



Legislation Review Committee

Correspondence received in response to the Legislation Review Committee
Digest No. 23/57 – 10 November 2020



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16 December 2020

Ms Felicity Wilson MP
Chair – Legislation Review Committee
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Wilson

Thank you for your letter of 12 November 2020 on behalf of the Legislation Review Committee to Hon Melinda Pavey MP, Minister for Water, Property and Housing regarding the *Water NSW Regulation 2020*. The Minister has asked me to respond on her behalf. You raised a number of issues in your letter which I have addressed below sequentially.

Strict liability offences

Higher Penalties than those prescribed under the National Park and Wildlife Service Regulation 2019

You noted in your letter that the penalties prescribed in the *Water NSW Regulation 2020* are higher than those in the *National Park and Wildlife Service Regulation 2019*.

The higher penalties in the *Water NSW Regulation 2020* reflect the fact that entering water catchments is restricted and activities regulated. WaterNSW's statutory function includes the protection of water quality and quantity for public health and public safety. The higher penalties are necessary to act as a disincentive to entering the area for the purpose of recreational activities which compromise these objectives.

A distinction should be drawn between the two Regulations. There is an open invitation for people to visit the National Park Estate for recreational purposes where the objective of the *Water NSW Regulation* is to regulate access and activities to the special and controlled areas for the purpose of water quality and asset protection.

No Move on Provision

You noted in your letter that there is no "move on" power comparable to section 9 of the *Summary Offences Act*.

However, Clause 19 (1) of the Regulation does contain a move on provision, which states:

A person who contravenes a provision of the Act or this Regulation on Crown land or Water NSW land that is in a special area or controlled area must leave the land concerned immediately when directed to do so by an authorised officer.

Freedom of movement and enjoyment of public space

Prohibiting the Use of Drones

You have also noted that while the Regulation introduces a prohibition of drones over the Special Areas, there is no mechanism prescribed in the Regulation to provide consent. The relevant provision is clause 25(1)(d) which contains this prohibition concerning the flying of a drone.

However, I can advise you that clause 9 of the Regulation states:

- (1) A person does not commit an offence under this Part (other than an offence under this clause or under clause 15, 18, 19 or 20) by reason of anything done with the consent of Water NSW.*
- (2) A person who does anything in a special area or controlled area with the consent of Water NSW must comply with the conditions, if any, to which the consent is subject.*

The way WaterNSW can grant consent is prescribed in clause 10 of the Regulation.

Further information can be found on the WaterNSW website here:

<https://www.watarnsw.com.au/water-quality/catchment/manage/special-areas/access>

Thank you for your interest in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read "Fiona Smith".

Fiona Smith
Executive Manager – Water and Catchment Protection