) (c) of the Act, such a notice may require a motor vehicle to be tested or inspected at a place approved by the EPA by a person approved by the EPA.

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Amendment of Protection of the Environment Operations (General) Regulation 1998

Schedule 1

Division 2 Approved mechanics and approved inspection stations

72 Approved mechanics

- (1) An individual may apply to the EPA for an approval to carry out tests or inspections to which this Part applies.
- (2) An application under this clause must:
 - (a) be made in the manner and form approved by the EPA, and
 - (b) be supported by any information required by the EPA.
- (3) The EPA may, if it considers it necessary in order to determine the suitability of the applicant for an approval under this clause, require the applicant to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary.
- (4) The EPA is to determine an application under this clause by granting or refusing to grant the application.
- (5) The EPA may refuse to grant the application if, in its opinion, the individual is not a fit and proper person to carry out tests or inspections to which this Part applies.
- (6) The EPA must give notice in writing of the determination of the application under this clause to the applicant, including, if the application is granted, notice of the date from which the approval takes effect and any conditions to which the approval is subject.
- (7) An approval under this clause:
 - (a) applies to the testing or inspection of motor vehicles generally or to the class or classes of vehicles specified in the approval, and
 - (b) remains in force until it is surrendered, suspended or revoked, and
 - (c) is to be given in the manner and in the form approved by the EPA, and
 - (d) may be given unconditionally or subject to such conditions as the EPA considers appropriate.
- (8) A person must not hold himself or herself out as a person authorised to carry out tests or inspections to which this Part applies, or issue a vehicle inspection report in relation to any such test or inspection, unless the person is an approved mechanic.

Maximum penalty:

 - (a) in the case of a corporation—200 penalty units, or

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Schedule 1 Amendment of Protection of the Environment Operations (General) Regulation 1998

(b) in the case of an individual—100 penalty units.

73 Approved inspection stations

- (1) A proprietor of premises may apply to the EPA for an approval of the premises to be used for the purpose of carrying out tests or inspections to which this Part applies.
- (2) An application under this clause must:
 - (a) be made in the manner and form approved by the EPA, and
 - (b) be supported by any information required by the EPA.
- (3) The EPA may, if it considers it necessary in order to determine the suitability of the applicant for an approval under this clause, require the applicant to furnish to the EPA, within a specified time, any further particulars that the EPA considers necessary.
- (4) The EPA is to determine an application under this clause by granting or refusing to grant the application.
- (5) The EPA may refuse to grant the application:
 - (a) if, in its opinion, the premises the subject of the application or the equipment on the premises are not suitable for the purpose of carrying out tests or inspections to which this Part applies, or
 - (b) if, in its opinion, the applicant is not a fit and proper person to carry out the responsibilities associated with using the premises for that purpose, or
 - (c) for any other reason the EPA considers appropriate.
- (6) The EPA must give notice in writing of the determination of the application for an approval under this clause to the applicant, including, if the application is granted, notice of the date from which the approval takes effect and any conditions to which the approval is subject.
- (7) An approval under this clause:
 - (a) applies to the testing or inspection of motor vehicles generally or to the class or classes of vehicles specified in the approval, and
 - (b) remains in force until it is surrendered, suspended or revoked, and
 - (c) is to be given in the manner and in the form approved by the EPA, and
 - (d) may be given unconditionally or subject to such conditions as the EPA considers appropriate.

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Amendment of Protection of the Environment Operations (General) Regulation 1998

Schedule 1

-
- (8) A proprietor of premises must not allow the premises to be used for the purpose of carrying out a test or inspection to which this Part applies unless:
- (a) the premises are an approved inspection station, and
 - (b) the test or inspection of the vehicle is a test or inspection of a vehicle to which the approval applies, and
 - (c) the test or inspection is carried out by an approved mechanic.

Maximum penalty (subclause (8)):

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

74 Maximum fee for test or inspection

The maximum fee that may be charged for the carrying out of a test or inspection to which this Part applies is:

- (a) in the case of a motorcycle—\$40.15, or
- (b) in any other case—\$60.50.

75 Vehicle inspection reports

- (1) An approved mechanic who carries out a test or inspection to which this Part applies must, in accordance with conditions of the mechanic's approval, complete a vehicle inspection report in the form approved by the EPA.
- (2) Copies of a completed vehicle inspection report must be given to:
 - (a) the owner of the relevant motor vehicle or a person acting on behalf of the owner, and
 - (b) the EPA,in accordance with the conditions of an approval under clause 72 or 73, as the case may be.
- (3) A person must not issue a vehicle inspection report in relation to a test or inspection to which this Part applies if the person knows, or ought reasonably to suspect, that the report is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—200 penalty units, or
 - (b) in the case of an individual—100 penalty units.
- (4) The holder of an approval for an approved inspection station who allows a vehicle inspection report to be issued in relation to a test or inspection to which this Part applies that is carried out at the

	Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007
Schedule 1	Amendment of Protection of the Environment Operations (General) Regulation 1998

station is guilty of an offence if the person knows, or ought reasonably to suspect, that the report is false or misleading in a material particular.

Maximum penalty (subclause (4)):

- (a) in the case of a corporation—200 penalty units, or
- (b) in the case of an individual—100 penalty units.

76 Variation of approvals under this Part

- (1) The EPA may, by notice in writing, vary an approval given under this Part (including the conditions of an approval).
- (2) A variation includes the attaching of a condition to an approval (whether or not any conditions have already been attached), the substitution of a condition, the omission of a condition or the amendment of a condition.
- (3) An approval may be varied on application in writing to the EPA by the holder of the approval or on the initiative of the EPA.
- (4) An approval may be varied at any time during its currency.
- (5) A variation operates from the date of the EPA's decision to grant or issue the variation or another date specified by the EPA in the notice.

77 Surrender of approvals under this Part

- (1) The holder of an approval under this Part may surrender the approval by giving notice in writing to the EPA.
- (2) The surrender of an approval under this clause does not take effect until 28 days, or some other period approved by the EPA, after the notice has been given to the EPA.

78 Suspension or revocation of approvals under this Part

- (1) The EPA may, by notice in writing, suspend or revoke an approval under this Part if:
 - (a) the holder has contravened a provision of this Part, or
 - (b) the holder or the premises concerned no longer satisfies the relevant requirements for approval under this Part, or
 - (c) the holder has failed to comply with a condition to which the approval is subject, or
 - (d) the holder provided false or misleading information in the application for approval, or

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Amendment of Protection of the Environment Operations (General) Regulation 1998

Schedule 1

-
- (e) the EPA is, for any reason, of the opinion that the holder is not a fit and proper person to continue to hold the approval.
 - (2) A suspension of an approval under this clause may be for a specified period or until further notice in writing by the EPA.
 - (3) A suspension or revocation of an approval under this clause operates from the day the notice of the suspension or revocation is given to the holder of the approval or from such later day as the notice specifies.
 - (4) The EPA must not suspend or revoke an approval unless before doing so:
 - (a) it has given notice to the holder of the approval that it intends to do so, and
 - (b) it has specified in that notice the reasons for its intention to do so, and
 - (c) it has given the holder a reasonable opportunity to make submissions in relation to the proposed suspension or revocation, and
 - (d) it has taken into consideration any such submissions by the holder.
 - (5) An approval may be revoked under this clause during the currency of a suspension.

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Schedule 2 Consequential amendment of other regulations

Schedule 2 Consequential amendment of other regulations

(Clause 3)

2.1 Protection of the Environment Operations (Noise Control) Regulation 2000

[1] Clause 13 Use of motor vehicles on road

Omit clause 13 (2). Insert instead:

- (2) A person is not guilty of an offence under this clause arising because the motor vehicle is being taken directly to:
- (a) a place where repairs or other work required to reduce the noise level of the vehicle are to be carried out, or
 - (b) a place where an authorised officer may inspect or test the vehicle, or
 - (c) a place approved by the EPA for the purposes of section 207 (2) (c) of the Act where a person approved by the EPA for the purposes of that section may inspect or test the vehicle,
- or is being taken directly from any such place to the place where the vehicle is usually kept.

[2] Clause 26 Defective vehicle notices

Omit clause 26 (6). Insert instead:

- (6) A person is not guilty of an offence under this clause arising because the motor vehicle is being taken directly to:
- (a) a place where repairs or other work required to remedy the defect are to be carried out, or
 - (b) a place where an authorised officer may inspect or test the vehicle, or
 - (c) a place approved by the EPA for the purposes of section 207 (2) (c) of the Act where a person approved by the EPA for the purposes of that section may inspect or test the vehicle,
- or is being taken directly from any such place to the place where the vehicle is usually kept.

Protection of the Environment Operations (General) Amendment (Vehicle Testing and Inspection) Regulation 2007

Consequential amendment of other regulations

Schedule 2

[3] Clause 27 Defective vehicle labels

Omit clause 27 (6). Insert instead:

- (6) A person does not commit an offence under subclause (5) if the motor vehicle is being taken directly to:
- (a) a place where repairs or other work required to remedy the defect are to be carried out, or
 - (b) a place where an authorised officer may inspect or test the vehicle, or
 - (c) a place approved by the EPA for the purposes of section 207 (2) (c) of the Act where a person approved by the EPA for the purposes of that section may inspect or test the vehicle,
- or is being taken directly from any such place to the place where the vehicle is usually kept.

2.2 Protection of the Environment Operations (Penalty Notices) Regulation 2004

Schedule 1 Penalty notice offences

Insert at the end of the matter relating to the *Protection of the Environment Operations (General) Regulation 1998*, in Columns 1, 2, 3 and 4, respectively:

Clause 72 (8)	2A	\$500	\$1000
Clause 73 (8)	2A	\$500	\$1000
Clause 75 (3)	2A	\$500	\$1000
Clause 75 (4)	2A	\$500	\$1000



New South Wales

Security Industry Amendment (Disqualifying Offences) Regulation 2007

under the

Security Industry Act 1997

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Security Industry Act 1997*.

JOHN WATKINS, M.P.,
Minister for Police

Explanatory note

The object of this Regulation is to specify further offences that disqualify a person from applying for a licence to carry on a security activity under the *Security Industry Act 1997*. The offences relate to participating in criminal groups and recruiting persons to engage in criminal activity.

This Regulation is made under the *Security Industry Act 1997*, including sections 16 and 48 (the general regulation-making power).

Clause 1 Security Industry Amendment (Disqualifying Offences) Regulation 2007

Security Industry Amendment (Disqualifying Offences) Regulation 2007

under the

Security Industry Act 1997

1 Name of Regulation

This Regulation is the *Security Industry Amendment (Disqualifying Offences) Regulation 2007*.

2 Amendment of Security Industry Regulation 1998

The *Security Industry Regulation 1998* is amended by inserting after clause 11 (f) the following paragraph:

(g) **Offences involving organised criminal groups and recruitment**

An offence committed under section 93IK or 351A of the *Crimes Act 1900*.



New South Wales

Weapons Prohibition Amendment (Disqualifying Offences) Regulation 2007

under the

Weapons Prohibition Act 1998

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Weapons Prohibition Act 1998*.

JOHN WATKINS, M.P.,
Minister for Police

Explanatory note

The object of this Regulation is to specify further offences that disqualify a person from applying for a permit for a prohibited weapon under the *Weapons Prohibition Act 1998*. The offences relate to participating in criminal groups and recruiting persons to engage in criminal activity.

This Regulation is made under the *Weapons Prohibition Act 1998*, including sections 10 and 50 (the general regulation-making power).

Clause 1 Weapons Prohibition Amendment (Disqualifying Offences) Regulation 2007

Weapons Prohibition Amendment (Disqualifying Offences) Regulation 2007

under the

Weapons Prohibition Act 1998

1 Name of Regulation

This Regulation is the *Weapons Prohibition Amendment (Disqualifying Offences) Regulation 2007*.

2 Amendment of Weapons Prohibition Regulation 1999

The *Weapons Prohibition Regulation 1999* is amended by inserting after clause 5 (c) the following paragraph:

(d) **Offences involving organised criminal groups and recruitment**

An offence committed under section 93IK or 351A of the *Crimes Act 1900*.

Orders



New South Wales

Anglican Church of Australia (Sapphire Coast Anglican College) Order 2007

under the

Anglican Church of Australia (Bodies Corporate) Act 1938

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, CVO, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 4 of the *Anglican Church of Australia (Bodies Corporate) Act 1938*, make the following Order.
Dated, this 28th day of February 2007.

By Her Excellency's Command,

BOB DEBUS, M.P.,
Attorney General

Explanatory note

Section 4 of the *Anglican Church of Australia (Bodies Corporate) Act 1938* provides that persons who, for the time being, are members of an unincorporated body that is constituted by an ordinance of the Synod of a diocese for the purposes of managing, governing or controlling an institution or organisation of the Anglican Church of Australia, or of dealing with any church trust property, may be the subject of a declaration by an ordinance of the Synod that it is expedient to constitute them as a body corporate. Once the ordinance making the declaration is passed, the Governor may, by order published in the Gazette, declare the members of the unincorporated body to be a body corporate.

The object of this Order is to declare that the members of the Sapphire Coast Anglican College Board are a body corporate known as "Sapphire Coast Anglican College". The relevant ordinances are the *Sapphire Coast Anglican College Ordinance 2006* and the *Sapphire Coast Anglican College Incorporation Ordinance 2006*.

This Order is made under section 4 of the *Anglican Church of Australia (Bodies Corporate) Act 1938*.

Clause 1 Anglican Church of Australia (Sapphire Coast Anglican College) Order 2007

Anglican Church of Australia (Sapphire Coast Anglican College) Order 2007

under the

Anglican Church of Australia (Bodies Corporate) Act 1938

1 Name of Order

This Order is the *Anglican Church of Australia (Sapphire Coast Anglican College) Order 2007*.

2 Sapphire Coast Anglican College

It is declared that the persons who for the time being are the members of the body known as the Sapphire Coast Anglican College Board constituted under the *Sapphire Coast Anglican College Ordinance 2006* are a body corporate under the name "Sapphire Coast Anglican College".



New South Wales

Order

under the

Threatened Species Conservation Act 1995

I, the Minister for the Environment, in pursuance of section 9 of the *Threatened Species Conservation Act 1995*, do, by this my Order, amend Part 1 of Schedule 1 to that Act by omitting from under the heading “Fabaceae” (under the heading “Plants”) the asterisk from the matter relating to *Cullen parvum*.

Dated, this 28th day of February 2007.

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

Explanatory note

The object of this Order is to amend Schedule 1 to the *Threatened Species Conservation Act 1995* (Endangered species, populations and ecological communities) as a consequence of *Cullen parvum* no longer having national status as a threatened species of plant.

OFFICIAL NOTICES

Appointments

FAIR TRADING ACT 1987

Fair Trading Safety Committee

Appointment of Member

IN accordance with section 24 of the Fair Trading Act 1987, I hereby appoint the following person as a member of the Products Safety Committee:

- Mr Antonio Bonacruz

This appointment will expire on 1 December 2009.

Dated this 8th day of January 2007.

The Hon DIANE BEAMER, M.P.,
Minister for Fair Trading

TOURISM NEW SOUTH WALES ACT 1984

Appointment of Part-time Members Tourism New South Wales

IT is hereby notified that in pursuance of Section 4(3), 4(4) and 4(5) of the *Tourism New South Wales Act 1984* (as amended) Denis Pierce be appointed a part-time member of the Board of Tourism New South Wales from the date of appointment for the term of office specified:

To appoint Denis Pierce as a part-time member of the Board of Tourism New South Wales for a period of three years expiring on 31 December 2009.

SANDRA NORI, M.P.,
Minister for Tourism and Sport and Recreation
Minister for Women
Minister Assisting the Minister for State Development

STATE RECORDS ACT 1998

Appointment of Member

Board of the State Records Authority of New South Wales

HER Excellency the Governor, with the advice of the Executive Council, has approved, pursuant to Section 69 of the State Records Act 1998, the following persons being appointed as members of the Board of the State Records Authority of New South Wales:

- (i) Professor Lucy Taksa, as Chairperson, pursuant to section 69(3)(d) [new appointment] from 7 February 2007 to 31 December, 2009;
- (ii) The Hon Donald Harwin MLC, pursuant to section 69(2)(d) [new appointment] from 7 February 2007 to 31 December, 2009;
- (iii) Mr John O'Hearn, pursuant to section 69(2)(c) [re-appointment] from 7 February 2007 to 31 December, 2009.

JOHN DELLA BOSCA, M.P.,
Minister for Commerce

TOURISM NEW SOUTH WALES ACT 1984

Appointment of Part-time Members Tourism New South Wales

IT is hereby notified that in pursuance of Section 4(3b), of the *Tourism New South Wales Act 1984* (as amended) Loftus Harris be appointed a member of the Board of Tourism New South Wales from the date of appointment for the term of office specified:

To appoint Loftus Harris as a member of the Board of Tourism New South Wales for the term of his appointment as Director General, Department of State and Regional Development.

SANDRA NORI, M.P.,
Minister for Tourism and Sport and Recreation
Minister for Women
Minister Assisting the Minister for State Development

Department of Lands

DUBBO OFFICE

142 Brisbane Street (PO Box 865), Dubbo NSW 2830

Phone: (02) 6841 5200 Fax: (02) 6841 5231

APPOINTMENT OF CORPORATION TO MANAGE RESERVE TRUST

PURSUANT to section 95 of the Crown Lands Act 1989, the corporation specified in Column 1 of the Schedule hereunder is appointed to manage the affairs of the reserve trust specified opposite thereto in Column 2, which is trustee of the reserve referred to in Column 3 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Mid-Western Regional Council	Wollar Bushfire Brigade (R90855) Reserve Trust	Reserve No. 90855 Public Purpose: Bush Fire Brigade Purposes Public Purpose: Bush Fire Brigade Purposes Notified: 5 August 1977 File Reference: DB81R206

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
NSW Department of Primary Industries	Trangie Agricultural Research Station (R50521) Reserve Trust	Reserve No. 50521 Public Purpose: Experiment Farm Notified: 10 February 1915 File Reference: DB84R97

GOULBURN OFFICE

159 Auburn Street (PO Box 748), Goulburn NSW 2580

Phone: (02) 4828 6725 Fax: (02) 4828 6730

APPOINTMENT OF CORPORATION TO MANAGE RESERVE TRUST

PURSUANT to section 95 of the Crown Lands Act 1989, the corporation specified in Column 1 of the Schedule hereunder is appointed to manage the affairs of the reserve trust specified opposite thereto in Column 2, which is trustee of the reserve referred to in Column 3 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Goulburn Mulwaree Council	Marulan Public Hall Trust	Dedication No. 530021 Public Purpose: Public Hall Notified: 13 December 1963 File Reference: GB80R268

GRIFFITH OFFICE
2nd Floor, Griffith City Plaza,
120–130 Banna Avenue (PO Box 1030), Griffith NSW 2680
Phone: (02) 6962 7522 Fax: (02) 6962 5670

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.

TONY KELLY, M.L.C.,
 Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Land District: Coleambally Local Government Area: Murrumbidgee & Jerilderie Parishes: Waddi; Ugobit; Mycotha; Boona; Yamma; Coleambally; Bundure North and Argoon Counties: Boyd and Urana Locality: Coleambally being the Crown land depicted on the plan of Reserve 1012550 held by the Department of Lands Area: About 2980 hectares File No: GH06R5	Reserve No. 1012550 for the public purpose of access and public requirements, rural services, tourism purposes and environmental and heritage conservation

Note: Existing reservations under the Crown Lands Act are not revoked.

HAY OFFICE
126 Lachlan Street (PO Box 182), Hay NSW 2711
Phone: (02) 6993 1306 Fax: (02) 6993 1135

NOTIFICATION OF CLOSING OF PUBLIC ROAD

IN pursuance of the provisions of the Roads Act 1993, the road hereunder described is closed and the land comprised therein ceases to be a public road and the rights of passage and access that previously existed in relation to the road are extinguished. On road closure, title to the land comprising the former public road vests in the body specified in the Schedule hereunder.

TONY KELLY, M.L.C.,
 Minister for Lands.

Description

Land District of Hay;
Council of Sturt

Lot 1 of D.P. 1091589 Parish of Nallam, County of Townsend, File No: HY 05 H 15.

Note: (1) On closing, title for the land comprised in Lot 1 remains vested in the Murray Shire Council as Operational Land.

MOREE OFFICE**Frome Street (PO Box 388), Moree NSW 2400****Phone: (02) 6752 5055 Fax: (02) 6752 1707****ALTERATION OF CORPORATE NAME OF RESERVE TRUST**

PURSUANT to section 92(3) of the Crown Lands Act 1989, the corporate name of the reserve trust specified in Schedule 1 hereunder, which is trustee of the reserve referred to in Schedule 2, is altered to the corporate name specified in Schedule 3.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule 1

Collins Park (R82261) Reserve Trust.

Schedule 2

Reserve No. 82261.
Public Purpose: Public Recreation.
Notified: 8 January 1960.
File Reference: ME83R17.

Schedule 3

Tibbereena Street Recreation (R82261) Reserve Trust.

APPOINTMENT OF CORPORATION TO MANAGE RESERVE TRUST

PURSUANT to section 95 of the Crown Lands Act 1989, the corporation specified in Column 1 of the Schedule hereunder is appointed to manage the affairs of the reserve trust specified opposite thereto in Column 2, which is trustee of the reserve referred to in Column 3 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Narrabri Shire Council	The Crossing Theatre (R1005349) Reserve Trust	Reserve No. 1005349 Public Purpose: Community Purposes Notified: 5 December 2003 File Reference: ME07R1

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Narrabri Shire Council	Narrabri Tourism & Australian Cotton Centre (R1005350) Reserve Trust	Reserve No. 1005350 Public Purpose: Tourist Facilities and Services Notified: 5 December 2003 File Reference: ME07R2

ESTABLISHMENT OF RESERVE TRUST

PURSUANT to section 92(1) of the Crown Lands Act 1989, the reserve trust specified in Column 1 of the Schedule hereunder is established under the name stated in that Column and is appointed as trustee of the reserve specified opposite thereto in Column 2 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

Column 1

The Crossing Theatre (R1005349) Reserve Trust

Column 2

Reserve No. 1005349
Public Purpose:
Community Purposes
Notified: 5 December 2003
File Reference: ME07R1

Schedule

Column 1

Narrabri Tourism & Australian Cotton Centre (R1005350) Reserve Trust

Column 2

Reserve No. 1005350
Public Purpose:
Tourist Facilities and Services
Notified: 5 December 2003
File Reference: ME07R2

NOWRA OFFICE
5 O'Keefe Avenue (PO Box 309), Nowra NSW 2541
Phone: (02) 4428 6900 Fax: (02) 4428 6988

AUTHORISATION OF ADDITIONAL PURPOSE

IT is hereby notified pursuant to section 121A of the Crown Lands Act 1989, that the additional purpose specified in Column 1 of the Schedule hereunder is applied to the whole of the reserve specified opposite thereto in Column 2 of the schedule.

TONY KELLY, MLC,
Minister for Lands

Schedule 1

<i>Column 1</i> Peter HOUGHTON Manager State Reserves Strategy Crown Lands Division Department of Lands	<i>Column 2</i> Bulli Pass Scenic Reserve Trust	<i>Column 3</i> Reserve No. 67711 Public Purpose: Public Recreation Notified: 1 July 1938 Locality: Bulli Pass File No: NA82 R 137
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For a term of up to six months from the date of this notification.

Schedule

<i>Column 1</i> Telecommunication Facilities	<i>Column 2</i> Reserve No.: 246 Public Purpose: Recreation and Trigonometrical Purposes Notified: 25 November, 1885 File: NA07R2
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AUTHORISATION OF ADDITIONAL PURPOSE

PURSUANT to Section 121A of the Crown Lands Act 1989, it is hereby ordered that the reserve specified in Column 1 of the Schedule hereunder may also be used for the additional purpose specified opposite thereto in Column 2.

TONY KELLY, M.L.C.,
Minister for Lands

SCHEDULE

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.

TONY KELLY, M.L.C.,
Minister for Lands

<i>Column 1</i> Killalea State Park (D. 1001339) dedicated for the purpose of public recreation on 1st June, 1997 (pursuant to section 47N of the National Parks and Wildlife Act 1974) and dedicated for the public purpose of public recreation on 23rd June, 2000. File Ref: LANDS06/187 NA 96 R 12	<i>Column 2</i> Tourist facilities
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Schedule

<i>Column 1</i> Land District: Nowra Local Government Area: Shoalhaven City Council Locality: Ulladulla Reserve No. 1011528 Public Purpose: Access and public requirements, tourism purposes and environmental and heritage conservation Notified: 9 June 2006 File Reference: NA 05 H 358	<i>Column 2</i> The part being <table border="0"> <tr> <td><i>Lot</i></td> <td><i>Sec.</i></td> <td><i>D.P. No</i></td> <td><i>Parish</i></td> <td><i>County</i></td> </tr> <tr> <td>14</td> <td>1105304</td> <td>Ulladulla</td> <td>St Vincent</td> <td></td> </tr> </table> of an area of 613.3m ²	<i>Lot</i>	<i>Sec.</i>	<i>D.P. No</i>	<i>Parish</i>	<i>County</i>	14	1105304	Ulladulla	St Vincent	
<i>Lot</i>	<i>Sec.</i>	<i>D.P. No</i>	<i>Parish</i>	<i>County</i>							
14	1105304	Ulladulla	St Vincent								

NOTIFICATION OF CLOSING OF PUBLIC ROAD

IN pursuance of the provisions of the Roads Act, 1993, the road hereunder specified is closed and the land comprised therein ceases to be public road and the rights of passage and access that previously existed in relation to the road are extinguished.

TONY KELLY, M.L.C.,
Minister for Lands

Description

Parish – Yowaka;
County – Auckland;
Land District – Bega;
LGA – Bega

Lot 1 in DP 1106143 at Lochiel. File No. NA06H20.

Note: On closing, the land will remain vested in the State of New South Wales as Crown land.

**APPOINTMENT OF ADMINISTRATOR TO
MANAGE A RESERVE TRUST**

PURSUANT to section 117 of the 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.

TONY KELLY, M.L.C.,
Minister for Lands.

ORANGE OFFICE
92 Kite Street (PO Box 2146), Orange NSW 2800
Phone: (02) 6391 4300 Fax: (02) 6362 3896

**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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Land District: Lithgow	Parts being allotments 8,
LGA: Lithgow	10, 19-21, Section 22,
Parish: Gindantherie	DP 758446
County: Cook	Area: 3,168 square metres
Village: Glen Davis	
Reserve No.: 1011448	
Purpose: Future Public	
Requirements	
Date of Notification:	
31 March 2006	
File: OE03 H 216	

SYDNEY METROPOLITAN OFFICE
Level 12, Macquarie Tower, 10 Valentine Avenue, Parramatta 2150
(PO Box 3935, Parramatta NSW 2124)
Phone: (02) 8836 5300 Fax: (02) 8836 5365

ADDITION TO RESERVED CROWN LAND

PURSUANT to Section 88 of the Crown Lands Act 1989, the Crown land specified in Column 1 of the Schedule hereunder is added to the reserved land specified opposite thereto in Column 2 of the Schedule.

TONY KELLY, M.L.C.,
 Minister for Lands

 Schedule

<i>Column 1</i>	<i>Column 2</i>
Land District: Metropolitan	Reserve No.: 33756
Local Government Area: Hornsby Shire Council	Public Purpose: Public Recreation
Locality: Berowra	Notified: 11 January 1902
Lot: 7045	Lot: 7003 DP No.: 752026#
DP No.: 752026#	Parish: Cowan
Parish: Cowan	County: Cumberland
County: Cumberland	Lot: 7004 DP No.: 752026#
Area: 2.93ha approximately	Parish: Cowan
File Ref.: MN93R40/1	County: Cumberland
	Lot: 474
	DP No.: 822295
	Parish: Cowan
	County: Cumberland
	New Area: 5.56ha

Disclaimer: #Please note that the above lot numbers marked # are for Departmental use only.

ESTABLISHMENT OF RESERVE TRUST

PURSUANT to Section 92(1) of the Crown Lands Act 1989, the reserve trust specified in Column 1 of the Schedule hereunder is established under the name stated in that Column and is appointed as trustee of the reserve specified opposite thereto in Column 2 of the Schedule.

TONY KELLY, M.L.C.,
 Minister for Lands

 Schedule

<i>Column 1</i>	<i>Column 2</i>
The Parklands Oval (R62981) Reserve Trust	Reserve No. 62981
	Public Purpose: Public Recreation
	Notified: 16 October 1931
	File Ref.: MN06H291/1

APPOINTMENT OF CORPORATION TO MANAGE RESERVE TRUST

PURSUANT to Section 95 of the Crown Lands Act 1989, the corporation specified in Column 1 of the Schedule hereunder is appointed to manage the affairs of the reserve trust specified opposite thereto in Column 2, which is trustee of the reserve referred to in Column 3 of the Schedule.

TONY KELLY, M.L.C.,
 Minister for Lands

 Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Hornsby Shire Council	The Parklands Oval (R62981) Reserve Trust	Reserve No. 62981 Public Purpose: Public Recreation Notified: 16 October 1931 File Ref.: MN06H291/1

TAMWORTH OFFICE**25-27 Fitzroy Street (PO Box 535), Tamworth NSW 2340****Phone: (02) 6764 5100 Fax: (02) 6766 3805****ROADS ACT 1993****ORDER**

Transfer of Crown Road to Council

IN pursuance of provisions of section 151, Roads Act 1993, The Crown public 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 and as from that date, the roads specified in Schedule 1 cease to be Crown public road.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule 1

Parish – Perry;
County – Inglis;
Land District – Tamworth;
L.G.A – Tamworth Regional Council

Crown public road described within Lots 63, 62 and 70 in DP753843.

Schedule 2

Roads Authority: Tamworth Regional Council.

File No: TH05H251.

ROADS ACT 1993**ORDER**

Transfer of Crown Road to Council

IN pursuance of provisions of section 151, Roads Act 1993, The Crown public 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 and as from that date, the roads specified in Schedule 1 cease to be Crown public road.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule 1

Parish – Welsh;
County – Darling;
Land District – Tamworth;
L.G.A – Tamworth Regional Council

Crown public road described as part within Lot 68 in DP752203 (that part running from DP1081589 to Lot 58 in DP 752203).

Schedule 2

Roads Authority: Tamworth Regional Council.

File No: TH06H226.

ALTERATION OF CORPORATE NAME OF A RESERVE TRUST

PURSUANT to section 92(3) of the Crown Lands Act 1989, the corporate name of the reserve trust specified in Schedule 1 hereunder, which is trustee of the reserve referred to in Schedule 2, is altered to the corporate name specified in Schedule 3.

TONY KELLY, M.L.C.,
Minister for Lands.

Schedule 1

Quirindi (72708) Reserve Trust

Schedule 2

Reserve No.: 72708

Public Purpose: Public Recreation, Showground & Racecourse

Notified: 21 May 1948.

File Reference: TH80 R 74.

Schedule 3

Quirindi Showground & Racecourse Reserve Trust

TAREE OFFICE
98 Victoria Street (PO Box 440), Taree NSW 2430
Phone: (02) 6591 3500 Fax: (02) 6552 2816

NOTIFICATION OF CLOSING OF PUBLIC ROAD

IN pursuance of the provisions of the Roads Act 1993, the road hereunder described is closed and the land comprised therein ceases to be a public road and the rights of passage and access that previously existed in relation to the road are extinguished.

TONY KELLY, M.L.C.,
Minister for Lands

Description

Land District – Taree;
Local Government Area – Greater Taree

Road closed: Lots 1 & 2 DP1106992 at Harrington.

Parish of Harrington, County of Macquarie. File No. TE03H193/TE04H68.

On closing, the land within lots 1 & 2 remains vested in the State of New South Wales as Crown land.

Note: The subject lots are subject to easements for:

- Right of Access
- Drainage of Water
- Positive Covenant

WAGGA WAGGA OFFICE**Corner Johnston and Tarcutta Streets (PO Box 60), Wagga Wagga NSW 2650****Phone: (02) 6937 2700 Fax: (02) 6921 1851****ERRATUM**

IN the Government Gazette dated 24th November, 2006 (Folio 9921) the notice under the heading "Appointment of Trust Board Members" is hereby deleted and the notice hereunder is inserted in its place. WA80R191

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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
The person for the time being holding the office of Trust Representative Temora Trotting Club Ltd (ex-officio member)	Temora Showground Trust	Dedication No. 620071 Public Purpose: Showground Notified: 10 September 1886 File Reference: WA80R191
The person for the time being holding the office of Trust Representative Temora Trotting Club Ltd (ex-officio member)		
The person for the time being holding the office of Trust Representative Temora Trotting Club Ltd (ex-officio member)		
The person for the time being holding the office of Trust Representative Temora Show Society (ex-officio member)		
The person for the time being holding the office of Trust Representative Temora Show Society (ex-officio member)		
The person for the time being holding the office of Trust Representative, Temora Canine All Breeds Kennel Club (ex-officio member)		
The person for the time being holding the office of Trust Representative, Temora Pony Club (ex-officio member)		
Ken Smith (new member)		
Leslie Lionel Harmer (re-appointment)		
William George Preston (re-appointment)		
Douglas James Sutton (re-appointment)		

For a term commencing the date of this notice and expiring 18 July 2011.

ADDITION TO RESERVED CROWN LAND

PURSUANT to section 88 of the Crown Lands Act 1989, the Crown land specified in Column 1 of the Schedule hereunder is added to the reserved land specified opposite thereto in Column 2 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Land District: Albury LGA: Albury City Council Locality: Glenroy Lot 1151 DP 728300 Parish Albury, County Goulburn Land District: Gundagai LGA: Gundagai Shire Council Locality: Burra Creek Lots 91 & 92 DP 751419 Parish Mitta Mitta, County Clarendon Land District: Tumbarumba LGA: Tumbarumba Shire Council Locality: Tumbarumba Lot 715 DP 755892 Parish Tumbarumba, County Selwyn Land District: Tumut LGA: Tumut Shire Council Locality: Argalong Lot 7010 DP 750981# Parish Cooleman, County Buccleuch Locality: Brungle Lots 1 & 2 Sec 20 DP 758169 Lot 359 DP 726224 Parish Brungle, County Buccleuch Land District: Urana LGA: Urana Shire Council Locality: Urana Lot 1 Sec 8 DP 759023 Lots 1 to PT7 Sec 9 DP 759023 Parish Urana, County Urana Area: 22.76ha File: WA 07 R 2	Reserve No: 1011448 Public Purpose: Future Public Requirements Notified: 31 March 2006 All Crown Land in the Eastern and Central Divisions of the State that were not within a reserve or part of any holding as 31 March 2006 and any other Crown Land that has been added since that date.

Disclaimer: Please note that the above Lot number marked # is for Departmental use only.

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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Graeme John Hatty (new member) Gordon David Jones (new member) Rupert Richardson (new member) John Curtis Steele (new member) David George Henderson (new member) Roger Lindsay Hamblin (new member) Lyle J McPherson (new member)	Matong Crown Reserves Trust	Reserve No. 1001387 Public Purpose: Community Purposes Notified: 21 August 1998 Reserve No. 91480 Public Purpose: Public Hall Notified: 10 August 1979 Reserve No. 31133 Public Purpose: Public Recreation Notified: 7 July 1900 File Reference: WA06R3

For a term commencing the date of this notice and expiring 1 March 2012.

REVOCATION OF APPOINTMENT OF RESERVE TRUST

PURSUANT to section 92(3)(c) of the Crown Lands Act 1989, the appointment of the reserve trust specified in Column 1 of the Schedule hereunder, as trustee of the reserve(s), or part(s) of the reserve(s), specified opposite thereto in Column 2 of the Schedule, is revoked.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Junee Shire Council Crown Reserves Reserve Trust	Reserve No. 83163 Public Purpose: Public Recreation Notified: 5 May 1961 File Reference: WA88R36

APPOINTMENT OF RESERVE TRUST AS TRUSTEE OF A RESERVE

PURSUANT to section 92(1) of the Crown Lands Act 1989, the reserve trust specified in Column 1 of the Schedule hereunder is appointed as trustee of the reserve specified opposite thereto in Column 2 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Junee Reefs Public Hall Trust	Reserve No. 83163 Public Purpose: Public Recreation Notified: 5 May 1961 File Reference: WA80R67

APPOINTMENT OF RESERVE TRUST AS TRUSTEE OF A RESERVE

PURSUANT to section 92(1) of the Crown Lands Act 1989, the reserve trust specified in Column 1 of the Schedule hereunder is appointed as trustee of the reserve specified opposite thereto in Column 2 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Junee Shire Council Crown Reserves Reserve Trust	Reserve No. 2533 Public Purpose: Public Buildings Public Recreation Notified: 20 February 1882 File Reference: WA06R6

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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>								
Land District: Wagga Wagga LGA: Wagga Wagga City Council Locality: South Wagga Wagga Reserve No. 54218 Public Purpose: Quarry Notified: 15 October 1920 File Reference: WA03R20	The whole being <table border="1"> <thead> <tr> <th>Lot</th> <th>D.P. No.</th> <th>Parish</th> <th>County</th> </tr> </thead> <tbody> <tr> <td>7057</td> <td>1029396#</td> <td>South Wagga</td> <td>Wynyard</td> </tr> </tbody> </table> of an area of 12.9ha	Lot	D.P. No.	Parish	County	7057	1029396#	South Wagga	Wynyard
Lot	D.P. No.	Parish	County						
7057	1029396#	South Wagga	Wynyard						

Notes: It is intended to reserve this land for Environmental Protection following revocation

Disclaimer: Please note that the above Lot number marked # is for Departmental use only.

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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>												
Land District: Wagga Wagga LGA: Wagga Wagga City Council Locality: San Isidore <table border="1"> <thead> <tr> <th>Lot</th> <th>D.P. No.</th> <th>Parish</th> <th>County</th> </tr> </thead> <tbody> <tr> <td>305</td> <td>757249</td> <td>South Wagga</td> <td>Wynyard</td> </tr> <tr> <td>7057</td> <td>1029396 #</td> <td>South Wagga</td> <td>Wynyard</td> </tr> </tbody> </table> Area: About 25.35ha File Reference: WA03R20	Lot	D.P. No.	Parish	County	305	757249	South Wagga	Wynyard	7057	1029396 #	South Wagga	Wynyard	Reserve No. 1005428 Public Purpose: Environmental Protection
Lot	D.P. No.	Parish	County										
305	757249	South Wagga	Wynyard										
7057	1029396 #	South Wagga	Wynyard										

Disclaimer: Please note that the above Lot number marked # is for Departmental use only.

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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Matong Public Hall Trust	Reserve No. 1001387 Public Purpose: Community Purposes Notified: 21 August 1998 Reserve No. 91480 Public Purpose: Public Hall Notified: 10 August 1979 File Reference: WA80R173

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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Matong Recreation Reserve Trust	Reserve No. 31133 Public Purpose: Public Recreation Notified: 7 July 1900 File Reference: WA82R99

ESTABLISHMENT OF RESERVE TRUST

PURSUANT to section 92(1) of the Crown Lands Act 1989, the reserve trust specified in Column 1 of the Schedule hereunder is established under the name stated in that Column and is appointed as trustee of the reserve specified opposite thereto in Column 2 of the Schedule.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>
Matong Crown Reserves Trust	Reserve No. 1001387 Public Purpose: Community Purposes Notified: 21 August 1998 Reserve No. 91480 Public Purpose: Public Hall Notified: 10 August 1979 Reserve No. 31133 Public Purpose: Public Recreation Notified: 7 July 1900 File Reference: WA06R3

NOTIFICATION OF CLOSING OF A ROAD

IN pursuance of the provisions of the Roads Act, 1993, the road hereunder specified is closed, the road ceases to be a public road and the rights of passage and access that previously existed in relation to the road are extinguished.

TONY KELLY, M.L.C.,
Minister for Lands

Description

*Parish – Albury;
County – Goulburn;
and District – Albury;
City – Albury*

Lot 2 in DP 1107017 at Albury

File No WA05H135

Note: On closing, the land within the former Council public road will remain vested in the Council of the City of Albury as operational land.

WESTERN DIVISION OFFICE
45 Wingewarra Street (PO Box 1840), Dubbo NSW 2830
Phone: (02) 6883 3000 Fax: (02) 6883 3099

GRANTING OF A WESTERN LANDS LEASE

IT is hereby notified that under the provisions of Section 28A of the Western Lands Act 1901, the Western Lands Lease of the land specified has been granted to the undermentioned persons.

The lease is subject to the provisions of the Western Lands Act 1901 and the Regulations thereunder and to the special conditions, provisions, exceptions, covenants and reservations set out hereunder.

The land is to be used only for the purpose for which the lease is granted.

All amounts due and payable to the Crown must be paid to the Department of Lands by the due date.

IAN MACDONALD MLC,
Minister for Natural Resources

Administrative District – Wentworth;
Shire – Wentworth;
Parish – Cliffs;
County – Wentworth

Western Lands Lease 14810 was granted to Gol Gol Public School Endowment Block Incorporated, comprising of Lot 51 DP 756936 (folio identifier 51/756936) of 4.881 hectares at Gol Gol, for the purpose of “Horticulture” for a term in perpetuity commencing 5 April 2006.

Papers: WLL 14810

**CONDITIONS AND RESERVATIONS ATTACHED TO
WESTERN LANDS LEASE 14810**

- (1) In the conditions annexed to the lease, the expression “the Minister” means the Minister administering the Western Lands Act 1901, and any power, authority, duty or function conferred or imposed upon the Minister by or under those conditions may be exercised or performed either by the Minister or by such officers of the Department of Natural Resources as the Minister may from time to time approve.
- (2) In these conditions and reservations the expression “the Commissioner” means the Commissioner charged with the administration of the Western Lands Act 1901 (“the Act”) in accordance with section 4(2) of the Act.
- (3) (a) For the purposes of this clause the term Lessor shall include Her Majesty the Queen Her Heirs and Successors the Minister and the agents servants employees and contractors of the Lessor Her Majesty Her Majesty’s Heirs and Successors and the Minister.
(b) The lessee covenants with the Lessor to indemnify and keep indemnified the Lessor from and against all claims for injury loss or damage suffered by any person or body using or being in or upon the Premises or any adjoining land or premises of the Lessor arising out of the Holder’s use of the Premises and against all liabilities for costs charges and expenses incurred by the Lessor in respect of the claim of any such person or body except to the extent that any such claims and demands arise wholly from any negligence or wilful act or omission on the part of the Lessor.
- (c) The indemnity contained in this clause applies notwithstanding that this Lease authorised or required the lessee to undertake or perform the activity giving rise to any claim for injury loss or damage.
- (d) The lessee expressly agrees that the obligations of the Holder under this clause shall continue after the expiration or sooner determination of this Lease in respect of any act deed matter or thing occurring before such expiration or determination.
- (4) The rent of the lease shall be assessed in accordance with Part 6 of the Western Lands Act 1901.
- (5) The rent shall be due and payable annually in advance on 1 July in each year.
- (6) (a) “GST” means any tax on goods and/or services, including any value-added tax, broad-based consumption tax or other similar tax introduced in Australia.
“GST law” includes any Act, order, ruling or regulation, which imposes or otherwise deals with the administration or imposition of a GST in Australia.
(b) Notwithstanding any other provision of this Agreement:
 - (i) If a GST applies to any supply made by either party under or in connection with this Agreement, the consideration provided or to be provided for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply.
 - (ii) If the imposition of a GST or any subsequent change in the GST law is accompanied by or undertaken in connection with the abolition of or reduction in any existing taxes, duties or statutory charges (in this clause “taxes”), the consideration payable by the recipient of the supply made under this Agreement will be reduced by the actual costs of the party making the supply that are reduced directly or indirectly as a consequence of the abolition of or reduction in taxes.
- (7) The lessee shall pay all rates and taxes assessed on or in respect of the land leased during the currency of the lease.
- (8) The lessee shall hold and use the land leased bona fide for the lessee’s own exclusive benefit and shall not transfer, convey or assign the land or any portion thereof without having first obtained the written consent of the Minister.
- (9) The lessee shall not enter into a sublease of the land leased unless the sublease specifies the purpose for which the land may be used under the sublease, and it is a purpose which is consistent with the purpose for which the land may be used under this lease.

- (10) If the lessee enters into a sublease of the land leased, the lessee must notify the Commissioner of the granting of the sublease within 28 days after it is granted.
- (11) The land leased shall be used only for the purpose of Horticulture.
- (12) The lessee shall maintain and keep in reasonable repair all improvements on the land leased during the currency of the lease and shall permit the Minister or the Commissioner or any person authorised by the Minister or the Commissioner at all times to enter upon and examine the whole or any part of the land leased and the buildings or other improvements thereon.
- (13) All minerals within the meaning of the Mining Act 1992, and all other metals, gemstones and semiprecious stones, which may be in, under or upon the land leased are reserved to the Crown and the lessee shall permit any person duly authorised in that behalf to enter upon the land leased and search, work, win and remove all or any minerals, metals, gemstones and semiprecious stones in, under or upon the land leased.
- (14) Mining operations may be carried on, upon and in the lands below the land leased and upon and in the lands adjoining the land leased and the lands below those lands and metals and minerals may be removed therefrom and the Crown and any lessee or lessees under any Mining Act or Acts shall not be subject to any proceedings by way of injunction or otherwise in respect of or be liable for any damage occasioned by the letting down, subsidence or lateral movement of the land leased or any part thereof or otherwise by reason of the following acts and matters, that is to say, by reason of the Crown or any person on behalf of the Crown or any lessee or lessees, having worked now or hereafter working any mines or having carried on or now or hereafter carrying on mining operations or having searched for, worked, won or removed or now or hereafter searching for, working, winning or removing any metals or minerals under, in or from the lands lying beneath the land leased or any part thereof, or on, in, under or from any other lands situated laterally to the land leased or any part thereof or the lands lying beneath those lands, and whether on or below the surface of those other lands and by reason of those acts and matters or in the course thereof the Crown reserves the liberty and authority for the Crown, any person on behalf of the Crown and any lessee or lessees from time to time to let down without payment of any compensation any part of the land leased or of the surface thereof.
- (15) The lessee shall comply with the provisions of the Local Government Act 1993, and of the ordinances made thereunder.
- (16) The lessee shall comply with the provisions of the Water Management Act 2000 and any regulations made in pursuance of that Act.
- (17) The lessee shall not erect or permit any person to erect any buildings or extend any existing buildings on the land leased except to the satisfaction of the Commissioner.
- (18) The lessee shall ensure that the land leased is kept in a neat and tidy condition to the satisfaction of the Commissioner and not permit refuse to accumulate on the land.
- (19) Upon termination or forfeiture of the lease the Commissioner may direct that the former lessee shall remove any structure or material from the land at his own cost and without compensation. Where such a direction has been given the former lessee shall leave the land in a clean and tidy condition free from rubbish and debris.
- (20) The lessee shall, within 1 year from the date of commencement of the lease or such further period as the Commissioner may allow, enclose the land leased, either separately or conjointly with other lands held in the same interest, with a suitable fence to the satisfaction of the Commissioner.
- (21) The lessee shall not obstruct or interfere with any reserves, roads or tracks on the land leased, or the lawful use thereof by any person.
- (22) The lessee shall erect gates on roads within the land leased when and where directed by the Commissioner for public use and shall maintain those gates together with approaches thereto in good order to the satisfaction of the Commissioner.
- (23) The right is reserved to the public of free access to, and passage along, the bank of any watercourse adjoining the land leased and the lessee shall not obstruct access or passage by any member of the public to or along the bank.
- (24) Any part of a reserve for travelling stock, camping or water supply within the land leased shall, during the whole currency of the lease, be open to the use of bona fide travellers, travelling stock, teamsters and carriers without interference or annoyance by the lessee and the lessee shall post in a conspicuous place on the reserve a notice board indicating for public information the purpose of such reserve and, in fencing the land leased, the lessee shall provide gates and other facilities for the entrance and exit of travelling stock, teamsters and others. The notice board, gates and facilities shall be erected and maintained to the satisfaction of the Commissioner. The lessee shall not overstock, wholly or in part, the areas leased within the reserve, the decision as to overstocking resting with the Commissioner.
- (25) The Crown shall not be responsible to the lessee or the lessee's successors in title for provision of access to the land leased.
- (26) The lessee shall comply with the provisions of the Native Vegetation Act 2003 and any regulations made in pursuance of that Act.
- (27) Notwithstanding any other condition annexed to the lease, the lessee shall, in removing timber for the purpose of building, fencing or firewood, comply with the routine agricultural management activities listed in the Native Vegetation Act 2003.
- (28) The lessee shall not interfere with the timber on any of the land leased which is within a State forest, timber reserve or flora reserve unless authorisation has been obtained under the provisions of the Forestry Act 1916 and shall not prevent any person or persons duly authorised in that behalf from taking timber on the land leased. The lessee shall not have any property right in the timber on the land leased and shall not ringbark, kill, destroy or permit the killing or destruction of any

- timber unless authorised under the Forestry Act 1916 or unless approval has been issued in accordance with the Native Vegetation Act 2003, but the lessee may take such timber as the lessee may reasonably require for use on the land leased, or on any contiguous land held in the same interest, for building, fencing or firewood.
- (29) The lessee shall take all necessary steps to protect the land leased from bush fire.
- (30) The lessee shall, as the Commissioner may from time to time direct, foster and cultivate on the land leased such edible shrubs and plants as the Commissioner may consider can be advantageously and successfully cultivated.
- (31) Whenever so directed by the Commissioner, the lessee shall, on such part or parts of the land leased as shall be specified in the direction, carry out agricultural practices, or refrain from agricultural practices, of such types and for such periods as the Commissioner may in the direction specify.
- (32) The lessee shall not overstock, or permit or allow to be overstocked, the land leased and the decision of the Commissioner as to what constitutes overstocking shall be final and the lessee shall comply with any directions of the Commissioner to prevent or discontinue overstocking.
- (33) The lessee shall, if the Commissioner so directs, prevent the use by stock of any part of the land leased for such periods as the Commissioner considers necessary to permit of the natural reseedling and regeneration of vegetation and, for that purpose, the lessee shall erect within the time appointed by the Commissioner such fencing as the Commissioner may consider necessary.
- (34) The lessee shall furnish such returns and statements as the Commissioner may from time to time require on any matter connected with the land leased or any other land (whether within or outside the Western Division) in which the lessee has an interest.
- (35) The lessee shall, within such time as may be specified by the Commissioner take such steps and measures as the Commissioner shall direct to destroy vermin and such animals and weeds as may, under any Act, from time to time be declared (by declaration covering the land leased) noxious in the Gazette and shall keep the land free of such vermin and noxious animals and weeds during the currency of the lease to the satisfaction of the Commissioner.
- (36) The lessee shall not remove or permit any person to remove gravel, stone, clay, shells or other material for the purpose of sale from the land leased unless the lessee or the person is the holder of a quarry license under regulations made under the Crown Lands Act 1989 or, in respect of land in a State forest, unless the lessee or the person is the holder of a forest materials licence under the Forestry Act 1916, and has obtained the special authority of the Minister to operate on the land, but the lessee may, with the approval of the Commissioner, take from the land such gravel, stone, clay, shells or other material for building and other purposes upon the land as may be required by the lessee.
- (37) The lessee shall comply with the provisions of the Protection of the Environment Operations Act 1997 particularly in relation to disposal of tailwaters or waters which may be contaminated with fertiliser, herbicide or pesticide or similar chemicals.
- (38) The lessee shall not clear any native vegetation within the area shown cross-hatched on the diagram hereunder unless written approval has been granted by the local Catchment Management Authority.
- (39) The lessee shall ensure that cultivation and associated activities do not interfere with any road formation within the allowable area.
- (40) Incised drainage lines, other than man made structures, which carry water after storms shall be left uncultivated in the channels and for a distance of 20 metres on either side of the banks of the channels except when the Western Lands Commissioner specifies otherwise.
- (41) The lessee shall undertake any fuel management and/or provision of fire trail access in accordance with fire mitigation measures to the satisfaction of the local bushfire authority.
- (42) Aboriginal Sites are protected under the National Parks and Wildlife Act 1974, and are extremely vulnerable to many kinds of agricultural development. Should any Aboriginal archaeological relics or sites be uncovered during the proposed works, work is to cease immediately. The lessee must consider the requirements of the National Parks and Wildlife Act 1974 with regard to Aboriginal relics. Under Section 90 it is an offence to damage or destroy relics without prior consent of the Director-General of the National Parks and Wildlife Service (NPWS). If a site is discovered the lessee should contact the Manager, Cultural Heritage Unit, National Parks and Wildlife Services on Phone (02) 6883 5324 OR AT 58-62 Wingewarra St, Dubbo.
- (43) The lessee shall establish windbreaks at his/her own expense, as may be ordered by the Western Lands Commissioner to provide adequate protection of the soil.
- (44) The lessee shall ensure that stubble and other crop residue is retained on the soil surface and shall not be burnt, except with the approval of the Western Lands Commissioner or his delegate. Where such approval is granted and stubble burning is carried out with the approval as per requirements of the NSW Rural Fire Services.
- (45) The lessee shall undertake any appropriate measures, at his/her own expense, ordered by the Commissioner to rehabilitate any degraded cultivated areas.
- (46) Irrigation water is not to be permanently transferred from the lease without the prior permission of the Western Lands Commissioner.
- (47) Disposal of tailwater into creeks and rivers is controlled by the Environment Protection Authority under the Clean Waters Act. Before disposing of any tailwater or water which may be contaminated with fertiliser, herbicide or pesticide the Environment Protection Authority must be contacted.

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.

TONY KELLY, M.L.C.,
Minister for Lands

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Philip John Pippin (new member)	Homebush Recreation Reserve	Reserve No. 97957 Public Purpose: Public Recreation Notified: 18 October 1985 File Reference: WL90R33/2
Peter Joseph Jackson (new member)		
Timothy Raymond O'Halloran (re-appointment)		
Anthony Francis O'Halloran (re-appointment)		

For a term commencing the date of this notice and expiring 26 December 2011.

Schedule

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
Adam Hutchinson (new member)	Ivanhoe Public Hall Reserve Trust	Reserve No. 85525 Public Purpose: Hall Notified: 5 November 1965 File Reference: WL96R78/1
Fay Lorraine Linnett (new member)		
Clive Maxwell Linnett (re-appointment)		
Janice Ann Longfellow (re-appointment)		
Raymond John Longfellow (re-appointment)		

For a term commencing the date of this notice and expiring 28 June 2011.

Department of Natural Resources

WATER ACT 1912

AN APPLICATION for a license under Part 5 of the Water Act, 1912, as amended, has been received as follows;

Murrumbidgee Valley

JADEMARK PTY LTD for a bore on Lot 16 DP 757261, Parish of Woomahrigong, County of Wynyard for a water supply for irrigation of 20 hectares (stock feed). New License. Reference: 40BL191344.

William John ROBERTSON for a bore on Lot 446 DP 757248, Parish of South Gundagai, County of Wynyard for a water supply for irrigation of 40 hectares (lucerne, cereals, forage crops). New License. Reference 40BL191354.

John ROBERTSON for a bore on Lot 436 DP 757248, Parish of South Gundagai, County of Wynyard for a water supply for irrigation of 50 hectares (lucerne, cereals and forage crops). New License. Reference 40BL191355.

John ROBERTSON for a bore on Lot 438 DP 757248, Parish of South Gundagai, County of Wynyard for a water supply for irrigation of 48 hectares (lucerne, cereals and forage crops). New License. Reference 40BL191356.

Written submissions of support or objections with grounds stating how your interest may be affected must be lodged before 29th March 2007 as prescribed by the Act.

S.F. WEBB,

Licensing Manager
Murray/Murrumbidgee Region

Department of Natural Resources
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.

Applications for a license under Section 10 for works within a proclaimed (declared) local area as generally described hereunder have been received from:

Murrumbidgee Valley

TIVERTON PTY LTD for a bywash dam on Blind Creek, Lot 108 DP 7553611, Parish of Douglas, County of Harden for conservation of water for stock and domestic purposes. New License. Reference 40SL71111.

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's Regional Director at Leeton within the 28 days as fixed by the Act.

S.F. WEBB,
Licensing Manager
Murray/Murrumbidgee Region

Department of Natural Resources
P.O. Box 156, LEETON NSW 2705

WATER ACT 1912

Notice of Land Board Hearing

THE Local Land Board for the Land District of Gunnedah will, at 10am on 12, 13 and 14 March 2007 at Wests Diggers Club, Kable Avenue, Tamworth NSW 2340, publicly inquire as to the desirability of granting an application for a Joint Water Supply Authority under Part 2 of the Water Act, 1912 by George Clift and others for stock and domestic purposes and irrigation of 1, 296 hectares on Lots 25, 28, 58, 72, 73 and 75 DP 755486, Parish of Clift, County of Pottinger.

Any person who thinks their interests may be affected by the granting of this application may present their case at this hearing. (Our reference: 90SA011701).

GA2: 527903.

GEOFF CAMERON,
Principal Licensing Officer
Tamworth

WATER ACT 1912

Notice of Withdrawal of Pumping Suspensions under Section 22B of the Water Act 1912 Coffs Creek and its Tributaries

THE Department of Natural Resources advises that PUMPING SUSPENSIONS as contained in notice dated 6 February 2007 under section 22B of the Water Act 1912 relating to Coffs Creek and its tributaries with respect to the taking of water therefrom hereby gives notice to all holders of permits, authorities and licenses under Part 2 of the Water Act that pumping suspensions so imposed are now lifted. Diversion of water must however be undertaken in accordance with the conditions of individual licenses.

Dated this twenty-seventh day of February 2007.

D. MILLING,
Manager, Licensing North,

Department of Natural Resources,
Locked Bag 10, Grafton NSW 2460

WATER ACT 1912

Notice of Withdrawal of Pumping Restrictions under Section 22B of the Water Act 1912 Dungay Creek and its Tributaries

THE Department of Natural Resources advises that PUMPING RESTRICTIONS as contained in Notice dated 1 February 2007 under section 22B of the Water Act 1912 relating to Dungay Creek and its tributaries with respect to the taking of water therefrom hereby gives notice to all holders of permits, authorities and licenses under Part 2 of the Water Act that pumping restrictions so imposed are now removed. Diversion of water must however be undertaken in accordance with the conditions of individual licenses.

Dated this twenty-seventh day of February 2007.

D. MILLING,
Manager, Licensing North

Department of Natural Resources,
Locked Bag 10, Grafton NSW 2460

WATER ACT 1912

APPLICATION for a license under Part 2 of the Water Act 1912 being within a Proclaimed (declared) Local Area under section 5(4) of the Act.

An Application for a license Under Section 10 of Part 2 of the Water Act, has been received as follows;

Gwydir Valley

Donald Stephen and Jennifer Helen Downes for 50 mm centrifugal pump on the Macintyre River located on Lot 11 DP 188692 parish of Inverell County of Gough for stock and domestic purposes. New License. LO Papers 90SL100925 GA2: 527904

Written objections specifying grounds thereof, may be made by any statutory authority or local occupier within the proclaimed local area whose interests may be effected, must be lodged with the Department within 28 days of the date of this publication as prescribed by the Act.

PETER CUELL,
Licensing Manager
Licensing – North

Department of Natural Resources
PO Box 550 Tamworth NSW 2340

WATER MANAGEMENT ACT 2000

Water Management (Minister's Plan)

Lower Lachlan Groundwater Order Number 2, 2007

I, IAN MACDONALD, M.L.C., Minister for Natural Resources, in pursuance of section 45(4) of the Water Management Act 2000 and with the concurrence of the Minister for the Environment, do, by this my Order, amend the Water Sharing Plan for the Lower Lachlan Groundwater Source 2003 by omitting from clause 3 the matter '1 April 2007' and by inserting instead the matter '1 May 2007'.

This Order takes effect on the date that it is published in the Gazette.

Dated this twenty eighth day of February, 2007.

IAN MACDONALD, M.L.C.,
Minister for Natural Resources

Explanatory Note

The object of this Order is to postpone the commencement of the Water Sharing Plan for the Lower Lachlan Groundwater Source 2003 from 1 April 2007 to 1 May 2007.

Native Vegetation Regulation 2005 Environmental Outcomes Assessment Methodology

Protecting and investing in healthy and productive landscapes for the people of New South Wales

Under clause 24 of the Native Vegetation Regulation 2005, I approve this document as the Environmental Outcomes Assessment Methodology.

Ian Macdonald MLC

Date: 22 February 2007

This version was originally published in the NSW Government Gazette on 18th November 2005 and incorporates amendments published on 21st July 2006, 24th November 2006 and 2nd March 2007.

Native Vegetation Regulation 2005: Environmental Outcomes Assessment Methodology

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NSW Department of Natural Resources
23-33 Bridge Street Sydney NSW Australia
<http://www.nativevegetation.nsw.gov.au/>
ISBN 0 7347 5654 2

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1 Introduction

In December 2003 the NSW Government undertook a major overhaul of natural resource management institutions in NSW by passing the *Natural Resources Commission Act 2003*, the *Catchment Management Authorities Act 2003* and the *Native Vegetation Act 2003*.

These new reforms were built on the Wentworth Group's report to Premier Carr in February 2003. Their report, titled "*A New Model for Landscape Conservation in New South Wales*" contained five interdependent recommendations:

- 1) strengthen and simplify native vegetation regulation ending the broadscale clearing of remnant vegetation and protected regrowth;
- 2) set environmental standards and clarify responsibilities for native vegetation management which will, over time, create healthy rivers and catchments;
- 3) use property management plans to provide investment security, management flexibility and financial support for farmers;
- 4) provide significant public funding to farmers to help meet new environmental standards and support on-ground conservation; and
- 5) strengthen institutions by obtaining scientific input into policy setting, improving information systems, and regionalising administration.

The Native Vegetation Reform Implementation Group was established to advise the Premier on how to implement the Wentworth Group's reforms. This group comprised senior representatives from farmer groups, environment groups, scientists and members of NSW public service agencies. The Native Vegetation Reform Implementation Group Report identified that:

"New South Wales needs a sound approach to the management of our native vegetation that:

- *is built on a shared commitment to develop the world's leading agricultural production systems that utilise maximum water efficiency and sustainable farming practices;*
- *is capable of sustaining regional development with secure access to natural resources;*
- *protects the environment by restoring and maintaining the quality of our water, soil and biodiversity; and*
- *is based on mutual trust between farmers, environmentalists, governments, and the wider community."*

In December 2003 the *Natural Resources Commission Act 2003*, *Catchment Management Authorities Act 2003* and the *Native Vegetation Act 2003* were passed to deliver this framework.

The *Natural Resources Commission Act 2003* created the Natural Resources Commission. One of the primary functions of the Commission is to set State-wide standards and targets for natural resource management. The Commission is required to have regard to, among other things, the principles of ecologically sustainable development, the social and economic implications of its recommendations and advice, and regional variation in the environment.

The *Catchment Management Authorities Act 2003* creates Catchment Management Authorities. The Authorities have both an operational role and a planning role. Operationally the Catchment Management Authorities are responsible for approving property vegetation plans under the *Native Vegetation Act 2003* and delivering incentives to landholders from funding provided by Government. Catchment Management Authorities are also responsible for preparing catchment action plans. The catchment action plans are the link between the State-wide standards and targets and on ground actions at the regional level.

An objective of the *Native Vegetation Act 2003* is to end broadscale clearing except where the clearing will improve or maintain environmental outcomes. This Environmental Outcomes Assessment Methodology sets out the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes. It provides the scientific underpinning for, and the logic used in this assessment. It will continue to be refined as the science improves.

The Environmental Outcomes Assessment Methodology is applied using an objective, computer-based decision support software known as the PVP Developer. This software weighs up the positive and negative benefits of different management actions helping assessment officers to make practical decisions based on the best scientific information available.

The PVP Developer will be used by Catchment Management Authorities to assist farmers prepare Property Vegetation Plans. Property Vegetation Plans will be the main vehicle for delivering on farm incentives and for securing and clarifying farmers' rights to manage native vegetation consistent with the *Native Vegetation Act 2003*.

Detailed explanations on the use of the software outlined in the methodology are provided in Operations Manuals.

The methodology and software has evolved as a result of extensive field trials, public submissions and review by panels of independent scientists, farming and environmental interests.

It will continue to be refined as scientific knowledge advances. All future improvements to the PVP Developer will require consideration by the Natural Resources Commission and approved by the Minister for Natural Resources and, for matters related to biodiversity, concurrence from the Minister for Environment and Conservation.

Notes in this document are explanatory notes and do not form part of the document for the purposes of the Native Vegetation Regulation 2005.

Note: For further information please see the following:

Wentworth Group of Concerned Scientists, 2003 *A New Model for Landscape Conservation in New South Wales*. NSW Government

http://www.wwf.org.au/News_and_information/Publications/PDF/Report/new_model_report_to_carr.pdf

Native Vegetation Reform Implementation Group, 2003 *Final Report*. Department of Infrastructure, Planning and Natural Resources

<http://www.nativevegetation.nsw.gov.au/methodology/index.shtml>

Department of Natural Resources (DNR), 2003 *A New Approach to Natural Resource Management*.

<http://www.nativevegetation.nsw.gov.au/methodology/index.shtml>

2 Assessment of broadscale clearing proposals

2.1 Overview

The *Native Vegetation Act 2003* states that broadscale clearing proposed in a development consent or a property vegetation plan may only be approved if the clearing will improve or maintain environmental outcomes. Sections 15 and 32 of the *Native Vegetation Act 2003* allows the Native Vegetation Regulation 2005 to make provision for or with respect to "the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes"

This document sets out the circumstances in which clearing and, where appropriate associated offsets, are to be regarded as improving or maintaining environmental outcomes.

This document is adopted into the Native Vegetation Regulation 2005 (as required by the *Native Vegetation Act 2003*) by clause 24 of the Native Vegetation Regulation 2005. The Environmental Outcomes Assessment Methodology can only be varied in accordance with the process set out in clause 25 of the Native Vegetation Regulation 2005. In particular, before any change takes effect, the Native Vegetation Regulation 2005 will need to be updated to refer to the amended version (clause 25(1)(g)) of the Environmental Outcomes Assessment Methodology.

The environmental outcomes of clearing are highly variable and depend on a range of issues such as the type of vegetation being cleared, how the clearing will be undertaken and the existing state of the landscape in the area where the clearing is proposed. This document and the data that underlies some of the requirements (see Chapter Section 2.4) reflect this complexity.

To facilitate timely assessment of clearing proposals in accordance with the computer models set out in this document, the scientific information in the models has been codified into a decision support tool called the PVP Developer. This allows local environmental variables and details of the clearing and any offset proposals to be entered into the computer, with the results of ensuing computations being available to assist decision making by the appropriate authorities as to whether the proposed broadscale clearing is to be regarded as improving or maintaining environmental outcomes in accordance with this Environmental Outcomes Assessment Methodology. An officer delegated by the Minister must certify that the PVP Developer complies in all aspects with the Environmental Outcomes Assessment Methodology. Decisions made in accordance with the PVP Developer will be regarded as improving environmental outcomes.

The Director General of the Department of Natural Resources or their delegate will maintain version control of the PVP Developer in accordance with amendments made under clause 25 of the Native Vegetation Regulation 2005. Version control is managed through the Property Administration Management System (PAMS) that automatically maintains the version of the PVP Developer and its databases used for a Property Vegetation Plan. A PVP can nor be generated without reference to the Property Administration Management System.

Broadscale clearing must be assessed in accordance with Chapters 2 to 6. The overall impacts of proposed broadscale clearing are to be determined by separately assessing the impacts of the proposal on:

- water quality (Chapter 3);
- salinity (Chapter 4);
- biodiversity (Chapter 5); and
- land degradation (soil) (Chapter 6).

Where the broadscale clearing is of an invasive native scrub species listed in Table 7.1 the option is available to have the proposal assessed in accordance with Chapter 7 only.

2.2 The improve or maintain test

Proposed broadscale clearing assessed under this test is to be regarded as improving or maintaining environmental outcomes if either:

- 1) **In relation to development applications**, the impacts of the proposed clearing will improve or maintain environmental outcomes for each *relevant environmental value* (that is, water quality, salinity, biodiversity and land degradation (soil)); or
- 2) **In relation to a draft Property Vegetation Plan (PVP)**, the impacts of the proposed clearing and the benefits from any offset whether the same property or elsewhere, will improve or maintain environmental outcomes for each relevant environmental value.

If a clearing proposal that involves clearing of native vegetation (other than invasive native scrub) the proposal must be assessed against each of the relevant environmental values (that is, water quality, salinity, biodiversity and soils). For each environmental value, the clearing (and, where relevant, any offsets) must improve or maintain environmental outcomes, according to this Environmental Outcomes Assessment Methodology.

If a clearing proposal is for the purpose of clearing of invasive native scrub (as defined by this Environmental Outcomes Assessment Methodology in Chapter 7), then that proposal is assessed **only under Chapter 7** to determine whether the proposed clearing will improve or maintain environmental outcomes. If the assessment under Chapter 7 indicates that the proposed clearing will improve or maintain environmental outcomes, then there is no need to assess the proposal under Chapter 3 (water quality), Chapter 4 (salinity), Chapter 5 (biodiversity) and Chapter 6 (soils).

For a clearing proposal that deals with the clearing of invasive native scrub, if the assessment under Chapter 7 indicates that the clearing will **not** improve or maintain environmental outcomes, then the clearing proposal must be assessed in the same way as a proposal that involves clearing native vegetation that is not invasive native scrub.

2.3 Offsets

Where management actions that have environmental benefits (referred to as offsets) are proposed in a Property Vegetation Plan, the benefits of the proposed action are to be determined by separately assessing the benefits of the offset in relation to each of the environmental values listed above.

In addition to any specific requirements for offsets set out in Chapter Sections 3 to 6, the benefits of a proposed offset may only be taken into account when assessing whether proposed clearing will improve or maintain environmental outcomes if the:

- benefits of the offset persist for at least the duration of the negative impact of the proposed clearing; and
- offset is additional to actions or works carried out using public funds or to fulfil regulatory obligations.

Offsets may only be proposed in a Property Vegetation Plan.

Note:

1. The principles for the use of offsets are:
 - A. the benefits of the offset persist for at least the duration of the negative impact of the proposed clearing (usually in perpetuity); and
 - B. the benefits from any offset whether the same property or elsewhere will improve or maintain environmental outcomes for each relevant environmental value; and
 - C. the offset vegetation for biodiversity is either of equal or greater regional conservation significance as the site proposed for clearing; and
 - D. management actions are likely to be deliverable and enforceable; and
 - E. permanent conservation measures are given greater value than other management actions; and
 - F. the benefits of the offset are assessed using the same methodologies used to assess the impacts of the proposed clearing; and
 - G. the offset is additional to actions or works carried out using public funds or to fulfil regulatory obligations; and
 - H. only benefits from the management action or permanent conservation action may comprise the offset.
2. Offsets (that are not related to how the proposed clearing is carried out) are not available as part of development applications as there is no way of ensuring that these actions are implemented by subsequent landholders.
3. When the Minister on the advice of the Natural Resources Commission, approves the appropriate method(s) within the Environmental Outcomes Assessment Methodology the net effect of impacts and benefits on water quality, land degradation (soil) and salinity will be assessed and the flow-on effects of the impacts and benefits between water quality, land degradation (soil) and salinity will be taken into account. Biodiversity outcomes will not be tradeable.

2.4 Data variation

2.4.1 Databases containing environmental information

Chapters 3, 4, 5, 6 and 7 specify the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for water quality, salinity, biodiversity, soils and invasive native scrub respectively.

To apply these circumstances accurately and meaningfully to the enormous range of possible clearing and offset proposals in the diverse environments that exist throughout the State it is necessary to rely on detailed data about the state of the environment in NSW. The information is held in the following databases:

- threatened species profiles database;
- vegetation benchmarks database;
- overcleared landscapes database;
- overcleared vegetation types database;
- major rivers database;
- important wetlands database;
- soil subregions database; and
- invasive native scrub species database.

These databases are available from the web sites of the Catchment Management Authorities; the Department of Environment and Conservation; and the Department of Natural Resources.

2.4.2 Changing the databases

The databases are updated in response to increasing knowledge about the environment and changes in the environment itself. Prior to updating the databases the Director General of the Department responsible for that database must consult the Natural Resources Commission, the Catchment Management Authorities and any other public authorities, bodies or persons that are, in the opinion of the Director General, likely to be affected by the proposal.

Changes to the databases must be published on the internet.

2.4.3 Using more appropriate local data

Where an assessment of proposed broadscale clearing using the approved databases indicates that the proposal does not improve or maintain environmental outcomes, it may be possible to utilise more appropriate local data.

If an **accredited expert** certifies that data is available that more accurately reflects local environmental conditions (compared to the data in the approved databases) in relation to:

- vegetation benchmarks;
- whether threatened animal species are likely to occur on the land in that vegetation type or habitat feature in the sub region; or
- the estimated percentage increase in population that can be expected in response to a proposed management action, as measured by either an increase in the number of individuals, or habitat amount or key habitat feature.

The Catchment Management Authority Board or General Manager (exercising power delegated by the Minister) may authorise the replacement of the approved data with data that the accredited expert advises is more appropriate.

After the data is varied the proposal may be reassessed in accordance with clause 26(1)(a) of the Native Vegetation Regulation 2005.

In certifying that data is available that more accurately reflects local environmental conditions (compared to the data in the approved databases), an accredited expert must:

- provide reasons for this opinion; and
- comply with any assessment protocols approved by the Minister for Natural Resources (in relation to aspects of assessment concerned with salinity, soil and water quality), the Minister for Environment and Conservation (in relation to aspects of assessment concerned with threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with fish and marine vegetation).

Accredited expert means a person accredited by the Minister for Natural Resources as an expert for the purposes of this Chapter Section, being accreditation on the basis of criteria approved by the Minister for Natural Resources (in relation to aspects of assessment concerned with salinity, soil and water quality), the Minister for the Environment (in relation to aspects of assessment concerned with threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with fish and marine vegetation).

If proposed broadscale clearing is approved after data has been varied in accordance with this Chapter Section the requirements of clause 29 of the Native Vegetation Regulation 2005 must be complied with.

3 Water Quality Assessment

3.1 Introduction

Riparian vegetation provides multiple benefits for water quality, land degradation (soil), salinity and terrestrial and aquatic biodiversity. Riparian (or riverside) vegetation therefore is used as a surrogate for water quality impacts, where the term “water quality” is used broadly to mean “river health”. In addition to the sediment and nutrient aspects of water quality, this also encompasses aquatic habitat (for biodiversity protection) and geomorphological considerations.

“Riparian land is important because it is usually the most fertile and productive part of the landscape, in terms of both agriculture and natural ecosystems. It often has better quality soils than surrounding hill-slopes and, because of its lower position in the landscape, often retains moisture over a longer period” (Cotton Research and Development Corporation, 2003).

“Riparian land often supports a greater diversity of plants and animals than non-riparian land. This is a result of its wide range of habitats and food types, its closeness to water, its microclimate and its ability to provide refuge. Many native plants and animals are found only, or mainly, in riparian lands, and this makes these areas essential to many animals for all or part of their lifecycle” (Cotton Research and Development Corporation, 2003).

“Riparian land also provides a refuge for native plants and animals in times of drought and fire, as well as providing corridors for wildlife in highly-cleared landscapes” (Cotton Research and Development Corporation, 2003).

“Careful management of riparian land is vital for the conservation of Australia’s unique biodiversity” (Cotton Research and Development Corporation, 2003).

3.2 The improve or maintain test for water quality

The water quality tool is to be used in the field during site visits. The user is to apply the tool if all or part of a stream or wetland area can be seen on the ground within the proposed Property Vegetation Plan area or within the following distances from the boundary of the Property Vegetation Plan area:

- coast and tablelands- 40 metres;
- western slopes and plains-100 metres; or
- estuarine areas-50 metres;

Otherwise there is no need to apply the tool and clearing is deemed to improve or maintain environmental outcomes *for water quality*.

3.2.1 Clearing that does not improve or maintain environmental outcomes for water quality

Subject to Chapter Section 3.2.3, below, the following clearing does not improve or maintain environmental outcomes *for water quality* and cannot be offset:

- clearing within 20 metres of, and within, a stream listed in Major Rivers Database (NSW Government, 1977);
- clearing within the riparian buffer distance around important wetlands or minor wetlands (as defined in Table 3.1).

Table 3.1 Definition of riparian buffer distances

Location	Size of stream/wetland			
	Minor watercourses, flood runners and effluents	Minor creeks & lagoons	Minor rivers, minor wetlands & major creeks	Major rivers & important wetlands
Coast & tablelands	10 m	20 m	30 m	40 m
Western slopes & plains	20 m	40 m	60 m	100 m
Estuarine areas	50 m from the astronomical high tide mark (where no obvious bank).			

3.2.2 Clearing that may improve or maintain environmental outcomes for water quality with appropriate offsets

Subject to Chapter Sections 3.2.1 and 3.2.3, it is deemed that clearing within the riparian buffer distance will not improve or maintain environmental outcomes for water quality without offsets. The offset:

- must provide commensurate vegetation cover (to minimise soil erosion and filter sediment); and
- must be within the riparian buffer distance that applies to the stream or wetland where the offset is to be located; the offset need not be on the same stream or lagoon as the clearing.

Offsets for water quality are calculated using the process described for biodiversity in Chapter 5. Proposed offsets may need to be assessed under Chapters 4 and 6 to determine whether the water quality offset has any negative impacts on salinity or land degradation.

3.2.3 Clearing that does improve or maintain environmental outcomes for water quality

The following clearing is deemed to improve or maintain environmental outcomes *for water quality*:

- clearing outside the riparian buffer distances for streams and wetlands; or
- clearing within the riparian buffer distances for streams and wetlands if it is for thinning of native vegetation to benchmark conditions for biodiversity (see Chapter Section 5.4).

3.3 Definitions

Stream means any river, creek, or natural watercourse, whether artificially modified or not, in which water flows, regardless of flow regime, in a defined flow path, bed or channel.

Effluent means an anabranch or distributary that is:

- a) listed in the Major Rivers Database (see definition of Minor River); or
- b) not listed in the Major Rivers Database but is shown on the topographic map in the PVP Developer.

Lagoon means a wetland that is visible on the ground but may or may not be marked on a 1:25,000 (or next best available scale) topographic map, is not listed in the Important Wetlands Database, is not a SEPP 14 Wetland and is not shown on the map of wetlands in the PVP Developer.

Major river means any part of a stream that is listed as a “major river” in the Major Rivers Database which is:

- a) downstream of the most upstream tributary listed in the Major Rivers Database; or
- b) downstream of another stream that is listed as a “major river” in the Major Rivers Database.

Minor river means any part of a stream that is:

- a) listed as a tributary or effluent in the Major Rivers Database, and has one or more upstream tributaries that are 2nd order based on the topographic map in the PVP Developer; or
- b) listed as a “major river” in the Major Rivers Database, and is:
 - (i) above the highest tributary listed in the Major Rivers Database; and
 - (ii) does not have another stream upstream of it that is listed as a “major river” in the Major Rivers Database; and
 - (iii) has one or more upstream tributaries that are 2nd order based on the topographic map in the PVP Developer.

Major creek means any part of a stream that is:

- a) Major creek has the same meaning as “Minor river” in the context of the PVP Developer.

Minor creek means any part of a stream that is:

- a) not listed in the Major Rivers Database, is not an effluent or flood runner and the topographic map in the PVP Developer shows it has tributaries upstream of it; or
- b) a listed tributary or effluent of a “major river” in the Major Rivers Database, and the stream section is above the highest 2nd order tributary marked on the topographic map in the PVP Developer; or
- c) listed as a “major river” in the Major Rivers Database, and the stream section is above the highest 2nd order tributary marked on the topographic map in the PVP Developer.

Minor watercourse means any part of a stream:

- a) that is not listed in the Major Rivers Database and the topographic map in the PVP Developer shows it has no tributaries upstream of it; and
- b) for which there is a visible path where water flows intermittently, ephemerally or permanently, that may be vegetated and which may or may not have an eroded channel.

Important wetland means a wetland that is listed in the Important Wetlands Database or is a SEPP 14 wetland.

Minor wetland means a wetland that is shown on the map of wetlands in the PVP Developer but is not listed in the Important Wetlands Database and is not a SEPP 14 wetland.

Flood runner means a continuous channel across or down a floodplain that only carries flow during an overbank flood.

SEPP 14 wetland means a wetland that is shown on the map of SEPP 14 wetlands in the PVP Developer.

Visible channel means a visible path where water flows, regardless of flow regime, which shows some degree of incision or erosion.

Note:

1. The classification of major and minor rivers in the Major Rivers Database is based on the publication "*Restrictions on the removal of trees on NSW watercourses*" (NSW Government, 1977), stream ordering and visual inspection. All streams listed in the booklet, whether listed as "major rivers" or not, have been provided with the same protection zone (within 20 m of their banks) since 1964. Minor amendments have been made to the list in the booklet to make it suitable for current needs and the amended listing has been reorganised into one table for each Catchment Management Authority, and a separate table of "major rivers" (see in the Major Rivers Database). The amendments preserve the original protection afforded to listed streams.
2. The Commonwealth Department of Environment and Heritage has listed 'nationally important wetlands', a subset of which is a list of Nationally Important Wetlands in NSW. A list of these wetlands, *Nationally Important Wetlands in NSW*, is provided by Catchment Management Authority area in the Operations Manual (see the Important Wetlands Database).
3. SEPP 14 wetlands are shown on the map of SEPP 14 wetlands provided in the PVP Developer.

3.4 Using the modified Strahler Stream ordering system

Progressing upstream, rivers and creeks become progressively smaller and their default riparian buffer distance requirements reduce. For example, working upstream, the Murrumbidgee starts as a "major river" but it progressively dwindles to be a "minor river or major creek" and then to be a "minor creek" before it peters out altogether. Provision has also been made in the Major Rivers Database for streams, such as the Darling, that undergo name changes.

Where stream ordering is used in the above definitions, this is determined using the Strahler system, which starts with 1st order at the top of the stream network (based on a 1:25,000 or next best available scale topographic map). The modified Strahler system is illustrated in Figure 3.1.

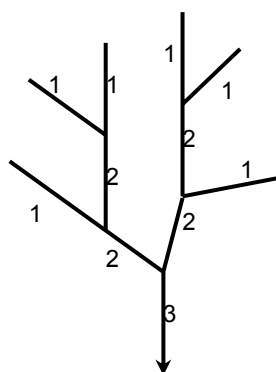


Figure 3.1 Modified Strahler stream ordering system

The stream ordering system is designed to produce results that are consistent between catchments, but also recognise legitimate regional differences. It is also designed to be simple enough to be useful to practitioners in the field, but at the same time reflect the differentiation in Table 3.1.

3.5 Measuring buffer distances

For streams, riparian buffer distances are measured on both sides of the stream from top of bank if this is defined, otherwise from the centre of the stream. Where a stream has more than one bank on either side, the bank closest to the main channel should be used, to protect vegetation on and within the stream banks.

For wetlands, riparian buffer distances are measured on all sides from the wetland limit. Where a wetland has more than one bank, the bank closest to the wetland area should be used.

Where a clearing or offset site is adjacent to a wetland, the distances for both streams and wetlands should be measured and the greater riparian buffer distance should be adopted.

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4 Salinity Assessment

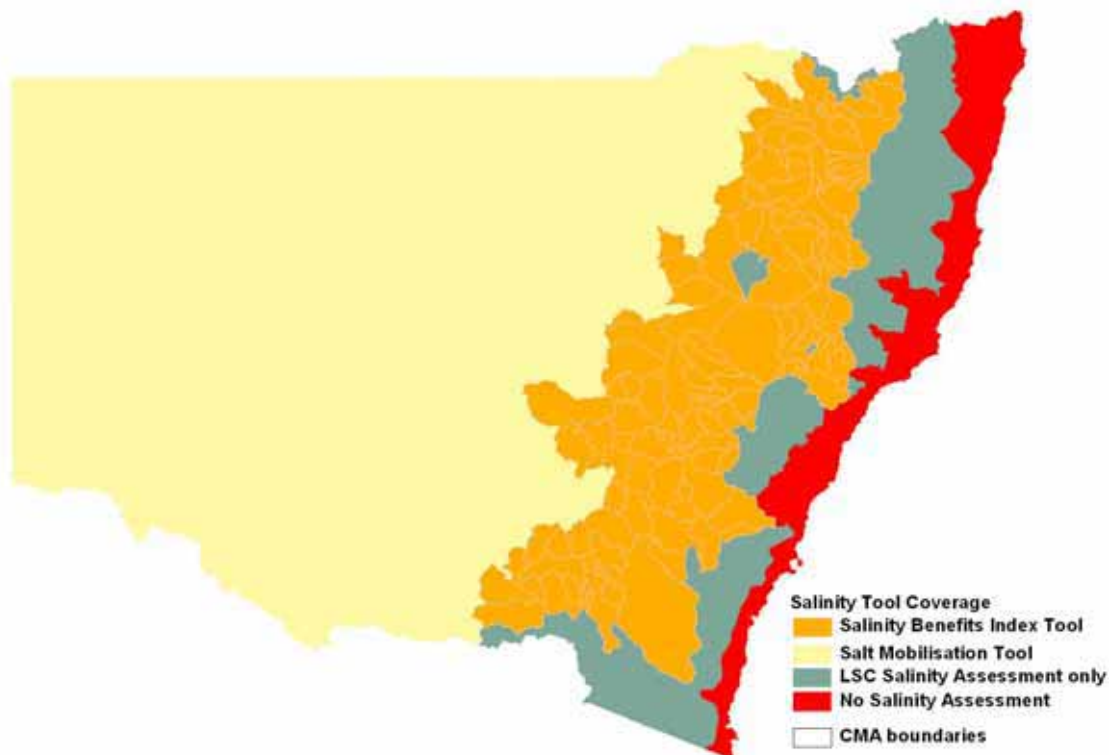
4.1 Introduction

This Environmental Outcomes Assessment Methodology defines the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for salinity under the *Native Vegetation Act 2003* including for the purposes of agreeing to a Property Vegetation Plan.

The assessment of the impacts of clearing on salinity, and the calculation of offsets, varies with location in NSW of the proposal:

- in upland areas of the Murray-Darling Basin, most of the Hunter catchment and a few coastal catchments, where dryland salinity has been identified as a significant hazard, the procedure involves calculating a Salinity Benefits Index, which is a measure of the change in stream salinity from current levels arising from a change in land cover. Chapter Section 4.4 describes the procedure for applying the improve or maintain test to clearing proposals and evaluating offsets using the Salinity Benefits Index;
- in the western part of NSW, where the geomorphic province is best described as “plains” but can also include some upland areas, the hydrologic processes and connectivity of salt stores with the surface drainage network are not adequately represented by the Salinity Benefits Index modelling approach. Here, the assessment procedure involves calculating a Salt Mobilisation Index which is a measure of the change in salt mobilised following a change in land use or cover (Department Infrastructure Planning and Natural Resources, 2005). Chapter Section 4.5 outlines the procedure for applying the improve or maintain test to clearing proposals in these areas;
- on the coastal slopes and tablelands an assessment of salinity is undertaken using only the Land and Soil Capability Tool (LSC); and
- on the coastal plains, a salinity assessment is not required because the dryland salinity hazard is low except in the Hawkesbury-Nepean coastal plain.

Figure 4.1 Map showing where each salinity assessment procedure is used



4.2 Assessing salinity hazard

The Land and Soil Capability Tool provides a preliminary assessment of clearing and offset proposals to check whether they are likely to improve or maintain environmental outcomes for dryland salinity.

A salinity hazard assessment is undertaken for all Catchment Hazard Areas where the clearing of native vegetation is proposed, excluding most of the Coastal Plains Catchment Hazard Areas. The one Coastal Plains exception is the Hawkesbury-Nepean Coastal Plain, where a preliminary assessment of salinity hazard is required.

A salinity hazard assessment is not required where the proposal to clear native vegetation involves the removal of paddock trees, as defined for the **BioMetric** Tool.

The criteria used by the Land and Soil Capability Tool to assess salinity hazard depend on the Catchment Hazard Area in which the assessment is undertaken and include:

- evidence of salinity outbreaks in the Land and Soil Capability zone;
- evidence of salinity outbreaks down-slope from the Land and Soil Capability zone;
- whether the Land and Soil Capability zone is in a known high salt store area;
- permeability of the soil; and
- condition of existing native vegetation.

The criteria (and relationships between the criteria) used by the Land and Soil Capability Tool to determine the Land and Soil Capability Class are shown in Table 4.1 for all Slopes and Tablelands Catchment Hazard Areas and the Hawkesbury-Nepean Coastal Plain Catchment Hazard Area, and in Table 4.2 for the Inland Plains Catchment Hazard Area.

If a preliminary salinity hazard assessment by the Land and Soil Capability Tool results in Land and Soil Capability Class 3 to 6, in the case of a clearing proposal, or Land and Soil Capability Class 3 to 8 in the case of an offset proposal, then:

- where the Salinity Benefits Index Tool is available for the Catchment Hazard Area, this Tool must be run to determine the salinity offset requirement, if any; or
- where the Salinity Benefits Index Tool is not available for the Catchment Hazard Area, and the Salt Mobilisation Tool is available, then the Salt Mobilisation Tool must be run to determine the salinity offset requirements.

Table 4.1 Criteria for determining Land and Soil Capability Class for Salinity Hazard for all Slopes and Tablelands Catchment Hazard Areas and the Hawkesbury - Nepean Coastal Plains Catchment Hazard Area.

Evidence of salinity outbreaks in the Land and Soil Capability Zone	Evidence of salinity outbreaks downslope from the Land and Soil Capability Zone	Salt Store Class	Land and Soil Capability Class	
No salt outbreaks	No salt outbreaks	Very Low	1	
		Very Low to Low; Low	2	
		Low to Moderate; Moderate	3-6	
		Moderate to High	7	
		High; High to Very High	8	
	Salt outbreaks observed but not extensive and no severe scalding	Salt outbreaks extensive and severe scalding	Very Low; Very Low to Low; Low; Low to Moderate; Moderate	3-6
			Moderate to High; High	7
			High to Very High; Very High	8
	Salt outbreaks observed but not extensive and no severe scalding	No salt outbreaks	Very Low; Very Low to Low; Low; Low to Moderate; Moderate	3-6
			Moderate to High; High	7
High to Very High; Very High			8	
Salt outbreaks observed but not extensive and no severe scalding		Salt outbreaks extensive and severe scalding	Very Low; Very Low to Low; Low; Low to Moderate	3-6
			Moderate; Moderate to High; High	7
			High to Very High; Very High	8
Salt outbreaks extensive and severe scalding		Not Required	Not Required	7-8

Table 4.2 Criteria for determining Land and Soil Capability Class for Salinity Hazard for the Inland Plains Catchment Hazard Area.

Evidence of salinity outbreaks in the Land and Soil Capability Zone	Salt Store Class	Soil Permeability Class ¹	Low Condition Vegetation ²	Land and Soil Capability Class	
No salt outbreaks	Very Low; Very Low to Low	Low	Yes	1	
			No	1	
		Moderate	Moderate	Yes	1
				No	2
			High	Yes	2
				No	3
	Low; Low to Moderate	Low	Yes	1	
			No	2	
		Moderate	Yes	2	
			No	3	
			Yes	3	
			No	4	
	Moderate	Low	Yes	2	
			No	3	
		Moderate	Yes	3	
			No	4	
			Yes	4	
			No	5	
	Moderate to High; High	Low	Yes	3	
			No	4	
		Moderate	Yes	4	
No			5		
Yes			5		
No			6		
High to Very High; Very High	Low	Yes	4		
		No	5		
	Moderate	Yes	5		
		No	6		
		Yes	6		
		No	7		
Salt outbreaks and/or scalding	Very Low; Very Low to Low	Low	Yes	3	
			No	3	
		Moderate	Moderate	Yes	3
				No	3
			High	Yes	3
				No	4
	Low; Low to Moderate	Low	Yes	3	
			No	3	
		Moderate	Yes	3	
			No	4	
			Yes	4	
			No	4	
	Moderate	Low	Yes	3	
			No	4	
		Moderate	Yes	4	
			No	4	
			Yes	4	
			No	5	
	Moderate to High; High	Low	Yes	4	
			No	4	
		Moderate	Yes	4	
No			5		
Yes			5		
No			6		
High to Very High; Very High	Low	Yes	4		
		No	5		
	Moderate	Yes	5		
		No	6		
		Yes	6		
		No	7		

¹ Defined in Section 4.5.4

² Defined in Section 4.3.7

4.3 Definitions

4.3.1 Streamflow

Streamflow is the total volume of water in a stream channel, for a specified time. It is measured at gauging stations and therefore is only known for discrete locations. In this model, streamflow (expressed in megalitres/year) is reported as an average annual value for the period 1975-2000.

Streamflow is separated into two flow components: quickflow and baseflow:

- Quickflow is the component of streamflow that is generated quickly during a rainfall event. It is sourced from surface runoff and lateral shallow subsurface runoff (i.e. pathways of water movement that are at or close to the ground surface). Quickflow is assumed to be a function of rainfall, soil, topography and land use.
- Baseflow is the component of streamflow that travels more slowly from the catchment to the stream and tends to sustain flow in a channel between rainfall events. It is sourced from rainfall that has infiltrated deep into the soil profile to recharge groundwater. This pathway of flow is typically slower than surface runoff pathways. Baseflow is assumed to be a function of rainfall, soil and land use.

4.3.2 Recharge

Recharge refers to the component of rainfall that infiltrates (percolates) down through the soil, beyond the root zone of the vegetation cover and into the groundwater aquifer. Rates of recharge tend to be slow. Where recharge water is discharged from a groundwater aquifer into a stream, it contributes to baseflow.

4.3.3 Surface Runoff

We use the term surface runoff to refer to the component of rainfall that flows at or relatively close to the ground surface and which, when it reaches a stream channel, contributes to the quickflow component of streamflow. It includes flow across the land surface and lateral shallow subsurface flow.

4.3.4 Salt Load

Salt load is the quantity of salt carried by a stream, over a specified time. It is a function of the salinity of streamflow and the volume of streamflow:

$$\text{Salt Load (M)} = \text{Streamflow (V)} * \text{Salinity (M/V)}$$

4.3.5 Stream Salinity

Stream salinity is the concentration of salt in a volume of water – in other words, the mass of salt per unit volume of water:

$$\text{Salinity} = \frac{\text{Salt(M)}}{\text{Water(V)}}$$

4.3.6 Local Reference Point

The local reference point is the nearest downstream gauging station from the list approved by the Minister. The list can be found in Tables 4.7 to 4.10 in Chapter Section 4.6.

4.3.7 Low Condition Vegetation

For the purposes of the salinity assessments:

- Native woody vegetation is in low condition if:
 - the over-storey percent foliage cover is less than 50% of the over storey percent foliage cover benchmark for that vegetation type; and
 - the percent ground cover tends (or is on average) less than 50%.
- Native grassland, shrubland, wetland or herb field is in low condition if:
 - the percent ground cover tends (or is on average) less than 50%.

Ground cover can comprise non-native species, including weeds, as the interest from a salinity perspective is in water use by the vegetation cover. This represents a slight variation on the definition of 'low condition' used in biodiversity assessments.

4.3.8 Paddock Trees

Paddock trees refer to "native vegetation with an over-storey projected foliage cover less than 25% of the lower benchmark for the vegetation community and where the ground layer is either exotic crop, ploughed fallow or almost exclusively perennial or annual exotic pasture (90% plus of the cover is exotic species)".

4.4 Using the Salinity Benefits Index Tool

At any given point along a stream network, stream salinity provides an integrated signature of the salinity processes operating in the area contributing to that point. The salinity benefits index value is used to determine whether the improve or maintain condition for a proposal to clear native vegetation is met and, if not met, the minimum level of offset (expressed in terms of the salinity benefits index) required to meet the improve or maintain test. The rationale for, and calculation of, the Salinity Benefits Index are described in Chapter Sections 4.4.4 and 4.4.5.

4.4.1 Clearing Areas

Clearing is deemed to improve or maintain instream salinity conditions if there is no increase in the long-term average stream salinity. The following general rules are used to interpret the Salinity Benefits Index (SBI) for clearing:

- If **SBI > 0**, then the proposal improves stream salinity outcomes and there is no requirement for salinity offsets;
- If **SBI = 0**, indicates that at the reference location there is no net change in average annual stream salinity, and there is no requirement for salinity offsets;
- If **SBI < 0**, then the proposal does not improve or maintain stream salinity outcomes. The proposal can only occur if actions are undertaken elsewhere on the property to offset the negative salinity impact.

4.4.2 Offset Areas

If offsets are required to mitigate against salinity impacts from a proposal to clear native vegetation, then the following rules are used to interpret the offset salinity benefits index relative to the clearing Salinity Benefits Index (SBI):

- If **SBI_{offset} ≥ 0** and **SBI_{offset} ≥ (SBI_{clearing} ignoring its minus sign)**, then the cumulative impact of the clearing and offset actions improve salinity outcomes;
- If **SBI_{offset} ≥ 0** and **SBI_{offset} < (SBI_{clearing} ignoring its minus sign)**, then the proposed offset provides a partial offset to the clearing impact, but the net outcome is that stream salinity is not improved or maintained. Additional or alternative salinity offsets are required;

- If $SBI_{\text{offset}} < 0$, then no salinity benefit is gained and the proposed offset does not improve or maintain stream salinity outcomes.

To obtain consistent and meaningful results the Salinity Benefits Indices for the impacts of a clearing proposal and any proposed offsets must be evaluated at the same reference point.

Offsets must be located:

- on the 'same property' as that where the clearing is proposed, and
- in catchments of the same stream order (Strahler system) or lower, and
- in the same SBI catchment as that of the clearing proposal.

The 'same property' assumes a contiguous block of land, but this definition can be expanded at the discretion of the CMA to include a property that is fragmented, so long as the clearing and offset sites are within the same local catchment, groundwater flow system or salinity hazard area. In circumstances where group PVP proposals are considered, the 'same property' refers to all properties making up the group bid, but with offset areas still subject to the other constraints listed above.

4.4.3 Reference Location

Salinity Benefits Index values are evaluated at the Local Reference Point (see Tables 4.7 to 4.10 in Chapter Section 4.6). It is assumed that:

- where the Salinity Benefits Index is negative at the reference location, the offset will negate any adverse impact such that there is no change in average stream salinity anywhere along the stream length;
- where the local Salinity Benefits Index is positive at the reference location (hence not requiring a salinity offset), any negative impact that might occur downstream of this point will be negligible, reflecting the increasing attenuation of impacts with distance downstream of the area of change.

4.4.4 Conceptual Framework for the Salinity Benefits Index Tool

It is assumed that if:

- the quantities of water and salt flowing past a given point in a stream; and
- the physical characteristics, which influence catchment water and salt yields (e.g. rainfall, topography, soil properties, salt stores, land cover), of the area contributing to that point;
- are known, then the water and salt loads at the measurement point can be apportioned to different parts of the catchment based on hydrologic principles and salt storage patterns.

In other words, every part of a contributing catchment can be defined in terms of its contribution to catchment water yield and salt export.

The approach adopted assumes that:

- there are two salt stores within the system: a soil salt store and a groundwater salt store;
- the salt from the soil salt store is mobilised by surface runoff and contributes to the salt load in quickflow;
- the salt from the groundwater salt store is mobilised by recharge and contributes to the salt load in baseflow;
- changing land cover can affect quickflow and baseflow in different proportions; and
- that soil and groundwater salinities are unaffected by land cover change.

Therefore, to capture the different pathways for salt mobilisation and differences in the way that quickflow and baseflow are impacted by a land cover change, streamflow is separated into two flow components. Source area maps represent the spatial variability of each component. For example, the source area map for quickflow describes the relative significance of every part of a catchment in terms of its contribution to quickflow. These

source area maps are inputs to the Salinity Benefits Index Tool, which sits behind the PVP Developer software.

Because quickflow and baseflow are influenced by land cover, when a land cover change is made, the source area distributions also change. The differences between the current condition and new condition source area distributions are used to calculate new quickflow and baseflow volumes. The changes in quickflow and baseflow cause changes in their respective salt loads, and these new flows and salt loads are used to calculate a Salinity Benefits Index.

4.4.5 Calculating the Salinity Benefits Index

The Salinity Benefits Index is a measure of the relative change in stream salinity from current salinity levels at a specific location, caused by changes in land cover and/or management.

A Salinity Benefits Index value is calculated as follows:

$$SBI = \frac{\frac{Salt_{current}}{Water_{current}} - \frac{Salt_{new}}{Water_{new}}}{\frac{Salt_{current}}{Water_{current}}} = \frac{Salinity_{current} - Salinity_{new}}{Salinity_{current}} * 1000$$

Where the subscript *current* refers to the mean annual salt load, water and salinity under current land cover conditions and subscript *new* refers to these same terms under the proposed land cover changes (Herron *et al.*, 2004). This equation says that the Salinity Benefits Index is the proportional change in stream salinity from current conditions caused by the land cover change.

The Salinity Benefits Index is evaluated at a reference point and applies to that reference point only. A reference point is a location downstream of the area of proposed clearing or other land use/management change at which measured streamflow and salinity data are available (i.e. a gauging station). The period 1975-2000 serves as the standard benchmark period for all catchment salinity assessments in the Murray-Darling Basin Salinity Management Strategy (MDBMC, 2003), and has therefore been used for deriving mean annual streamflow and salt load estimates for use in the Salinity Tool in the PVP Developer.

4.4.6 Defining Current Land Use Conditions

Streamflow

Streamflow is monitored in New South Wales' rivers by a network of gauging stations. A subset of these gauging stations is used to delineate the catchments used in the Salinity Benefits Index Tool for calculating the Salinity Benefits Index (see Tables 4.7 to 4.10 in Chapter Section 4.6). The selected gauging stations have good flow records and provide data, which is also used in NSW for surface water resources management planning.

The daily streamflow record for each gauging station is split into quickflow and baseflow components, using a digital filter approach. This is a standard hydrologic procedure for separating long term continuous records (Lyne & Hollick, 1979).

Salt Loads

Stream salinities are also measured at the gauging stations, although the record is generally shorter than for streamflow monitoring. Relationships between stream salinity and flow have been developed for each catchment based on the available data and these relationships are used to generate continuous time-series data of salinity, from which salt loads can be calculated. Salt load is split into quickflow and baseflow salt loads using the approach in CATSALT v1.5 (Tuteja *et al.*, 2003; Vaze *et al.*, 2004).

Spatial Data

A catchment is represented as a grid composed of square pixels (or cells) with sides of 25 metres. To represent the spatial pattern of a particular catchment attribute, whether it is elevation, groundwater salinity, recharge or some other attribute, each pixel within a grid is assigned a numerical value representing the attribute value in that part of the catchment. Different catchment attributes, represented as individual grids, are combined to produce weighted surfaces, reflecting the contributions from each pixel to total quickflow, baseflow and associated salt loads.

The weighted surface is a source area map in which the magnitude of the value assigned to each pixel of a catchment reflects its contribution to the total. Table 4.3 lists the individual grid layers used to generate weighted surfaces for quickflow, baseflow, quickflow salt load and baseflow salt load.

The proportional contribution, P_i , that cell i makes to some catchment total (eg. baseflow) is a function of the value of that cell, w_i , in the weighted grid relative to the sum of all the cell values (Σ = sum of) within the weighted grid, Σw_i :

$$P_i = \frac{w_i}{\sum w_i}$$

When P_i is multiplied by, for example, the mean annual baseflow for the catchment, the result is the volume of water contributed by pixel i to the total at the catchment outlet.

Table 4.3 The catchment attributes combined to produce weighted surfaces for quickflow, baseflow, quickflow salt load and baseflow salt load.

Quickflow	Baseflow	Quickflow Salt Load	Baseflow Salt Load
Digital Elevation Model(DEM) →* Compound topographic index (CTI)	Climate → Recharge	Soil Salinity	Groundwater salinity
Climate → Runoff	Soils → Recharge	Salt Outbreaks	Baseflow
Soils → Runoff		DEM → Flowpath length	
Land Cover	Land Cover	DEM → slope	
		Quickflow	

* The → symbol indicates a processing step from the first attribute to a derived attribute.

Factors Influencing Quickflow and Baseflow

- *Rainfall* – influences the amount of water entering the system. Everything else being equal, a pixel with a high mean annual rainfall will be a more significant source of quickflow than one with low rainfall. Modelled rainfall grids (five kilometre grid resolution) are derived by interpolating between points where rainfall has been measured (Hutchinson, 1995);
- *Soils* – different soils have different physical properties, which influence how readily they store and transmit water. The best available mapped soils data are used to define the spatial pattern of soils across each catchment. Soil hydraulic properties are assigned to each of the different soil types, based on measured data and, where measured data is not available, standard modelling techniques for deriving soil hydraulic properties;
- *Runoff* – the soil hydraulic properties and rainfall data are in the generation of a state-wide runoff grid. Water balance modelling was undertaken for every unique combination of climate zone and soil type occurring in the state to calculate average annual runoff (in mm). The spatial variability in runoff, as influenced by climate and soil type (i.e. no vegetation cover) is represented in the resultant runoff grid;
- *Recharge* – the soil hydraulic properties and rainfall data are in the generation of a state-wide recharge grid. Water balance modelling was undertaken for every unique

combination of climate zone and soil type occurring in the state to calculate average annual recharge (in mm). The spatial variability in recharge, as influenced by climate and soil type (i.e. no vegetation cover) is represented in the resultant recharge grid;

- *Topographic position* – influences the re-distribution of catchment water between rainfall events. Locations with large contributing areas and low local gradients tend to accumulate catchment water. As a result they are more likely to generate quickflow (i.e. shed water quickly) when it rains because their relatively high moisture content prevents more rain from infiltrating. They also tend to be near the stream so delivery of runoff to the stream occurs quickly. Locations with low contributing areas and/or steep gradients tend to drain relatively quickly, which means that on average they tend to be relatively dry. When it rains, more rain can infiltrate. These areas tend to be distant from streams, and are less significant sources of quickflow. A modelled index, the compound topographic index (CTI of Beven and Kirkby (1979)) is used to reflect this characteristic;
- *Land cover* – influences the evapotranspiration term of the catchment water balance and the partitioning between overland flow and infiltrated runoff. Perennial vegetation types use more water through a year via evapotranspiration than annual vegetation types, which are active for only part of the year (Zhang *et al.*, 2001). In general, trees use more water than perennial grass systems because they tend to have deeper root networks, and can access water stored deeper in the soil profile. Where there is no vegetation cover, the transfer of rainfall back to the atmosphere is by evaporation from the soil and this is restricted to a fairly shallow depth. These differences between vegetation types and cover influence the quantity of rainfall, which is available for quickflow and baseflow.

A water balance model is also used to calculate the weight assigned to each land cover class to reflect its influence on recharge and runoff. A bare soil condition is set as the reference condition and assigned a weighting of one (1). Since plant cover has the effect of reducing runoff and recharge, relative to bare soil, the land cover weightings are between zero (0) and one (1), where zero (0) is no runoff or recharge and one (1) is the same runoff or recharge as bare soil.

In the SBI Tool, the land cover/use layer maps to a look-up table which contains the land use weightings for runoff and recharge for every land cover/use type. These weightings vary from catchment to catchment.

Weighted Quickflow Surface

A weighted quickflow surface, QF_w , is generated by combining the runoff grid (based on soil-rainfall data) with the CTI surface and the weighted land use surface for quickflow (LU_{qf}):

$$QF_w = \text{Runoff} * CTI * LU_{qf}$$

Weighted Baseflow Surface

A weighted baseflow surface, BF_w , is generated by combining the recharge grid (based on soil-rainfall data) and the weighted land use surface for baseflow (LU_{bf}):

$$BF_w = \text{Recharge} * LU_{bf}$$

Factors Influencing Salt Load

- *Soil Salinity* – reflects the concentration of salt in the soil and available for mobilisation by quickflow. Everything else being equal, areas of high salinity are assumed to be more significant source areas of salt than areas of low salinity. Soil salinity spatial units are based on mapped soil type or geology, salt outbreak areas and landscape position. Estimates of soil salinity for each spatial unit are based on measured data and generalisations from point data to the wider area. Soil salinity is adjusted by topographic factors to account for landscape connectivity. In other words, each pixel is weighted to reflect the concentration of salt that the quickflow generated on the pixel would acquire in

its journey to the stream. If a pixel is close to the stream, its weighting will be less than a pixel that is far away from the stream network, everything else being equal. Furthermore, if quickflow from two pixels must travel the same distance to the stream, but the pathway for one pixel is through very saline cells, while the other pathway is through relatively non-saline cells, the pixel with the more saline pathway will have the higher weighting;

- *Groundwater salinity* – reflects the concentration of salt in groundwater and contributing to baseflow salt loads. Areas with high groundwater salinities are assumed to be more significant source areas of salt than areas of low groundwater salinity. Groundwater salinity spatial units are defined on the basis of groundwater flow systems mapping, and each unit is assigned a salinity value based on measured data and extrapolation from measured data to the wider area.

Weighted Quickflow Salt Load Surface

As quickflow salt load is a function of soil salinity and volume of quickflow, the weighted quickflow salt load grid, S_{QFW} , is generated by combining the weighted quickflow grid with the weighted soil salinity grid, $SoilEC_w$:

$$S_{QFW} = QF_w * SoilEC_w$$

Weighted Baseflow Salt Load Surface

As baseflow salt load is a function of groundwater salinity and volume of baseflow, the weighted baseflow salt load grid, S_{BFW} , is generated by combining the weighted baseflow grid with the groundwater salinity grid, $GWEC_w$:

$$S_{BFW} = BF_w * GWEC$$

4.4.7 Land Cover Change

Once the distribution of catchment exports is defined for current land use conditions, different land use changes can be modelled and the change in mean annual salt loads and streamflow estimated.

The land cover term is the only variable in the model. All of the other catchment characteristics are assumed to not change. When land cover is changed, the amount of rainfall that returns to the atmosphere changes, as do the amounts of rainfall that become runoff (quickflow) and recharge (baseflow).

If an area of annual crops is converted to woodland, runoff and recharge is reduced. In the model, the weightings for cropping, which might be around 0.7 or 0.8, are changed to the appropriate land cover weightings for woodland, which are more like 0.2 or 0.3. This causes the weighted quickflow and baseflow surfaces to change – in this instance the sum of the weighted grids for quickflow and baseflow under the proposed land use change are lower than under the current conditions. The sum of the weighted grid under the new condition is compared to that for the current condition. The ratio, which in this case will be less than 1, is multiplied by the mean annual quickflow (baseflow) to obtain a new mean annual quickflow (baseflow).

A change in quickflow and baseflow volumes influences the export of salt from the affected area and the weighted quickflow salt load and baseflow salt surfaces also change. Using the same approach, the new salt load for the land cover change is calculated.

The new exports are calculated as follows:

Quickflow

$$QF^{new} = \frac{\sum QF_w^{new}}{\sum QF_w} * QF_{ann}$$

Baseflow

$$BF^{new} = \frac{\sum BF_w^{new}}{\sum BF_w} * BF_{ann}$$

Quickflow Salt Load

$$S_{QF}^{new} = \frac{\sum S_{QFw}^{new}}{\sum S_{QFw}} * S_{QF}^{ann}$$

Baseflow Salt Load

$$S_{BF}^{new} = \frac{\sum S_{BFw}^{new}}{\sum S_{BFw}} * S_{BF}^{ann}$$

Where *QF* is quickflow, *BF* is baseflow, *S* is salt load and *new* denotes parameters for the new land use scenario. These equations compare the sum of all the cells in the weighted grid for the new land use scenario to that of the current land use for each flow and salt component and multiply the ratio by the current mean annual quickflow, QF_{ann} , baseflow, BF_{ann} , quickflow salt load, S_{QF}^{ann} and baseflow salt load, S_{BF}^{ann} , respectively. Thus, using information about current exports and the best available hydrologic and salt storage data, estimates of the impacts of land use changes on average annual streamflow and salt load are derived.

Finally, the salinity benefits index is calculated by:

- summing together quickflow and baseflow for current conditions and for the new conditions to produce total streamflows for current and new conditions;
- summing together the quickflow and baseflow salt loads for current conditions and the new conditions to produce current and new total salt loads;
- putting these values into the salinity benefits index equation; and
- rounding to the nearest whole (integer) number.

4.5 Using the Salt Mobilisation Tool

In the western parts of NSW, where landscapes tend to be flat and the connectivity between salt stores, hydrologic pathways and the stream network is not well understood, it is assumed that land cover changes which reduce average annual recharge benefit the environment through reducing the mobilisation of salt in the landscape.

The Salt Mobilisation Tool is used to calculate a Salt Mobilisation Index (SMI) for each site where clearing or offsets is proposed. The Salt Mobilisation Index is a measure of potential salt mobilisation as a function of recharge and salt store. The Salt Mobilisation Index is used to determine whether the improve or maintain condition for a proposal to clear native vegetation is met and, if not met, the minimum level of offset required to meet the improve or maintain test. The rationale for, and calculation of, the Salt Mobilisation Index are described in Chapter Sections 4.5.3 and 4.5.4.

4.5.1 Clearing Areas

Clearing is deemed to improve or maintain salinity outcomes if there is no increase in local recharge, hence salt mobilisation. The following general rules are used to interpret the Salt Mobilisation Index (SMI) for clearing:

- If **SMI** ≥ 0 , then the proposal is deemed to improve or maintain salinity outcomes and there is no requirement for salinity offsets;

- If **SMI < 0**, then the proposal is deemed to not improve or maintain salinity outcomes. The proposal can only occur if actions are undertaken elsewhere on the property to offset the negative salinity impact.

The majority of proposals to clear native vegetation in western NSW are likely to cause an increase in local recharge, and will typically require offsets. The steps for calculating the salt mobilisation offset requirement are described in Chapter Sections 4.5.2 and 4.5.4.

4.5.2 Offset Areas

If offsets are required to produce a net no salt mobilisation outcome from a proposal to clear native vegetation, then the following rules are used to interpret the offset Salt Mobilisation Index relative to the clearing Salt Mobilisation Index (SMI):

- If **SMI_{offset} > 0** and **SMI_{offset} > (SMI_{clearing} ignoring its minus sign)**, then the cumulative impact of the clearing and offset actions is deemed to improve or maintain salinity outcomes;
- If **SMI_{offset} > 0** and **SMI_{offset} < (SMI_{clearing} ignoring its minus sign)**, then the proposed offset provides a partial offset to the clearing impact, but the net outcome is that some salt is mobilised and the improve or maintain test is not met. Additional or alternative salinity offsets are required;
- If **SMI_{offset} < 0**, then the offset proposal is likely to increase salt mobilisation, hence provides no offset. The improve or maintain test is not met for salinity outcomes.

Offsets must be located:

- on the 'same property' as that where the clearing is proposed, and
- in catchments of the same stream order (Strahler system) or lower.

The 'same property' assumes a contiguous block of land, but this definition can be expanded at the discretion of the Catchment Management Authority to include a property that is fragmented, so long as the clearing and offset sites are within the same local catchment, groundwater flow system or salinity hazard area. In circumstances where group PVP proposals are considered, the 'same property' refers to all properties making up the group bid, but with offset areas still subject to the other constraints listed above.

4.5.3 Conceptual Framework for the Salt Mobilisation Tool

The approach adopted for assessing salinity impacts in relatively flat, floodplain environments is based on a very different assumption from the upland areas, where the assessment is based around the impacts on stream salinity. Here, the assumption is simply that reducing the mobilisation of salt stored in the ground is beneficial to the environment. Reducing salt mobilisation can be achieved through land cover changes that increase plant water uptake and, hence, reduce recharge. With respect to the clearing of native vegetation, unless the clearing involves the replacement of native grasses with some higher water use vegetation cover such as trees, the impacts will always be negative and require a salinity offset.

The Salt Mobilisation Tool uses current land cover, proposed land cover, salt store class, soil permeability class and the area of the clearing and offset sites to determine whether salinity outcomes are improved or maintained.

4.5.4 Calculating the Salt Mobilisation Offset requirement

The Salt Mobilisation Index is a function of the change in recharge caused by the proposed land cover change and the salt store weighting for the area. A limited set of recharge estimates has been defined to cover the range of land covers and soil types of the Inland Plains.

Each land cover available for selection in the tool has been classified into one of five classes according to its water use characteristics. In general, deep-rooted, perennial vegetation covers are on average higher water users than shallow-rooted or annual vegetation systems and the rating reflects this. Table 4.4 gives the water use efficiency rating that has been assigned to a range of different land cover options in western NSW.

For the native vegetation classes, it is assumed that water use will be less efficient where vegetation is in a “low condition” than where it is in a relatively undisturbed condition. Chapter Section 4.3.7 provides the definition of “low condition” for salinity purposes. Note that this definition differs somewhat from the biodiversity definition of low condition, since from a water use perspective a groundcover dominated by weeds can be as efficient as the natural groundcover. In other words, it is not the composition of the groundcover, so much as the extent of coverage, which is significant in terms of water use. In Table 4.4, each of the native vegetation classes has a water use efficiency classification reflecting the two conditions.

Paddock trees are assumed to be native vegetation remaining in areas of cropping or pasture (Chapter Section 4.3.8 for definition). The Salt Mobilisation Tool treats the clearing of paddock trees as having no impact on recharge, hence salt mobilisation. Thus clearing of paddock trees is deemed to maintain environmental outcomes.

Table 4.4 Vegetation covers classified into water use efficiency classes.

Vegetation Class	Water Use Efficiency Class	
	Not Low Condition	Low Condition
Arid and semi-arid shrublands ¹	<i>Very High</i>	<i>High</i>
Semi arid woodlands ¹	<i>Very High</i>	<i>High</i>
Sclerophyll grassy woodlands ¹	<i>Very High</i>	<i>High</i>
Dry sclerophyll shrub/grass forest ¹	<i>Very High</i>	<i>High</i>
Dry sclerophyll shrub forest ¹	<i>Very High</i>	<i>High</i>
Forested Wetlands ¹	<i>Very High</i>	<i>High</i>
Grasslands (native) ¹	<i>High</i>	<i>Moderate</i>
Horticulture (with DIMP ²)	<i>High</i>	<i>N/A</i>
High water use pasture (e.g. lucerne)	<i>High</i>	<i>N/A</i>
Response cropping	<i>High</i>	<i>N/A</i>
Pasture with paddock trees	<i>High</i>	<i>N/A</i>
No till cropping / Deep-rooted perennial pasture rotation	<i>High</i>	<i>N/A</i>
Continuous no till cropping	<i>High</i>	<i>N/A</i>
No till winter cropping	<i>Moderate</i>	<i>N/A</i>
Crops with paddock trees	<i>Moderate</i>	<i>N/A</i>
Summer-winter cropping	<i>Moderate</i>	<i>N/A</i>
Pasture (e.g. annual grasses/medic)	<i>Moderate</i>	<i>N/A</i>
Winter cropping (with conventional fallow)	<i>Low</i>	<i>N/A</i>
Annual pasture (e.g. oats)	<i>Low</i>	<i>N/A</i>
Horticulture (with no DIMP ²)	<i>Very Low</i>	<i>N/A</i>

¹ Based on Keith vegetation formations relevant to western NSW and non-native vegetation types relevant to western NSW.

² DIMP is drainage and irrigation management plan (DIMP).

Soil permeability classes are defined on the basis of their clay and sand content:

- low: light, medium and heavy clays;
- moderate: loams, clay loams;
- high: sandy loams, loamy sands, sands.

Sandy soils tend to have lower water holding capacities and higher conductivities than clay-rich soils, hence, everything else being equal, areas characterised by sandy soils have higher recharge rates.

The combined effects of soil permeability and water use efficiency on recharge are summarised in Table 4.5. Recharge estimates are based on values reported in the literature for areas with average annual rainfalls less than about 500 mm. It is the accuracy of the relative differences between classes, rather than that of the absolute values, which is significant for the calculations undertaken here.

Table 4.5 Estimates of average annual recharge (mm) in western NSW.

Soil Permeability Class	Vegetation Water Use Efficiency Class				
	Very Low	Low	Moderate	High	Very High
High	100	60	20	5	0.5
Moderate	60	30	10	3	0.1
Low	20	10	5	1	0.1

These values (in mm) are used to calculate the impact of changing land cover on recharge, R , on both the clearing and offset sites, as follows:

$$\Delta R_{clearing} = (R_{clearing}^{NV} - R_{clearing}^{proposed}) * A_{clearing}$$

$$\Delta R_{offset} = (R_{offset}^{current} - R_{offset}^{proposed}) * A_{offset}$$

where ΔR is the change in average annual recharge (mm) from changing land cover, multiplied by the area, A , of clearing. The subscripts and superscripts *offset*, *clearing*, *current*, *proposed* and *NV* refer to the offset site, clearing site, current vegetation cover, proposed vegetation cover and native vegetation, respectively. The formulation of the equation is such that a change to lower water use vegetation will result in a negative ΔR , whereas a change to higher water use vegetation will result in a positive ΔR .

The change in recharge from the land cover change is multiplied by the salt store weighting, S_w , (Table 4.6) for the site to produce an index of salt mobilisation.

$$SMI = \Delta R * S_w$$

With respect to a proposal to clear native vegetation, a negative SMI value on the clearing site will indicate the need for a salt mobilisation offset and the magnitude of the SMI will indicate how large an offset is required.

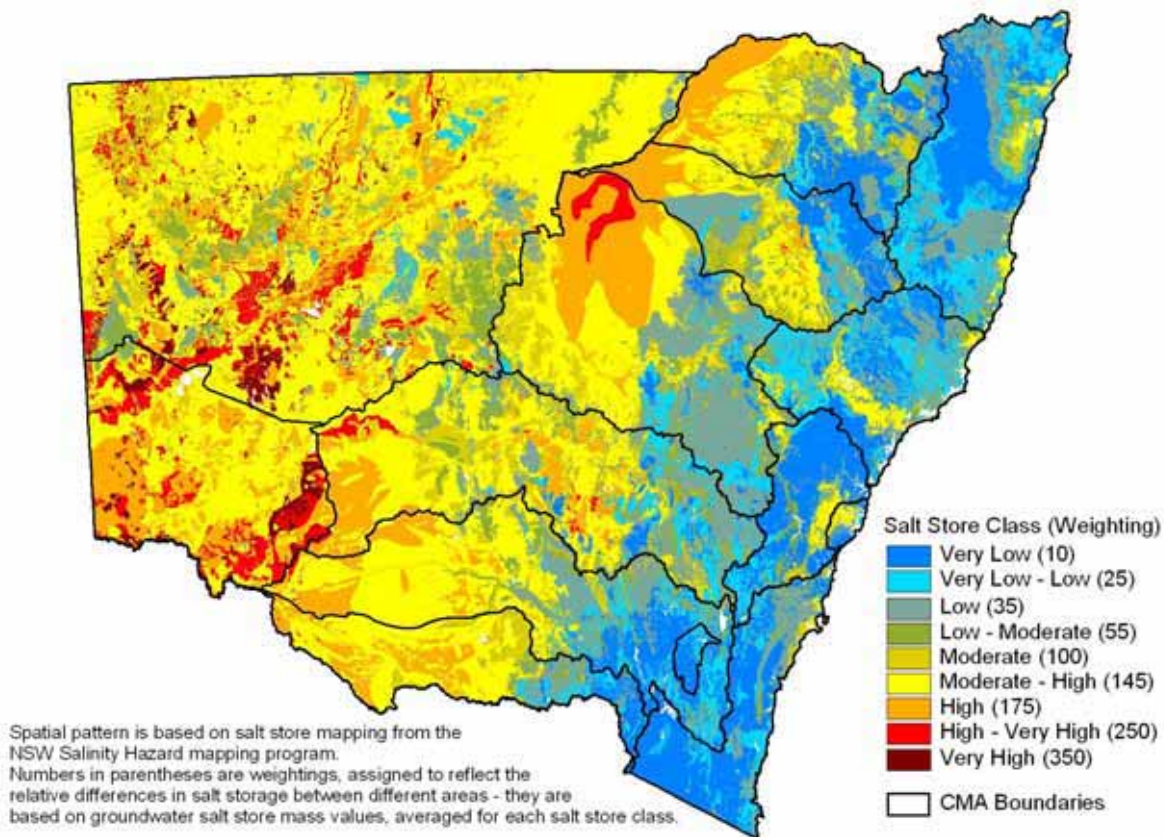
Table 4.6 Salt store classes and their model weighting.

Salt Store Class	Weighting, S_w
Very High	350
High – Very High	250
High	175
Moderate - High	145
Moderate	100
Low – Moderate	55
Low	35
Very Low – Low	25
Very Low	10

Salt weightings have been assigned to a salt store map of New South Wales (Figure 4.2), which was produced as part of the Salinity Hazard Mapping project (Department of Natural Resources). The salt store map represents the spatial pattern of salt storage in the groundwater, regolith and soil, taken together. The PVP Mapper version has been classified into 9 classes (Table 4.6) and the weightings assigned to each class are based on the range

of salinity values from groundwater data. Weightings have been used in preference to actual salinity values because of uncertainties in the soil, regolith and groundwater salt store data.

Figure 4.2 Map showing salt store class and weightings.



4.6 Catchments covered by the Salinity Benefits Index tool

Table 4.7 Border Rivers/Gwydir and Namoi

Stream Gauge Number	Description of Location	Stream Gauge Number	Description of Location
Border Rivers		Namoi	
416003	Tenterfield Creek	419001	Namoi River @ Gunnedah
416006	Severn River @ Ashford	419005	Namoi River @ North Cuerindi
416008	Beardy River @ Haystack No 4	419006	Peel River @ Carrol Gap
416010	Macintyre River @ Wallangra	419007	Namoi River @ Keepit Dam
416012	Macintyre River @ Holdfast	419012	Namoi River @ Boggabri
416020	Ottleys Creek @ Coolatai	419015	Peel River @ Piallamore
416021	Frazers Creek @ Ashford	419016	Cockburn River
416026	Reedy Creek	419020	Manilla River @ Briabri
416032	Mole River @ Donaldson	419022	Namoi River @ Manilla Railway Bridge
416039	Severn River @ Strathbogie	419024	Peel River @ Paradise Weir
Gwydir		419027	Mooki River
418001	Gwydir River @ Pallamallawa	419029	Halls Creek
418005	Copes Creek	419032	Coxs Creek
418012	Gwydir River @ Pinegrove	419035	Goonoo Goonoo Creek
418013	Gwydir River @ Gravesend Bridge	419036	Duncans Creek
418015	Horton River	419043	Manilla River @ Tarpoly Weir
418016	Warialda Creek	419045	Peel River @ Chaffey Dam
418017	Myall Creek	419051	Maules Creek
418018	Keera Creek		
418021	Laura Creek		
418022	Georges Creek		
418023	Moredun Creek		
418025	Halls Creek		
418026	Gwydir River @ Copeton Dam		
418029	Gwydir River @ Stonybattery		
418032	Tycannah Creek		
418033	Bakers Creek		

Table 4.8 Murrumbidgee and Murray

Stream Gauge Number	Description of Location	Stream Gauge Number	Description of Location
Murrumbidgee			
410001	Murrumbidgee River @ Wagga Wagga	410048	Kyeamba Creek
410004	Murrumbidgee River @ Gundagai	410057	Goobarragandra River
410025	Jugiong Creek	410059	Gilmore Creek
410026	Yass River	410061	Adelong Creek
410038	Adjungbilly Creek	410071	Brungle Creek
410039	Tumut River @ Brungle Bridge	410073	Tumut River @ Oddy's Bridge
410043	Hillas Creek	410087	Bullenbung Creek
410044	Muttama Creek	410103	Houlaghans Creek
410045	Billabung Creek		
410047	Tarcutta Creek	Murray	
		410091	Billabong Creek @ Walbundrie

Table 4.9 Castlereagh, Macquarie and Lachlan

Stream Gauge Number	Description of Location	Stream Gauge Number	Description of Location
Macquarie		Castlereagh	
421001	Macquarie River @ Dubbo	420004	Castlereagh River @ Mendooran
421007	Macquarie River @ Bathurst	420007	Castlereagh River @ Binnaway
421018	Bell River		
421019	Cudgegong River @ Yamble Bridge	Lachlan	
421025	Macquarie River @ Bruinbun	412002	Lachlan River @ Cowra
421026	Turon River	412004	Lachlan River @ Forbes
421035	Fish River	412009	Belubula River @ Canowindra
421040	Macquarie River d/s Burrendong Dam	412028	Abercrombie River
421041	Crudine Creek	412029	Boorowa River
421042	Talbragar River	412030	Mandagery Creek
421048	Little River	412043	Goobang Creek
421052	Lewis Creek	412050	Crookwell River
421053	Queen Charlottes Creek	412055	Belubula River @ Bangaroo Bridge
421058	Wyaldra Creek	412057	Lachlan River @ Nanami
421059	Buckinbah Creek	412065	Lachlan River @ Narrawa
421066	Pyramul Creek	412067	Lachlan River @ Wyangala Dam
421072	Winburndale Creek	412072	Back Creek
421073	Meroo Creek	412077	Belubula River @ Carcoar
421079	Cudgegong River @ Windamere Dam Site	412080	Flyers Creek
421101	Campbells River	412092	Coombing Creek

Table 4.10 Hunter and Hawkesbury (Capertee, Wollondilly and Wolgan)

Stream Gauge Number	Description of Location	Stream Gauge Number	Description of Location
Hunter		Hunter	
210055	Hunter River @ Denman	210002	Hunter River @ Muswellbrook Br
210044	Glennies Creek @ Middle Falbrook	210052	Pages River @ Gundy Recorder
210090	Martindale Creek near Martindale		
210089	Black Creek @ Rothbury	Capertee	
210088	Dart Brook @ Aberdeen No.2	212018	Capertee River @ Glen Davis
210087	Doyles Creek @ Doyles Creek	Wolgan	
210071	Glendon Brook @ Glendon Brook	212028	Wolgan River @ Newnes
210040	Wybong Creek @ Wybong	Wollondilly	
210031	Goulburn River @ Sandy Hollow	212270	Wollondilly River @ Jooriland
210014	Rouchel Brook @ Rouchel Brook (The Vale)	212271	Wollondilly River @ Golden Valley
210064	Hunter River (Singleton-Greta)		

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5 Biodiversity Assessment

5.1 Introduction

This Environmental Outcomes Assessment Methodology defines the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for biodiversity under the *Native Vegetation Act 2003*, including for the purposes of agreeing to a Property Vegetation Plan.

BioMetric is the tool used to assess losses of biodiversity from proposed clearing (including thinning), gains in biodiversity from proposed offsets, and gains in biodiversity from management actions for proposed incentives.

BioMetric incorporates data held by the NSW Department of Environment and Conservation and approved by the Minister for Environment and Conservation. It includes data on Mitchell landscapes, vegetation formations, vegetation types and other associated data and formulae need to assess the value of biodiversity at national regional, landscape and site scales according to the procedures included in this Environmental Outcomes Assessment Methodology.

Proposals to clear native vegetation:

- clearing of native vegetation is permitted under the *Native Vegetation Act 2003* if it improves or maintains environmental outcomes;
- clearing of native vegetation is not permitted in vegetation types or landscapes that are already overcleared or listed as threatened at the national, regional or landscape scales, unless the vegetation is in low condition;
- native vegetation can only be cleared if losses from proposed clearing can be offset by commensurate long-term gains from revegetation or management. Offsets can only improve or maintain environmental outcomes if:
 1. offsets are in vegetation types of equal or greater Regional Value (the conservation status of the vegetation type) to the vegetation proposed for clearing; and
 2. improvement in Landscape Value (the configuration of vegetation) is equal to or greater than the losses from proposed clearing; and
 3. improvement in Site Value (the quality and quantity of vegetation) from the offset is equal to or greater than losses from proposed clearing.

Prior to assessment of impact the area to be cleared must be divided into zones comprising relatively homogenous vegetation types and condition categories. If the area to be cleared comprises more than one zone separate assessments must be undertaken for each zone.

5.2 Overcleared vegetation and landscapes

This Chapter Section applies to clearing that is not thinning to benchmark stem densities.

5.2.1 The improve or maintain test

Clearing of overcleared vegetation does not improve or maintain environmental outcomes for biodiversity.

Overcleared vegetation is native vegetation that:

- is not of low condition, and
- is either:
 1. occurring in a Mitchell landscape that is >70% cleared; or
 2. is a vegetation type that is >70% cleared; or

3. an ecological community listed as critically endangered, endangered or vulnerable under either the *Threatened Species Conservation Act 1995 (NSW)* or the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*.

Offsets cannot be used to balance the impacts of clearing in these circumstances.

5.2.2 Determining whether the vegetation is in low condition

Vegetation in low condition is defined as follows:

- **Native woody vegetation** with an:
 1. over-storey per cent foliage cover <25% of the lower value of the over-storey per cent foliage cover benchmark for that vegetation type; and
 2. <50% of vegetation in the ground layer is indigenous species; or
 3. >90% is ploughed or fallow.
- **Native grassland, shrubland, wetland or herbfield** with:
 1. <50% of vegetation in the ground layer is indigenous species; or
 2. >90% is ploughed or fallow.

Only patches of vegetation >0.25 ha are assessed separately (as distinct zones) from surrounding vegetation (e.g. a patch of vegetation with benchmark over-storey cover that is <0.25 ha is not assessed separately from surrounding vegetation with sparser over-storey cover).

The over-storey is assessed using one of the methods outlined in the **BioMetric** Operational Manual.

The ground layer must be assessed using a method consistent with this Native Vegetation Regulation 2005.

5.2.3 Determining whether the vegetation is in an overcleared landscape

An overcleared landscape is a Mitchell landscape area in which more than 70% of native vegetation cover has been cleared. The Mitchell landscape and whether it is overcleared are contained within a database in the **BioMetric** tool.

The overcleared landscape database is a database held by the Department of Environment and Conservation and approved by the Director General, Department of Environment and Conservation, which includes:

- a list of Mitchell landscape area in which more than 70% of native vegetation cover has been cleared; and
- prior to any changes being made to the overcleared landscape database the Director General, Department of Environment and Conservation will consult with the Minister for Natural Resources.

5.2.4 Determining whether the vegetation is an overcleared vegetation type

An overcleared vegetation type is a vegetation type of which more than 70% has been cleared within the relevant Catchment Management Authority area.

The **vegetation type** and whether it is an overcleared vegetation type is identified from the list of vegetation types in the **BioMetric** database.

The overcleared vegetation type database is a database held by the Department of Environment and Conservation and approved by the Director General, Department of Environment and Conservation, which includes:

- a list of Vegetation types are listed by Catchment Management Authority area in which more than 70% of native vegetation type has been cleared; and

- prior to any changes being made to the overcleared vegetation types data base the Director General, Department of Environment and Conservation will consult with the Minister for Natural Resources.

5.2.5 Determining whether the vegetation is a threatened ecological community

Threatened ecological community is determined by referring to definitions of critically endangered, endangered or vulnerable and relevant Schedules under either the *Threatened Species Conservation Act 1995 (NSW)* or the *Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)*.

5.3 Assessing impacts of clearing generally

This Chapter Section does not apply to:

- clearing of overcleared vegetation (under Chapter Section 5.2); or
- clearing that is thinning to benchmark stem densities (under Chapter Section 5.4).

5.3.1 The improve or maintain test

Clearing is to be regarded as improving or maintaining environmental outcomes for biodiversity if the losses of the proposed clearing can be offset by commensurate long-term gains. Offsets can only improve or maintain environmental outcomes if:

- offsets are in vegetation type/s of equal or greater *Regional Value* to the vegetation proposed for clearing; and
- improvement in *Landscape Value* is equal to or greater than losses from clearing; and
- improvement in *Site Value* by the offset is equal to or greater than losses from clearing.

5.3.2 Assessing regional value

Regional value is the percentage of its original extent that a vegetation type has been cleared in the catchment. The greater the percentage of the original extent of a vegetation type that has been cleared the higher is its regional value.

Regional value is calculated from the relationship between the percentage(s) of the vegetation type(s) that is/are cleared relative to its/their pre-European (or pre-1750) extent(s) within each Catchment Management Authority.

BioMetric calculates overall regional value for the vegetation type(s) in the proposal using the equation set out below.

Regional Value of both a proposed offset and proposed clearing is calculated using:

- The % that each vegetation type has been cleared relative to predicted pre-European levels;
- A generic species-area relationship; and
- The proportion of the site occupied by each vegetation type using the equation:

$$\sum_{i=1}^n \left(\left(1 - \left(1 - \left(\frac{\% \text{cleared}}{100} \right) \right)^{0.25} \right) \times \left(\frac{\text{ZoneArea}}{\text{TotalArea}} \right) \times 100 \right)_i$$

Where:

i is the *n*th vegetation Zone (of either the clearing or offset);

%cleared is the % of the vegetation type in the *i*th vegetation Zone that is cleared;

ZoneArea is the area of the *i*th Zone in hectares; and

TotalArea is the sum of the area of all Zones in the proposal in hectares.

5.3.3 Assessing change in landscape value

Change in landscape value from clearing

Change in landscape value with clearing is calculated as the difference between current landscape value and landscape value with clearing using the equations below.

Landscape value encompasses fragmentation, connectivity and adjacency of native vegetation up to 1000 ha around the clearing proposal. The assessor determines change in landscape value from clearing using the following measures:

- percent native vegetation cover in the landscape. This is current vegetation cover and future vegetation cover (with proposed clearing) within radii of 1.75 km (1000 ha), 0.55 km (100 ha) and 0.2 km (10 ha) with the centre of the radii placed to cover the maximum loss of vegetation from clearing, estimated in categories of 0-10%, 11-30%, 31-70%, or >70% cover;
- connectivity. The current and future (with proposed clearing) connectivity values are assessed as high, moderate, low, or nil using criteria in the **Biometric** to determine the change in connectivity value with clearing;
- total adjacent remnant area. This is the total remnant area of which the clearing proposal is a part recorded as large, medium, small, or zero.

Biometric calculates change in landscape value with clearing using the equations below.

Change in landscape value with offset(s)

Change in landscape value with the offset(s) is calculated as the difference between current landscape value and landscape value in the offset site and clearing using the equations below.

The change in landscape value with the offset also considers the percentage within the riparian area. This is the percentage of the site within the riparian area as defined in the Biometric manual.

The **Landscape Value** formulae for the clearing site are:

$$\left(\text{Landscape Value}_{\text{Current}} \right)_{\text{Clearing site}} = \left(\sum_{v=a}^e (s_v w_v) \right)$$

$$\left(\text{Landscape Value}_{\text{With clearing}} \right)_{\text{Clearing site}} = \left(\sum_{v=a}^d (s_v w_v) \right)$$

where:

s_v is the score for v th variable (a-e) as defined below and in Table 5.1

w_v is the weighting for the v th variable (a-e) as defined below and in Table 5.1

a = % cover of native vegetation within a 1.75km radius of the site (1000 ha)

b = % cover of native vegetation within a 0.55km radius of the site (100 ha)

c = % cover of native vegetation within a 0.2km radius of the site (10 ha)

d = connectivity value

e = total adjacent remnant area

The **Landscape Value** formulae for the offsets site are:

$$\left(\text{Landscape Value}_{\text{With clearing}} \right)_{\text{Offset site}} = \left(\sum_{v=a}^d (s_v w_v) \right)$$

$$\left(\text{Landscape Value}_{\text{With clearing \& offsets}} \right)_{\text{Offset site}} = \left(\sum_{v=a}^f (s_v w_v) \right)$$

where

s_v is the score for v th variable (a - f) as defined below and in Table 5.1

w_v is the weighting for the v th variable (a - f) as defined below and in Table 5.1

a = % cover of native vegetation within a 1.75km radius of the site (1000 ha)

b = % cover of native vegetation within a 0.55km radius of the site (100 ha)

c = % cover of native vegetation within a 0.2km radius of the site (10 ha)

d = connectivity value

e = total adjacent remnant area

f = % within riparian area

Details of these variables are provided in Tables 5.1, 5.2 and 5.3.

Table 5.1 Details of variables used to calculate *Landscape Value*. See Table 5.2 for criteria for connectivity value and Table 5.3 for criteria for total adjacent remnant area. The score for each variable is multiplied by its weighting.

Variable	0 points	1 point	2 points	3 points	Relative Weighting
% cover of native vegetation within a 1.75 km radius of the site (1000 ha)	0-10%	11-30%	31-70%	>70%	10
% cover of native vegetation within a 0.55 km radius of the site (100 ha)	0-10%	11-30%	31-70%	>70%	6.66
% cover of native vegetation within a 0.2 km radius of the site (10 ha)	0-10%	11-30%	31-70%	>70%	3.33
Connectivity value (see Table 3)	Nil	Low	Moderate	High	6.66
Total adjacent remnant area (see Table 4)	Small	Medium	Large	Very large	6.66
% within riparian area	0-25%	26-50%	51-75%	>75%	6.66

Table 5.2 Criteria for assessing connectivity value. Where the proposal includes multiple types of vegetation, choose the highest connectivity value that pertains to vegetation within the site.

Note: Vegetation is linked to surrounding native vegetation if it is ≤ 100 metres from native vegetation that is, in turn, linked to surrounding native vegetation not in low condition and greater than one hectare.

Connectivity value	Current	With proposal
High	The proposal includes vegetation that: <ul style="list-style-type: none"> • is not in low condition; • has an average width >100 m; and • links to surrounding native vegetation on more than one compass quarter of the proposal. 	At least one high connectivity value vegetation link is maintained (following clearing) or created (by the offset or incentive proposal) between surrounding native vegetation on more than one compass quarter.
Moderate	The proposal includes vegetation that: <ul style="list-style-type: none"> • is not in low condition, • has an average width of >30 m-100 m, and • links to surrounding native vegetation on more than one compass quarter of the proposal. 	At least one moderate connectivity value vegetation link is maintained (following clearing) or created (by the offset or incentive proposal) between surrounding native vegetation on more than one compass quarter.
Low	The proposal includes vegetation that: <ul style="list-style-type: none"> • is in low condition, • has an average width >100 m, and • links to surrounding native vegetation on more than one compass quarter of the proposal; OR The proposal includes vegetation that: <ul style="list-style-type: none"> • is not in low condition • has an average width ≥ 5 m-30 m, and • links to surrounding native vegetation on more than one compass quarter of the proposal. The proposal includes vegetation that: <ul style="list-style-type: none"> • links to surrounding native vegetation via exotic vegetation with similar structure to the proposal on more than one compass quarter. 	At least one low connectivity value vegetation link is maintained (following clearing) or created (by the offset or incentive proposal) between surrounding native vegetation on more than one compass quarter.
Nil	The proposal includes vegetation that meets none of the above definitions.	No links between vegetation surrounding proposal that meet any of the above criteria will be maintained (following clearing) or created (by the offset or incentive proposal).

Table 5.3 Criteria for assessing total adjacent remnant area. Adjacent remnant area refers to the area (ha) of native vegetation that is not in low condition and is linked to (≤ 100 m from) the site.

Level for total adjacent remnant area	% native vegetation cleared in the (Mitchell) landscape			
	<30%	30-70%	71-90%	>90%
Very large	>500	>100	>50	>20
Large	201-500	51-100	21-50	11-20
Medium	101-200	21-50	11-20	1-10
Small	<100	<20	<10	<1

5.3.4 Assessing site value

Site value is the quantitative measure of structural and floristic condition of native vegetation assessed for each zone area(s). Ten condition measures in site values are assessed against benchmark values as detailed in Table 5.4. For both proposed clearing and proposed offsets *Site Value* is calculated as:

Site Value is calculated as:

$$\sum_{z=1}^n \left(\left(\frac{\left(\sum_{v=a}^j (s_v w_v) \right) + 5 \left((s_a s_g) + (s_b s_i) + (s_h s_j) + (s_c s_k) \right) \times 100}{c} \right) \times (\text{ZoneArea}) \right)_z$$

where

z is the n th Vegetation Zone

s_v is the score for v th variable ($a-j$) as defined in Table 5.4

w_v is the weighting for the v th variable ($a-j$) as defined in Table 5.4

$k = (s_d + s_e + s_i) / 3$

c is the maximum score that can be obtained given the variables $a-j$ that occur in the benchmark for the vegetation type (i.e., this varies depending on which variables are in the benchmark)

ZoneArea is the total area of the n th Vegetation Zone in hectares

Table 5.4 Explanation of the way each variable in site value is calculated

Variable	Score in <i>BioMetric</i>				Percent weighting
	0	1	2	3	
Native plant species richness	0	0-<50% of benchmark	50-<100% of benchmark	≥benchmark	25
Native over-storey cover	0-10% or >200% of benchmark	>10-<50% or <150-200% of benchmark	50-<100% or >100-150% of benchmark	within benchmark	10
Native mid-storey cover	0-10% or >200% of benchmark	>10-<50% or <150-200% of benchmark	50-<100% or >100-150% of benchmark	within benchmark	10
Native ground cover (grasses)	0-10% or >200% of benchmark	>10-<50% or <150-200% of benchmark	50-<100% or >100-150% of benchmark	within benchmark	2.5
Native ground cover (shrubs)	0-10% or >200% of benchmark	>10-<50% or <150-200% of benchmark	50-<100% or >100-150% of benchmark	within benchmark	2.5
Native ground cover (other)	0-10% or >200% of benchmark	>10-<50% or <150-200% of benchmark	50-<100% or >100-150% of benchmark	within benchmark	2.5
Exotic plant cover (calculated in <i>BioMetric</i> as % of total ground and mid-storey cover)	>66%	<33-66%	<5-33%	0-5%	5
Number of trees with hollows	0 (unless benchmark includes 0)	>0-<50% of benchmark	50-<100% of benchmark	≥ benchmark	20
Proportion of over-storey species occurring as regeneration	0%	>0-<50%	50-<100%	≥100%	12.5
Total length of fallen logs	0-10% of benchmark	10-50% of benchmark	50-100% of benchmark	≥ benchmark	10

Change in site value with clearing

Change in site value with clearing is determined from the difference between the current site value and the predicted site value following clearing. Site value is calculated from site condition in the zone(s) and area(s) of the zone(s), using the above equation.

Current site value is determined by:

- measuring the condition variables - native plant species, native over-storey cover, native mid-storey cover, native ground cover (grasses), native ground cover (shrubs), native ground cover (other), exotic plant cover, number of trees with hollows, overstorey regeneration, and length of fallen logs - in plots in the vegetation zone(s) proposed for clearing; and

- assigning values to these condition variables by comparing the measured values of the condition variables with benchmark values for the same variables. Benchmarks are values for each condition variable in relatively unmodified examples of the same vegetation community (see Glossary). A score of 0-3 (0=low, 1=moderate, 2=high, 3=very high) is allocated to each condition variable from the difference between its measured value and its benchmark value.

Current site value is measured as follows:

- establish plots in each vegetation zone in approximate proportion to the area of the zone. Plots should be placed randomly with a minimum of one plot and a maximum of ten plots within a zone;
- measure data for the condition variables in the vegetation zone(s) in the clearing proposal;
- enter the measured condition data into **BioMetric**;
- enter benchmark data for the vegetation community directly into **BioMetric** either from information provided with **BioMetric** or data obtained from reference sites;
- the measured data and the benchmark data for condition variables entered into **BioMetric** generate a score for the current site condition of the native vegetation in the zone using the above equations.

The condition scores for current site value are multiplied in **BioMetric** by the area of the zone(s) to provide the measure of current site value, using the above equations.

Site value following clearing is determined by:

- predicting the impact of clearing on each condition variable according to the type of clearing, using the information provided with **BioMetric**.

The condition scores for site value with clearing are multiplied in **BioMetric** by the area of the zone(s) to provide the measure of site value following clearing, using the above equations for calculating site value. The change in site value with clearing is calculated as the difference between the current site value and site value with clearing.

Change in site value with the offset(s)

Change in site value with the offset is determined from the difference between current site value and predicted site value with the offset.

Site value with offsets is determined by:

- predicting the future score for each condition variable for the vegetation zone(s) in the offset(s) with the proposed management actions in the offset(s), using information provided with **BioMetric**. Eight general management actions can be undertaken by the landholder to improve condition variables in the offset. The landholder can also undertake any combination of actions that fall under the broad categories; and
- multiplying the predicted condition in the vegetation zone(s) with the offset(s) actions by the area of the zone(s).

The condition scores for site condition with the offset(s) are multiplied in **BioMetric** by the area of the zone(s) to provide the measure of site value with the offset(s), using the above equations for calculating site value:

- there are eight management actions in **BioMetric** including stock grazing exclusion, strategic stock grazing, planting or direct seeding of native vegetation, weed control, erosion control, feral herbivore control, retention of all dead timber, retention of all regrowth (as defined in the NSW *Native Vegetation Act 2003*). Management actions can increase the future score for the condition variables. When scoring an expected increase in value of a variable with management, the following must be considered. The increase in the score for a variable can generally only be by one point unless there is a strong management intervention in which case the increase can be by two points;

- planting or direct seeding will increase the relevant cover values, but will only result in an increase in richness if the species are indigenous to the areas and the seed is sourced locally;
- where a variable is currently absent from the proposal site and adjacent areas then an increase cannot generally be scored unless it is to be specifically introduced;
- where an increase is not feasible because of other pressures associated with the proposal (eg. grazing or exotic invasion) then an increase should not be scored;
- no increase can be scored for trees with hollows because of the long period that hollows take to form (generally > 100 years).

The score for each zone is not simply the difference between the current score and the score with offset. This is because the extent to which the zone could be degraded over time, as allowed under the provisions of the *Native Vegetation Act 2003* is taken into account. Thus the score with offset includes a factor that recognises past good management above that required by the *Native Vegetation Act 2003* where the landholder agrees to continue those practices as part of the PVP.

5.4 Assessing thinning to benchmark stem densities

Thinning means clearing that comprises only the removal of individual trees or shrubs. This Chapter Section does not apply to coastal Catchment Management Authorities other than the following parts of the Northern Rivers Catchment Management Authority; on grazing properties within Tenterfield, Kyogle and the former Copmanhurst and Nymboida local government council areas within the Northern Rivers CMA. In these areas its use is limited to eucalypt and acacia species (not in rainforest) only.

This Chapter Section does not apply to proposed thinning of the following species: turpentine, hopbushes, budda, punty bush, or silver cassia.

Note:

The Environmental Outcomes Assessment Methodology and **BioMetric** may not be suitable for assessing thinning of some other forms of invasive native scrub (See Chapter 7.0 for further detail), including some tree species such as cypress pine.

5.4.1 The improve or maintain test

Thinning is to be regarded as improving or maintaining environmental outcomes if, in relation to each vegetation zone:

- thinning is proposed on no more than 80% of the area of the proposal area; and
- the stems to be removed from each stem diameter class for the vegetation type do not exceed the number calculated by **BioMetric**.

5.4.2 The Assessment

Different vegetation types must be assessed separately. If the area proposed to be thinned contains more than one vegetation type the proposal must be divided into vegetation zones each comprising a relatively homogenous vegetation type. Each zone must be separately assessed.

Within each vegetation zone, 0.1 hectare plots must be randomly placed every two hectares, with a minimum of one plot and a maximum of 10 plots per vegetation zone.

In relation to each plot the stems must be classified into one of the following stem diameter classes: 0-10 cm, 11-20 cm, and 21-30 cm dbh.

The number of stems per plot in each stem diameter class must be recorded.

These plots are used to predict the number of trees for the vegetation type in each stem diameter class within the vegetation zone.

Benchmark data for stem densities are provided with **BioMetric**, or obtained from reference sites. Reference sites must:

- comprise the same vegetation community and be located in the same region as the vegetation zone being assessed;
- contain vegetation in relatively unmodified condition; and
- be measured as near in time to the vegetation zones being assessed so as to allow seasonal variation in condition to be taken into account.

BioMetric calculates the maximum number and percentage of existing stems in each diameter class that can be removed by comparing stem density in the zone by diameter class, with benchmark stem densities by diameter class.

Stems can be thinned to the benchmark values of stem densities for each diameter class. That is:

- thinning is permitted WHILE $Observed\ stems_{ij} \geq Benchmark\ stems_j$
ELSE
- thinning proposals must be assessed as for other clearing proposals;

where

- *observed stems_{ij}* is the median number of stems observed in the *j*th diameter class within the *i*th vegetation Zone.
- *Benchmark stems_j* is the benchmark number of stems for the vegetation type observed on the site for the *j*th diameter class.

5.5 Definitions

Benchmark or benchmark value. Benchmarks or benchmark values are standards for vegetation condition in vegetation communities with relatively little evidence of recent or current alteration, disturbance or modification by humans. Benchmarks prescribe the range of variation in condition variables in such communities. Condition variables for individual vegetation communities are assessed against benchmark values for these communities.

Database. The data on Mitchell landscapes, vegetation formations, vegetation types and associated formulae contained in **BioMetric**.

dbh. Stem diameter at breast height, ie, at 1.3 metres above the ground.

Landscape. Mitchell Landscape area as defined in Mitchell, P.B. (2002). NSW ecosystems study: background and methodology. Unpublished report to the NSW National Parks and Wildlife Service, Hurstville; and in Mitchell, P.B. (2003). NSW ecosystems database mapping unit descriptions. Unpublished report to the NSW National Parks and Wildlife Service, Hurstville.

Listed ecological community. Critically endangered, endangered or vulnerable ecological community listed under the *NSW Threatened Species Conservation Act 1995* or the *Federal Environment Protection and Conservation Act 1999*.

Listed threatened species. Critically endangered, endangered or vulnerable ecological species or population listed under the *NSW Threatened Species Conservation Act 1995* or the *Federal Environment Protection and Conservation Act 1999*.

Offset. Management actions on site(s) used for offsets. Gains in biodiversity from management actions on an offset site(s) may balance losses in biodiversity with clearing on another site(s).

Plot. Area in which condition assessment is undertaken.

Reference site. Sites used to collect benchmark information where the benchmarks are not already available for a vegetation type. Reference sites are with the same vegetation community and in the same region as the vegetation zone being assessed, containing vegetation in relatively unmodified condition. Values derived from the reference sites form the benchmarks for condition assessments. The reference sites should be measured as near in time and location to the vegetation zones being assessed for clearing (including thinning only), and offsets as possible. This allows seasonal variation in condition to be taken into account.

Riparian area. Area in riparian zone (plus buffer). See Table 3.1 in Chapter 3 for details.

Site. General term for clearing zone(s) and for offset zone(s). Also used in the context of reference site.

Stem density. Number of stems per hectare, measured in plots.

Vegetation type. Vegetation type in the catchment, generally at the classification level of association; classification level varies between catchments. Classification levels are defined in Executive Steering Committee for Australian Vegetation Information (2003). Australian Vegetation Attribute Manual Version 6.0. Department of Environment and Heritage, Canberra, see table below.

Vegetation formation. As defined in Keith, D. (2002). A compilation map of native vegetation for New South Wales. Version 1.1. A project undertaken for the NSW Biodiversity Strategy. NSW National Parks and Wildlife Service, Hurstville.

Vegetation community. Vegetation community usually at the level of classification between National Vegetation Information System (NVIS) association and NVIS sub-formation, ie, at the approximate level of - Dominant growth form, cover, height and dominant species for each of the three strata (i.e. Upper, Mid and Ground), see table below. This is above the level of association used for vegetation type (levels defined in Executive Steering Committee for Australian Vegetation Information (2003). Australian Vegetation Attribute Manual Version 6.0. Department of Environment and Heritage, Canberra), see table below. Condition variables for individual vegetation communities are assessed against benchmark values for vegetation communities.

The NVIS Information Hierarchy		
Hierarchical Level	Description	NVIS structural/floristic components required
I	Class*	Dominant growth form for the ecologically or structurally dominant stratum
II	Structural Formation*	Dominant growth form, cover and height for the ecologically or structurally dominant stratum.
III	Broad Floristic Formation**	Dominant growth form, cover, height and dominant land cover genus for the upper most or the ecologically or structurally dominant stratum.
IV	Sub-Formation**	Dominant growth form, cover, height and dominant genus for each of the three traditional strata. (i.e. Upper, Mid and Ground)
V	Association**	Dominant growth form, height, cover and species (3 species) for the three traditional strata. (i.e. Upper, Mid and Ground)
VI	Sub-Association**	Dominant growth form, height, cover and species (5 species) for all layers/sub-strata.

* Walker J. and Hopkins M.S (1990). Vegetation. In McDonald, R. C.; Isbell, R. F.; Speight, J. G.; Walker, J., and Hopkins, M. S. Australian Soil and Land Survey. Inkata Press, Melbourne.

** NVIS (defined for the NVIS Information Hierarchy)

Vegetation zone. Relatively homogenous, discrete zone(s) into which site is divided for assessment according to vegetation type (for clearing and thinning) and broad condition (whether low condition or not) (for clearing).

5.6 Improve or maintain test for threatened species

'Threatened Species' means threatened species, endangered ecological communities or endangered populations for the purpose of this methodology. Broad-scale clearing of remnant native vegetation will improve or maintain environmental outcomes for threatened species if:

- 1. no threatened plant species are identified as occurring within the area to be cleared; and
- 2. no threatened fauna species are identified or known or likely to occur within the area to be cleared; or
- the clearing proposal is not likely to cause a loss to any threatened species identified, including loss to the area of habitat or key habitat features for threatened species known or likely to occur within the area to be cleared; or
- any threatened species are identified, known or likely to occur within the area to be cleared and the clearing causes a loss of any of these threatened species but the likely loss is offset by equivalent or greater gains for these threatened species from management actions applied in perpetuity to offsets, as specified in a Property Vegetation Plan.

5.7 Identify whether any threatened species occur or are likely to occur

1. A threatened species is likely to occur on the area proposed to be cleared if the:
 - a) Threatened Species Profile Database indicates that the species is known or likely to occur in the Catchment Management Authority Area Sub-region (See Appendix A) and is associated with any of the vegetation types within the area to be cleared; and
 - b) area proposed to be cleared is within the specified geographic constraints for the species as defined in the Threatened Species Profile Database. For some species there is additional information that describes in more detail the geographical constraints on a species beyond vegetation type and sub-region. In certain circumstances this will enable the location of a threatened species to be more effectively predicted; and
 - c) The Threatened Species Profile Database indicates that the species is likely to occur in the vegetation type if it is in moderate to good condition, low condition or paddock tree condition. Many species are only likely to occur if the vegetation is in moderate to good condition and therefore do not need to be considered further if the vegetation on the area proposed to be cleared is low condition or paddock trees. The condition categories are:
 - i) **Moderate to Good Condition** vegetation defined as:
 - Native woody vegetation** having a mature overstorey per cent foliage cover that is >25% of the lower projected mature overstorey foliage expected for the vegetation type **or** has >50% of the vegetation in the ground layer comprising of indigenous native plant species and there is > 10% ground cover.
 - Native grassland, wetland or herbfield** having >50% of the ground layer comprising of indigenous native species and there is > 10% ground cover); or
 - ii) **Low Condition** vegetation defined as:
 - Native woody vegetation** having a mature overstorey per cent foliage cover <25% of the lower projected value of mature overstorey foliage expected for that vegetation type and has <50% of the vegetation in the ground layer comprising of indigenous native species or > 90 % is ploughed or fallow.
 - Native grassland, wetland or herbfield** having <50% of the ground layer comprising of indigenous native species or >90 % is ploughed or fallow.

iii) **Paddock trees** condition defined as: native vegetation having an overstorey per cent foliage cover <25% of the lower projected foliage cover for the vegetation community and the ground layer is either crop, ploughed fallow or almost exclusively perennial or annual exotic pasture (90% of cover is exotic species). *Note: mid storey condition is not considered under this definition, refer to low condition definition.*

and

- d) cover of vegetation remaining in the landscape is greater than the minimum amount for that species as identified in the Threatened Species Profile Database. The landscape is defined as the area of land within a 1.75 kilometre radius of the centre of the area to be cleared; and
 - e) vegetation in the area to be cleared is part of a patch of vegetation greater than the minimum patch size specified for that species as defined in the Threatened Species Profile Database; and
 - f) vegetation in the area to be cleared contains either important breeding or foraging or shelter habitat features as defined in the Threatened Species Profile Database.
2. A visual inspection of the area proposed to be cleared must be undertaken prior to approving the Property Vegetation Plan.
 3. The visual inspection must:
 - a) determine whether there is any important breeding, foraging or shelter habitat for threatened fauna species occurring on the land where a threatened species is likely to occur; and
 - b) assess the condition of the vegetation and specifically consider whether the identified subject threatened species is likely to occupy 'Paddock Trees condition' or 'Low Condition' vegetation.
 - c) specifically consider whether each threatened plant species that is likely to occur is present; and
 - d) include in the assessment any additional threatened species that are located and present in the area;
 - e) be undertaken in accordance with any requirements of the Threatened Species Profile Database relevant to each threatened plant species that is likely to occur.
 4. The Threatened Species Profile Database (Species Profiles) is a database held by the Department of Environment and Conservation and approved by the Director General, Department of Environment and Conservation, which includes the following:
 - a) a list of threatened species known or likely to be present in each Catchment Management Authority Area and Catchment Management Authority Area Subregion;
 - b) for each threatened species:
 - i). a description and, where available, a series of photographs;
 - ii). a description of its distribution in NSW;
 - iii). habitat and ecology;
 - iv). threats;
 - v). management action and the predicted response (expressed as percentage improvement in population or site carrying capacity) that each management action is likely to have on each threatened species. Differing levels of response may be provided for Paddock Trees" condition, "Low Condition" or "Moderate to Good Condition" vegetation;
 - vi). vegetation types with which each threatened species is associated;
 - vii). geographical constraints to the presence of the species;
 - viii). landscape requirements, minimum patch size, important breeding, foraging and shelter habitat features;
 - ix). the time of year when the species is identifiable (used to identify appropriate time for inspection of plants);

- x). the species' ability to sustain a temporary reduction in local population or temporary loss of habitat; and
 - xi). the species' ability to occupy 'Paddock Trees' condition or Low Condition vegetation.
- c) any changes to the Threatened Species Profile Database will follow steps identified in Chapter Section 2.4.

5.8 Loss of threatened species, habitat or key habitat features

The key habitat features are those features that are important for some threatened species. They could include breeding, foraging or shelter habitat features. Where it is appropriate to use key habitat features as a measure of gain or loss then this is described in the Threatened Species Profile Database.

If the proposal will result in loss of individuals of the species, or the area of its habitat or key habitat features an offset will be needed in order for the clearing to improve or maintain environmental outcomes for threatened species.

The expected loss of threatened species, or their habitat or their key habitat features is to be determined in accordance with the following process:

1. determine the unit of measure of this loss (eg. individuals of a threatened species measured by number of individuals, area of habitat measured by hectares or key habitat features measured by number of each feature such as number of hollow-bearing trees). This unit of measure must also be used for assessing any offset required for that species;
2. estimate the expected loss for each species known or likely to be present in each vegetation zone;
3. if there is more than one vegetation zone within the area proposed to be cleared then the total loss for each species is calculated by adding the losses in each vegetation zone.

5.9 Can any likely loss be offset?

Offsets can only be used where the local population of a species can sustain the level of likely temporary loss of individuals of the species, their habitat or their key habitat features (including important breeding, foraging and shelter components), as specified in the Threatened Species Profile Database, whilst the gains are being achieved on the offset area/s.

Note:

For the purposes of offsets a local population is defined as the total population of the threatened species on the property or properties subject of the Property Vegetation Plan on which the clearing is proposed.

A loss of individuals of the species, or its habitat or its key habitat features can only be offset by a corresponding gain in individuals of the species, or its habitat based on equivalent vegetation type or its key habitat features.

The Property Vegetation Plan must include management actions in appropriate offset area(s) that will achieve the offset.

The Threatened Species Profile Database identifies the management actions that can be undertaken to provide gains for threatened species. This includes an estimate of the percentage increase in population that can be expected in response to each management action, as measured by either an increase in the number of individuals, or habitat amount or key habitat feature.

An offset area must:

- a) support the same or a similar vegetation type to that being cleared - the offset cannot be used as an offset for that species if it does not contain a vegetation type that is known to

be used by the subject species (as recorded in the Threatened Species Profile Database);
or

- b) contain key habitat features that would support the threatened species; or
- c) be occupied by a sufficient population of the threatened plant species as confirmed by site inspection; and
- d) contain the vegetation in a condition suitable to support the subject species; and
- e) be in perpetuity.

The assessment must calculate the population(s), area of habitat or amount of key habitat feature that each offset area contains for each affected threatened species.

The gain for each species is determined by the following formula:

$$\text{Gain}^{\text{Action1}} = \text{Expected increase} \times \text{Amount}$$

Where:

- **Gain** is the increase in the population of threatened species;
- **Expected increase** is the offset ratio or the percentage increase in population or carrying capacity expected in response to management action, as detailed in the Threatened Species Profile Database;
- **Amount** is the number of individuals or area of habitat or number of the key habitat feature that are contained within the proposed offset;
- The value of actions is additive so that total gain achieved is the sum of gains for each action.

If there is more than one vegetation zone within the area proposed as an offset then the total gain for each species is calculated by adding the gains in each vegetation zone.

If total gain for each threatened species known or likely to occur in the area proposed as an offset is equal to or greater than the total loss then the proposal maintains or improves environmental outcomes for threatened species.

If there is a loss for any species known or likely to occur in the area proposed to be cleared and the loss is greater than the total gain from all offset areas then the proposal does not maintain or improve environmental outcomes for threatened species.

Note: References

Executive Steering Committee for Australian Vegetation Information (2003). Australian Vegetation Attribute Manual Version 6.0. Department of Environment and Heritage, Canberra;

Keith, D. (2002). A compilation map of native vegetation for New South Wales. Version 1.1. A project undertaken for the NSW Biodiversity Strategy. NSW National Parks and Wildlife Service, Hurstville;

Mitchell, P.B. (2002). NSW ecosystems study: background and methodology. Unpublished report to the NSW National Parks and Wildlife Service, Hurstville;

Mitchell, P.B. (2003). NSW ecosystems database mapping unit descriptions. Unpublished report to the NSW National Parks and Wildlife Service, Hurstville;

Vegetation type is identified in accordance with the list published by Department Environment and Conservation at:

<http://www.nationalparks.nsw.gov.au/npws.nsf/Content/Threatened+Species+Search> and
<http://www.deh.gov.au/biodiversity/threatened/communities/index.html>.

6 Soil Assessment

6.1 Introduction

This Environmental Outcomes Assessment Methodology defines the circumstances in which broadscale clearing is to be regarded as improving or maintaining environmental outcomes for land degradation under the *Native Vegetation Act 2003* including for the purposes of agreeing to a Property Vegetation Plan.

The Land and Soils Capability (LSC) tool assesses the following land degradation hazards:

- areas that are very susceptible to environmental harm arising from clearing of native vegetation;
- water erosion;
- wind erosion;
- earth mass movement;
- acid sulfate soils;
- salinity (see Chapter 4);
- shallow and rocky soils; or
- soil structure.

The Land and Soils Capability class that any associated hazards fall within determines whether a proposal is considered to improve or maintain environmental outcomes:

- Land and Soils Capability classes 1 & 2: the proposal is regarded as improving or maintaining environmental outcomes;
- Land and Soils Capability classes 3 to 6: will not improve or maintain environmental outcomes unless the on-site management actions specified in Appendix B or Appendix C for each applicable hazard and class are undertaken;
- Land and Soils Capability classes 7 & 8: will not improve or maintain environmental outcomes and the impacts cannot be offset by management actions.

The process for assessing clearing and offset proposals in respect of land degradation is the same, except where otherwise stated.

The Land and Soils Capability Tool also assesses biodiversity, salinity or water quality offset proposals that involve soil disturbance in order to determine whether the offsets will improve or maintain environmental outcomes in relation to land degradation.

Where a proposal has several hazards the decision as to whether clearing or offset proposals will improve or maintain environmental outcomes is based on the most significant land degradation risk arising from the proposal, ie the hazard with the highest class.

6.2 Land and soil capability classification

The land and soil capability classification is based on the Rural Land Capability system defined by Emery (1985). However, the proposed land and soil capability system places additional emphasis on soil limitations and explicitly incorporates them into the classification.

All parts of the landscape are classified within eight capability classes, designated by numerals 1 to 8, the sequence indicating progressively greater land and soil limitations. These limitations usually restrict the type and diversity of land use activities that can be undertaken without significant land and soil degradation occurring. Although this system is intended primarily to address agricultural activities, it can be used to provide a general indication of the capability of the land for other land use practices, including forestry and urban development. Increasing the degree of constraint imposed by specific limitations,

which progressively limit the range of alternative land uses and management practices that are practicable and appropriate, achieves this.

6.3 The improve or maintain test for land degradation

The Land and Soils Capability Tool requires 4 key actions:

- identify the land and soils capability zone; these are areas of land that have relatively uniform physical characteristics in relation to slope, rockiness, soil type, soil drainage, landform or salt outbreak;
- identify the relevant catchment hazard area;
- establish slope; and
- establish rainfall.

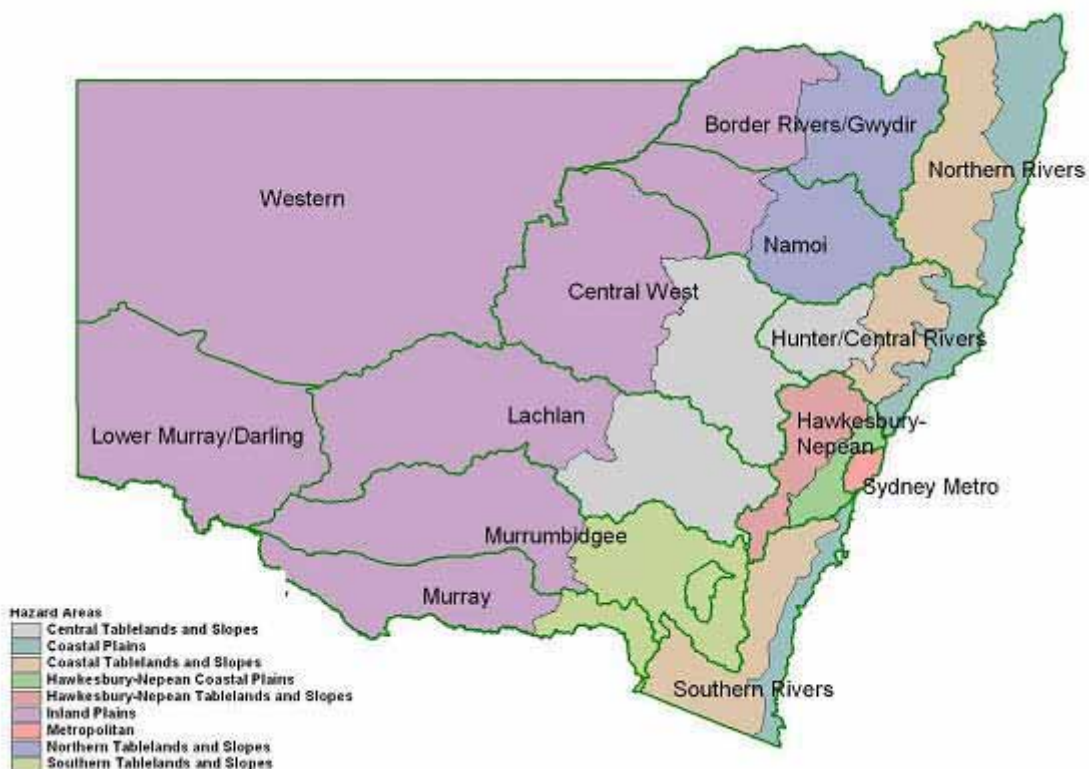
6.3.1 Identify Land and Soils Capability Zone

Land and soils capability zones are areas of land that have relatively uniform physical characteristics in relation to slope, rockiness, soil type, soil drainage, landform or salt outbreak. The proposal must improve or maintain environmental outcomes for all Land and Soils Capability zones it includes in order to pass the 'improve or maintain' test.

6.3.2 Identify the relevant Catchment Hazard Area

To simplify the assessment process, Catchment Management Authority areas have been divided into Catchment Hazard Areas based on common climatic, soil and geomorphic characteristics. These Catchment Hazard Areas are shown in Figure 6.1.

Figure 6.1: Map of Catchment Hazard Areas



In some catchment hazard areas certain hazards are not significant and are deemed to improve or maintain environmental outcomes. For example, acid sulfate soils are only assessed for coastal plains. The hazards assessed for each area are shown in Table 6.1.

Table 6.1 Required Hazard Assessment by Catchment Hazard Areas

Catchment Hazard Areas	What Hazards are assessed?							
	Sensitive terrain	Water erosion hazard	Wind erosion hazard	Salinity hazard (Chapter 4)	Shallow & rocky soil hazard	Earth mass movement hazard	Soil structure hazard	Acid sulfate soil hazard
Coastal Tableland and Slopes	✓*	✓		✓	✓	✓		
Northern Tableland and Slopes	✓	✓	✓	✓	✓	✓		
Central Tableland and Slopes	✓	✓	✓	✓	✓	✓		
Southern Tablelands and Slopes	✓	✓	✓	✓	✓	✓		
Coastal Plains excluding Hawkesbury/Nepean	✓	✓	✓		✓	✓		✓
Coastal Plains - Hawkesbury/Nepean only	✓	✓	✓	✓	✓	✓		✓
Inland Plains	✓	✓	✓	✓	✓		✓	

*Ticked cell indicates hazard is assessed in the Catchment Hazard Area

6.3.3 Slope

Slope is used to assess water erosion hazard and mass movement hazard.

Average slope may be either:

- estimated visually in the field by experienced landscape assessors;
- measured using an Abney level or clinometer; or
- estimated from a topographic map or Digital Elevation Model.

The slope classes available as options in the Land and Soils Capability Tool vary between different Catchment Areas to reflect local conditions and the specific criteria required for hazard assessments.

6.3.4 Rainfall

Rainfall is one factor used to assess water erosion hazard, wind erosion hazard, soil structure decline and earth mass movement hazard.

Average annual rainfall requires the selection of the appropriate 100 mm class using information provided by the Australian Bureau of Meteorology. This must relate to the locality if this is available, or, where this is not available, to a nearby town with a similar climate.

6.4 Assessing clearing on sensitive terrain

- sensitive terrains are areas of the landscape that are very susceptible to environmental harm arising from clearing of native vegetation. They are defined in Table 6.2.
- clearing of native vegetation on sensitive terrain located in a Catchment Area ticked in Table 6.3 is regarded as not improving or maintaining environmental outcomes.
- it is not possible to offset the impacts of the clearing of sensitive terrain.
- sensitive terrain is not assessed in respect of proposals for biodiversity or salinity offsets.

Table 6.2 Definitions of Sensitive Terrain.

Sensitive Terrain	Definition
Foredune to beach	Elongated, moderately inclined to very steep, single or compound ridge generally less than 15 metres high, built up by the wind from predominantly sand sized particles derived from an adjacent coastal beach.
Derelict mine site	Surface workings of former mining sites, whether remediated or unremediated, which may contain toxic soil, rock or spoil materials.
High run-on area	Areas of the inland plains that have large up-slope catchments and are subject to very high run-on volumes in times of rainfall.
Lakebed within 200 m of shoreline	Beds of ephemeral or fluctuating lakes, whether fresh or saline, of the inland plains. The near-shore areas of these lakebeds are often susceptible to wind erosion and environmental degradation.
Lunette	Occurs mainly in the inland plains and is an elongated, gently recurved, low ridge consisting of sand or pelletised silt and clay which has been built up by wind action on the north eastern or eastern margin of a ephemeral freshwater or saline lake or closed depression. A lunette typically has a wave-modified slope towards the lake or depression.
Flow line	Occurs in the Slopes and Tablelands where surface water flow or seepage is initially concentrated in drainage depressions and is not yet in clearly defined streams.
Sand Dune	Occurs mainly in the inland plains and coastal plains and is a moderately inclined to very steep, sub-parallel linear ridge or hillock built up from sand sized particles by wind action.

Table 6.3 Applicability of Sensitive Terrain in Catchment Hazard Areas.

Catchment Hazard Area	Sensitive Terrain						
	Foredune to Beach	Derelict Mine Site	High Run-on Area	Lakebed	Lunette	Flow Line	Sand Dune
Northern Tablelands and Slopes		✓*				✓	
Central Tablelands and Slopes		✓				✓	
Southern Tablelands and Slopes		✓				✓	
Coastal Tablelands and Slopes		✓				✓	
Coastal Plains	✓	✓				✓	✓
Inland Plains		✓	✓	✓	✓		✓

*Ticked cell indicates hazard is assessed in the Catchment Hazard Area

6.5 Assessing water erosion hazard

- Water erosion hazard is the susceptibility of land to soil erosion by moving water.
- Rainfall erosivity and water availability for plant growth are factors that affect soil erosion. These vary significantly between different parts of the State. The Land and Soils Capability Tool uses different classes in different Catchment Areas to account for differences in these factors. These are set out in Table 6.4.
- The severity of existing water erosion is classed by the Land and Soils Capability Tool as either: nil, low, moderate, high, very high, or extreme, according to the definitions of these categories contained in Table 6.5.
- If the existing erosion is classed as **nil, low or moderate**, the Land and Soils Capability Tool assigns the land and soils capability class indicated in Table 6.4 (based on slope).
- Land and soils capability classes 4 and 5 are not differentiated from each other by slope, but by whether the soils have high natural fertility (class 4) or relatively low natural fertility (class 5).
- If the existing erosion is classed as **high**, the Land and Soils Capability Tool automatically assigns water erosion hazard to land and soils capability class 6, except for land and soils capability zones in the Coastal Tablelands and Slopes Catchment Hazard Area, which are automatically assigned to class 7.
- If the existing erosion is classed as **very high**, the Land and Soils Capability Tool automatically assigns water erosion hazard to land and soils capability class 7.
- If the existing erosion is classed as **extreme**, the Land and Soils Capability Tool automatically assigns water erosion hazard to land and soils capability class 8.

Table 6.4 Slope Class (%) for each land and soils capability class used to determine Water Erosion Hazard in the Catchment Areas.

Catchment Area	Land and soils capability class determined by slope (%)					
	1	2	3	4 & 5	6	7 & 8
Northern Tablelands and Slopes	< 1	1 - <2	2 - <8	8 - <25	25 - 33	> 33
Inland Plains	< 1	1 - <3	3 - <10	10 - <25	25 - 33	> 33
Central Tablelands and Slopes	< 1	1 - <2	2 - <8	8 - <25	25 - 33	> 33
Southern Tablelands and Slopes	<1.5	1.5 - <5	5 - <12	12 - <25	25 - 33	> 33
Coastal Tablelands and Slopes	< 1	1 - <2	2 - <8	8 - <25	25 - 50	> 50
Coastal Plains	< 1	1 - <2	2 - <8	8 - 25	25 - 33	> 33

Table 6.5 Definitions of Existing Erosion Classes

Class	Definition
Nil	No sheet or gully erosion present.
Low	Minor sheet and gully erosion present.
Moderate	Moderate sheet and gully erosion present – gullies restricted to major flow lines.
High	Severe sheet and gully erosion present – rills clearly evident, subsoil and C horizons clearly exposed in many areas, clearly evident depositional areas adjacent to fences and roads - gullies are deep and active in 2 nd order streams showing branching into lower parts of 1 st order flow lines.
Very high	Severe sheet erosion present causing bare ground and scalding – subsoil and C horizons or bare rock exposed in many areas - clearly evident areas of deposition on lower slopes, adjacent to fences and roads - gullies are active and strongly branched, extending high into 1 st order flow lines – gullies often show tunnelling.
Extreme	Majority of the area is bare and scalded, usually extensive areas of active rilling and gullying present – gullies may occupy the majority of the area.

6.6 Assessing wind erosion hazard

- Wind erosion hazard is the susceptibility of land to the erosion of soil particles by wind.
- Soil erosion by wind is of particular concern in coastal regions and inland dryland farming areas.
- The criteria used by the Land and Soils Capability Tool to assess wind erosion hazard are:
 - wind erodibility of soil;
 - wind erosive power as indicated on a map in the Land and Soils Capability Tool;
 - exposure to prevailing winds;
 - average annual rainfall.
- The relationship between the criteria in determining the class is shown in Table 6.6.
- Wind erodibility of soil is assessed in the following classes:
 - low: loams, clay loams, or clays (all with greater than 13% clay);
 - moderate: fine sandy loams or sandy loams (all with 6 – 13% clay);
 - high: loam sands or loose sands (all with less than 6% clay).
- Exposure to prevailing winds is assessed in the following classes:
 - low exposure: sheltered locations in valleys or in the lee of hills;
 - moderate exposure: intermediate situations - not low or high exposure locations;
 - high exposure: hilltops or exposed coastal locations.

Table 6.6 Relationship between Wind Erodibility Class of Soil, Wind Erosive Power Exposure to Prevailing Winds, and Annual Rainfall for Land and Soils Capability Classes.

Average Annual Rainfall	Wind Erodibility Class of Soil	Wind Erosive Power	Exposure to Wind	Land and Soils Capability Class
> 500 mm	low	low	low	1
			moderate	1
			high	2
		moderate	low	1
			moderate	2
			high	3
		high	low	2

Average Annual Rainfall	Wind Erodibility Class of Soil	Wind Erosive Power	Exposure to Wind	Land and Soils Capability Class
			moderate	3
			high	4
	moderate	low	low	2
			moderate	3
			high	4
		moderate	low	2
			moderate	3
			high	4
		high	low	3
			moderate	4
			high	5
	high	low	low	3
			moderate	4
			high	5
		moderate	low	4
			moderate	5
			high	6
		high	low	5
			moderate	6
			high	7
300 – 500 mm	low	low	low	2
			moderate	2
			high	3
		moderate	low	2
			moderate	3
			high	4
		high	low	3
			moderate	4
			high	4
	moderate	low	low	3
			moderate	4
			high	5
		moderate	low	3
			moderate	4
			high	5
		high	low	3
			moderate	5
			high	6
	high	low	low	4

Average Annual Rainfall	Wind Erodibility Class of Soil	Wind Erosive Power	Exposure to Wind	Land and Soils Capability Class
			moderate	5
			high	7
		moderate	low	5
			moderate	6
			high	7
		high	low	6
			moderate	7
			high	7
200 – <300 mm	low	low	low	3
			moderate	3
			high	4
		moderate	low	3
			moderate	4
			high	5
		high	low	4
			moderate	5
			high	6
	moderate	low	low	4
			moderate	5
			high	6
		moderate	low	4
			moderate	5
			high	7
		high	low	4
			moderate	6
			high	8
	high	low	low	5
			moderate	6
			high	8
		moderate	low	6
			moderate	7
			high	8
		high	low	7
			moderate	8
			high	8
< 200 mm	low	low	low	8
			moderate	8
			high	8
		moderate	low	8

Average Annual Rainfall	Wind Erodibility Class of Soil	Wind Erosive Power	Exposure to Wind	Land and Soils Capability Class
			moderate	8
			high	8
		high	low	8
			moderate	8
			high	8
	moderate	low	low	8
			moderate	8
			high	8
		moderate	low	8
			moderate	8
			high	8
		high	low	8
			moderate	8
			high	8
	high	low	low	8
			moderate	8
			high	8
		moderate	low	8
			moderate	8
			high	8
		high	low	8
			moderate	8
			high	8

6.7 Assessing shallow and rocky soil hazard

- Shallow soils and rockiness reduce the land use capability of soils and land.
- The criteria used by the Land and Soils Capability Tool to assess shallow soil and rockiness hazard are:
 - estimated percentage exposure of rocky outcrops;
 - average soil depth; and
 - average annual rainfall.
- The relationship between the criteria in determining the land and soils capability class is shown in Table 6.7.

Table 6.7 Relationship between Soil Depth, Rocky Outcrop, and Average Annual Rainfall for Assessment of Shallow and Rocky Soils.

Soil Depth cm	Rocky Outcrop % Coverage	Land and Soils Capability Class if <500 mm Av. Annual Rainfall	Land and Soils Capability Class if >500 mm Av. Annual Rainfall
>100	<30	1, 2	1, 2
50 – 100		4	1, 2
25 – <50		7, 8	4
<25		7, 8	7, 8
>100	30 - 50	4, 5	4, 5
50 – 100		4, 5	4, 5
25 – <50		7, 8	4, 5
<25		7, 8	7, 8
>100	50 – 70	6	6
50 – 100		6	6
25 – <50		7, 8	6
<25		7, 8	7, 8
>100	>70	7, 8	7, 8
50 – 100		7, 8	7, 8
25 – <50		7, 8	7, 8
<25		7, 8	7, 8

6.8 Assessing earth mass movement hazard

- The criteria used by the Land and Soils Capability Tool to assess earth mass movement hazard are:
 - existing evidence of earth mass movement;
 - slope class;
 - average annual rainfall;
 - soil saturation conditions;
 - nature of underlying soil materials.
- The relationship between the criteria in determining the Land and Soils Capability Class is shown in Table 6.8.

Table 6.8 Relationship between Existing Earth Mass Movement, Slope, Average Annual Rainfall, Subsurface Soil Saturation Conditions and Unconsolidated Substrates for Assessing Earth Mass Movement Hazard.

Is there existing earth mass movement?	Slope	Is the average annual rainfall > 900 mm?	Concentration or impedance of seepage flows?	Is the underlying material unconsolidated?	Land and Soils Capability Class
yes	<12%	not required	not required	not required	1
	12% or more	not required	not required	not required	8
no	< 12 %	not required	not required	not required	1
	12 – 25%	yes	yes	yes	7
				no	6
			no	yes	6
				no	3
		no	yes	yes	6
				no	3
			no	yes	3
				no	1
	> 25%	yes	yes	yes	8
				no	7
			no	yes	7
				no	6
		no	yes	yes	6
				no	6
			no	yes	6
				no	3

6.9 Assessing acid sulfate soils hazard

- The Land and Soils Capability Tool assesses acid sulfate soils hazard for Coastal Plains in the Northern Rivers Catchment Management Authority, the Southern Rivers Catchment Management Authority, the Hawkesbury Nepean Catchment Management Authority and the coastal subdivision of the Hunter and Central Rivers Catchment Management Authority.
- The criteria used by the Land and Soils Capability Tool to assess acid sulfate soils hazard are:
 - land elevation in metres above Australian Height Datum (AHD);
 - depth to potential or actual acid sulfate soil.
- The depth to acid sulfate soils is estimated from Department of Natural Resources Acid Sulfate Soil maps, or can be obtained through field testing in the relevant Land and Soils Capability zone;
- The relationship between the criteria in determining the land and soils capability class is shown in Table 6.9.

Table 6.9 Relationship between Criteria Determining Class for Acid Sulfate Soils Hazard.

Is land >10 m AHD?	Depth to Acid Sulphate Soils Hazard	Land and Soils Capability Class
Yes	NA	1
No	ASS not present	1
	>4m	3
	2 – 4m	4
	1 – <2m	5
	<1m	8

6.10 Assessing soil structure hazard

- Soil structure decline is only assessed by the Land and Soils Capability Tool for the inland plains of NSW and only if average annual rainfall is <600 mm;
- The criterion used by the Land and Soils Capability Tool to assess soil structure decline hazard is the nature of surface soils;
- Table 6.10 shows how the Class is determined.

Table 6.10 Relationship between Nature of Surface Soils and Classes for the Assessment of Soil Structural Decline Hazard in the Inland Plains of NSW (where annual rainfall <600 mm).

Nature of surface soils	Class
self-mulching clay surface soils; loose sands	1, 2
fine sandy loam and sandy loam surface soils	3
loam and clay loam surface soils, non sodic	3
mildly sodic, loam, clay loam and clay surface soils	4
sodic, light clay and medium clay surface soils	5, 6
strongly sodic, light clay and medium clay surface soils	7, 8

Note: References

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7 Invasive Native Scrub Assessment

7.1 Introduction

This Chapter applies to the clearing of species of invasive native scrub under the Native Vegetation Act 2003.

Regrowth that is not classified as “protected regrowth” under the *Native Vegetation Act 2003* may be cleared without approval under that Act. Clearing of any other vegetation, which is classified under the *Native Vegetation Act 2003* as “remnant vegetation” or “protected regrowth” requires approval from the local Catchment Management Authority. This includes clearing of invasive native species.

Where a proposal only involves clearing of invasive native species a shortened assessment process (within the PVP Developer) can be used. This assessment process is designed to maintain or create a mosaic of vegetation states across the landscape and does not require offsets.

Further information on supporting science and application of the Environmental Outcome Assessment Methodology relating to clearing/thinning of native vegetation known as invasive native scrub under the *Native Vegetation Act 2003* is contained in:

- Operational Manual for the PVP Developer;
- Collation of Discussion Paper Submissions and Responses from the Invasive Native Scrub Team (<http://www.nativevegetation.nsw.gov.au/methodology/>).

7.2 Assessing invasive native species clearing proposals

This Chapter applies to the clearing of invasive native species.

Note:

There are two steps in assessing a proposal to clear invasive native species.

The first step is to determine whether the species proposed to be cleared may be assessed under this Chapter. This involves firstly, determining whether the species is listed in Table 7.1 as generally being invasive in the Catchment Management Authority area and/or the Interim Biogeographic Regionalisation of Australia (“IBRA”) region where the proposal is located, and secondly, whether the behaviour of the species in the area of the proposal satisfies certain criteria relating to whether a species can be said to be an invasive native species.

If the species is not an invasive native species, then the clearing proposal may not be assessed under this Chapter.

The second step is assessing whether the clearing proposal satisfies all of the applicable criteria listed below. If the clearing proposal does satisfy all applicable criteria, the clearing is to be regarded as improving or maintaining environmental outcomes and it is not necessary to assess the clearing proposal against the other environmental values listed in the Assessment Methodology (that is, water quality, salinity, soils and biodiversity).

If the clearing proposal does not satisfy all of the applicable criteria, then the proposal may not be assessed under this Chapter.

Invasive native species for the purposes of this Chapter means a plant species that satisfies the following criteria:

- 1) The species is listed in Table 7.1 in respect of the Catchment Management Authority Area or the Catchment Management Authority Area and IBRA region to which the clearing proposal relates; **and**
- 2) In the opinion of the relevant Catchment Management Authority (or an officer of that Authority who is responsible for making this assessment), the species satisfies the following criteria for acting invasively:
 - (a) the species is invading plant communities where it has not been known to occur previously, **or**
the species is regenerating densely following natural or artificial disturbance, **and**
 - (b) the invasion and/ or dense regeneration of the species is resulting in change of structure and/ or composition of a vegetation community, **and**
 - (c) the species is within its natural geographic range.

For the purpose of assessing whether clearing for the purpose of controlling invasive native scrub will improve or maintain environmental outcomes, such clearing is divided into the following clearing types:

- a) burning;
- b) clearing of individual plants with no disturbance to groundcover (for example, chemical spot treatment or ringbarking);
- c) clearing of individual plants with minimal disturbance to groundcover (for example, grubbing);
- d) clearing of plants at paddock scale with nil to minimal disturbance to soil and groundcover (for example, chaining, slashing or roping);
- e) clearing of plants at paddock scale with temporary disturbance to soil and groundcover (for example, bladeploughing); and
- f) clearing of plants at paddock scale with longer-term disturbance to soil and groundcover (for example, short-term cropping).

Note:

The examples set out in brackets above are given by way of illustration only and do not limit techniques for clearing which fall within each method.

Proposed invasive native species clearing assessed under this Chapter is regarded as improving or maintaining environmental outcomes in relation to applications for consent or Property Vegetation Plans if it meets all of the following criteria which apply to the proposed clearing.

All of the following criteria apply to all proposed clearing, unless expressly stated to apply only to a specific type of clearing.

In the following criteria:

- “groundcover” means any type of herbaceous vegetation, native and non-native, living or dead;
- “native groundcover” means living, native herbaceous vegetation;
- “the extent of invasive native species on the property” means the extent of the areas on the property where invasive native species are currently present and areas on the property where they may not presently occur but where invasive native scrub management is required to prevent their spread or recurrence, as mapped by the relevant Catchment Management Authority. Non native vegetation areas and areas of native vegetation not impacted by invasive native scrub should not be included in the extent of invasive native scrub on the property;

- “non-invasive native species” and “non-invasive native vegetation” mean any native species that are not invasive native species, as defined above;
- “diameter at breast height” means the diameter of the stem at 1.3 metres above the ground;
- “erosion risk” means the intrinsic susceptibility of a parcel of land to the prevailing agents of erosion. It is dependent on a combination of climate, landform and soil factors (Houghton & Charman 1986);
- “derived vegetation community” for the purposes of this chapter means a vegetation community which has changed from structurally different vegetation community, for example, shrubland that has encroached into open woodland or grassland areas. Vegetation communities with mature trees of the same species as younger trees in the community are generally not derived communities;
- “high condition” is as defined as benchmark condition (by Chapter 5 of the Environmental Outcomes Assessment Methodology) for the vegetation type which corresponds to the threatened ecological community being treated.
- “density” or “densities” means the number of plants per hectare.

Purpose of the clearing

- 1) Clearing permitted by these provisions is for the purpose of re-establishing native vegetation or allowing natural regeneration of native species.

Native groundcover

- 2) After the clearing provisions of the consent or property vegetation plan end, native groundcover on the area where the clearing took place is maintained in perpetuity unless clearing is permitted by a property vegetation plan or consent under the *Native Vegetation Act 2003*.

Total areas which may be cleared

- 3) Total clearing of invasive native species does not exceed 80% of the extent of invasive native species on the property.
- 4) Where the following types of clearing are carried out
 - burning or
 - clearing of individual plants with no disturbance to groundcover(a) The clearing does not exceed 80% of the extent of the area of invasive native species on the property (as mapped by the relevant Catchment Management Authority).
- 5) Where the following types of clearing are carried out:
 - clearing of individual plants with minimal disturbance to groundcover or
 - clearing plants at a paddock scale with nil to minimal disturbance to soil and groundcover.a) The clearing does not exceed 60% of the extent of invasive native species on the property, except as set out in 5 b) below.
b) Up to a further 20% of the extent of invasive native species on the property is cleared only if the Catchment Management Authority is satisfied that land that was initially cleared by either of these types of clearing has achieved a groundcover of greater than 50% (or higher percentage as determined by the CMA) and the groundcover consists of greater than 75% (or higher percentage as determined by the CMA) native groundcover.

- c) Groundcover is maintained in perpetuity on land initially cleared by this type of clearing from the date the Catchment Management Authority is satisfied the land is at the groundcover set out in paragraph 5 (b) unless clearing is permitted by a property vegetation plan or consent under the *Native Vegetation Act 2003*.
- d) If clearing plants at a paddock scale with nil to minimal disturbance to soil and groundcover is carried out with clearing plants at a paddock scale with temporary disturbance to soil and groundcover and/ or clearing of plants at paddock scale with longer-term disturbance to soil and groundcover the total clearing must not exceed 60% of the extent of invasive native species on the property except as set out in paragraph 5 b).
- e) The CMA must certify in writing that it is satisfied as to the matters set out in paragraph 5 b) before the further clearing referred to in that paragraph can take place.

Note:

Criterion 5 d) means that if clearing type d is undertaken in combination with clearing type e and/or f the total initial clearing cannot exceed 60% of the extent of invasive native species on the property.

Due to the other retention requirements within this Chapter the clearing by clearing types d-f may be limited to 72% of the extent of invasive native species on the property in total over the period of the Property Vegetation Plan.

- 6) Where the following type of clearing is carried out:
 - Clearing plants at a paddock scale with temporary disturbance to soil and groundcover.
 - a) The clearing does not exceed 40% of the extent of invasive native species on the property, except as set out in 6 b) below.
 - b) Up to a further 40% of the extent of invasive native species on the property is cleared only if the Catchment Management Authority is satisfied that land that was initially cleared by this type of clearing has achieved a groundcover of greater than 50% (or higher percentage as determined by the CMA) and the groundcover consists of greater than 75% (or higher percentage as determined by the CMA) native groundcover.
 - c) Groundcover is maintained in perpetuity on land initially cleared by this type of clearing from the date the Catchment Management Authority is satisfied the land is at the groundcover set out in set out in paragraph 6 (b) unless clearing is permitted by a property vegetation plan or consent under the *Native Vegetation Act 2003*.
 - d) If both clearing plants at paddock scale with temporary disturbance to soil and groundcover and clearing of plants at paddock scale with longer-term disturbance to soil and groundcover are to be carried out, then criterion 8 also applies.
 - e) The CMA must certify in writing that it is satisfied as to the matters set out in paragraph 6 b) before the further clearing referred to in that paragraph can take place.
- 7) Where the following type of clearing is carried out:
 - Clearing of plants at paddock scale with longer-term disturbance to soil and groundcover.
 - a) The clearing does not exceed 20% of the extent of invasive native species on the property, except as set out in 7 b) below.
 - b) Up to a further 60% of the extent of invasive native species on the property is cleared only if the Catchment Management Authority is satisfied that for each further 20% (up to a maximum of 80%) of the extent of invasive native species on the property, land that was initially cleared by this type of clearing has achieved a groundcover of greater than 50% (or higher percentage as determined by the CMA) and the

- groundcover consists of greater than 75% (or higher percentage as determined by the CMA) native groundcover.
- c) Groundcover is maintained in perpetuity on land cleared by this type of clearing from the date the Catchment Management Authority certifies in writing that the land is at the groundcover set out in set out in paragraph 7 b) unless clearing is permitted by a property vegetation plan or consent under the *Native Vegetation Act 2003*.
 - d) The clearing at any one time does not exceed 20% of the invasive native species extent on the property.
 - e) If both clearing plants at paddock scale with temporary disturbance to soil and groundcover and clearing of plants at paddock scale with longer-term disturbance to soil and groundcover are to be carried out, then criterion 8 also applies.
 - f) The CMA must certify in writing that it is satisfied as to the matters set out in paragraph 7 b) before the further clearing referred to in that paragraph can take place.
- 8) Where both of the following types of clearing are carried out:
- clearing plants at a paddock scale with temporary disturbance to soil and groundcover and
 - clearing of plants at paddock scale with longer-term disturbance to soil and groundcover.
- a) The clearing does not exceed 40% of the extent of invasive native species on the property except as set out in 8 b) below.
 - b) Up to a further 40% of the extent of invasive native species on the property is cleared only if the Catchment Management Authority is satisfied that land that was initially cleared by either of these types of clearing has achieved a groundcover of greater than 50% (or higher percentage as determined by the CMA) and the groundcover consists of greater than 75% (or higher percentage as determined by the CMA) native groundcover.
 - c) Groundcover is maintained in perpetuity on land initially cleared by this type of clearing from the date the Catchment Management Authority is satisfied the land is at the groundcover set out in set out in paragraph 8 b) unless clearing is permitted by a property vegetation plan or consent under the *Native Vegetation Act 2003*.
 - d) The clearing at any one time does not exceed 40% of the invasive native species extent on the property.
 - e) The CMA must certify in writing that it is satisfied as to the matters set out in paragraph 8 b) before the further clearing referred to in that paragraph can take place.

Note:

For example, using this type of clearing, if the extent of invasive native species on a property is 1,000 ha, then the landholder may initially clear 20% of this area, that is, 200 ha. Once the Catchment Management Authority is satisfied that this 200 ha has achieved a groundcover of more than 50% cover and that cover consists of more than 75% native vegetation, then the landholder may clear a further 20% of the extent of invasive native species on the property, that is, a further 200 ha.

Once the Catchment Management Authority is satisfied that the second parcel of 200 ha has achieved the groundcover and percentage of native groundcover described above, then the landholder may clear a further 200 ha and so on, until the landholder has cleared 800 ha, which is the maximum area permitted to be cleared (that is, 80% of 1,000 ha). In this example at any one time, no more than 200 ha may be cleared.

The landholder must not re-clear any areas cleared under these provisions that have achieved the necessary level of groundcover unless another consent or Property Vegetation Plan is obtained.

Restrictions on which methods of clearing may be used

- 8A) The clearing type that is used (being a type described in Chapter Section 7.2 (a) to (f)) is a type which is permitted for the species being cleared, according to Table 7.1
- 9) The method of clearing is limited to burning, clearing of individual plants with no disturbance to groundcover or clearing of individual plants with minimal disturbance to groundcover where:
- a) non-invasive native trees and shrubs represent more than 50% of total number of individual trees and shrubs; or
 - b) skeletal/ rocky soils, dunefields or lunettes occur on the area where the proposed clearing is to take place, or
- vegetation is a threatened ecological community or threatened population within the meaning of the *Threatened Species Conservation Act 1995* except, if the threatened ecological community is not in high condition and the clearing does not include the key species in the threatened ecological community (species in the title of the listing under the *Threatened Species Conservation Act 1995*) of the threatened ecological community, then the method of clearing of plants at paddock scale with nil to minimal disturbance to soil and groundcover may also be used, but to clear the understorey or groundcover only.
- 10) For methods other than burning, clearing of individual plants with no disturbance to groundcover and clearing of individual plants with minimal disturbance to groundcover, no land of slope greater than 18 degrees is cleared.
- 11) For the method of clearing of plants at paddock scale with longer-term disturbance to soil and groundcover, no vegetation is cleared on land:
- a) with a soil profile less than 1m in depth; or
 - b) of a medium erosion risk; or
 - c) of a high erosion risk.
- 12) For the method clearing of plants at a paddock scale with temporary disturbance to soil and groundcover, no vegetation is cleared on land of a high erosion risk.
- 13) For methods other than burning, any invasive native species that has a stem or trunk with a diameter at breast height ("dbh") greater than the dbh specified in the column headed "Maximum dbh allowed to be cleared" in Table 7.1 is not cleared except as set out in 13A and 13C.
- 13A) The relevant Catchment Management Authority may vary the measurement in the column "Maximum dbh allowed to be cleared" in Table 7.1 by up to 5 centimetres if, in the judgement of the Catchment Management Authority, the variation is appropriate for the land to be cleared.
- 13B) Any native vegetation other than the invasive native species referred to in 13 with a stem or trunk diameter at breast height greater than 20cm is not cleared except as set out in 13C.
- 13C) Accidental clearing of invasive native species with a stem or trunk dbh greater than the maximum dbh allowed to be cleared and non-invasive native species with a stem or trunk greater than 20cm dbh is limited to 1% of the total number of trees and shrubs in the area to be cleared.
- 14) For methods other than burning or clearing of individual plants with no disturbance to groundcover, no clearing is undertaken within the riparian buffer distances, as set out in

Table 3.1 of the Environmental Outcomes Assessment Methodology. Rivers and important wetlands are defined by Section 3.3 of the Environmental Outcomes Assessment Methodology. Other watercourses, lagoons and wetlands are to be defined by Section 3.3 of the Environmental Outcomes Assessment Methodology or as defined by the Catchment Management Authority.

15) [Note: this criterion has been removed. See criterion 17A.]

Non-native vegetation

16) For methods of clearing plants at paddock scale with temporary disturbance to soil and groundcover, and clearing of plants at paddock scale with longer term disturbance to soil and groundcover, the clearing does not result in the introduction into the cleared area of any non-native perennial vegetation other than the species listed in Table 7.2 (where in the judgement of the Catchment Management Authority the species listed in Table 7.2 is non-persistent in the area the species is proposed to be introduced)

17) For methods other than clearing plants at a paddock scale with temporary disturbance to soil and groundcover and clearing of plants at paddock scale with longer term disturbance to soil and groundcover, the clearing does not result in the introduction into the cleared area of any non-native vegetation.

Retention of native vegetation

17A) For methods of clearing of individual plants with no disturbance to groundcover and clearing of individual plants with minimal disturbance to groundcover:

- a) Plants of the species listed in Table 7.1 as requiring retention are to be retained at the densities specified in Table 7.1, except
 - I) Where the vegetation is a derived vegetation community; or
 - II) As set out in criterion 17A (b);
- b) Where more than one species is present, the total retention requirement for all species does not exceed 20 stems per hectare. If there is more than one species present, the stems retained must reflect the proportion of total individuals for each species present and stems are to be retained for a range of size classes present less than the dbh specified in Table 7.1; and,
- c) Stems retained must represent the proportion of size classes present prior to clearing; and,
- d) The relevant Catchment Management Authority may use its judgement to vary the number of stems per hectare that must be retained as specified by Table 7.1. However, the number of stems per hectare may not be varied to a ratio less than 1 stem under the maximum dbh allowed to be cleared in Table 7.1 to every 1 stem over the maximum dbh allowed to be cleared in Table 7.1, present per hectare for each species present to which this criterion applies. Any such variation does not affect the other requirements of this criterion.

Note:

For the purposes of criterion 17A, the number of plants per hectare means the number of plants on a one hectare area.

18) For the methods of clearing plants at a paddock scale with nil to minimal disturbance to soil and groundcover, clearing plants at a paddock scale with temporary disturbance to soil and groundcover and clearing of plants at paddock scale with longer-term disturbance to soil and groundcover:

- a) a minimum of 20% of the native vegetation on the area to be cleared is retained; and,

- b) if more than 500 hectares is to be cleared, then a minimum of 20% of the native vegetation on that area must be retained on each 500 hectare area within or between cleared areas; and
- c) the 20% retained native vegetation may not be cleared by any other method; and
- d) The retained native vegetation may include invasive native species; and
- e) The native vegetation retained for the purposes of this criterion may be included in the calculation of the uncleared area extent of invasive native species on the property for the purposes of criterion 3 to 8.

Note:

1. The 20% retention may be retained in patches or buffers.
2. The intention of this criterion is that, for example, if 750 ha are to be cleared, then the 750 ha area is to be divided into a 500 ha "envelope" and a 250 ha "envelope." At least 100 ha must be retained on the 500 ha envelope and at least 50 ha must be retained on the 250 ha envelope. It is not permissible to retain, for example, 150 ha on the 500 ha envelope and retain nothing on the 250 ha envelope.

- 18A) For the methods of clearing plants at a paddock scale with nil to minimal disturbance to soil and groundcover, clearing plants at a paddock scale with temporary disturbance to soil and groundcover and clearing of plants at paddock scale with longer-term disturbance to soil and groundcover, if plants of the species listed in Table 7.1 as requiring retention are present:
- a) a minimum of 10% of the area of native vegetation on the area to be cleared is retained in patches; and
 - I) if more than 100 hectares is to be cleared, then a minimum of 10% of the area of native vegetation on that area must be retained on each 100 hectare area; and
 - II) the areas retained as required by this criterion are additional to the areas retained for the purposes of criteria 3 to 8 and 18;
- or
- b) plants are retained individually as specified in 17A).

Requirements on how the clearing is to be carried out

The clearing is carried out in accordance with the methods set out below:

- 19) If clearing by the method of burning:
 - a) clearing of non-invasive native species is to the minimum extent necessary to clear the invasive native species; and
 - b) the clearing does not result in soil surface disturbance.
- 20) If clearing by the method of clearing of individual plants with no disturbance to groundcover:
 - a) the clearing does not result in soil surface disturbance; and
 - b) non-invasive native trees and shrubs cleared comprise no more than 1% of the total number of individual trees and shrubs cleared; and
 - c) any clearing of groundcover is incidental in extent; and
 - d) the clearing is limited to clearing of individual plants of invasive native species.
- 21) If clearing by the method of clearing of individual plants with minimal disturbance to soil and groundcover:
 - a) disturbance to soil surface is to the minimum extent necessary to clear individual plants; and
 - b) non-invasive native trees and shrubs cleared comprise no more than 1% of the total number of individual trees and shrubs cleared and;

- c) the clearing of groundcover is to the minimum extent necessary; and;
 - d) the clearing is specific to individual plants of invasive native species.
- 22) If clearing by method of clearing of plants at a paddock scale with nil to minimal disturbance to soil and groundcover:
- a) disturbance to soil surface is to the minimum extent necessary; and
 - b) non-invasive trees and shrubs comprise less than 10% of the total number of individual trees and shrubs cleared; and
 - c) the clearing of groundcover is to the minimum extent necessary.
- 23) If clearing by method of clearing plants at a paddock scale with temporary groundcover and soil disturbance:
- a) non-invasive trees and shrubs comprise less than 10% of the total number of individual trees and shrubs cleared; and
 - b) the clearing of groundcover is to the minimum extent necessary; and
 - c) disturbance to soil surface is limited to the minimum extent necessary to control the invasive native species; and
 - d) the introduction of non-persistent non-native perennial vegetation listed in Table 7.2 (the species listed in Table 7.2 must also in the judgement of the Catchment Management Authority, be non-persistent in the area where the species is proposed to be introduced) and annual non-native vegetation, is limited to the clearing activity; and
 - e) any non-native vegetation introduced is not harvested.
- 24) If clearing by method of clearing of plants at paddock scale with longer-term disturbance to soil and groundcover:
- a) the non-invasive trees and shrubs comprise less than 20% of the total number of individual trees and shrubs cleared; and
 - b) the clearing of groundcover is to the minimum extent necessary to control the invasive native species; and
 - c) the preparation and sowing of land with annual non-native vegetation and/ or non-persistent non-native perennial vegetation listed in Table 7.2 (the species listed in Table 7.2 must also, in the judgement of the Catchment Management Authority, be non-persistent in the area where the species is proposed to be introduced) is limited to three occasions in 15 years from the date of granting of consent or approval of the Property Vegetation Plan.

Key

In Table 7.1:

“n/a” means not applicable.

In the column headed “Clearing type permitted” and Note (1), the letters “a” to “f” correspond with the clearing types, that is:

- a: burning;
- b: clearing of individual plants with no disturbance to groundcover (for example, chemical spot treatment or ringbarking);
- c: clearing of individual plants with minimal disturbance to groundcover (for example, grubbing);
- d: clearing of plants at paddock scale with nil to minimal disturbance to soil and groundcover (for example, chaining, slashing or roping);
- e: clearing of plants at paddock scale with temporary disturbance to soil and groundcover (for example, bladeploughing); and
- f: clearing of plants at paddock scale with longer-term disturbance to soil and groundcover (for example, short-term cropping).

Table 7.1. Invasive Native Scrub Species Database

The species listed are consistent with the following criteria:

- (a) the species invades plant communities where it has not been known to occur previously, or the species regenerates densely following natural or artificial disturbance, and
- (b) the invasion and/ or dense regeneration of the species results in change of structure and/ or composition of a vegetation community, and
- (c) the species is within its natural geographic range.

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Border Rivers/Gwydir--BBS	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Border Rivers/Gwydir--BBS	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Border Rivers/Gwydir--BBS	Cassinia arcuata (Sifton Bush)	none prescribed	No	n/a	All
Border Rivers/Gwydir--BBS	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Border Rivers/Gwydir--BBS	Olearia elliptica (Sticky Daisy Bush, Peach Bush)	none prescribed	No	n/a	All
Border Rivers/ Gwydir--BBS	Cassinia laevis	None prescribed	No	n/a	All
Border Rivers/ Gwydir--BBS	Cassinia quinquefaria	None prescribed	No	n/a	All
Border Rivers/ Gwydir--BBS	Dodonea viscosa subsp. angustissima (Narrowleaf Hopbush)	None prescribed	No	n/a	All
Border Rivers/ Gwydir--BBS	Dodonea viscosa subsp. spatulata (Broadleaf Hopbush)	None prescribed	No	n/a	All
Border Rivers/Gwydir--DRP	Acacia farnesiana (Mimosa)	None prescribed	No	n/a	All
Border Rivers/Gwydir--DRP	Acacia stenophylla (River Cooba, Black Wattle)	None prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Border Rivers/Gwydir--DRP	Acacia salicina (Cooba)	None prescribed	No	n/a	All
Border Rivers/Gwydir--DRP	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Border Rivers/Gwydir--DRP	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Border Rivers/Gwydir--DRP	Eremophila bignoniiflora (Eurah)	none prescribed	No	n/a	All
Border Rivers/Gwydir--DRP	Eremophila maculata (Spotted Fuschia)	none prescribed	No	n/a	All
Border Rivers/Gwydir--DRP	Eremophila longifolia (Emu Bush)	none prescribed	No	n/a	All
Border Rivers/Gwydir--DRP	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Border Rivers/Gwydir--DRP	Eucalyptus camaldulensis (River Red Gum)	20 (Total under 20cm dbh)	Yes	20cm	All
Border Rivers/Gwydir--DRP	Eucalyptus coolabah (Coolibah)	20 (Total under 20cm dbh)	Yes	20cm	All
Border Rivers/Gwydir--DRP	Eucalyptus largiflorens (Black Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Border Rivers/ Gwydir--DRP	Dodonea viscosa subsp. angustissima (Narrow/leaf Hobbush)	None prescribed	No	n/a	All
Border Rivers/ Gwydir--DRP	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	None prescribed	No	n/a	All
Border Rivers/Gwydir--NAN	Acacia deanei (Deane's Wattle)	none prescribed	No	n/a	All
Border Rivers/Gwydir--NAN	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Border Rivers/Gwydir--NAN	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Border Rivers/Gwydir--NAN	Cassinia arcuata (Sifton Bush)	none prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Border Rivers/Gwydir-- NAN	Leptospermum brevipes (Grey Teatree, Teatree)	none prescribed	No	n/a	All
Border Rivers/Gwydir-- NAN	Olearia elliptica (Sticky Daisy Bush, Peach Bush)	none prescribed	No	n/a	All
Border Rivers/ Gwydir-- NAN	Cassinia quinquefaria	None prescribed	No	n/a	All
Border Rivers/ Gwydir-- NAN	Cassinia laevis	None prescribed	No	n/a	All
Border Rivers/ Gwydir-- NAN	Dodonea viscosa subsp. angustissima (Narrowleaf Hobbush)	None prescribed	No	n/a	All
Border Rivers/ Gwydir-- NAN	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	None prescribed	No	n/a	All
Border Rivers/Gwydir-- NET	Leptospermum brevipes (Grey Teatree, Teatree)	none prescribed	No	n/a	All
Border Rivers/ Gwydir-- NET	Cassinia laevis	None prescribed	No	n/a	All
Border Rivers/ Gwydir-- NET	Cassinia quinquefaria	None prescribed	No	n/a	All
Central West--All	Acacia aneura (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Central West--All	Acacia deanei (Deane's Wattle)	none prescribed	No	n/a	All
Central West--All	Acacia farnesiana (Mimosa)	none prescribed	No	n/a	All
Central West--All	Acacia stenophylla (Black Wattle)	none prescribed	No	n/a	All
Central West--All	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Central West--All	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Central West--All	Cassinia arcuata (Sifton Bush)	none prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Central West--All	<i>Dodonea viscosa</i> subsp. <i>spatulata</i> (Broadleaf Hobbush)	none prescribed	No	n/a	All
Central West--All	<i>Dodonea viscosa</i> subsp. <i>angustissima</i> (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Central West--All	<i>Eremophila bignoniiflora</i> (Eurah)	none prescribed	No	n/a	All
Central West--All	<i>Eremophila longifolia</i> (Emu Bush)	none prescribed	No	n/a	All
Central West--All	<i>Eremophila mitchellii</i> (Budda, False sandalwood)	none prescribed	No	n/a	All
Central West--All	<i>Eremophila sturtii</i> (Turpentine)	none prescribed	No	n/a	All
Central West--All	<i>Eucalyptus coolabah</i> (Coolibah)	20 (Total under 20cm dbh)	Yes	20cm	All
Central West--All	<i>Eucalyptus largiflorens</i> (Black Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Central West--All	<i>Eucalyptus populinea</i> (Bimble box, Poplar Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Central West--All	<i>Maireana microphylla</i> (Eastern Cotton Bush)	none prescribed	No	n/a	All
Central West--All	<i>Nitrania billardieri</i> (Dillon Bush)	none prescribed	No	n/a	All
Central West--All	<i>Senna</i> form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Central West--All	<i>Senna</i> form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Central West--All	<i>Scierolaena birchii</i> (Galvanised Burr)	none prescribed	No	n/a	All
Central West--All	<i>Scierolaena muricata</i> (Black Rolypoly)	none prescribed	No	n/a	All
Central West--All	<i>Acacia homalophylla</i> (Yarran)	none prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Central West--All	<i>Geijera parviflora</i> (Wilga)	20 (Total under 20cm dbh)	No	n/a	All
Central West--All	<i>Acacia salicina</i> (Cooba or Native Willow)	None prescribed	Yes	20cm	a-e
Central West--All	<i>Eucalyptus camaldulensis</i> (River Red Gum)	20 (Total under 20cm dbh)	Yes	20cm	a-c
Hawkesbury/Nepean--All	<i>Callitris endlicheri</i> (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Hawkesbury/Nepean--All	<i>Cassinia arcuata</i> (Sifton Bush)	none prescribed	No	20cm	All
Hawkesbury/Nepean--All	<i>Kunzea ericoides</i> (Burgan)	none prescribed	No	n/a	All
Hawkesbury/Nepean--All	<i>Kunzea parvifolia</i> (Violet Kunzea)	none prescribed	No	n/a	All
Hunter and Central Rivers--All	<i>Callitris endlicheri</i> (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Lachlan--All	<i>Acacia deanei</i> (Deane's Wattle)	None prescribed	No	n/a	All
Lachlan--All	<i>Callitris endlicheri</i> (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Lachlan--All	<i>Callitris glaucophylla</i> (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Lachlan--All	<i>Cassinia arcuata</i> (Sifton Bush)	none prescribed	No	n/a	All
Lachlan--All	<i>Dodonea viscosa</i> subsp <i>angustissima</i> (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Lachlan--All	<i>Dodonea viscosa</i> subsp. <i>spatulata</i> (Broadleaf Hobbush)	none prescribed	No	n/a	All
Lachlan--All	<i>Eremophila bowmanii</i> subsp. <i>bowmanii</i> (Silver Turkey Bush)	none prescribed	No	n/a	All
Lachlan--All	<i>Eremophila longifolia</i> (Emu Bush)	none prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Lachlan--All	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Lachlan--All	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Lachlan--All	Senna form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Lachlan--All	Senna form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Lachlan	Sclerolaena birchii (Galvanised Burr)	None prescribed	No	n/a	All
Lachlan	Sclerolaena muricata (Black Rolypoly)	None prescribed	No	n/a	All
Lower Murray /Darling--All	Dodonea viscosa subsp angustissima (Narrowleaf Hopbush)	none prescribed	No	n/a	All
Lower Murray /Darling--All	Dodonea viscosa subsp. spatulata (Broadleaf Hopbush)	none prescribed	No	n/a	All
Lower Murray /Darling--All	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Lower Murray /Darling--All	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Lower Murray /Darling--All	Senna form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Lower Murray /Darling--All	Senna form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Murray--All	Acacia paradoxa (Kangaroo Thorn)	none prescribed	No	n/a	All
Murray--All	Eucalyptus camaldulensis (River Red Gum)	20 (Total under 20cm dbh)	Yes	20cm	All
Murray--All	Eucalyptus largiflorens (Black Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Murray--All	Sclerolaena muricata (Black Rolypoly)	none prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Murray--All	Nitragia billiardieri (Dillon Bush)	none prescribed	No	n/a	All
Murrumbidgee--All	Acacia aneura (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Murrumbidgee--All	Acacia stenophylla (River Cooba, Black Wattle)	none prescribed	No	n/a	All
Murrumbidgee--All	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Murrumbidgee--All	Dodonea viscosa subsp angustissima (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Murrumbidgee--All	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	none prescribed	No	n/a	All
Murrumbidgee--All	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Murrumbidgee--All	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Murrumbidgee--All	Eucalyptus camaldulensis (River Red Gum)	20 (Total under 20cm dbh)	Yes	20cm	All
Murrumbidgee--All	Senna form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Murrumbidgee--All	Senna form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Murrumbidgee	Sclerolaena birchii (Galvanised Burr)	None prescribed	No	n/a	All
Namoi--All	Acacia deanei (Deane's Wattle)	none prescribed	No	n/a	All
Namoi--All	Acacia farnesiana (Mimosa)	none prescribed	No	n/a	All
Namoi--All	Bursaria spinosa (Blackthorn)	none prescribed	No	n/a	All
Namoi--All	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Namoi--All	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Namoi--All	Cassinia arcuata (Sifton Bush)	none prescribed	No	n/a	All
Namoi--All	Dodonea viscosa subsp angustissima (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Namoi--All	Eucalyptus coolabah (Coolibah)	20 (Total under 20cm dbh)	Yes	20cm	All
Namoi--All	Eucalyptus largiflorens (Black Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Namoi--All	Olearia eliptica (Sticky Daisy Bush, Peach Bush)	none prescribed	No	n/a	All
Namoi--All	Leptospermum brevipes (Grey Teatree, Teatree)	none prescribed	No	n/a	All
Namoi--All	Acacia stenophylla (Black Wattle or River Cooba)	20 (Total under 20cm dbh)	Yes	20cm	All
Namoi--All	Cassinia laevis (Cough Bush)	None prescribed	No	n/a	All
Namoi--All	Cassinia quinquefaria	None prescribed	No	n/a	All
Namoi--All	Casuarina cristata (Belah)	20 (Total under 20cm dbh)	Yes	20cm	a-c
Namoi--All	Dodonea viscosa subsp. angustissima (Narrowleaf Hobbush)	None prescribed	No	n/a	All
Namoi--All	Dodonea viscosa subsp. mucronata	None prescribed	No	n/a	All
Namoi--All	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	None prescribed	No	n/a	All
Namoi--All	Eremophila bignoniiflora (Eurah)	None prescribed	No	n/a	All
Namoi--All	Eremophila longifolia (Emu Bush)	None prescribed	No	n/a	All
Namoi--All	Eremophila mitchellii (Budda, False Sandalwood)	None prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Namoi--All	<i>Scierolaena birchii</i> (Galvanised Burr)	None prescribed	No	n/a	All
Namoi--All	<i>Scierolaena muricata</i> (Black Rolypoly)	None prescribed	No	n/a	All
Southern Rivers--All	<i>Kunzea ericoides</i> (Burgan)	none prescribed	No	n/a	All
Southern Rivers--All	<i>Kunzea parvifolia</i> (Violet Kunzea)	none prescribed	No	n/a	All
Southern Rivers--All	<i>Acacia mearnsii</i> (Black Wattle)	none prescribed	No	n/a	All
Southern Rivers--All	<i>Bursaria spinosa</i> (Blackthorn)	none prescribed	No	n/a	All
Southern Rivers--All	<i>Cassinia arcuata</i>	none prescribed	No	n/a	All
Western--BBS	<i>Acacia aneura</i> (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--BBS	<i>Acacia farnesiana</i> (Mimosa)	none prescribed	No	n/a	All
Western--BBS	<i>Callitris endlicheri</i> (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--BBS	<i>Callitris glaucophylla</i> (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--BBS	<i>Dodonea viscosa</i> subsp <i>angustissima</i> (Narrowleaf Hopbush)	none prescribed	No	n/a	All
Western--BBS	<i>Dodonea viscosa</i> subsp. <i>spatulata</i> (Broadleaf Hopbush)	none prescribed	No	n/a	All
Western--BBS	<i>Eremophila mitchellii</i> (Budda, False Sandalwood)	none prescribed	No	n/a	All
Western--BBS	<i>Eremophila sturtii</i> (Turpentine)	none prescribed	No	n/a	All
Western--BBS	<i>Eucalyptus coolabah</i> (Coolibah)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--BBS	<i>Eucalyptus largiflorens</i> (Black Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--BBS	<i>Eucalyptus populnea</i> (Bimble Box, Poplar Box)	20 (Total under 20cm dbh)	Yes	20cm	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Western--BBS	Senna form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Western--BBS	Senna form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--BBS	Casuarina cristata (Belah)	20 (Total under 20cm dbh)	Yes	20cm	a-c
Western--BBS	Eremophila bignoniiflora (Eurah)	None prescribed	No	n/a	All
Western--BHC	Acacia aneura (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--BHC	Dodonea viscosa subsp angustissima (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Western--BHC	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Western--BHC	Senna form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Western--BHC	Senna form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--BHC	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	None prescribed	No	n/a	All
Western--BHC	Eremophila mitchellii (Budda)	None prescribed	No	n/a	All
Western--DRP	Acacia aneura (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--DRP	Acacia farnesiana (Mimosa)	none prescribed	No	n/a	All
Western--DRP	Acacia stenophylla (Black Wattle)	none prescribed	No	n/a	All
Western--DRP	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--DRP	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--DRP	Dodonea viscosa subsp angustissima (Narrowleaf Hobbush)	none prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Western--DRP	<i>Dodonea viscosa</i> subsp. <i>spatulata</i> (Broadleaf Hobbush)	none prescribed	No	n/a	All
Western--DRP	<i>Eremophila longifolia</i> (Emu Bush)	none prescribed	No	n/a	All
Western--DRP	<i>Eremophila mitchellii</i> (Budda, False Sandalwood)	none prescribed	No	n/a	All
Western--DRP	<i>Eremophila sturtii</i> (Turpentine)	none prescribed	No	n/a	All
Western--DRP	<i>Eucalyptus coolabah</i> (Coolibah)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--DRP	<i>Eucalyptus largiflorens</i> (Black Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--DRP	<i>Eucalyptus populnea</i> (Bimble Box, Poplar Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--DRP	<i>Senna</i> form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Western--DRP	<i>Senna</i> form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--DRP	<i>Casuarina cristata</i> (Belah)	20 (Total under 20cm dbh)	Yes	20cm	a-c
Western--DRP	<i>Eremophila bignoniflora</i> (Eurah)	None prescribed	No	n/a	All
Western--DRP	<i>Muehlenbeckia florulenta</i> (Lignum)	None prescribed	No	n/a	a
Western--DRP	<i>Sclerolaena birchii</i> (Galvanised Burr)	None prescribed	No	n/a	All
Western--DRP	<i>Sclerolaena muricata</i> (Black Rolypoly)	None prescribed	No	n/a	All
Western--CC	<i>Dodonea viscosa</i> subsp. <i>angustissima</i> (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Western--CC	<i>Eremophila duttonii</i> (Harlequin Fuchsia Bush)	none prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Western--CC	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Western--CC	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Western--CC	Senna form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--CP	Acacia aneura (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--CP	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--CP	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--CP	Dodonea viscosa subsp angustissima (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Western--CP	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	none prescribed	No	n/a	All
Western--CP	Eremophila longifolia (Emu Bush)	none prescribed	No	n/a	All
Western--CP	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Western--CP	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Western--CP	Eucalyptus populinea (Bimble Box, Poplar Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--CP	Senna form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Western--CP	Senna form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--CP	Acacia homalophylla (Yarran)	none prescribed	No	n/a	All
Western--CP	Geijera parviflora (Wilga)	20 (Total under 20cm dbh)	No	20cm	All
Western--CP	Eucalyptus intertexta (Red Box)	20 (Total under 20cm dbh)	Yes	20cm	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Western--CP	<i>Sclerolaena birchii</i> (Galvanised Burr)	None prescribed	No	n/a	All
Western--ML	<i>Acacia aneura</i> (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--ML	<i>Callitris endlicheri</i> (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--ML	<i>Callitris glaucophylla</i> (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--ML	<i>Dodonea viscosa</i> subsp <i>angustissima</i> (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Western--ML	<i>Eremophila duttonii</i> (Harlequin Fuchsia Bush)	none prescribed	No	n/a	All
Western--ML	<i>Eremophila gilesii</i> (Green Turkey-bush)	none prescribed	No	n/a	All
Western--ML	<i>Eremophila longifolia</i> (Emu Bush)	none prescribed	No	n/a	All
Western--ML	<i>Eremophila mitchellii</i> (Budda, False Sandalwood)	none prescribed	No	n/a	All
Western--ML	<i>Eremophila sturtii</i> (Turpentine)	none prescribed	No	n/a	All
Western--ML	<i>Eucalyptus populnea</i> (Bimble Box, Poplar Box)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--ML	<i>Senna</i> form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Western--ML	<i>Senna</i> form taxon 'filifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--ML	<i>Acacia homalophylla</i> (Yarran)	none prescribed	No	n/a	All
Western--ML	<i>Geijera parviflora</i> (Wilga)	20 (Total under 20cm dbh)	No	20cm	All
Western--ML	<i>Dodonea viscosa</i> subsp. <i>spatulata</i> (Broadleaf Hobbush)	None prescribed	No	n/a	All
Western--ML	<i>Eremophila bowmanii</i> var. <i>bowmanii</i> (Silver Turkey Bush)	None prescribed	No	n/a	All

Catchment Management Authority – IBRA region	Invasive Native Species	Retention requirements			INS type of clearing permitted
		Number of plants per hectare to be retained	Retention required by criterion 18A (clearing types d-f only)	Maximum dbh allowed to be cleared	
Western--ML	Muehlenbeckia florulenta (Lignum)	None prescribed	No	n/a	a
Western--MDD	Acacia aneura (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--MDD	Callitris glaucophylla (White Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--MDD	Callitris endlicheri (Black Cypress)	20 (Total under 20cm dbh)	No	20cm	All
Western--MDD	Dodonea viscosa subsp angustissima (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Western--MDD	Eremophila mitchellii (Budda, False Sandalwood)	none prescribed	No	n/a	All
Western--MDD	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Western--MDD	Senna form taxon 'fiifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--MDD	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	None prescribed	No	n/a	All
Western--MDD	Senna form taxon 'artemisioides' (Silver Cassia)	None prescribed	No	n/a	All
Western--SSD	Acacia aneura (Mulga)	20 (Total under 20cm dbh)	Yes	20cm	All
Western--SSD	Dodonea viscosa subsp angustissima (Narrowleaf Hobbush)	none prescribed	No	n/a	All
Western--SSD	Eremophila sturtii (Turpentine)	none prescribed	No	n/a	All
Western--SSD	Senna form taxon 'artemisioides' (Silver Cassia)	none prescribed	No	n/a	All
Western--SSD	Senna form taxon 'fiifolia' (Punty Bush)	none prescribed	No	n/a	All
Western--SSD	Dodonea viscosa subsp. spatulata (Broadleaf Hobbush)	None prescribed	No	n/a	All

Note:

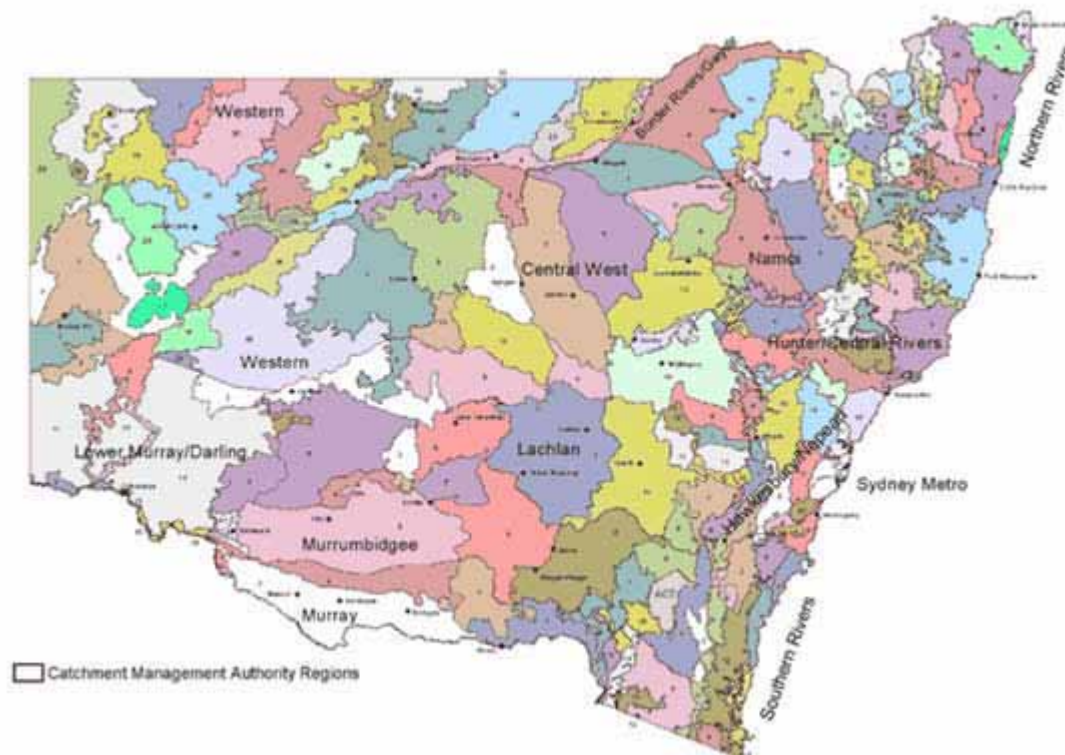
(1): For clearing types (d), (e) and (f), 20cm. For all other clearing types, no maximum dbh is applicable.

Table 7.2. Non-persistent and Non-native Perennial Species Database

Non-persistent non-native perennial vegetation species
<i>Medicago sativa</i> (Lucerne)

APPENDICES

Appendix A. Sub-regions of NSW Catchment Management Authority Areas



Sub-regions of NSW Catchment Management Authority Areas

Key to map

Border Rivers/Gwydir

1	Beardy River Hills
2	Binghi Plateau
3	Bundarra Downs
4	Castlereagh-Barwon
5	Deepwater Downs
6	Eastern Nandewars
7	Glenn Innes-Guyra Basalts
8	Inverell Basalts
9	Kaputar
10	Moredun Volcanics
11	Nandewar, Northern Complex
12	Northeast Forest Lands
13	Northern Basalts
14	Northern Outwash
15	Peel
16	Severn River Volcanics
17	Tenterfield Plateau
18	Tingha Plateau
19	Yarrowyck-Kentucky Downs

Central West	
1	Bathurst
2	Bogan-Macquarie
3	Canbelego Downs
4	Capertee
5	Castlereagh-Barwon
6	Hill End
7	Kerrabee
8	Liverpool Range
9	Lower Slopes
10	Nymagee-Rankins Springs
11	Oberon
12	Orange
13	Pilliga
14	Pilliga Outwash
15	Talbragar Valley
16	Upper Slopes
17	Wollemi
Hawkesbury/Nepean	
1	Bathurst
2	Bungonia
3	Burraborang
4	Capertee
5	Crookwell
6	Cumberland
7	Kanangra
8	Monaro
9	Moss Vale
10	Oberon
11	Pittwater
12	Sydney Cataract
13	Wollemi
14	Yengo
Hunter/Central Rivers	
1	Barrington
2	Comboyne Plateau
3	Ellerston
4	Hunter
5	Karuah Manning
6	Kerrabee
7	Liverpool Range
8	Macleay Hastings
9	Mummel Escarpment
10	Pilliga
11	Tomalla
12	Upper Hunter
13	Walcha Plateau
14	Wollemi
15	Wyong
16	Yengo

Lachlan	
1	Barnato Downs
2	Crookwell
3	Darling Depression
4	Kanangra
5	Lachlan
6	Lachlan Plains
7	Lower Slopes
8	Murrumbateman
9	Nymagee-Rankins Springs
10	Oberon
11	Orange
12	South Olary Plain, Murray Basin Sands
13	Upper Slopes
Lower Murray/ Darling	
1	Barrier Range
2	Barrier Range Outwash, Fans and Plains
3	Darling Depression
4	Great Darling Anabranh
5	Lachlan
6	Menindee
7	Murray Scroll Belt
9	Pooncarie-Darling
10	Robinvale Plains
11	South Olary Plain, Murray Basin Sands
Murray	
1	Bondo
2	Lower Slopes
3	Murray Fans
4	Murrumbidgee
5	New South Wales Alps
6	South Olary Plain, Murray Basin Sands
7	Upper Slopes
Murrumbidgee	
1	Bondo
2	Darling Depression
3	Kybeyan - Gourrock
4	Lachlan
5	Lachlan Plains
6	Lower Slopes
7	Monaro
8	Murrumbateman
9	Murrumbidgee
10	New South Wales Alps
11	South Olary Plain, Murray Basin Sands
12	Upper Slopes
Namoi	
1	Castlereagh-Barwon
2	Eastern Nandewars

3	Kaputar
4	Liverpool Plains
5	Liverpool Range
6	Northern Basalts
7	Peel
8	Pilliga
9	Pilliga Outwash
10	Walcha Plateau
Northern Rivers	
1	Armidale Plateau
2	Carrai Plateau
3	Cataract
4	Chaelundi
5	Clarence Lowlands
6	Clarence Sandstones
7	Coffs Coast & Escarpment
8	Comboyne Plateau
9	Dalmorton
10	Ebor Basalts
11	Glenn Innes-Guyra Basalts
12	Guy Fawkes
13	Macleay Gorges
14	Macleay Hastings
15	Murwillumbah (Qld - Southeast Hills and Ranges)
16	Nightcap
17	Northeast Forest Lands
18	Richmond - Tweed (Qld - Scenic Rim)
19	Rocky River Gorge
20	Round Mountain
21	Stanthorpe Plateau
22	Upper Manning
23	Walcha Plateau
24	Washpool
25	Wongwibinda Plateau
26	Woodenbong
27	Yuraygir
Southern Rivers	
1	Bateman
2	Bungonia
3	Burraborang
4	East Gippsland Lowlands (EGL)
5	Ettrema
6	Illawarra
7	Jervis
8	Kybeyan - Gourock
9	Monaro
10	Moss Vale
11	New South Wales Alps
12	South East Coastal Ranges
13	South East Coastal Plains

Western	
1	Barnato Downs
2	Barrier Range
3	Barrier Range Outwash, Fans and Plains
4	Bogan-Macquarie
5	Boorindal Plains
6	Bulloo Dunefields
7	Bulloo Overflow
8	Canbelego Downs
9	Castlereagh-Barwon
10	Central Depression
11	Central Downs - Fringing Tablelands and Downs
12	Core Ranges
13	Core Ranges
14	Culgoa-Bokhara
15	Darling Depression
16	Kerribree Basin
17	Louth Plains
18	Menindee
19	Moonie - Barwon Interfluve, Collarenebri Interfluve
20	Mootwingee Downs
21	Narrandool
22	Nebine Plains, Block Range
23	Nymagee-Rankins Springs
24	Paroo Overflow
25	Paroo Sand Sheets, Cuttaburra-Paroo
26	Paroo-Darling Sands
27	Scopes Range
28	South Olary Plain, Murray Basin Sands
29	Strzelecki Desert, Western Dunefields
30	Urisino Sandplains
31	Warrambool-Moonie
32	Warrego Plains
33	Warrego Sands
34	West Warrego - Tablelands and Downs
35	White Cliffs Plateau
36	Wilcannia Plains

Appendix B. Management Actions Specified by the Clearing Module of the LSC Tool for Assessed Land Degradation Hazards to Pass the Improve or Maintain Test.

Hazard	Class	Management Action
Salinity	3	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	3	Run the Salt Mobilisation Tool to ensure no net disbenefit
Salinity	4	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	4	Run the Salt Mobilisation Tool to ensure no net disbenefit
Salinity	5	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	5	Run the Salt Mobilisation Tool to ensure no net disbenefit
Salinity	6	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	6	Run the Salt Mobilisation Tool to ensure no net disbenefit
Water Erosion	3	Use conservation farming practices &/or erosion control earthworks
Water Erosion	3	If cropping: no burning of stubble, use controlled traffic, minimal cultivation, adequate fertiliser, direct seeding
Water Erosion	3	If cropping very long slopes in the Border Rivers / Gwydir, Namoi or Central West CMAs: use strip cropping
Water Erosion	3	If grazing: use suitable pasture rotations & manage grazing to maintain groundcover and pasture composition
Water Erosion	3	If cropping or grazing: use soil ameliorants where required (gypsum, lime)
Water Erosion	4	If cropping: use conservation farming practices
Water Erosion	4	If cropping: no burning of stubble, use controlled traffic, minimal cultivation, adequate fertiliser, direct seeding
Water Erosion	4	If grazing: use suitable pasture rotations & adequate fertiliser & manage grazing to maintain groundcover and pasture composition
Water Erosion	4	If cropping or grazing: use soil ameliorants where required (gypsum, lime)
Water Erosion	5	No cultivation or cropping
Water Erosion	5	If grazing: use suitable pasture rotations & adequate fertiliser & manage grazing to maintain groundcover and pasture composition
Water Erosion	5	Use earthworks to control erosion and intercept sediment
Water Erosion	6	No cultivation or cropping
Water Erosion	6	If clearing or thinning in the Coastal Tablelands and Slopes: no soil disturbance and no removal of cut or fallen timber
Water Erosion	6	If grazing: use controlled grazing, suitable pasture rotations, adequate fertiliser & maintain groundcover
Wind Erosion	3	Use conservation farming practices
Wind Erosion	3	If cropping: no burning of stubble, maintain 50% groundcover, minimal cultivation with reduced speed of implements, adequate fertiliser, direct seeding
Wind Erosion	3	If grazing: use controlled grazing, minimal cultivation to establish pasture and suitable pasture rotations
Wind Erosion	3	If cropping or grazing: install wind breaks
Wind Erosion	4	Use conservation farming practices
Wind Erosion	4	If cropping: limited to 3 years in 10

Hazard	Class	Management Action
Wind Erosion	4	If cropping: no burning of stubble, maintain 50% groundcover, minimal cultivation with reduced speed of implements, adequate fertiliser, direct seeding
Wind Erosion	4	If grazing: use controlled grazing, minimal cultivation to establish pasture and suitable pasture rotations
Wind Erosion	4	If cropping or grazing: install wind breaks
Wind Erosion	5	No cultivation or cropping
Wind Erosion	5	If grazing: manage pasture to maintain groundcover, including use of adequate fertiliser
Wind Erosion	6	No cultivation or cropping
Wind Erosion	6	If grazing: manage to maintain groundcover, including use of adequate fertiliser
Soil Structure Decline	3	Use conservation farming practices
Soil Structure Decline	3	If cropping: no stubble burning (retain and incorporate stubble), and use controlled traffic, minimal cultivation, direct seeding, adequate fertiliser, adequate soil ameliorant (lime), & recommended rotation and length of pasture phases
Soil Structure Decline	3	If grazing: use controlled grazing, manage pasture to maintain groundcover and biomass to protect soil structure, adequate soil ameliorant (lime)
Soil Structure Decline	4	Use conservation farming practices
Soil Structure Decline	4	If cropping: limited to 3 years in 10
Soil Structure Decline	4	If cropping: no stubble burning (maintain 50% groundcover), controlled traffic, reduced speed of cultivation, minimal cultivation, direct seeding, adequate fertiliser, adequate soil ameliorant (lime)
Soil Structure Decline	4	If grazing: use controlled grazing, suitable pasture rotations, manage pasture to maintain groundcover and biomass to protect soil structure, use adequate fertiliser & soil ameliorant (lime)
Soil Structure Decline	5	No cultivation or cropping
Soil Structure Decline	5	If grazing: manage pasture to maintain groundcover and biomass to protect soil structure, use adequate fertiliser & soil ameliorant (lime)
Soil Structure Decline	6	No cultivation or cropping
Soil Structure Decline	6	If grazing: manage pasture to maintain groundcover and biomass to protect soil structure, use adequate fertiliser & soil ameliorant (lime)
Shallow & Rocky Soils	4	No cropping
Shallow & Rocky Soils	4	If grazing: manage pasture to maintain ground cover, including use of adequate fertiliser
Shallow & Rocky Soils	5	No cultivation or cropping
Shallow & Rocky Soils	5	If grazing: manage pasture to maintain ground cover, including use of adequate fertiliser

Hazard	Class	Management Action
Shallow & Rocky Soils	6	No cultivation or cropping
Shallow & Rocky Soils	6	If grazing: manage pasture to maintain ground cover, including use of adequate fertiliser
Acid Sulfate Soils	3	No soil disturbance or drainage deeper than 3 metres
Acid Sulfate Soils	4	No soil disturbance or drainage deeper than 1 metre
Acid Sulfate Soils	5	No soil disturbance or drainage deeper than 0.5 metre
Earth Mass Movement	3	No concentration of surface or subsurface water flow
Earth Mass Movement	3	No excavation batters >2.5 metres without geotechnical design & batter angles <3:1
Earth Mass Movement	3	Maintain groundcover to maximise water use & bind soil
Earth Mass Movement	6	No concentration of surface or subsurface water flow
Earth Mass Movement	6	No excavation batters >1.5 metres without geotechnical design & batter angles <3:1
Earth Mass Movement	6	Subsurface drainage required
Earth Mass Movement	6	Maintain groundcover, especially deep-rooted plants, to maximise water use & bind soil

Appendix C. Management Actions Specified by the Offsets Module of the LSC Tool for Assessed Land Degradation Hazards to Pass the Improve or Maintain Test.

Hazard	Class	Management Action
Water Erosion	4	If establishing perennial pastures, use only direct seeding with minimal soil disturbance
Water Erosion	4	If planting trees for native vegetation regeneration, all cultivation or deep ripping must follow the contour
Water Erosion	5	If establishing perennial pastures, use only broadcast seeding without cultivation or soil disturbance
Water Erosion	5	If planting individual trees or broadcast seeding for native vegetation regeneration, deep ripping or extensive soil disturbance should not be used
Water Erosion	6	If establishing perennial pastures, use only broadcast seeding without cultivation or soil disturbance
Water Erosion	6	If planting individual trees or broadcast seeding for native vegetation regeneration, deep ripping or extensive soil disturbance should not be used
Water Erosion	7	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Water Erosion	8	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Wind Erosion	4	If establishing perennial pastures, use only direct seeding with minimal soil disturbance
Wind Erosion	4	If planting trees for native vegetation regeneration, all cultivation or deep ripping must follow the contour
Wind Erosion	5	If establishing perennial pastures, use only broadcast seeding without cultivation or soil disturbance
Wind Erosion	5	If planting individual trees or broadcast seeding for native vegetation regeneration, deep ripping or extensive soil disturbance should not be used
Wind Erosion	6	If establishing perennial pastures, use only broadcast seeding without cultivation or soil disturbance
Wind Erosion	6	If planting individual trees or broadcast seeding for native vegetation regeneration, deep ripping or extensive soil disturbance should not be used
Wind Erosion	7	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Wind Erosion	8	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Soil Structure	4	If establishing perennial pastures, use only direct seeding with minimal soil disturbance
Soil Structure	4	If planting trees for native vegetation regeneration, all cultivation or deep ripping must follow the contour
Soil Structure	7	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Soil Structure	8	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding

Hazard	Class	Management Action
Rockiness & Shallow Soils	4	If establishing perennial pastures, use only direct seeding with minimal soil disturbance
Rockiness & Shallow Soils	4	If planting trees for native vegetation regeneration, all cultivation or deep ripping must follow the contour
Rockiness & Shallow Soils	5	If establishing perennial pastures, use only broadcast seeding without cultivation or soil disturbance
Rockiness & Shallow Soils	5	If planting individual trees or broadcast seeding for native vegetation regeneration, deep ripping or extensive soil disturbance should not be used
Rockiness & Shallow Soils	6	If establishing perennial pastures, use only broadcast seeding without cultivation or soil disturbance
Rockiness & Shallow Soils	6	If planting individual trees or broadcast seeding for native vegetation regeneration, deep ripping or extensive soil disturbance should not be used
Rockiness & Shallow Soils	7	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Rockiness & Shallow Soils	8	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Acid Sulfate Soils	4	If establishing perennial pastures, use only direct seeding with minimal soil disturbance
Acid Sulfate Soils	4	If planting trees for native vegetation regeneration, all cultivation or deep ripping must follow the contour
Acid Sulfate Soils	5	If establishing perennial pastures, use only broadcast seeding without cultivation or soil disturbance
Acid Sulfate Soils	5	If planting individual trees or broadcast seeding for native vegetation regeneration, deep ripping or extensive soil disturbance should not be used
Acid Sulfate Soils	7	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Acid Sulfate Soils	8	Regeneration of native vegetation only to be undertaken by fencing and natural regeneration or broadcast seeding
Salinity	3	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	4	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	5	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	6	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	7	Run the Salinity Benefits Index Tool to ensure no net disbenefit
Salinity	8	Run the Salinity Benefits Index Tool to ensure no net disbenefit

Department of Planning



New South Wales

Botany Local Environmental Plan 1995 (Amendment No 40)

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*. (S06/00203/S69)

FRANK SARTOR, M.P.,
Minister for Planning

Clause 1 Botany Local Environmental Plan 1995 (Amendment No 40)

Botany Local Environmental Plan 1995 (Amendment No 40)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Botany Local Environmental Plan 1995 (Amendment No 40)*.

2 Aims of plan

This plan aims to permit, with the consent of the City of Botany Bay Council, the carrying out of development on the land to which this plan applies (which is subject to high aircraft noise constraints) for the purpose of a retail plant nursery (being an additional use of the land).

3 Land to which plan applies

This plan applies to Lot B, DP 402249 and Lot 1, DP 784515, known as 84A Wentworth Avenue, Mascot, as shown edged heavy black on the map marked “Botany Local Environmental Plan 1995 (Amendment No 40)” deposited in the office of the City of Botany Bay Council.

4 Amendment of Botany Local Environmental Plan 1995

Botany Local Environmental Plan 1995 is amended by inserting at the end of Schedule 2 the following words:

- Land, being Lot B, DP 402249 and Lot 1, DP 784515, known as 84A Wentworth Avenue, Mascot, as shown edged heavy black on the map marked “Botany Local Environmental Plan 1995 (Amendment No 40)” —retail plant nursery.



New South Wales

Wyong Local Environmental Plan 1991 (Amendment No 157)

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*. (N00/00234/S69)

FRANK SARTOR, M.P.,
Minister for Planning

Clause 1 Wyong Local Environmental Plan 1991 (Amendment No 157)

Wyong Local Environmental Plan 1991 (Amendment No 157)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Wyong Local Environmental Plan 1991 (Amendment No 157)*.

2 Aims of plan

This plan aims:

- (a) to allow, with the consent of Wyong Shire Council, the carrying out of development on the land to which this plan applies for the purpose of the expansion of an existing factory outlet centre, and
- (b) to increase the maximum gross floor area applying to the factory outlet centre component of the site from 12,200 to 18,000 square metres, and
- (c) to provide additional parking for cars and coaches, and
- (d) to require consent for any such development to be subject to specified conditions, and
- (e) to update the property description of the existing factory outlet centre (from Lot 1071, DP 858034, Lots 4, 10, 16 and 17, DP 5536 and Lot 18, DP 650958 to Lot 10, DP 1038778) and to add an additional parcel of land (Lot 1, DP 213204) to the site.

3 Land to which plan applies

This plan applies to land situated in the local government area of Wyong, being Lot 10, DP 1038778 and Lot 1, DP 213204, Bryant Drive, Tuggerah.

4 Amendment of Wyong Local Environmental Plan 1991

Wyong Local Environmental Plan 1991 is amended as set out in Schedule 1.

Wyong Local Environmental Plan 1991 (Amendment No 157)

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 4)

[1] Clause 70

Insert after clause 69:

70 Development of certain land—Bryant Drive, Tuggerah

- (1) This clause applies to Lot 10, DP 1038778 and Lot 1, DP 213204, Bryant Drive, Tuggerah.
- (2) Nothing in this plan prevents a person, with the consent of the Council, from carrying out the following development:
 - (a) factory outlet centre having a gross floor area of not more than 18,000 square metres (excluding pedestrian arcades, public mall areas and colonnades)—on so much of Lot 10, DP 1038778 as is to the west of Bryant Drive, Tuggerah,
 - (b) car and coach parking associated with the development referred to in paragraph (a)—on the remainder of Lot 10, DP 1038778, and Lot 1, DP 213204.
- (3) The Council must not consent to a development application made pursuant to this clause unless a condition is imposed by the Council to the effect that only the things referred to in subclause (5) (a)–(d) may be displayed in or made available for sale from the factory outlet centre.
- (4) Subclause (3) does not limit the kinds of conditions that may be imposed on a development consent, or allow conditions to be imposed on a development consent otherwise than in accordance with the Act.
- (5) For the purposes of this clause, *factory outlet centre* means a building or place used only for the purpose of displaying or making available for sale one or more of the following:
 - (a) products that do not achieve manufacturers' quality control requirements,
 - (b) products that are "end-of-line", "out-of-season" or "samples",
 - (c) products that are damaged,
 - (d) food and beverage for consumption by customers and staff, provided their sale is ancillary to the sale of things referred to in paragraph (a), (b) or (c),but does not include a market or trash-and-treasure outlet or the like.

Wyong Local Environmental Plan 1991 (Amendment No 157)

Schedule 1 Amendments

[2] Schedule 2 Development for certain additional purposes

Omit the matter relating to land in Bryant Drive, Tuggerah.



New South Wales

Young Local Environmental Plan 1991—Urban Lands (Amendment No 25)

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*. (QUE0000217/PC)

FRANK SARTOR, M.P.,
Minister for Planning

Clause 1 Young Local Environmental Plan 1991—Urban Lands (Amendment No 25)

Young Local Environmental Plan 1991—Urban Lands (Amendment No 25)

under the

Environmental Planning and Assessment Act 1979

1 Name of plan

This plan is *Young Local Environmental Plan 1991—Urban Lands (Amendment No 25)*.

2 Aims of plan

This plan aims to amend *Young Local Environmental Plan 1991—Urban Lands* to require development consent for the erection of dwelling-houses on land within Zone No 1 (c) (Rural “C” Zone) or Zone No 2 (a) (Residential Zone).

3 Land to which plan applies

This plan applies to land within Zone No 1 (c) or 2 (a) in the local government area of Young to which *Young Local Environmental Plan 1991—Urban Lands* applies.

4 Amendment of Young Local Environmental Plan 1991—Urban Lands

Young Local Environmental Plan 1991—Urban Lands is amended as set out in Schedule 1.

Young Local Environmental Plan 1991—Urban Lands (Amendment No 25)

Amendments

Schedule 1

Schedule 1 Amendments

(Clause 4)

[1] Clause 9 Zone objectives and development control table

Omit “(Rural “C” Zones)” from the Table to the clause.

Insert instead “(Rural “C” Zone)”.

[2] Clause 9, Table

Omit “Dwelling-houses” wherever occurring in Item 2 of the matter relating to Zones Nos 1 (c) and 2 (a).

Insert instead “Nil”.

[3] Clause 9, Table

Omit “2 or” wherever occurring in Item 3 of the matter relating to Zones Nos 1 (c) and 2 (a).

Department of Primary Industries

FISHERIES MANAGEMENT ACT 1994

Section 227

Instrument of Delegation

I, IAN MACDONALD MLC, Minister for Primary Industries, pursuant to section 227 of the Fisheries Management Act 1994 (“the Act”), hereby delegate the functions conferred or imposed on me under subclause 152A(2)(a) and clauses 157 and 157A of the Fisheries Management (General) Regulation 2002 to the Director-General of the NSW Department of Primary Industries.

Pursuant to section 228(2) of the Act, I also authorise the Director-General of the NSW Department of Primary Industries to subdelegate these functions to an authorised person.

In this instrument of delegation:

“*function*” includes power, authority or duty,

“*authorised person*” has the same meaning as in section 228(3) of the Act.

Dated this 15th day of February 2007.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

FISHERIES MANAGEMENT ACT 1994

Section 228

Instrument of Delegation

I, BARRY DESMOND BUFFIER, Director-General of the NSW Department of Primary Industries, pursuant to section 228 of the Fisheries Management Act 1994 (“the Act”), do by this instrument:

1. delegate the functions conferred or imposed on me under subclauses 277C(1)(b), (4), (5) and (6) and clauses 280A, 280B and 280C of the Fisheries Management (General) Regulation 2002 and under subclauses 7(1)(b), (4), (5) and (6) of the Fisheries Management (Supporting Plan) Regulation 2006 to the authorised persons who from time to time hold the positions described in the Schedule to this instrument; and
2. subdelegate the functions delegated to me by the Minister for Primary Industries pursuant to section 227 of the Act, under subclause 152A(2)(a) and clauses 157 and 157A of the Fisheries Management (General) Regulation 2002 to the authorised persons who from time to time hold the positions described in the Schedule to this instrument.

In this instrument of delegation:

“*function*” includes power, authority or duty,

“*authorised person*” has the same meaning as in section 228(3) of the Act.

Dated this 19th day of February 2007.

B. D. BUFFIER,
Director-General
NSW Department of Primary Industries

Schedule

Deputy Director-General, Agriculture, Fisheries & Regional Relations;
Director, Wild Harvest Fisheries;
Manager, Fisheries Planning & Operations;
Manager, Fishing Business Services

FISHERIES MANAGEMENT ACT 1994

Re-appointment of Chairperson of Total Allowable Catch Setting and Review Committee

I, IAN MACDONALD MLC, Minister for Primary Industries, pursuant to section 27(1)(a) of the Fisheries Management Act 1994, hereby appoint Ian CARTWRIGHT as Chairperson of the Total Allowable Catch Setting and Review Committee for a term commencing on the date hereof and expiring on 31 December 2009.

Dated this 24th day of January 2007.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

STOCK DISEASES ACT 1923

Appointment Of Inspector

Notification No: 468

I, B D BUFFIER, Director-General of NSW Department of Primary Industries, pursuant to Section 6(1) of the Stock Diseases Act 1923 (“the Act”), appoint Toby Roy O’BRIEN as an inspector for the purposes of the Act.

Dated this 15th day of February 2007.

B D BUFFIER,
Director-General
NSW Department of Primary Industries

AGRICULTURAL LIVESTOCK (DISEASE CONTROL FUNDING) ACT 1998

Reappointment of Chair and Members of the OJD Industry Advisory Committee

I, IAN MACDONALD MLC, Minister for Primary Industries, pursuant to section 8(3) of the *Agricultural Livestock (Disease Control Funding) Act 1998*, hereby appoint the persons named in the Schedule to the Ovine Johne's Disease Industry Advisory Committee for a term commencing on the date hereof and expiring on 31 December 2007.

Schedule

Appointee	Authority	Nominator
WEST, Garry Bruce (Chair)	8(3)(a)	Minister for Primary Industries
SUTTOR, Rodney Ranken	8(3)(b)	NSW Farmers' Association
WATT, Rodney	8(3)(b)	NSW Farmers' Association
MOLESWORTH, Richard	8(3)(d)	Representatives of designated livestock producers concerned
WATT, Bruce Richard	8(3)(d)	Representatives of designated livestock producers concerned
WILSON, Camac	8(3)(d)	Representatives of designated livestock producers concerned
WRIGHT, Donald Gordon	8(3)(d)	Representatives of designated livestock producers concerned

Dated this 7th day of February 2007.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

FISHERIES MANAGEMENT ACT 1994

Elected Industry Members to Management Advisory Committees

I, IAN MACDONALD MLC, Minister for Primary Industries, pursuant to section 230(2) of *Fisheries Management Act 1994*, appoint the persons named in the Schedule as elected industry members to the relevant Management Advisory Committees as set out below, from date hereof.

Dated this 7th day of February 2007.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

Schedule

Management Advisory Committee	Name	Region/Representation	Expiry of Term
Ocean Hauling Management Advisory Committee	Steven Rosskelly	Region 4	31 August 2009
	Barry Aish	Region 6	31 August 2009
	Julie Fourter	Region 7	31 August 2009
	Denis Brown	Purse Seine	31 August 2009
Ocean Trap & Line Management Advisory Committee	John Garven	Demersal Fish Trap North	31 August 2009
	Paul Sullivan	Demersal Fish Trap South	31 August 2009
	Matthew Creek	Line fishing (east) South	31 August 2009
Estuary General Management Advisory Committee	Glenn Dawson	Region 2	31 August 2009
	Russell Massey	Region 6	31 August 2009
Estuary Prawn Trawl Management Advisory Committee	Suzane Hamilton	Hunter River	31 August 2009
	Rolf Norington	Hawkesbury River	31 August 2009
Lobster Management Advisory Committee	Ron Firkin Noel Gogerly	2 positions	31 August 2009
Abalone Management Advisory Committee	George Chung Steven Hunter	2 positions	31 August 2009

FISHERIES MANAGEMENT ACT 1994

Elected Industry Members to Management Advisory Committees

I, IAN MACDONALD MLC, Minister for Primary Industries, pursuant to section 230(2) of *Fisheries Management Act 1994*, appoint the persons named in the Schedule as elected industry members to the relevant Management Advisory Committees as set out below, from 1 September 2006 until date hereof.

Dated this 7th day of February 2007.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

Schedule

Management Advisory Committee	Name	Region/Representation
Ocean Hauling Management Advisory Committee	Steven Rosskelly	Region 4
	Barry Aish	Region 6
	Julie Fourter	Region 7
	Denis Brown	Purse Seine
Ocean Trap & Line Management Advisory Committee	John Garven	Demersal Fish Trap North
	Paul Sullivan	Demersal Fish Trap South
	Matthew Creek	Line fishing (east) South
Estuary General Management Advisory Committee	Glenn Dawson	Region 2
	Russell Massey	Region 6
Estuary Prawn Trawl Management Advisory Committee	Suzane Hamilton	Hunter River
	Rolf Norington	Hawkesbury River
Lobster Management Advisory Committee	Ron Firkin Noel Gogerly	2 positions
Abalone Management Advisory Committee	George Chung Steven Hunter	2 positions

FISHERIES MANAGEMENT ACT 1994*Fisheries Management (General) Regulation 2002*

Industry Members to Management Advisory Committees

I, IAN MACDONALD MLC, Minister for Primary Industries, pursuant to section 406(2) of *Fisheries Management (General) Regulation 2002*, appoint the person named in the Schedule as an industry member to the relevant Management Advisory Committee as set out below, from date hereof.

Dated this 7th day of February 2007.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

Schedule

Management Advisory Committee	Name	Region/Representation	Expiry of Term
Estuary General Management Advisory Committee	Ted Allan	Region 5	28 February 2008

FISHERIES MANAGEMENT ACT 1994*Fisheries Management (General) Regulation 2002*

Industry Members to Management Advisory Committees

I, IAN MACDONALD MLC, Minister for Primary Industries, pursuant to section 406(2) of *Fisheries Management (General) Regulation 2002*, appoint the person named in the Schedule as an industry member to the relevant Management Advisory Committee as set out below, from 1 September 2006 until date hereof.

Dated this 7th day of February 2007.

IAN MACDONALD, M.L.C.,
Minister for Primary Industries

Schedule

Management Advisory Committee	Name	Region/Representation
Estuary General Management Advisory Committee	Ted Allan	Region 5

Roads and Traffic Authority

ROADS ACT 1993

Order - Sections 46, 49, 54 and 67

Wingecarribee Shire Council area

Dedication of Land as Public Road and Declaration
as a Controlled Access Road at Paddys River

I, the Minister for Roads, pursuant to Sections 46, 49, 54 and 67 of the Roads Act, 1993, by this order:-

1. dedicate as public road the land described in the Schedule under;
2. declare to be a main road the said public road;
3. declare to be a controlled access road the said main road; and
4. declare that access to the said controlled access road is restricted.

**HON ERIC ROOZENDAAL MLC
MINISTER FOR ROADS**

SCHEDULE

ALL that piece or parcel of land situated in the Wingecarribee Shire Council area, Parish of Wingello and County of Camden, shown as:

Lot 10 Deposited Plan 250694.

The above Lot is shown in RTA Plan 0002 495 AC 4002.

(RTA Papers 2/495.1173 Pt 6)

ROADS ACT 1993

Notice of Dedication of Land as Public Road at Grenfell
in the Weddin Shire Council area

THE Roads and Traffic Authority of New South Wales, by its delegate, dedicates the land described in the schedule below as public road under section 10 of the Roads Act 1993.

T D Craig
Manager, Compulsory Acquisition & Road Dedication
Roads and Traffic Authority of New South Wales

SCHEDULE

ALL that piece or parcel of land situated in the Weddin Shire Council area, Parish of Brundah and County of Montegale, shown as Lot 2 Deposited Plan 839290.

ROADS ACT 1993

ORDER

Transfer of public road to the Crown

In pursuance of the provisions of section 150 of the Roads Act 1993, the public 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 Singleton Shire Council ceases to be the roads authority for that road.

**HON ERIC ROOZENDAAL MLC
MINISTER FOR ROADS**

SCHEDULE 1

ALL that piece or parcel of public road in the Singleton Shire Council area, Parish of Wareng and County of Hunter, shown as Lot 2 Deposited Plan 1082776.

SCHEDULE 2

Roads Authority: The Minister for Lands

(RTA Papers 402.5360)

ROADS ACT 1993

Notice of Dedication of Land as Public Road at
Bathampton in the Bathurst Regional Council area

THE Roads and Traffic Authority of New South Wales, by its delegate, dedicates the land described in the schedule below as public road under section 10 of the Roads Act 1993.

T D Craig
Manager, Compulsory Acquisition & Road Dedication
Roads and Traffic Authority of New South Wales

SCHEDULE

ALL those pieces or parcels of land situated in the Bathurst Regional Council area, Parish of Cole and County of Bathurst, shown as:

Lots 3 to 11 inclusive Deposited Plan 1076276; and

Lots 24 and 27 to 30 inclusive Deposited Plan 1076130.

(RTA Papers: FPP 2M2852; RO 6/146.173)

ROADS ACT 1993

Notice of Dedication of Land as Public Road at Carcoar
in the Blayney Shire Council area

THE Roads and Traffic Authority of New South Wales, by its delegate, dedicates the land described in the schedule below as public road under section 10 of the Roads Act 1993.

T D Craig
Manager, Compulsory Acquisition & Road Dedication
Roads and Traffic Authority of New South Wales

SCHEDULE

ALL those pieces or parcels of land situated in the Blayney Shire Council area, Parishes of Shaw and Somers and County of Bathurst, shown as Lots 3, 4 and 5 Deposited Plan 1083088.

(RTA Papers: 6/43.1103)

Other Notices

BANKS AND BANK HOLIDAYS ACT 1912

Notice

I, JOHN DELLA BOSCA, Minister for Industrial Relations, in pursuance of section 19(3) of the Banks and Bank Holidays Act 1912, appoint Friday, 7 September 2007, to be observed as a public holiday in those local government areas of New South Wales specified in the Schedule by reference to Council names.

Dated at Sydney, this 28th day of February, 2007.

JOHN DELLA BOSCA, M.L.C.,
Minister for Industrial Relations

Schedule

The Council of the Municipality of Ashfield
Auburn Council
Bankstown City Council
The Council of the Shire of Baulkham Hills
Blacktown City Council
The Council of the City of Botany Bay
Burwood Council
Camden Council
Campbelltown City Council
City of Canada Bay Council
Canterbury City Council
Fairfield City Council
Holroyd City Council
The Council of the Shire of Hornsby
The Council of the Municipality of Hunters Hill
Hurstville City Council
Kogarah Municipal Council
Ku-ring-gai Council
Lane Cove Municipal Council
Leichhardt Municipal Council
Liverpool City Council
Manly Council
Marrickville Council
Mosman Municipal Council
North Sydney Council
Parramatta City Council
Penrith City Council
Pittwater Council
Randwick City Council
Rockdale City Council
Ryde City Council
Strathfield Municipal Council
Sutherland Shire Council
Council of the City of Sydney
Warringah Council
Waverley Council
Willoughby City Council
Woollahra Municipal Council

GEOGRAPHICAL NAMES BOARD

Erratum

IN the notice referring to the assignment of the name and Opossum Pinch, Folio 5625, 25 October 1974. The notice incorrectly gave the designation as Spur, the correct designation for this feature is Gradient, this notice corrects that error.

W. WATKINS,
Chairman

Geographical Names Board
PO Box 143 Bathurst 2795

GEOGRAPHICAL NAMES BOARD

Erratum

IN the notice referring to the assignment of the name and Jacksons Swamp, Folio 8057, 25 January 1975. The notice incorrectly gave the designation as Swamp, the correct designation for this feature is Creek, this notice corrects that error.

W WATKINS,
Chairman

Geographical Names Board
PO Box 143 Bathurst 2795

NATIONAL PARKS AND WILDLIFE ACT, 1974

Proclamation

I, Professor MARIE BASHIR, A.C., C.V.O, Governor of the State of New South Wales, with the advice of the Executive Council and in pursuance of the powers vested in me under Section 68 of the National Parks and Wildlife Act, 1974, with the consent of every owner and occupier do, on the recommendation of the Director-General of the Department of Environment and Conservation, by this my Proclamation declare the lands described hereunder to be a wildlife refuge for the purposes of the abovementioned Act.

To be known as "Flitton Wildlife Refuge"

Signed and Sealed at Sydney this 14th day of February 2007.

MARIE BASHIR,
Governor

By Her Excellency's Command

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

GOD SAVE THE QUEEN!

Description

*Land District – Windsor;
Council – Baulkham Hills*

County of Cumberland, Parish of Cornelia, 8.97 hectares,
being lot 773 DP 818575. NPWS 06/07936.

POISONS AND THERAPEUTIC GOODS ACT, 1966

Restoration of Drug Authority

IN accordance with the provisions of clause 171 (1) of the Poisons and Therapeutic Goods Regulation 2002, a direction has been issued that the order prohibiting Dr Juliet Bochan of 32 Shepherds Drive, Cherrybrook 2126 from supplying or having possession of drugs of addiction as authorised by clause 101 of the Regulation and issuing a prescription for a drug of addiction as authorised by clause 76 of the Regulation, for the purpose of his profession as a medical practitioner, shall cease to operate from 5 March 2007.

ROBYN KRUK,
Director-General

Department of Health, New South Wales,
Sydney, 1 March 2007

RETENTION

Her Excellency the Governor, by deputation of Her Majesty the Queen, has been pleased to approve of the retention of the title "Honourable" by Mr Justice Brian Thomas Sully following his retirement from judicial office on 23 March 2007".

SPORTING INJURIES INSURANCE ACT 1978

Sporting Injuries Committee

Sydney, 28th February, 2007

Order of Declaration under Section 5

IN pursuance of Section 5 of the Sporting Injuries Insurance Act, 1978, I declare by this order the

Northern NSW Football Limited

to be a sporting organisation, for the purposes of the provisions of the Act, in respect of the activity of Soccer.

ROB THOMSON,
Deputy Chairperson

Date: 28th February, 2007.

SPORTING INJURIES INSURANCE ACT 1978

Sporting Injuries Committee

Sydney 15th December 2006

Order of Declaration under Section 5

IN pursuance of Section 5 of the Sporting Injuries Insurance Act, 1978, I declare by this order the

NSW Basketball Association Ltd

to be a sporting organisation, for the purposes of the provisions of the Act, in respect of the activity of Basketball.

ROB THOMSON,
Deputy Chairperson

Date: 15th December 2006.

SPORTING INJURIES INSURANCE ACT 1978

Sporting Injuries Committee

Sydney, 28th February, 2007

Order of Declaration under Section 5

IN pursuance of Section 5 of the Sporting Injuries Insurance Act, 1978, I declare by this order the

Colonial Country Trail Riders Inc.

to be a sporting organisation, for the purposes of the provisions of the Act, in respect of the activity of Pony Riding.

ROB THOMSON,
Deputy Chairperson

Date: 28th February, 2007.

SPORTING INJURIES INSURANCE ACT 1978

Sporting Injuries Committee

Sydney, 28th February, 2007

Order of Declaration under Section 5

IN pursuance of Section 5 of the Sporting Injuries Insurance Act, 1978, I declare by this order the

Scone Soccer Association Inc.

to be a sporting organisation, for the purposes of the provisions of the Act, in respect of the activity of Soccer.

ROB THOMSON,
Deputy Chairperson

Date: 28th February, 2007.

**STATE EMERGENCY AND RESCUE
MANAGEMENT ACT 1989**

Changes to Emergency Management Districts

IN pursuance of section 21 (1) of the State Emergency and Rescue Management Act 1989, I have transferred the Wentworth Local Government Area from the Murray Emergency Management District to the Far West Emergency Management District with effect 27 February 2007. The Local Government Areas included in the Murray and Far West Emergency Management Districts are described hereunder.

TONY KELLY, M.L.C.,
Minister for Emergency Services

Description

The Far West Emergency Management District comprises the following Local Government Areas:

Bogan Council,
Bourke Council,
Brewarrina Council,
Broken Hill City Council,
Central Darling Council,
Cobar Council
Wentworth Shire Council
and the Unincorporated Area of NSW

The Murray Emergency Management District comprises the following Local Government Areas:

City of Albury Council,
Balranald Council,
Berrigan Council,
Conargo Council,
Corowa Council,
Deniliquin Council,
Greater Hume Council,
Jerilderie Council,
Murray Council,
Tumbarumba Council,
Urana Council,
Council of the Shire of Wakool

THREATENED SPECIES CONSERVATION ACT

Notice of Preliminary Determination

THE Scientific Committee, established by the Threatened Species Conservation Act, has made a Preliminary Determination to support a proposal to list the Orange-bellied Parrot *Neophema chrysogaster* (Latham 1790), as a **CRITICALLY ENDANGERED SPECIES** in Part 1 of Schedule 1A of the Act, and as a consequence, to omit reference to the Orange-bellied Parrot *Neophema chrysogaster* (Latham 1790) from Part 1 of Schedule 1 (Endangered species) of the Act.

A copy of the Determination, which contains the reasons for the determination, may be obtained free of charge on the Internet www.nationalparks.nsw.gov.au, by contacting the Scientific Committee Unit, PO Box 1967 Hurstville 1481. Tel: (02) 9585 6940 or Fax (02) 9585 6606, or in person at the Department of Environment and Conservation Information Centre, Level 14, 59-61 Goulburn Street, Sydney. Copies of the determination may also be obtained from National Parks and Wildlife Service Area Offices and Visitor Centres, subject to availability.

Any person may make a written submission regarding the Preliminary Determination. Send submissions to: Scientific Committee, PO Box 1967, Hurstville 1481. Attention Suzanne Chate. Submissions must be received by 27th April, 2007.

Associate Professor Lesley Hughes,
Chairperson

TENDERS

Department of Commerce

SUPPLIES AND SERVICES FOR THE PUBLIC SERVICE

Information in relation to the Department of Commerce proposed, current and awarded tenders is available on:

<http://www.tenders.nsw.gov.au>

PRIVATE ADVERTISEMENTS

COUNCIL NOTICES

ALBURY CITY

Pesticide Use Notification Plan

ALBURY CITY would like to advise the public that a Final Pesticide Use Notification Plan has been prepared in accordance with the Pesticide Regulation 1995. The Plan outlines how it will notify members of the community about the use of pesticides in public places owned or maintained by Council in the Albury local government area. A copy of the plan is available for viewing free of charge at Councils Customer Service Centre, 553 Kiewa Street, Albury or on Councils website www.alburycity.nsw.gov.au. LES TOMICH General Manager, PO Box 323, Albury NSW 2640.

[3028]

BATHURST REGIONAL COUNCIL

Roads Act 1993

Land Acquisition (Just Terms Compensation) Act 1991

Notice of Compulsory Acquisition of Land

BATHURST REGIONAL COUNCIL declares with the approval of Her Excellency the Governor that the land described in the schedule below, excluding any mines or deposits of minerals in the land, is acquired by compulsory process in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purpose of road widening. Dated at Bathurst 3 March 2007, DAVID SHERLEY, General Manager, Bathurst Regional Council, PMB 17, Bathurst, NSW 2795.

Schedule 1

Lot 3 DP 48619.

[3029]

BATHURST REGIONAL COUNCIL

Local Government Act 1993

Land Acquisition (Just Terms Compensation) Act 1991

Notice of Compulsory Acquisition of Land

BATHURST REGIONAL COUNCIL declares with the approval of Her Excellency the Governor that the land described in the schedule below, excluding any mines or deposits of minerals in the land, is acquired by compulsory process in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 and the Local Government Act 1993 for the purpose of a rural fire brigade. Dated at Bathurst 3 March 2007, DAVID SHERLEY, General Manager, Bathurst Regional Council, PMB 17, Bathurst, NSW 2795.

Schedule 1

Lot 2 DP 48619/

[3030]

BAULKHAM HILLS SHIRE COUNCIL

Roads Act 1993 and Roads (General) Regulation 2000

Name Public Road as Hidden Valley Lane

NOTICE is hereby given pursuant to the Roads (General) Regulation 2000 as amended and Clause 162 of the Roads Act 1993 as amended, Baulkham Hills Shire Council resolved on 21 November 2006 to name a public road as "Hidden Valley Lane", location described below.

<i>Description</i>	<i>Name</i>
The section of road that commences at the intersection of Pitt Town Road Kenthurst between Lot 212 DP 752047 and Lot 1 DP 550165, and continues north to near intersection Cattai Ridge Road next to Cattai Creek bridge and ends at the northern boundary of Lot 77 DP 752047.	Hidden Valley Lane

For further enquiries regarding this matter please contact Council's Team Leader - Land Information Management, LESA ROBINSON on 9843 0474. D WALKER, General Manager, Baulkham Hills Shire Council, PO Box 75, Castle Hill NSW 1765 [3031]

CABONNE COUNCIL

Naming Of Roads

NOTICE is hereby given that Cabonne Council, in pursuance of Section 162 of the Roads Act, 1993 has named the roads described hereunder:

<i>Description</i>	<i>Name</i>
new road off Windera Drive, Windera	Woolshed Lane
new road in Cudal Gardens subdivision off Davys Plains Road, Cudal	Rodda Drive
new road off Rodda Drive	Balcomb Way
new road off western end of Balcomb Way	Jenkins Place
new road off eastern end of Balcomb Way	Zeidler Street
new road off southern end of Zeidler Street	Fairall Place

Authorised by resolution of Council on 19 February 2007. G. L. P. FLEMING, General Manager, Cabonne Council, PO Box 17, MOLONG. NSW 2866, tel.: 6390 7160.

[3032]

CAMPBELLTOWN CITY COUNCIL

Local Government Act 1993, Section 50 (1), (4)

Notification of vesting of land

NOTICE is hereby given pursuant to Section 50 (1) and (4) of the Local Government Act 1993, that the land in the Schedule below is vested in the Campbelltown City Council. Paul Tosi, General Manager, Campbelltown City Council, PO Box 57, Campbelltown, NSW, 2560.

Schedule

Lot 11 in Deposited Plan 222581, shown on this plan as "Public Garden and Recreation Space", comprising part of the land in old system deed Book 2676 No 785 and part of the land in old system deed Book 2704 No 861. [3033]

CLARENCE VALLEY COUNCIL

Local Government Act, 1993

Land Acquisition (Just Terms Compensation) Act 1991

Notice of Compulsory Acquisition of Easements

THE CLARENCE VALLEY COUNCIL declares, with the approval of Her Excellency the Governor, that the easements described in the Schedule below are acquired by compulsory process in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for water supply purposes.

Dated at Grafton this 1st day of November 2006.

ROSS BRYANT,
Acting General Manager
Clarence Valley Council

SCHEDULE

Interest in Land

Easement rights for water pipeline in the terms set out hereunder over the sites shown in:

Deposited Plan 1075673 (SB55589) as:

'(B) PROPOSED EASEMENT FOR WATER PIPELINE 5 WIDE & VARIABLE. ' exclusive of that part within Lot 7016 Deposited Plan 1054604

'(C) PROPOSED EASEMENT FOR WATER PIPELINE VARIABLE WIDTH. '

Easement for Water Pipeline

FULL AND FREE right for the Body having the benefit of this easement (being a public or local authority) and every person authorised by it from time to time and at all times to pass and convey water in any quantities through the servient tenement TOGETHER WITH the right to use for the purpose of the easement any line of pipes (including works ancillary thereto) already laid within the servient tenement for the purposes of the passage and conveyance of such water or any pipe or pipes in replacement, substitution or duplication therefor and where no such line of pipes exists to lay place and maintain a line of pipes of sufficient internal diameter beneath the surface of the servient tenement and to lay place and maintain upon the surface of the servient tenement any works ancillary to the said line of pipes AND TOGETHER WITH the right for the Body having the benefit of this easement (being a public or local authority) and every person authorised by it with any tools, implements, or machinery, necessary for the purposes, to enter upon the servient tenement and to remain there for any reasonable time for the purposes of laying, inspecting, cleansing, repairing, maintaining, or renewing such pipeline or any part thereof (including works ancillary thereto) AND for any of the aforesaid purposes to open the soil of the servient tenement to such extent as may be necessary PROVIDED THAT the Body having the benefit of this easement (being a public or local authority) and every person authorised by it will take all reasonable precautions to ensure as little disturbance as possible to the surface of

the servient tenement and will restore that surface as nearly as practicable to its original condition.

DoC Ref. 319.

[3034]

COOMA-MONARO COUNCIL

Road Act 1993

Land Acquisition (Just Terms Compensation) Act 1991

Notice of Compulsory Acquisition of Land

COOMA-MONARO COUNCIL declares with the approval of Her Excellency the Governor, that the land described in the Schedule below, excluding any mines or deposits of minerals within the land, is acquired by compulsory process in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991 for the purposes of the Roads Act 1993. Dated at Cooma this 26 February 2007. Neil Watt, General Manager, Cooma-Monaro Council, 81 Commissioner Street, Cooma NSW 2630.

Schedule

Lot 1 in Deposited Plan 859306.

[3035]

GOULBURN MULAREE COUNCIL

Notification of Dedication of Land as a Public Road

IN pursuance of the provisions of Section 16 of the Roads Act 1993 the road specified in Schedule 1 is hereby proclaimed to be a public road held by the Road Authority specified in Schedule 2 hereunder as and from the publication of this Notice.

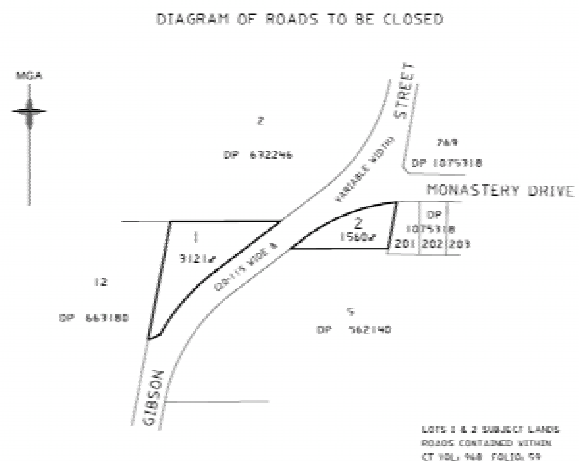
Schedule 1

Parish – Narrangarril;
County – Argyle;
Land District – Goulburn;
Council – Goulburn Mulwaree

Description: Land to the South of Lot 2 DP632246 and to the north of Lot 5 DP562140 Gibson Street, Goulburn as shown on the diagram below and land being part of the land comprised in Certificate of Title Volume 968 Folio 59.

Schedule 2

Roads Authority – Goulburn Mulwaree Council.



[3036]

KYOGLE COUNCIL

Kyogle Pesticides Notification Plan

THAT pursuant to the Pesticides Regulation 1995, notice is hereby given that Council at its meeting on February 19, 2007 resolved to adopt the Kyogle Pesticides Notification Plan. The Plan applies to the whole of the Local Government Area of Kyogle Council.

The plan is to meet the community's general right to know about pesticide applications made to outdoor public places that are owned or controlled by Kyogle Council. The plan allows members of the community to take action to avoid contact with pesticides, if they wish.

A copy of the Kyogle Pesticides Notification Plan may be viewed at the Council Administration Building, Stratheden Street, Kyogle or alternatively on Council's Website www.kyogle.nsw.gov.au.

The Plan comes into force from the date of this notice. ARTHUR PIGGOTT, General Manager, Kyogle Council, Kyogle NSW 2474. [3037]

LOCKHART SHIRE COUNCIL

Pesticide Use Notification Plan

LOCKHART SHIRE COUNCIL'S Pesticide Use Notification Plan has been prepared and will operate in all parts of Lockhart Shire. The Plan may be viewed at the Green Street, Lockhart office of Council. The General Manager, Lockhart Shire Council, PO Box 21, Lockhart NSW 2656, tel.: (02) 6920 5305, fax.: (02) 6920 5247, email: mail@lockhart.nsw.gov.au. [3038]

MAITLAND CITY COUNCIL

Roads Act 1993, Section 10

Dedication of Land as Public Road

NOTICE is hereby given that the lands described in the Schedule below are dedicated to the public as road. D. EVANS, General Manager, Maitland City Council, PO Box 220, Maitland NSW 2320.

Schedule

Lot 13, DP 612870; Lot 14, DP 612870; Lot 68, DP 246877.

All being Parish of Maitland County of Northumberland and forming part of Crawford Avenue Tenambit.

[3039]

MARRICKVILLE COUNCIL

NOTICE is hereby given that on 20 February 2007 Marrickville Council resolved to adopt a new Tree Preservation Order to be known as the Marrickville Tree Preservation Order 2007 and to advertise it in the NSW Government Gazette and in a local newspaper.

The Order provides a regulatory framework for the preservation of trees and ensures that development within the area is carried out with sensitivity to the environment and to any trees in the vicinity. The Order applies to all land within the Marrickville Council local government area. The

Order prevents a person from carrying out a "restricted act", in relation to a "designated tree", as defined in the Order, without the written consent of Marrickville Council.

A copy of the Marrickville Tree Preservation Order 2007 is available for viewing, free of charge, at the Administration Centre, 2-14 Fisher Street, Petersham during business hours or may be viewed at Council's website: www.marrickville.nsw.gov.au. CANDY NAY, General Manager, Marrickville Council, PO Box 14 Petersham NSW 2049. [3040]

PORT STEPHENS COUNCIL

Local Government Act 1993

Land Acquisition (Just Terms Compensation) Act, 1991

Notice of Compulsory Acquisition of Land

PORT STEPHENS COUNCIL declares, with the approval of Her Excellency the Governor, that the interests in lands described in the Schedule below, excluding mines and minerals in the lands, are acquired by compulsory process in accordance with the provisions of the Land Acquisition (Just Terms Compensation) Act 1991, for the purposes of the Roads Act 1993.

Dated at Raymond Terrace this 2nd day of March 2007. P. GESLING, General Manger, Port Stephens Council PO Box 42 Raymond Terrace, NSW 2324. (Council file A2004-1016).

Schedule

7 – 12 inc. D.P.1054367.

[3041]

ROCKDALE CITY COUNCIL

Road Dedication – Section 16 Roads Act, 1993

PURSUANT to section 16 of the *Roads Act, 1993*, Rockdale City Council hereby dedicates the following land as public road. CHRIS WATSON, General Manager, Rockdale City Council, PO Box 21, Rockdale, NSW 2216.

Schedule

That part of the land (Tantallon Lane) at Arncliffe Parish St George County Cumberland, between Lot B, DP 306071 and Lot11 Section D, DP 2271.



[3042]

URANA SHIRE COUNCIL

Renaming of Roads

NOTICE is given in accordance with Section 162.1 of the Roads act 1993 as amended. Council has renamed the following roads:

<i>Location/Description</i>	<i>New Name</i>
Savernake Road from MR323 south to Corowa Shire boundary.	Claremont Road
Nixons Road (Oaklands) from MR323 north to SR 44 Maxwellton Road.	Day Road

JOHN S HUNT, General Manager, Urana Shire Council, PO Box 55 Urana 2645. [3043]

WAVERLEY COUNCIL

Local Government Act 1993

Delay of By-Election

I, the Hon Kerry Hickey MP, Minister for Local Government, in pursuance of section 293 of the Local Government Act 1993, have formed the opinion that it would be impractical or inconvenient to hold a by-election by Saturday, 21 April 2007 as a consequence of a casual vacancy in civic office that was held by Councillor Richard Davidson, and order that Saturday, 19 May 2007 be appointed as the day for that by-election instead.

Dated this 19th day of February 2007.

KERRY HICKEY, M.P.,
Minister for Local Government

[3044]

ESTATE NOTICES

IN the Supreme Court of New South Wales Equity Division Probate – Notice of Intended Distribution of Estate. – Any person having any claim upon the Estate of EVELYN MAY McLEAN, late of Elanora Heights in the State of New South Wales, Widow who died on 18 December 2006 must send particulars of his/her claim to the Executors Alan Desmond Hickey and Amanda Francesca Hickey care of John de Mestre & Co solicitors Level 10, 99 Elizabeth Street Sydney NSW 2000 within one month from publication of this notice. After that time the executors may distribute the assets of the estate having regard only to the claims of which at the time of distribution they have notice. Probate was granted in New South Wales on 16 February 2007. JOHN DE MESTRE & CO, Solicitors, Level 10, 99 Elizabeth Street, Sydney NSW 2000 (DX 1224 SYDNEY), tel.: 9221 3966, fax.: 9221 0166, Ref: ADH 4241. [3045]

NOTICE of Intended Distribution of Estate. – Any person having any claim upon the estate of PERCY KENNETH LEE late of 11 Burdett Street, Hornsby in the State of New South Wales, Retired – Assistant Station Master, who died on 22 August 2006, must send particulars of his/her claim to the Executors, HEATHER MARGARET MACDONALD and KENNETH IAN WILLIAM LEE C/- Collins & Thompson, Solicitors, 8 Coronation Street, Hornsby NSW 2077 within one calendar month from publication of this notice. After that time the assets of the estate may be conveyed and distributed having regard only to the claims of which at the time of

conveyance or distribution the Executors have notice. Probate was granted in New South Wales on 20 February 2007. COLLINS & THOMPSON, Solicitors, 8 Coronation Street, Hornsby NSW 2077, (DX 9691 Hornsby), tel.: 9476 2788

[3046]

NOTICE of intended distribution of estate.–Any person having any claim upon the estate of GEOFFREY TATE, late of Firefly, in the State of New South Wales, who died on 15th August 2006, must send particulars of the claim to the executrice/ors, Barbara Mary Tate, Anthony Geoffrey Tate and Nicholas George Tate, c.o. of McKerns, 12 Albert Street, Taree NSW 2430, within one (1) calendar month from publication of this notice. After that time the executor/rix may distribute the assets of the estate having regard only to the claims of which at the time of distribution the trustees has notice. Probate was granted in New South Wales on 29th January 2007. McKERNs, 12 Albert Street, Taree NSW 2430 (DX 7021, Taree), tel.: (02) 6550 0922. [3047]

COMPANY NOTICES

NOTICE of meeting of members'. – Pursuant to section 509 in the matter of MALAHYDE HOLDINGS PTY LIMITED, A.C.N. 000 404 008. – Notice is hereby given that pursuant to section 509 of the Corporations Law, the final meeting of members of the above named company will be held at the offices of Steel Walsh & Murphy of 103 Kendal Street, Cowra NSW 2794 on the 23 March 2007 for the purpose of laying before the meeting the liquidator's final account and report and giving any explanation thereof. Dated this 23rd day of February 2007. WILLIAM MICHAEL MURPHY, Chartered Accountant, 103 Kendal Street, Cowra NSW 2794, tel.: (02) 6342 1311. [3048]

OTHER NOTICES

NOTICE under section 42 of the Anglican Church of Australia Trust Property Act 1917 – DIOCESAN COUNCIL OF THE SYNOD OF THE ANGLICAN CHURCH DIOCESE OF ARMIDALE – By The New England Girls' School (Election of separate trustee and variation of trusts) Ordinance 2006, passed on 21 December, 2006 under sections 16 and 23 of the Anglican Church of Australia Trust Property Act 1917, the Diocesan Council of the Synod of the Anglican Church Diocese of Armidale elected NEGS Limited (ACN 122 393 702), a public company limited by guarantee and registered under the Corporations Act 2001, to be trustee of the following church trust property assets held on trust for The New England Girls' School, that is all the property not being real property, and declared that those assets are held on trust for:

- (a) the religious purposes of the Diocese of Armidale through The New England Girls' School that are consistent with the Fundamental Declarations of the Anglican Church and that do not contravene any principle of doctrine or worship in the Book of Common Prayer and Thirty Nine Articles of Religion; and
- (b) the educational purposes of the Diocese of Armidale through The New England Girls' School.

P. R. BRAIN, Bishop of Armidale, Diocesan Registry, 116 Rusden Street, Armidale NSW 2350 tel.: (02) 6772 4491.

[3049]

BEGA VALLEY SHIRE COUNCIL

Local Government Act 1993 - Section 715 (1) (b)
Sale of Land for Overdue Rates

NOTICE is hereby given to the persons named hereunder that the Council of the Shire of Bega Valley has resolved in pursuance of Section 715 (1) (b) of the Local Government Act 1993, to sell the land described hereunder of which the persons named appear to be the owners or in which they appear to have an interest and on which the amount of rates stated in each case, as at June 30, 2006 is due.

<i>Owner or person having interest in the land</i> (a)	<i>Description of Land</i> (b)	<i>Amount of rates (including extra charges) overdue for more than five years</i> (c) \$	<i>Amount of all other rates (including extra charges) due and in arrears</i> (d) \$	<i>Total</i> (e) \$
William Frank Beazley	Lot 5 SP 4050 5/21 Monaro Street, Pambula	6646.70	1491.86	8138.56
Victor Wilden-Constantin	Lot 14 DP 848295 Max Slater Drive, Bega	3273.75	598.36	3872.11
Ian Donald Boyles	Lot 3 DP 758860 Cobargo Street, Quaama	2305.45	534.97	2840.42
Official Trustee in Bankruptcy, Parrish Newing, Adam Vaughan Lonnie & Glenn dean Thomsett	Lots 10, 11, 13 & 14 DP 758197 Sect 11 Towamba Street, Burragate.	2527.58	520.11	3047.69
Neil Fredrick Clarke & Roslyn Francis Cohen	Lots 50 & 131 DP 750243 Big Jack Mtn Road, Rocky Hall	4724.45	597.94	5322.39
Ian Donald Boyles	Lot 6 DP 758992 Sect 7 Denison Street, Towamba	1840.59	704.11	2544.70
Neil Fredrick Clarke	Lots 12 & 148 DP 750243 Big Jack Mtn Road, Rocky Hall	4450.23	570.15	5020.38

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 publication of this notice, or an arrangement satisfactory to the Council for payment of all such rates being entered into by the rateable person, before the time fixed for the sale, the said land will be offered for sale by public auction at the Bega Valley Shire Council Chambers, Zingel Place, Bega on May 24, 2007 commencing at 10 am. For further information relating to rates and charges, please contact the Bega Valley Shire Council, Zingel Place, Bega, NSW, Telephone 6499.2220, Attention Mr J Kennedy.

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MOREE PLAINS COUNCIL

Property Schedule

NOTICE is hereby given to the persons named hereunder, that the Council of Moree Plains has resolved, in pursuance of Section 713 of the Local Government Act 1993, to sell the land described hereunder of which the persons named are known to the Council to be the owners of or to have an interest in the land on which the amount of rates stated in each case, as at 30 January, 2007, is due:

<i>Assessment Number</i>	<i>1. Owner(s) 2. Registered Interest 3. Other</i>	<i>Property Description</i>	<i>Property Area</i>	<i>Amount of Rates Charges and Interest Outstanding for more than 5 years</i>	<i>Amount of all other Rates, Charges and Interest Outstanding</i>	<i>Total Rates, Charges and Interest Outstanding</i>
4189	1. Fae Ilma Wilson	102 Merriwa Street, Boggabilla	2845 sqm	\$862.09	\$6,750.01	\$7,612.10
4547	1. Eliza Jane North	57 Werrina Street Boomi	3895 sqm	\$599.14	\$2,285.89	\$2,885.03
255	Azra Besic	77 Anne Street Moree	1378 sqm	-	\$6,431.07	\$6,431.07
7358	1. Emma Tierney	21 Alma Street Ashley	2023 sqm	\$1,730.36	\$5,057.29	\$6,787.65
3760	1. Susan Margaret Philpot	58 Goondiwindi Street, Mungindi	1296 sqm	\$1,081.76	\$10,281.44	\$11,363.20
353	1. Todd William Kelley	33 Arunga Street, Moree	594.4 sqm	-	\$8,821.10	\$8,821.10
3470	1. Robert John Lines & Ainslee Cheryl Lines	5 Wales Street, Moree	550.1 sqm	-	\$8,178.26	\$8,178.26
4192	1. Leslie Paul Hinds	108 Merriwa Street, Boggabilla	1056 sqm	\$1,193.73	\$4,747.78	\$5,941.51
Total				\$5,467.08	\$52,552.84	\$58,019.92

In default of payment to the Council of the amount stated under Total Rates, Charges and Interest outstanding in the column above and any other rates (including extra charges) becoming due and payable after this notice or any arrangements satisfactory to the Council for payment of all such rates being entered into by the rateable person before the time fixed for the sale, the said land will be offered for sale by public auction by Moree Real-Estate (Moree), at the Moree Memorial Hall, 36 Balo Street, MOREE NSW 2400, on Saturday 9th June, 2007 at 11.00am. General Manager: Moree Plains Shire Council, P.O Box 420 Moree, NSW, 2400.

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ISSN 0155-6320

Authorised to be printed
ROBERT J. GALLAGHER, Government Printer.