

LEGAL REGISTER

Provided below is an overall summary on the key pieces of environmental legislation which are relevant to lodge activities within Kosciuszko National Park. This list is not exhaustive, its purpose is simply to provide an introduction to environmental legislation. Additional information on environmental legislation can be found at www.environment.nsw.gov.au/legislation/ or alternatively you can call the PRREMS Officer on (02) 6450 5612 or email perisher.ems@environment.nsw.gov.au

National Parks and Wildlife Act 1974

The Perisher Range Resorts are located within **Kosciuszko National Park (KNP)**. KNP is managed in accordance with the requirements of the **National Parks and Wildlife Act 1974 (NPWA)** and the **National Parks and Wildlife Regulation 2002**. The National Parks and Wildlife Service (NPWS), part of the Department of Environment and Climate Change (DECC) is the agency with responsibility under this Act for managing all parks within NSW. NPWS must ensure the protection and maintenance of natural and cultural values, and the fostering of public appreciation, and understanding and enjoyment of those values for the parks it manages.

Plans of Management must be prepared by NPWS for each park or reserve it manages (s72). The plan of management in place for KNP is the **Kosciuszko National Park Plan of Management 2006**. This plan provides a framework of objectives, principles and policies to guide the long term management of the broad range of values contained in the park. This framework is translated into specific actions to be undertaken by NPWS and other organisations. All premises and operators within the park must have a valid **lease or licence**. A lease or licence is not to be issued by NPWS unless it is a permissible use within the Plan of Management (s151). Copies of this document are available from NPWS Jindabyne Visitor Centre. Alternatively the document can be downloaded from www.environment.nsw.gov.au/resources/nature/KNPPOM.pdf.

The Act also has specific responsibilities for NPWS in relation to the protection and care of native fauna and flora and Aboriginal places and objects throughout NSW. Under the Act a person who is aware of the location of an Aboriginal object must inform NPWS within a reasonable time (s91). It is an offence for a person to take possession of or remove an Aboriginal object that is in a national park unless it is in accordance with a permit (s86). It is also an offence if a person knowingly destroys, defaces, or damages or knowingly causes or permits the destruction of an Aboriginal object or Aboriginal place unless in accordance with a permit (s90). Where action is likely to significantly affect protected fauna, native plants, an Aboriginal object or place, or any other cultural heritage item, NPWS may issue a stop work order where action is likely (s91AA).

The Act also provides for a number of offences in relation to the protection of native flora and fauna. Under this Act it is an offence to:

- Bring animals (i.e. dogs, cats, birds) into a national park (note this rule applies even to animal remains in the owner's car)
- Buying, selling or processing protected fauna (s101)
- Harm protected fauna (s98)
- Pick or possess a protected native plant (s117)
- Damage critical habitat (s118)

Under the NPWA the NPWS is also responsible for certain functions relating to health of the public in KNP (s155A). These functions are similar to those conferred on a council under the *Local Government Act 1993*. Essentially NPWS may make orders requiring the occupier or other persons to do or refrain from doing certain things relating to public health in KNP.

Environmental Planning and Assessment Act 1979

Planning and development in NSW is carried out under the ***Environmental Planning and Assessment Act 1979 (EPAA)***. The Department of Planning (DoP) is the consent authority for all development applications within the alpine ski resorts. All development applications must be assessed in accordance with the relevant Environmental Planning Instrument, which for the alpine resorts of KNP, is the ***State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007***.

The aim of this policy is to protect and enhance the natural environment of the alpine resorts, by ensuring development is managed in accordance with the principles of ecologically sustainable development (ESD). The SEPP contains a land use table which specifies development that may be carried out without consent, with consent and development that is prohibited.

For development where consent is required a State of Environmental Effects (SEE) must accompany the Development Application (DA) and include information on a range of issues which are detailed in the SEPP (cl14-16). These matters include the aims and objectives of the SEPP, geotechnical issues, stormwater drainage issues, capacity of existing facilities and others (cl14). Additional matters are to be considered for building works (cl15) and for subdivisions (cl16). Part 4 of the SEPP lists 'exempt development'.

Within 7 days of receiving a DA, DoP must refer the application to NPWS for comment (cl17 SEPP). NPWS have 28 days to respond and DoP must consider these comments when assessing the DA. DoP must also consider whether there is likely to be a significant effect on threatened species, populations or ecological communities or their habitats as a result of the development and have regard to the register of critical habitat kept by the NPWS (s110 EPAA).

Section 111 of the EPAA requires determining authorities, in this case DoP, when assessing DA's to examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment. This is to include in the case of threatened species, population and ecological

communities and their habitat, whether there is likely to be a significant effect on them.

The SEPP also details those developments which may be referred to as 'advertised development'. Development is advertised development if it involves the erection of a building with a footprint of more than 1000m², is the erection of a new ski lift line or extension of a ski lift line or damage to any plant or wetland that is part of an endangered ecological community or vulnerable ecological community or damage to feldmark, short alpine herbfield or snowpatch on land identified in any Figure of the Kosciuszko Resorts Vegetation Assessment (cl27 SEPP).

Development by the crown or any public authority for any purpose (other than water storage dams, sewage treatment works, waste management facilities) is permitted without development consent (cl25 SEPP). Assessment under Part 5 of the EP&A Act however will still be required.

Threatened Species Conservation Act 1995

This Act provides for the conservation of threatened species, populations and ecological communities of animals and plants.

The Act sets up a Scientific Committee whose functions include:

- Identifying and classifying (as endangered, critically endangered or vulnerable) the species, populations and ecological communities with which it is concerned, and
- Identify key threatening processes that may threaten the survival of those species, populations and ecological communities.

Identified species, populations, ecological communities and key threatening processes are listed in the Schedules to the Act. Provision is made for the preparation of recovery plans and priority action statements for listed threatened species, populations and ecological communities and threat abatement plans to manage key threatening processes.

The Act also provides for the declaration and mapping of habitats that are critical to the survival of those identified threatened species, populations and ecological communities that are classified as endangered (critical habitats).

The Act inserts offences into the *National Parks and Wildlife Act 1974* relating to harming (of listed threatened species, populations and ecological communities, being plants), buying, selling or possessing of threatened species or populations (bring animals or plants) and damaging of critical and other habitat.

Threatened Species Assessment Guidelines have been developed in accordance with this Act to provide guidance on how to assess significance of impacts on threatened species as a result of a development (s94A).

Protection of the Environment Operations Act 1997

This Act provides for the protection, restoration and enhancement of the quality of the environment. It allocates responsibilities between the Environment Protection Authority (EPA), local councils and other public authorities. When activities are being undertaken by the State or public authorities, the EPA is the regulatory authority (s6).

Schedule 1 of the Act lists those activities which require a licence from the EPA. These licences can control air, noise, water and waste impacts of an activity. Licences can also be issued by the EPA to regulate water pollution from activities which are not listed in Schedule 1.

For all non-scheduled premises and activities within KNP, NPWS is the appropriate regulatory authority (ARA) (cl 64B *Protection of the Environment Operations (General) Regulation 1998*).

The Act also provides for the issuing of Environment Protection Notices (chapter 4). Clean up Notices can be issued to deal with pollution incidents, Prevention Notices where an activity is carried out in an environmentally unsatisfactory manner and a Prohibition Notice when an activity is required to be stopped.

There are a number of offences under the Act which fall under Tier 1, 2 or 3 (chapter 5). The most serious offences are under Tier 1 and cover certain waste disposals, leaks, spillages and other escapes, and ozone depleting emissions. Tier 1 offences require proof of wilfulness or negligence and evidence of harm or likely harm to the environment. These offences carry maximum penalties of \$5 million for corporations and \$1 million and /or 7 years imprisonment for individuals.

Tier 2 offences consist of all other offences under the Act and regulations, including water pollution, air pollution, land pollution and noise pollution offences. These offences are generally categorised as 'strict liability' offences i.e. the prosecution is not required to prove intent. They carry a maximum penalty of \$1 million for corporations and \$250,000 for individuals, and for continuing offences, further daily penalties of up to \$120,000 and \$60,000 respectively. The maximum penalty for the general littering offence is 20 penalty units (\$2,200).

Tier 3 offences are not separate offences, they are Tier 2 matters that have been designated in the regulation as being capable of being dealt with by way of penalty notice. The amount of the penalty is set by the regulations and may not exceed the maximum penalty that can be imposed by a court for the offence. EPA officers and the staff of certain other public authorities (including NPWS) have been authorised to issue penalty notices.

Any person may institute proceedings for an offence against the Act or the regulations in the Land and Environment Court or the Supreme Court. If proceedings are brought in the Land and Environment Court, the maximum

period of imprisonment the court can impose is 2 years. Proceedings for all other offences may be dealt with before a Local Court or the Land and Environment Court. If proceedings are brought in a Local Court, the maximum penalty that can be imposed is \$22,000.

The Act sets out a number of orders that the Court can make where an offence is proved. For example, the Court can require the guilty party to publicise their offence or to carry out an environmental project for the public benefit.

The Act also requires that pollution incidents which cause or threaten material harm must be notified to the ARA, which in the case of KNP is the NPWS, as soon as practicable (s148). Material harm to the environment has occurred if it involves actual or potential harm to the health or safety of human beings or to ecosystems that is not trivial or if it results in actual or potential loss or property damage exceeding \$10, 000 (s147). This amount includes the cost of cleanup or any repair to the environment.

Heritage Act 1977

This Act regulates to the conservation of items of environmental heritage defined as places, buildings, works, relics, and moveable objects of state or local heritage significance which are at least 50 years old. The NSW heritage Council maintains the State Heritage Register listing these items. Section 33 of the Act details the procedure for proposing an item to the State heritage Register.

When an Interim Heritage Order or listing on the State Heritage Register applies to a place, building, work, relic or moveable object, a person must not affect that area or item except in accordance with an approval (s60). Under the Act NPWS is also required to maintain a Heritage and Conservation Register, which is to be available for public inspection (s170). Prior to removing any item from the register or transferring its ownership or demolishing it the Heritage Council must be first notified. All items on the register must be maintained by NPWS with due diligence (s170A).

If you would like to access NPWS Heritage Register please contact the HHIMS Registrar, Culture and Heritage Division, Hurstville on (02) 9585 6472. However there are currently no items from the Perisher Range Resorts on the HHIMS Register.

Under the Act it is an offence for a person to disturb or excavate any land which they know or suspect will result in a relic being discovered, exposed, moved, damaged, or destroyed (s140). This is not an offence if the disturbance is carried out in accordance with an excavation permit. If a person is aware of or believes they have discovered or located a relic they must notify and provide further information to the Heritage Council (s146).

Contaminated Land Management Act 1997

This Act enables the EPA (part of DECC) to respond to contamination that is causing significant risk of harm to human health or the environment and sets criteria for determining whether such a risk exists. The EPA may declare any area as an investigation area or remediation site if it has reasonable grounds to believe the land is contaminated (s21). It may also order the appropriate persons to investigate or remediate those areas (s11).

Contaminated land is defined as being 'the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment' (s5).

There is a duty to report areas suspected of being contaminated to the EPA, who must examine the information it receives of actual or possible contamination of land and respond to the person who reported it with details of how the EPA are handling it (s60). Any person may institute proceedings in the Land and Environment Court for an offence against this Act or its Regulations.

Pesticides Act 1999

This Act controls and regulates the use of pesticides in NSW. It is an offence under the Act to:

- use a pesticide in a manner that injures or is likely to injure another person (s10);
- to use a pesticide in a manner that harms any non-target animal or plant (s11);
- ? to wilfully or negligently use a pesticide in a manner that causes material harm to threatened species or protected animals (s9);
- to possess or use an unregistered pesticide without a permit (ss 12, 13);
- to fail to read an approved label or permit before using a registered pesticide (s14);
- to use a registered pesticide contrary to the approved label (s15);
- to keep registered pesticides in a container without an approved label (s16);
- to possess or use a restricted pesticide without being authorised by a certificate of competency or a pesticide control order (s17).

Noxious Weeds Act 1993

As a public authority and occupier of land NPWS has a responsibility to control noxious weeds as required under any Weed Control Orders to prevent weeds from spreading to adjoining lands (s13). If NPWS becomes aware of a notifiable weed on its land it must inform the Local Council within 3 days (s15).

Water Management Act 2000

This Act provides for the sustainable and integrated management of the water sources of the state for the benefit of both present and future generations. It also specifically governs the issue of new water licences.

Under the Act a Controlled Activity Approval is required for certain types of development and activities which are carried out within 40 metres of a river, lake or estuary. Development includes the erection of a building, removal of material or vegetation from land, the deposition of material on land or any activity that affects the quantity or flow of water (s344).