

## Proposed Alpine Resorts (Management) Regulations 2020

### Summary of issues raised in submissions on the Regulatory Impact Statement

#### Responses and Statement of Reasons

##### Introduction

On 27 July 2020, the Department of Environment, Land, Water and Planning (DELWP) released a Regulatory Impact Statement (RIS) to facilitate public consultation on the proposed Alpine Resorts (Management) Regulations 2020 (the proposed Regulations). The public submission period closed on 24 August 2020.

DELWP received 8 submissions on the proposed Regulations and the RIS.

Following detailed consideration of each submission received in response to the RIS, a small number of changes will be made to the proposed Regulations.

The following table summarises the issues raised in the submissions, sets out DELWP's responses and provides a statement of reasons for each.

Comment/Issue raised	Response
<b>1. Operator Onus for Vehicle Entry Offences</b>	
Proposed regulation 20 needs to be an operator onus offence. Currently, the offence of enter to an Alpine Resort in a motor vehicle without paying the fee or of any vehicle related offence is essentially impossible to enforce.	<b>Supported.</b> DELWP notes the enforcement gap that has been identified and will amend the regulations in order to improve future enforcement of offences where vehicles enter an alpine resort without paying the requisite fee.
<b>2. Limited (seasonal) Authorised Officer qualification for specific and limited offences</b>	
One of the greatest difficulties in enforcing resort entry payments is the fact that the infringing officer must be an Authorised Officer under the <i>Conservation Forests and Lands Act 1987</i> . In the past the training to become an authorised officer has been conducted by The Department of Environment and Primary Industries (DEPI) and are conducted over a two weeks duration. This is an impossible barrier for seasonal ski resorts especially Mount Hotham. To overcome this short fall of Authorised Officers at Alpine Resorts, a targeted short course could be implemented to authorise suitable candidates in some of the areas of vehicle compliance.	<b>Out of scope.</b> Authorised officers are appointed under the <i>Conservations, Forests and Lands Act 1987</i> .

Comment/Issue raised	Response
<b>3. The authority to demand identification and name and address in specific circumstances</b>	
<p>Authorised officers need the authority to demand identification and name and address in specific circumstances otherwise the Regulations may be updated but remain unusable for Alpine Resorts, especially Mount Hotham.</p>	<p><b>Out of scope.</b> Such an authority would extend beyond the powers that can be granted to authorised officers in the <i>Alpine Resorts (Management) Act 1997</i>.</p>
<b>4. The maximum fee for bus passengers per day is too high</b>	
<p>It is understood that this change is intended to capture the costs associated with the provision of resort services by overnight guests who have arrived by bus. It is recognised that this is a logical step to take in ensuring that costs are fairly distributed across the user-base of the resort but believe that the maximum fee proposed is too high, being roughly equivalent to the previous whole-of-trip fee.</p> <p>The regulations should provide that the boards may either charge a per-user fee of the proposed amount, or a substantially reduced per-diem fee. This fee should be calculated to facilitate cost recovery in line with other fees in a transparent and accountable manner.</p>	<p><b>Not supported.</b> Alpine Resort Management Boards have the discretion to charge less than the maximum amount, including the discretion to charge passengers daily or otherwise. Boards are expected to charge an amount which allows for cost recovery while not dissuading attendance to the alpine resorts.</p>
<b>5. The definition of snowplay equipment should be broadened</b>	
<p>The adoption of a broader definition of 'snowplay equipment' would ensure that regulation 38 does not require further review and amendment in the future, rather than individually providing for these devices in the regulations and definitions.</p>	<p><b>Not supported.</b> Snow feet and the other snowplay equipment listed under regulation 38 are examples only. Boards are free to set aside an area for the use of any other specific snowplay equipment at their discretion. Use of any snowplay equipment in an area not set aside for the use of that specific equipment is an offence under regulation 38(2).</p>
<b>6. Acknowledgement of the non-application of the organised events provision to existing arrangements</b>	
<p>It is crucial that ARMBs and Authorised officers understand that regulation 57 be read in light of regulation 6, which provides that the regulations would not apply where an existing agreement, lease or licence exists in relation to an area, to the extent of the authorisation provided in that agreement.</p> <p>It is requested that it is clearly stated in the RIS that the intended scope of the regulation applies to land and activities outside of existing arrangements (including leases, licences and permits) with the board.</p>	<p><b>Noted.</b> As noted in the submission, Regulation 6 notes that the regulations do not impact persons acting under agreements entered into under the <i>Alpine Resorts (Management) Act 1997</i> or a lease or licence granted in relation to an alpine resort. Activities of more than 30 persons, that meet the definition of an event or function and do not meet the requirements of Regulation 6, must be issued an authority to do so.</p>

Comment/Issue raised	Response
<b>7. Increase in penalty units for three offences is excessive</b>	
The increase in penalty points detailed in Table 7 of the RIS is excessive.	<b>Not supported.</b> The penalty amounts are not actual amounts, rather they are the maximum penalty imposable by a court. A court on consideration of all factors of each case may impose a penalty not exceeding the maximum penalty.
<b>8. Definitions of ‘Authority’, ‘Snow Feet’ and ‘Ski Lift’ should be amended</b>	
‘Authority’ needs to be more clearly defined and expanded upon. Does it mean a “licence” as well as a regulatory body? Perhaps the term could be replaced with alternative words such as “licence”, “ticket” or if used for a regulatory body, the name. Snow feet is an inappropriate term. It should be “snow shoe”? Ski lift definition should be included rather than in Regulation 42.	<b>Not Supported.</b> ‘Authority’ does not refer to a regulatory body. ‘Snow feet’ reference a specific type of ski attachment. Boards are free to limit the use of other snowplay equipment under regulation 38. The placement of the definition of ‘ski lift’ is a drafting decision of the Office of the Chief Parliamentary Counsel.
<b>9. Personal service in Regulation 14 to be more specifically described</b>	
Personal service requires a more specific description and definition to avoid misunderstanding.	<b>Supported</b> This provision has been amended to improve understanding.
<b>10. Temporary closure to include a pandemic</b>	
We query whether this be expanded to include a pandemic?	<b>Not supported.</b> A pandemic sufficiently fits into paragraph 16(1)(c), being an ‘emergency’.
<b>11. A determination of temporary closure to be made known via additional platforms</b>	
VSA suggests the obligation should require Boards to distribute to all who have requested receipt of material/publications from the Board i.e. newsletters, social media posts etc.	<b>Not supported.</b> The regulation making heads of power in the <i>Alpine Resorts (Management) Act 1997</i> do not extend to this issue. The regulation is specifically designed to reflect the best and widest means of communicating with users. As indicated on page 38 of the RIS the proposed wording is "Identical wording [in the current regulations] ... aside from an addition to include notification on the alpine resort website to complement other channels of communication. This reflects greater use of the internet as an information source since the regulations were last remade." The regulation does not prevent a Board from using other methods of communication over and above that required in this regulation.

Comment/Issue raised	Response
<b>12. Entry fees are excessive and should be reduced</b>	
<p>The entry fees are considered by many to be excessive and should be reduced. High entry fees reduce visitation and makes attracting guests more difficult.</p>	<p><b>Not supported.</b> The Boards have the discretion to charge fees at less than the maximum amount. Boards are expected to determine fees which balance cost recovery against discouraging attendance to the alpine resorts. The powers can be exercised to suit differing circumstances [see reg 16(3)] and proposed reg 19(4) allows Boards the discretion to exempt person from fees and to waiver or reduce fees.</p>
<b>13. Further clarification is needed by giving a code type for snow tyres</b>	
<p>Further clarification is needed by giving a code type for snow tyres. Wheel chains design to have a diamond pattern-is inadequately described. Our suggestion is - "a pattern that provides directional stability as well as traction control"</p>	<p><b>Partly supported.</b> <i>A fit wheel chains</i> sign may specify a specific code type for snow tyres. Definition of 'wheel chains' amended to 'devices made up of chains in a diamond pattern that are designed to be fitted to wheels of a vehicle to increase the directional stability and traction of the wheels of that vehicle on a road affected by snow or ice.'</p>
<b>14. Penalty for wheel chain offences is too high and there should be a consistent approach to non-wheel chain days</b>	
<p>The penalties seemingly are very high. Southern ARMB may apply an exemption for day visitors but not other resorts. There is a need for a consistent approach across all Victorian alpine resorts.</p>	<p><b>Not supported.</b> The offence for not having wheel chains is a matter of public safety. As indicated above, the penalty amounts are not actual amounts, rather they are the maximum penalty imposable by a court. The Department of Justice and Community Safety has been consulted and supports the maximum penalty being fixed at this level. <b>Not supported.</b> Allowing non-wheel chain days to the Southern Alpine Resort Management Board is based upon safety advice received from Victoria Police and VicRoads.</p>
<b>15. Examples given regarding 4WD vehicles fitting wheel chains</b>	
<p>Fit chains- exemptions currently apply to type of vehicle e.g. 4WD. The only example quoted is if snow tyres fitted. This needs further clarification such as adding 4WD-AWD as further examples.</p>	<p><b>Not supported.</b> Words and phrases in legislation that are not defined have been consistently interpreted by courts to have their ordinary common meaning that best aligns with the context in which they are used. Any list of examples provided would not be exhaustive and could lead to misinterpretation.</p>

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Comment/Issue raised	Response
<b>16. Boards should not be able to charge for dogs to be at resorts</b>	
<p>Dogs. If authority granted should the Board be able to charge for it? As most dogs already have registration in their home municipality, it is unreasonable to charge another fee. A fee for administration however would be reasonable together with penalties for not having an appropriate authority.</p>	<p><b>Noted</b> Boards are not able to charge fees for authorities to allow dogs into alpine resorts under the regulations. The Boards fee powers are set out in regulations 13, 19, 20, 22, 40 and 44 of the proposed regulations. However, existing legislation does not sufficiently provide for the control of dogs. There is a need for boards to develop a means to control the presence of dogs in a resort. Boards have the discretion to charge for an application processing fee in order to manage the presence of dogs at a resort.</p>
<b>17. Concerns about entry fees</b>	
<p>It is suggested that the fees should be significantly lower and that the all resorts season pass be made far more affordable.</p>	<p><b>Not supported.</b> Alpine Resort Management Boards have the discretion to charge less than the maximum amount. Boards are expected to charge an amount which allows for cost recovery while not dissuading attendance to the alpine resorts.</p>
<b>18. Concerns about alpine ski touring</b>	
<p>Alpine ski touring should be permitted within the resorts as long as it does not create a safety issue.</p>	<p><b>Noted.</b> A person may ski in an area that has been set aside, via determination, for skiing. A person may cross-country ski in an area that has been set aside, via determination, for cross country skiing and they have the appropriate authority, if required.</p>
<b>19. Concerns about the competition of commercial services</b>	
<p>Alpine Resort Boards should have to consider increasing competition when offering any commercial lease / operation to ensure better prices / service delivery for all.</p>	<p><b>Out of scope.</b> The power to direct an alpine resort board on how to enter into commercial arrangements extends beyond those that can be provided for in the regulations.</p>
<b>20. Concerns about resort board stakeholder engagement</b>	
<p>Resort boards should also be forced to consult with their stakeholders annually. Consultation has significantly decreased over the years.</p>	<p><b>Out of scope.</b> The power to direct an alpine resort board on how to engage with relevant stakeholders extends beyond those that can be provided for in the regulations.</p>

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<b>21. Concerns about the definition of ‘bus’</b>	
<p>The definition of a Bus should be consistent in the Alpine Resorts (Management) Regulations 2020, the Bus Safety Regulations 2020 and any forthcoming amendments to the Road Safety Road Rules 2017.</p>	<p><b>Noted.</b> DELWP has consulted with the Department of Transport and VicRoads on the provisions in the proposed Alpine Resorts (Management) Regulations 2020. The proposed definition of bus is consistent with the definition of a ‘large bus’ in the Forests (Recreation) Regulations 2010.</p>
<b>22. Concerns about wheel chains</b>	
<p>Suggested replacement definition: ‘wheel chains’ means devices made up of chains in a diamond pattern that are designed to be fitted to wheels of a vehicle to increase the traction of these wheels on a road affected by snow or ice and comply with the performance criteria specified in the Austrian Standard ONORM V5117 - Snow chains for vehicles up 3.5 tonnes and Austrian Standard ONORM V5119 – Snow chains for heavier vehicles.</p>	<p><b>Partly supported.</b> Definition of ‘wheel chains’ amended to ‘devices made up of chains in a diamond pattern that are designed to be fitted to wheels of a vehicle to increase directional stability and traction of the wheels of that vehicle on a road affected by snow or ice.’</p>
<b>23. Concerns about snow tyres</b>	
<p>Suggested replacement definition: ‘Winter tyre’ means a tyre whose tread pattern, tread compound and structure are specifically designed to achieve on a road affected by snow or ice a performance better than that of a normal tyre with regard to its ability to initiate, maintain or stop vehicle motion. The snow grip performance shall be tested in accordance with Annex 7 to UNECE Regulation No 117.</p>	<p><b>Partly supported.</b> Definition of ‘snow tyre’ amended to ‘a tyre whose tread pattern, tread compound and structure is specifically designed to achieve better performance, on a road affected by snow or ice, than that of a normal tyre with regard to its ability to initiate, maintain or stop vehicle motion’.</p>
<b>24. Concerns about four wheel drives</b>	
<p>A definition of 4 wheel drive should be added.</p>	<p><b>Supported.</b> Definition of 4 wheel drive added as follows: ‘includes an all-wheel drive vehicle.’</p>
<b>25. The inconsistency of the regulations with the Taungurung Natural Resources Agreement</b>	
<p>The proposed regulations appear inconsistent with multiple rights that the Taungurung people might otherwise possess under the NRA, and appears to limit their ability to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection.</p>	<p><b>Supported.</b> The regulations have been amended to ensure that the rights of Traditional Owners are recognised where a Natural Resource Agreement is in place.</p>

Comment/Issue raised	Response
<b>26. Exclusion of entry fee exemption for a person travelling to a freehold site within a resort boundary</b>	
<p>Paragraph 20(2)(a) should be amended to exclude a person travelling to any freehold site bounded entirely by the resort. Freehold sites present challenges in terms of enforcement and compliance monitoring due to access to private garages and car parks being restricted or limited. It is foreseeable that without making specific reference to this clause excluding freehold sites it could be argued that a person has travelled through the resort - from the point of entry to the freehold site - excluding them from the requirement to pay the stipulated entry fee.</p> <p>The inclusion of the above, or wording of a similar nature, would clearly avoid this argument being made and makes it clear that freehold sites form part of the resort with respect to resort entry fees.</p>	<p><b>Not supported.</b></p> <p>Charging a fee for entry for an individual to access their freehold land could be limiting their right to freedom of movement under the <i>Charter of Human Rights and Responsibilities Act 2006</i>.</p>
<b>27. Operator Onus for Vehicle Entry Offences</b>	
<p>Regulation 20 should be an operator onus offence. This is an important inclusion for the resorts as a mechanism to assist in the management of infringing those that enter the resort without paying the fee. Without this inclusion, a penalty can only be applied to the person who owns the vehicle, not the operator of a vehicle.</p> <p>The inclusion of an operator onus offence clause will assist in the protection of resort entry revenue and allow greater flexibility in systems of collecting this revenue as new technology and methods are adopted.</p>	<p><b>Supported.</b></p> <p>DELWP notes the enforcement gap that has been identified and the regulations have been amended in order to improve future enforcement of offences where vehicles enter an alpine resort without paying the requisite fee.</p>
<b>28. Recognition of Traditional Owner rights in the Proposed Regulations</b>	
<p>In order for the Proposed Regulations to be consistent with s19(2) of the <i>Charter of Human Rights and Responsibilities Act 2006</i>, we consider that Traditional Owners who have recognised rights over alpine resort areas should be exempt from the Proposed Regulations to the extent required for them to enjoy rights such as access, camping and conducting cultural activities (amongst other things). Such exemptions could be subject to any necessary overarching limitations, for example for public safety and conservation purposes.</p>	<p><b>Supported.</b></p> <p>The regulations have been amended to ensure that the rights of Traditional Owners are recognised where a Natural Resource Agreement is in place.</p>

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Comment/Issue raised	Response
<b>29. Insufficient Consultation Time</b>	
<p>First Nations received notice of the Proposed Regulations on 27 July 2020, which did not allow sufficient time for First Nations to meaningfully consult with our Traditional Owner clients.</p>	<p><b>Noted.</b> The proposed regulations and associated RIS were released for public submission on 27 July 2020 for a period of 28 days. In accordance with section 11 of the <i>Subordinate Legislation Act 1994</i> a notice of preparation of a RIS must invite public comment for a minimum period of 28 days.</p>

\*There were some submissions on specific regulations and other issues that were outside the scope of the regulations. These issues have not been addressed in the table.