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Crown Land (Reserves) Act 1978

CROWN LAND (RESERVES) (EX-HMAS CANBERRA DIVE SITE) REGULATIONS 2020

I, Lily D'Ambrosio, Minister for Energy, Environment and Climate Change, make the following Regulations.

Dated 2 November 2020

HON. LILY D'AMBROSIO MP
Minister for Energy, Environment and Climate Change

Crown Land (Reserves) Act 1978

CROWN LAND (RESERVES) (EX-HMAS CANBERRA DIVE SITE) REGULATIONS 2020

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SPECIAL

PART 1 – PRELIMINARY**1 Objectives**

The objectives of these Regulations are to provide for –

- (a) the care, protection and management of the reserve;
- (b) the preservation of good order in the reserve;
- (c) the setting aside of areas in the reserve in which specified activities are permitted, restricted or prohibited;
- (d) the safety of persons in the reserve;
- (e) the conditions of use of any improvements, services or facilities in the reserve;
- (f) the issuing of permits in relation to the use of the whole or any part of the reserve;
- (g) the imposition of fees for the use of any improvements, services or facilities in the reserve or permits for the use of the whole or any part of the reserve.

2 Authorising provision

These Regulations are made under section 13 of the **Crown Land (Reserves) Act 1978**.

3 Commencement

These Regulations come into operation on the day on which they are published in the Government Gazette.

4 Expiry

These Regulations expire on 30 April 2030.

5 Revocation

The following regulations are **revoked** –

- (a) Crown Land (Reserves) (Ex-HMAS Canberra Dive Site) Regulations 2010; and
- (b) any other regulations made under section 13 of the **Crown Land (Reserves) Act 1978** to the extent that they apply to the land shown hatched on the plan lodged in the Central Plan Office and numbered LEGL./09-208.

6 Definitions

In these Regulations –

aircraft, whether piloted or remote controlled, includes the following –

- (a) an aeroplane;
- (b) a drone;
- (c) a helicopter (including a multi-rotor helicopter);
- (d) a glider;
- (e) a hot air balloon;
- (f) a hang glider;
- (g) a paraglider;
- (h) a parachute;

animal means any vertebrate or invertebrate animal in any stage of biological development except –

- (a) a human; or
- (b) non-indigenous fish;

cultural heritage has the same meaning as in the **Heritage Act 2017**;

emergency has the same meaning as in the **Emergency Management Act 2013**;

emergency activity has the same meaning as in the **Emergency Management Act 1986**;

emergency services agency has the same meaning as in the **Emergency Management Act 1986**;

firearm has the same meaning as in the **Firearms Act 1996**;

fish has the same meaning as in the **Fisheries Act 1995**;

miner's right has the same meaning as in the **Mineral Resources (Sustainable Development) Act 1990**;

operate includes –

- (a) in respect of an aircraft, to launch, fly, control or land an aircraft or deliver anything by aircraft; or
- (b) in respect of a vessel, to facilitate or control the movement or navigation, launch, land, moor, secure, anchor, load or unload a vessel; or
- (c) in respect of a vehicle, to drive, ride or use a vehicle;

plant means any algae, fungi, non-vascular or vascular plant including any tree, bush, shrub or herb in any stage of biological development and whether alive or dead but does not include –

- (a) food for human or animal consumption; or
- (b) plant-based manufactured objects;

relevant land Act means –

- (a) the **Forests Act 1958**; or
- (b) the **Land Act 1958**; or
- (c) the **National Parks Act 1975**; or
- (d) Parts II and IIA of the **Wildlife Act 1975**;

reserve means the land shown as hatched on the plan lodged in the Central Plan Office and numbered LEGL./09-208;

the Act means the **Crown Land (Reserves) Act 1978**;

vessel has the same meaning as in the **Marine Safety Act 2010**;

volunteer emergency worker has the same meaning as in the **Emergency Management Act 1986**;

wreck means the vessel that was formerly the HMAS Canberra sited on the seabed in the reserve.

7 **Application of Regulations to permit, lease or licence holders etc.**

These Regulations do not apply to a person acting in accordance with the terms and conditions of any permit, lease, licence or other authority granted under the Act or a relevant land Act to the extent that the activities authorised by the permit, lease, licence or authority are inconsistent with these Regulations.

8 **Application of Regulations to employees etc.**

These Regulations do not apply to any of the following persons if that person is carrying out their duties or functions as –

- (a) an employee of the land manager;
- (b) an authorised officer;
- (c) a police officer or protective services officer within the meaning of the **Victoria Police Act 2013**;
- (d) a contractor, agent, volunteer or other person carrying out any work for or acting on the authority or instruction of the land manager;
- (e) a person employed under Part 3 of the **Public Administration Act 2004** who is carrying out a duty or function under a relevant law within the meaning of the **Conservation, Forests and Lands Act 1987**;

- (f) an operational staff member within the meaning of the **Ambulance Services Act 1986**;
- (g) an officer, employee or volunteer emergency worker of an emergency services agency when engaged in an emergency activity or the discharge of a responsibility, function or other role in relation to an emergency.

PART 2 – COMMON PROVISIONS FOR DETERMINATIONS AND PERMITS

9 Determinations setting areas aside

- (1) If the land manager is authorised to make a set aside determination under these Regulations, the determination must be in writing.
- (2) A determination under these Regulations must specify –
 - (a) the area that has been set aside under the determination; and
 - (b) in the case of an activity or conduct that is required or restricted, the conditions subject to which that activity or conduct must be carried out.
- (3) A determination under these Regulations may specify that it –
 - (a) applies to the whole or a specified area of the reserve; and
 - (b) applies on specified days, times or periods; and
 - (c) applies to a class of person, vessel or aircraft.
- (4) If the land manager makes a set aside determination, the land manager must cause notice of the determination to be published in accordance with regulation 10.
- (5) In these Regulations, **set aside determination** means the following –
 - (a) regulation 15;
 - (b) regulation 18;
 - (c) regulation 24.

10 Publication of set aside determinations

- (1) The land manager must, as soon as practicable after making a determination under these Regulations, publish the determination –
 - (a) in the Government Gazette; and
 - (b) on its internet site.
- (2) If the land manager revokes or amends a determination made under these Regulations, the land manager must, as soon as practicable after doing so, publish the revocation or amendment determination –
 - (a) in the Government Gazette; and
 - (b) on its internet site.

11 Permits

- (1) A permit issued under these Regulations must be in writing.
- (2) A permit issued under these Regulations must specify –
 - (a) the purpose of the permit; and
 - (b) the period of permit; and
 - (c) in the case of an activity or conduct that is being permitted, the conditions subject to which that activity or conduct must be carried out; and
 - (d) in the case of a permit for related to entry or use, the conditions for that entry or use.
- (3) A permit issued under these Regulations may specify that it –
 - (a) applies to the whole or a specified area of the reserve; and
 - (b) applies on specified days, times or periods; and
 - (c) applies to a class of vessel or aircraft.

- (4) A permit holder must produce the permit when requested by an authorised officer or police officer.

Penalty: 10 penalty units

12 Cancellation of permits

- (1) The land manager may cancel a permit issued under these Regulations at any time –
- (a) if the holder of the permit has –
 - (i) contravened the permit; or
 - (ii) otherwise contravened these Regulations; or
 - (b) if the continuation of the permit is likely to be detrimental to, or interfere with, the management and protection of the natural environment, features, or visitors in the reserve; or
 - (c) for the purposes of management of the reserve.
- (2) The cancellation of a permit under subregulation (1) does not take effect until the holder of the permit is given notification in writing of that cancellation.
- (3) If the holder of a permit has paid a fee for a permit under these Regulations and that permit is cancelled under subregulation (1)(b) or (c), the holder may apply in writing to the land manager, for a pro rata refund of the fee.
- (4) Upon receipt of an application under subregulation (3), the land manager may refund the remaining portion of the fee, calculated from the time at which the cancellation becomes effective until the time the permit would have expired.

13 Fees

- (1) The land manager may impose and recover reasonable fees for or in respect of any of the following –
- (a) entry to the reserve or an area of the reserve;
 - (b) the use of any improvement, service or facility in the reserve;
 - (c) the issuing of a permit under these Regulations.
- (2) The land manager must publish any fee imposed under subregulation (1) on its internet site.
- (3) A person must not enter or use an area of the reserve or use an improvement, service or facility in the reserve without paying the appropriate fee, if any, imposed by the land manager under subregulation (1).
- Penalty: 5 penalty units
- (4) The land manager may grant an exemption from or a reduction, waiver or refund, in whole or in part, of any fee imposed under subregulation (1).

PART 3 – ADMINISTRATION OF ACCESS TO THE RESERVE

14 Temporary closure of the reserve

- (1) The land manager may, by written determination, temporarily close the reserve or an area of the reserve to the public –
- (a) in the event of natural disaster or other emergency; or
 - (b) in anticipation of natural disaster or other emergency.
- (2) The land manager must not make a determination under subregulation (1) unless the land manager considers the determination is necessary because of risk, or likely risk, to the safety of persons within the reserve.
- (3) The land manager must, as soon as practicable after making a determination under subregulation (1) publish the determination –
- (a) in the Government Gazette; and
 - (b) on its internet site.

- (4) The land manager must, as soon as practicable after making a determination under subregulation (1), the land manager must cause signs or notices informing the public of the determination to be displayed in accordance with regulation 11.
- (5) A determination made under subregulation (1) remains in force for 14 days from the day it is made.
- (6) A person must not enter or remain in the reserve or an area of the reserve to which a determination under subregulation (1) applies.
Penalty: 20 penalty units
- (7) If the land manager considers the risk, or likely risk, that led to the determination being made under subregulation (1) no longer applies to the reserve or area of the reserve specified in the determination, the land manager must revoke the determination.
- (8) The land manager must, as soon as practicable after a determination has been revoked under subregulation (7) publish notice of the revocation –
 - (a) in the Government Gazette; and
 - (b) on its internet site.

15 Areas where access is prohibited or restricted

- (1) The land manager by determination may set aside an area of the reserve –
 - (a) as an area to which access is prohibited; or
 - (b) as an area to which access is restricted.
- (2) The land manager must not make a determination under subregulation (1) unless the land manager considers that the determination is necessary for the purposes of –
 - (a) the care, protection and management of the reserve; or
 - (b) the preservation of good order and decency in the reserve; or
 - (c) the safety of persons in the reserve.
- (3) In the reserve or an area of the reserve to which a determination under subregulation (1) (a) applies, a person other than a person to whom a permit has been issued under subregulation (5) must not –
 - (a) enter or remain in the area; or
 - (b) allow an animal, that a person is in charge of, to enter or remain in the area.
 Penalty: 10 penalty units
- (4) In the reserve or an area of the reserve to which a determination under subregulation (1) (b) applies, a person other than a person to whom a permit has been issued under subregulation (5) or acting in accordance with the determination under which the area is set aside must not –
 - (a) enter or remain in the area; or
 - (b) allow an animal, that a person is in charge of, to enter or remain in area.
 Penalty: 10 penalty units
- (5) For the purposes of subregulation (3) or (4), the land manager may issue a permit authorising a person, or an animal that a person is in charge of, to enter and remain in an area set aside under subregulation (1).

16 Power to give directions

- (1) Subject to subregulation (3), an authorised officer may, in writing, direct a person –
 - (a) to leave the reserve or an area of the reserve; or
 - (b) to remain in the reserve or an area of the reserve.
- (2) A direction given under subregulation (1)(a) may include a direction not to re-enter the reserve or an area of the reserve for a specified period not exceeding 24 hours.

- (3) An authorised officer must not give a direction under subregulation (1) unless the authorised officer considers the direction is necessary for any of the following purposes –
- (a) to avoid a contravention of these Regulations;
 - (b) to prevent the continuing contravention of these Regulations;
 - (c) for the safety of persons within the reserve;
 - (d) for the care, protection or management of the reserve.
- (4) A person to whom a direction is given under subregulation (1) must comply with that direction.
- Penalty: 20 penalty units

PART 4 – ACTIVITIES IN THE RESERVE

17 Interfering with wreck

- (1) A person must not, in the Reserve, remove, displace, damage, excavate or interfere with or take the wreck, any part of the wreck including any material, artefacts, structural elements, fittings, furnishings, equipment, or other components of the wreck.
- Penalty: 20 penalty units
- (2) Subregulation (1) does not apply to a person acting in accordance with a permit issued under subregulation (3).
- (3) The Committee may issue a permit to a person to remove, displace, damage, excavate or interfere with or take the wreck, any part of the wreck including any material, artefacts, structural elements, fittings, furnishings, equipment, or other components of the wreck.

18 Vessels

- (1) The land manager by determination may set aside an area in the reserve –
- (a) as an area where operating a vessel or a class of vessel is prohibited; or
 - (b) as an area where operating a vessel or a class of vessel is restricted.
- (2) A person other than a person to whom a permit has been issued under subregulation (4) must not operate a vessel or a class of vessel in an area set aside by a determination under subregulation (1)(a).
- Penalty: 20 penalty units
- (3) A person other than a person to whom a permit has been issued under subregulation (4) must not operate a vessel or a class of vessel in an area set aside under subregulation (1)(b) unless that person does so in accordance with the determination under which the area is set aside.
- Penalty: 20 penalty units
- (4) For the purposes of subregulation (2) or (3), the land manager may issue a permit to a person to operate a vessel or a class of vessel in an area set aside under subregulation (1).
- (5) Subregulation (2) and (3) do not apply to a person operating a vessel in an emergency.

19 Vessel not to be left unattended

An owner or operator of a vessel must remain on board that vessel at all times while the vessel is within the reserve.

Penalty: 10 penalty units

20 Interference with vegetation prohibited

- (1) A person in the reserve must not pick, take, destroy or damage any plant unless that person does so in accordance with a permit issued under subregulation (2) or regulation 25(2).
- Penalty: 20 penalty units

- (2) For the purposes of subregulation (1), the land manager may issue a permit authorising a person to engage in an activity prohibited by subregulation (1).

21 Interference with rocks prohibited

A person in the reserve must not excavate, remove, destroy, damage, deface or move any rock unless that person does so in accordance with a permit issued under regulation 20(2), 22(2), or 25(2).

Penalty: 20 penalty units

22 Interference with cultural heritage prohibited

- (1) A person in the reserve must not excavate, remove, destroy, damage, deface, or move any cultural heritage unless that person does so in accordance with a permit issued under subregulation (2) or regulation 25(2).

Penalty: 20 penalty units

- (2) For the purposes of subregulation (1), the land manager may issue a permit authorising a person to excavate, remove or otherwise disturb cultural heritage.

23 Digging, removal or bringing of material prohibited

- (1) A person in the reserve must not dig or remove from the reserve any gravel, shell, grit, sand, soil or other similar material unless that person does so in accordance with a permit issued under regulation 20(2), 22(2) or 25(2).

Penalty: 20 penalty units

- (2) A person must not knowingly bring into the reserve any gravel, shell, grit, sand, soil or other similar material.

Penalty: 20 penalty units

24 Fishing

- (1) The land manager by determination may set aside an area of the reserve –
(a) as an area where taking or attempting to take fish is prohibited; or
(b) as an area where taking or attempting to take fish is restricted.

- (2) A person must not, in the reserve, take, or attempt to take, fish in an area set aside under subregulation (1)(a).

Penalty: 10 penalty units

- (3) A person must not, in the reserve, take, or attempt to take, fish in an area set aside under subregulation (1)(b) unless that person does so in accordance with the determination under which the area is set aside.

Penalty: 10 penalty units

25 Research or scientific study

- (1) A person in the reserve must not conduct any research, investigation or scientific study unless that person is acting in accordance with a permit issued under subregulation (2).

Penalty: 8 penalty units

- (2) For the purposes of subregulation (1), the land manager may issue a permit authorising a person to conduct any research, investigation or scientific study in the reserve.

- (3) Without limiting regulation 11(1), a permit issued under subregulation (2) may include conditions relating to –

- (a) the purpose of the research, investigation or scientific study; or
(b) the amount and type of plant, animal or geological sample that may be taken; or
(c) the disturbance of Victorian cultural heritage; or
(d) interactions with visitors to the reserve; or
(e) the provision of a copy of any report prepared as a result of the research, investigation or scientific study to the land manager.

26 Organised events or functions

- (1) A person in the reserve must not conduct or organise an event or function unless that person does so in accordance with a permit issued under subregulation (2).
Penalty: 10 penalty units
- (2) For the purposes of subregulation (1), the land manager may issue a permit authorising a person to conduct or organise an event or function.
- (3) Without limiting regulation 13(1), a permit issued under subregulation (2) may include conditions relating to –
 - (a) the purpose of the event or function; and
 - (b) the number of people permitted to attend the event or function; and
 - (c) the type and size of any structure or vessel that may be used as part of the event or function.
- (4) In this regulation, an **event or function** is –
 - (a) entertainment or a show; or
 - (b) a festival, rave party, or public meeting; or
 - (c) a demonstration, training class or similar event; or
 - (d) a fishing competition or other competitive event; or
 - (e) a wedding or other ceremony; or
 - (f) a sporting or recreational event.

27 Conduct of commercial activities or trades and businesses

- (1) A person in the reserve must not conduct any commercial activity unless that person does so in accordance with a permit issued under subregulation (2).
Penalty: 20 penalty units
- (2) For the purposes of subregulation (1), the land manager may issue a permit authorising a person to engage in an activity prohibited by subregulation (1).
- (3) In this regulation, **commercial activity** includes –
 - (a) selling, trading or hiring goods or services; or
 - (b) advertising or offering goods or services for sale, trade or hire; or
 - (c) taking a photograph, film, video or audio recording for commercial purposes; or
 - (d) making a television or radio broadcast for commercial purposes.

28 Operating disturbing devices or equipment

- (1) A person in the reserve must not use or operate any device or equipment that produces noise or lighting that is likely to cause inconvenience, nuisance or disturbance to another person or to any animal.
Penalty: 10 penalty units
- (2) Subregulation (1) does not apply if the person is –
 - (a) lawfully and reasonably operating a vessel; or
 - (b) using or operating a device or equipment in accordance with a permit issued under subregulation (3).
- (3) For the purposes of subregulation (1)(b), the land manager may issue a permit authorising a person to use or operate any device or equipment prohibited under subregulation (1).
- (4) In this regulation, **device or equipment** does not include a device or equipment operated or used for a medical purpose.

NOTES

Penalty Units

These Regulations provide for penalties by reference to penalty units within the meaning of section 110 of the **Sentencing Act 1991**. The amount of the penalty is to be calculated, in accordance with section 7 of the **Monetary Units Act 2004**, by multiplying the number of penalty units applicable by the value of a penalty unit.

The value of a penalty unit for the financial year commencing 1 July 2020 is \$165.22. The amount of the calculated penalty may be rounded to the nearest dollar.

The value of a penalty unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a penalty unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.

Other Relevant Legislation

In addition to these Regulations, the following laws may also apply to activities within the reserve –

Aboriginal Sites and Relics

Aboriginal heritage (including Aboriginal objects, places and remains) is protected under the **Aboriginal and Torres Strait Islander Heritage Protection Act 1984** of the Commonwealth and the **Aboriginal Heritage Act 2006**. A contravention of this legislation may also result in the imposition of penalties.

Domestic Animals

The responsible ownership of dogs and cats is regulated by the **Domestic Animals Act 1994** and Regulations made under that Act. Failure to adhere to that legislation may result in the imposition of penalties.

Fires

The **Forests Act 1958**, the Forests (Fire Protection) Regulations 2014 and the **Country Fire Authority Act 1958** also limits the lighting of fires in certain areas.

A person who fails to comply with the **Forests Act 1958**, the Forests (Fire Protection) Regulations 2014 and the **Country Fire Authority Act 1958** may be liable to the imposition of penalties.

Firearms

The possession, carriage and use of firearms are regulated under the **Firearms Act 1996**. A contravention of that Act may result in the imposition of penalties.

Fishing

Fishing is regulated by the **Fisheries Act 1995** and Regulations made under that Act. Failure to adhere to that legislation may result in the imposition of penalties.

Historic Places and Objects

All archaeological sites and relics are protected under the **Heritage Act 2017**. A contravention of that Act may result in the imposition of penalties.

Litter

The depositing of litter is regulated under the **Environment Protection Act 1970** and may result in the imposition of penalties.

Wildlife

The taking, hunting or destroying of wildlife, including game, is regulated under the **Wildlife Act 1975** and Regulations made under that Act. A person who fails to comply with the requirements of that legislation may result in the imposition of penalties.

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