



Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2016

The Wreck Bay Aboriginal Community Council makes the following by-laws.

Dated 21 March 2016

Annette Brown
Chairperson
Wreck Bay Aboriginal Community Council

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Part 1—Preliminary

1 Name

This is the *Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2016*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---------------------------------|---------------|--------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. The whole of this instrument | 1 April 2016. | 1 April 2016 |

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 52A of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

In this instrument:

Aboriginal Land means land that is Aboriginal Land because of a declaration under Part III of the Act, other than Booderee National Park.

Act means the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*.

aircraft means an apparatus that can derive support in the atmosphere from the reactions of the air.

animal means any member, alive or dead, of the animal kingdom (other than man), and includes:

- (a) eggs or parts of eggs; and

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(b) the skin, feathers, horns, shell or any other part of an animal.

assistance animal means an animal trained to help a person to lessen the effects of a disability.

biodiversity means the variability among living organisms from all sources (including terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part) and includes:

- (a) diversity within species and between species; and
- (b) diversity of ecosystems.

blind person means a person who is totally or partially blind.

Booderee National Park means the Commonwealth reserve of that name within the Jervis Bay Territory under Division 4 of Part 15 of the EPBC Act.

burial includes scattering or other disposal of ashes that are or include human remains.

bushland means that part of Aboriginal Land not designated by the Council as being part of a township.

camp includes an overnight stay in a tent, caravan or campervan, or in or on a vehicle, vessel or aircraft.

camping area means a camping area determined under subsection 38(4).

camping site means an area of land within a camping area on which a campervan or tent may be installed.

capture, for an image, means record the image by artistic representation, or on film, videotape or electronic medium.

cetacean means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea, and includes a part of such a member and any product derived from such a member.

commemorative marker includes a monument, cairn, statue or sculpture, sign, plaque or tablet, wreath or floral arrangement.

Commonwealth agency means:

- (a) the Council; or
- (b) a body corporate established for a public purpose by a law of the Commonwealth; or
- (c) a body corporate established by a Minister otherwise than under a law of the Commonwealth; or
- (d) a company in which the whole of the shares or stock, or shares or stock carrying more than one-half of the voting power, is or are owned by or on behalf of the Commonwealth; or
- (e) a body corporate that is a subsidiary of:
 - (i) a body or company referred to in paragraph (b), (c) or (d); or
 - (ii) a body corporate that, because of a previous application or previous applications of this paragraph, is taken to be a Commonwealth agency for the purposes of this definition; or

- (f) a person holding, or performing the duties of:
- (i) an office established by or under a law of the Commonwealth (except a judicial office or office of member of a tribunal); or
 - (ii) an appointment made under a law of the Commonwealth (except an appointment to a judicial office or office of member of a tribunal); or
- (g) a person holding, or performing the duties of, an appointment made by the Governor-General, or by a Minister, otherwise than under a law of the Commonwealth;

but does not include:

- (h) a person holding an office established by or under either of the following Acts, or holding an appointment made under either of them:
- (i) the *Northern Territory (Self-Government) Act 1978*;
 - (ii) the *Australian Capital Territory (Self-Government) Act 1988*; or
- (i) any of the following:
- (i) an Aboriginal Land Trust, or an Aboriginal Land Council, established under the *Aboriginal Land Rights (Northern Territory) Act 1976*;
 - (ii) an Aboriginal and Torres Strait Islander corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
 - (iii) the Wreck Bay Aboriginal Community Council established by the Act.

Community means the community known as the Wreck Bay Aboriginal Community.

contact details, for a person, means:

- (a) the person's business or residential address; and
- (b) the person's postal address; and
- (c) the telephone number (if any) at which the person may be contacted personally; and
- (d) the telephone number (if any) to which a fax for the person may be sent; and
- (e) the person's email address (if any).

Council means:

- (a) the Wreck Bay Aboriginal Community Council established by section 4 of the Act; or
- (b) if the Council elects an Executive Committee—the Executive Committee.

deaf person means a person who is totally or partially deaf.

de-restricting sign means a traffic sign with a black circle with a straight black line bisecting the circle from the lower left quadrant to the upper right quadrant.

dog means an animal of the species *Canis familiaris*.

earth materials includes gravel, shell grit, coral, evaporites, fossils or speleothems.

entrance station means a building in a park or reserve that is:

- (a) adjacent to a road or track where persons enter the park or reserve; and

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- (b) identified by a sign including the name of the park or reserve and the words “ENTRANCE STATION”.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999*.

EPBC Regulations means the *Environment Protection and Biodiversity Conservation Regulations 2000*.

evaporite means salts deposited from solution because of evaporation of water.

explosive includes fireworks, but does not include:

- (a) fuel gas or liquid fuels to be used for domestic purposes, lighting, heating or cooking; or
(b) a flare carried on a vessel or used in dealing with an emergency.

fire includes a flame produced from any source.

fish includes aquatic invertebrate animals.

fossil includes prehistoric remains of a plant or an animal or the by-products of a plant or an animal.

fuel gas means a gas or mixture of gases that may be burned with air to produce light, heat or power.

Note: This includes natural gas or liquefied petroleum gas that is a mixture of hydrocarbons, substantially made up of propane or butane, in a liquid or gaseous state.

heritage, for Aboriginal Land, includes places, features, structures and objects that have aesthetic, archaeological, historic, scientific or social significance or other special value for the present community and for future generations.

hovercraft means a vehicle designed to be supported on a cushion of air.

Indigenous person means a person who is either:

- (a) a member of the Aboriginal race of Australia; or
(b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

jointly managed reserve has the same meaning as in section 363 of the EPBC Act.

karst includes surface and subterranean landscape features formed in water-soluble carbonate rocks.

Note: Examples include limestone or dolomite.

keep, for an organism, means to have charge or possession of the organism, either in captivity or in a domesticated state.

land includes subsoil of land and any body of water (whether flowing or not) except the sea.

liquid fuel includes the solid form of a liquid that is used for heating or cooking.

listed marine species has the same meaning as in the EPBC Act.

listed migratory species has the same meaning as in the EPBC Act.

listed species means a native species that is a listed threatened species, a member of a listed threatened ecological community, a listed migratory species, a listed marine species or a cetacean.

listed threatened ecological community has the same meaning as in the EPBC Act.

listed threatened species has the same meaning as in the EPBC Act.

Management Plan means a planning instrument approved by the Council from time to time, for the management of Aboriginal Land and all its resources.

member, for a native species, includes all or part of the member's reproductive material or dead body.

mineral means a naturally occurring substance or mixture of substances and includes:

- (a) gold, silver, copper, tin and other metals; and
- (b) coal, shale, petroleum and valuable earths and substances; and
- (c) mineral substances; and
- (d) gems and precious stones; and
- (e) ores and other substances containing minerals;

whether suspended in water or not, but does not include water.

native species means a species:

- (a) that is indigenous to Australia or an external Territory; or
- (b) that is indigenous to the seabed of the coastal sea of Australia or an external Territory; or
- (c) that is indigenous to the continental shelf; or
- (d) that is indigenous to the exclusive economic zone; or
- (e) members of which periodically or occasionally visit:
 - (i) Australia or an external Territory; or
 - (ii) the exclusive economic zone; or
- (f) that was present in Australia or an external Territory before 1400.

Note: A reference to Australia or an external Territory includes a reference to the coastal sea of Australia or the relevant Territory. See section 15B of the *Acts Interpretation Act 1901*.

officer of Customs has the same meaning as in the *Customs Act 1901*.

parking area means:

- (a) a part of a park or reserve designated by signs as a place where vehicles can be parked; or
- (b) the access to and from, and the passageways in, that part.

parking permit means a permit issued under section 51.

plant means a member, alive or dead, of the plant kingdom or of the fungus kingdom, and includes a part of a plant and plant reproductive material.

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protected species means a native species that:

- (a) is in any of the following:
 - (i) class Mammalia (mammals);
 - (ii) class Aves (birds);
 - (iii) class Reptilia (reptiles);
 - (iv) class Amphibia (amphibians);
 - (v) family Coenobitidae (terrestrial hermit crabs); and
- (b) is not a listed species; and
- (c) is in, or taken in, Aboriginal Land.

recovery plan means a plan made or adopted under section 269A of the EPBC Act.

seabed includes:

- (a) the surface of a coral formation; and
- (b) the subsoil of the seabed (including coral beneath the surface of a coral formation).

self-governing Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory.

species:

- (a) means a group of biological entities that:
 - (i) interbreed to produce fertile offspring; or
 - (ii) possess common characteristics derived from a common gene pool;and
- (b) includes:
 - (i) a sub-species; and
 - (ii) a distinct population of such biological entities that the Council has determined, under section 517 of the EPBC Act, to be a species for the purposes of that Act.

speed limit sign means a traffic sign inscribed with figures within a red circle.

speleothem means a deposit of calcium carbonate by diffusion of carbon dioxide from water in a cave.

sub-species means a geographically separate population of a species, being a population that is characterised by morphological or biological differences from other populations of that species.

threat abatement plan means a plan made or adopted under section 270B of the EPBC Act.

Town Plan means a plan established by the Council to govern land use, activities and any other matters within a township, as determined by the Council from time to time.

township means:

- (a) a group of dwellings that:

-
- (i) has been established within the Aboriginal Land before the commencement of these by-laws; and
 - (ii) is denoted on a plan or survey of the town declared by the Council to be the current official Town Plan; and
- (b) a group of dwellings that:
- (i) is established within the Aboriginal Land after the commencement of these by-laws; and
 - (ii) is not included in a group of dwellings to which paragraph (a) applies; and
 - (iii) is denoted on a plan or survey of the town declared by the Council to be the current official Town Plan.

vehicle includes a hovercraft.

warden means a person appointed as a warden by the Council under section 64.

wildlife conservation plan, for a listed species, means a plan made or adopted under section 285 of the EPBC Act.

works, for an action, includes earth works, removal or replacement of groundcover, diversion of water flows, tunnelling, drilling or any other sub-surface activity.

6 Physical elements of offences

For the purposes of applying Chapter 2 of the *Criminal Code* to an offence against these by-laws, the physical elements of the offence are set out in the subsection contravention of which is an offence.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

Part 2—Species and communities

7 Criteria for listing threatened species

Regulation 7.01 of the EPBC Regulations is applied to Aboriginal Land.

Note: Regulation 7.01 of the EPBC Regulations sets out criteria explaining when a native species is in the critically endangered, endangered or vulnerable category.

8 Criteria for listing threatened ecological communities

Regulation 7.02 of the EPBC Regulations is applied to Aboriginal Land.

Note: Regulation 7.02 of the EPBC Regulations sets out criteria explaining when an ecological community is in the critically endangered, endangered or vulnerable category.

9 Nominations

Division 7.2 of the EPBC Regulations is applied to Aboriginal Land as if references to the Minister were references to the Council.

Note: Division 7.2 of the EPBC Regulations sets out how a nomination to the Council must be made, before the Council can forward such a nomination to the Minister for review under the EPBC Act.

Part 3—Conservation of biodiversity on Aboriginal Land

10 Purpose of this Part

- (1) This Part provides for the conservation of biodiversity on Aboriginal Land.
- (2) In particular, this Part provides for prohibiting and regulating actions affecting members of native species on Aboriginal Land.

11 Offences in relation to protected species and approved management plans

Regulations 9.03 and 9.04 of the EPBC Regulations are applied to Aboriginal Land as if:

- (a) the reference in paragraph 9.03(4)(a) to a permit in force under Part 17 were a reference to a permit in force under Part 7 of these by-laws; and
- (b) the reference in paragraph 9.03(4)(c) to a management plan were a reference to a management plan to the extent that it relates to Aboriginal Land.

Part 4—Town Plans

12 Purpose of this Part

This Part sets out the requirements for introducing and varying a Town Plan.

13 The Council must introduce and vary Town Plans

- (1) The Council must develop, introduce and maintain a Town Plan for each township on Aboriginal Land.
- (2) Before introducing or varying a Town Plan, the Council must:
 - (a) notify the residents affected by the Town Plan and invite interested persons to make representations about the proposed introduction or variation by the date specified in the notice; and
 - (b) give due consideration to any representations made.

Part 5—Activities on Aboriginal Land

Division 5.1—Preliminary

14 Purpose of this Part

This Part provides for controlling activities relating to Aboriginal Land.

15 Application of this Part

This Part applies to Aboriginal Land.

16 Specifying time by reference to events

For this Part, time may be measured by reference to events, including the following:

- (a) the rising or setting of the sun;
- (b) forecast or actual meteorological conditions including temperature, wind, rainfall or fire danger;
- (c) the ebb or flow of tides;
- (d) fire, flood, earthquake, storm or other natural disasters;
- (e) seasons;
- (f) the arrival or departure of migratory species;
- (g) the occurrence or duration of a cultural event.

Division 5.2—Regulatory provisions

Subdivision 5.2.1—Preliminary

17 Activities that are not offences under this Division

- (1) An offence in this Division does not apply to an activity that:
- (a) is provided for, by, and carried out in accordance with, a Management Plan in force for the Aboriginal Land; or
 - (b) is carried out by the Council or a warden; or
 - (c) is authorised by a permit mentioned in subsection (2); or
 - (d) is carried out by an Indigenous person in accordance with conditions mentioned in section 18; or
 - (e) is provided for, by, and carried out in accordance with, a wildlife conservation plan, a recovery plan or a threat abatement plan in force under Division 5 of Part 13 of the EPBC Act; or
 - (f) is carried out by a Commonwealth agency, or an agency of a State or of a self-governing Territory and is reasonably necessary for law enforcement; or
 - (g) is reasonably necessary to deal with an emergency involving a serious threat to human life or property; or
 - (h) occurs because of an unavoidable accident, other than an accident caused by negligent or reckless behaviour; or
 - (i) is carried out in accordance with a lease or licence granted by the Council; or
 - (j) is carried out by a person who is complying with a direction given to the person by:
 - (i) the Council; or
 - (ii) a warden; or
 - (iii) a police officer, officer of Customs or emergency services officer, in the performance of his or her duties.

Note: By operation of other provisions of law, certain activities may also be carried out without breaching the offence provisions under this Part. See, for example, section 211 of the *Native Title Act 1993*.

- (2) The Council may issue a permit, in accordance with Part 7, authorising a person to carry out an activity that is prohibited under this Division.

18 Authorising activities by Indigenous people

- (1) For paragraph 17(1)(d), the Council may agree to conditions under which an Indigenous person may carry out the following activities on Aboriginal Land:
- (a) enter an area to which access is restricted or prohibited;
 - (b) take or keep an organism that is a member of a native species;
 - (c) use a vehicle, vessel or aircraft in an area in which the use of the vehicle, vessel or aircraft is prohibited;
 - (d) take a dog onto Aboriginal Land;
 - (e) take firewood from Aboriginal Land;

(f) carry out a cultural activity on Aboriginal Land.

- (2) Without limiting subsection (1), the conditions may include a requirement that the activity may only take place during the period, in the area or in the manner specified in the condition.

Note: By operation of other provisions of law, certain activities may be carried out by Indigenous persons without authorisation from the Council under this Division. See, for example, section 211 of the *Native Title Act 1993*.

19 Activities on Aboriginal Land where Management Plan is in force

If the Management Plan for the Aboriginal Land provides that an activity may be done in accordance with a permit issued by the Council under this Division, the Council may issue a permit in accordance with Part 7 for the activity.

Subdivision 5.2.2—General offences

Note 1: For the penalty that applies to an offence against a provision of this Subdivision, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

Note 2: An offence is not committed against a provision of this Subdivision if the activity that constitutes the contravention is:

- (a) described in section 17; or
- (b) authorised by a permit issued in accordance with Part 7.

20 Scientific research

- (1) A person must not carry out scientific research on Aboriginal Land.
- (2) In this section:
scientific, for research, includes archaeological and anthropological.
- (3) A contravention of subsection (1) is an offence.

21 Excavating, building and works

- (1) A person must not carry on an excavation, erect a building or other structure or carry out works on Aboriginal Land.
- (2) A contravention of subsection (1) is an offence.

22 Damaging, defacing features etc.

- (1) A person must not, on Aboriginal Land, damage, deface, obstruct, remove or interfere with:
 - (a) a natural feature; or
 - (b) an object, sign or structure.
- (2) A contravention of subsection (1) is an offence.

23 Damaging etc. heritage

- (1) A person must not, on Aboriginal Land, damage, deface, move, possess or interfere with heritage.

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- (2) A contravention of subsection (1) is an offence.

24 Dumping of waste, littering etc.

- (1) A person must not discharge or leave:
- (a) minerals, mineral waste or any other solid waste; or
 - (b) any noxious, offensive or polluting substance;
- on Aboriginal Land in an area that is not approved or provided for the purpose by the Council.
- (2) A person must not release liquid or gaseous material on Aboriginal Land if the release is likely:
- (a) to pollute the air, soil, water or a watercourse; or
 - (b) to be harmful to native species; or
 - (c) to be harmful or offensive to another person.
- (3) A person must not leave any litter, dung or other refuse on Aboriginal Land in a place that is not an area or receptacle approved or provided for that purpose by the Council.
- (4) However, subsection (3) does not apply to matter to which subsection (1) or (2) applies.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) A contravention of subsection (1), (2) or (3) is an offence.

25 Use of poisonous substances

- (1) A person must not use or introduce a pesticide, herbicide or other poisonous substance on Aboriginal Land.
- (2) However, subsection (1) does not apply to the reasonable use of a pesticide, herbicide or other poisonous substance by a person:
- (a) for a domestic purpose; or
 - (b) if the person holds a permit.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

- (3) A contravention of subsection (1) is an offence.

26 Fossicking, removal of earth materials etc.

- (1) A person must not, on Aboriginal Land:
- (a) introduce, disturb, or remove minerals, clay, sand, stone or other earth materials; or
 - (b) fossick, including by:
 - (i) using a device or technique (including remote sensing) for detecting minerals or metal; or
 - (ii) using a panning dish, a powered fan or a sieve to separate mineral materials of different sizes; or

- (iii) using a pump to remove mineral materials from the bed of a watercourse or body of water; or
- (iv) using a riffle or sluice box in the way it was designed to be used; or
- (v) drilling or taking core samples, or excavating, digging, raking or shovelling clay, sand, stone or other earth materials to find other mineral materials.

(2) A contravention of subsection (1) is an offence.

27 Activities relating to caves and karst

(1) A person must not, on Aboriginal Land:

- (a) enter a cave; or
- (b) interfere with anything within a cave; or
- (c) release a substance into waters that flow through a cave or karst area.

(2) A contravention of subsection (1) is an offence.

28 Use etc. of firearms, nets and other devices

(1) A person must not use or possess, on Aboriginal Land:

- (a) a firearm, whether or not it has been temporarily disabled; or
- (b) a flail or spear; or
- (c) a snare or trap; or
- (d) a hunting-bow, spear gun or any other device designed to discharge a projectile; or
- (e) a device for detecting minerals or metal; or
- (f) explosives; or
- (g) a chainsaw; or
- (h) any device that can be used, or is designed, for taking an animal, other than a hook and line for catching fish or a hand-held net designed to land a fish caught on a hook and line.

(2) However, subsection (1) does not apply to the use or possession of the item by a person to carry out commercial fishing operations that are authorised by a law of the Commonwealth, a State or self-governing Territory.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

(3) Also:

- (a) paragraph (1)(a) does not apply to a person acting as a police officer; and
- (b) paragraph (1)(g) does not apply to:
 - (i) a person who carries or has control of a chainsaw in a vehicle, vessel or aircraft in passage through Aboriginal Land if the chainsaw is not removed from the vehicle, vessel or aircraft; or
 - (ii) a person who is clearing fallen timber from a road or track that the person is permitted to use; or
 - (iii) the possession or use of a chainsaw in a township.

Note: A defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

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- (4) A contravention of subsection (1) is an offence.

29 Taking animals onto the bushland

- (1) A person must not cause or allow an animal owned by, or in the charge of, the person, to enter or remain on the bushland.
- (2) A person is taken to have contravened subsection (1) if the person places a beehive on the bushland.
- (3) However, subsection (1) does not apply to:
- (a) the use of a dog or animal that is:
 - (i) a guide dog used by a blind person, a hearing dog used by a deaf person or an assistance animal used by a person with a disability; and
 - (ii) at all times restrained on a leash not more than 3 metres in length; or
 - (b) the taking of the carcass of an animal onto the bushland as food for:
 - (i) the person; or
 - (ii) a dog or animal mentioned in paragraph (a).

Note: A defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

- (4) Also, subsection (1) does not apply if:
- (a) the person is on a vessel in passage through a marine area; and
 - (b) the animal is confined to the vessel.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

- (5) A person who, in accordance with a permit or other authority under these by-laws, takes an animal onto, or has in his or her possession an animal on, the bushland must not:
- (a) allow the animal to be at large; or
 - (b) fail to remove the animal from the bushland:
 - (i) if the person lives in the bushland—when the person ceases to live there; or
 - (ii) in any other case—when the person leaves the bushland.
- (6) A person who takes the carcass of an animal onto Aboriginal Land as food must not, within 50 metres of an area of water on the Aboriginal Land, dismember, disembowel or skin the carcass.
- (7) A contravention of subsection (1), (5) or (6) is an offence.

30 Taking plants onto Aboriginal Land etc.

- (1) A person must not cause or allow a plant to be taken onto, or possess a plant within, Aboriginal Land that is included on a list of plants specified by the Council as banned plants.
- (2) A contravention of subsection (1) is an offence.

31 Cultivating or propagating plants

- (1) A person must not cultivate or propagate a plant on Aboriginal Land that is included on a list of plants specified by the Council as banned plants.
- (2) A contravention of subsection (1) is an offence.

32 Failing to comply with directions to remove plants

- (1) This section applies if the Council directs a person, in writing, to remove a plant that:
 - (a) is cultivated or propagated in contravention of subsection 31(1); and
 - (b) is growing on land occupied by the person.
- (2) The person must comply with the direction.
- (3) A contravention of subsection (2) is an offence.
- (4) A warden may destroy or remove a plant:
 - (a) that is cultivated or propagated in contravention of subsection 31(1); and
 - (b) for which a direction mentioned in subsection (1) of this section has been given but has not been complied with.

Note: Section 60 deals with control of non-native species generally.

33 Entering prohibited or restricted area

- (1) A person must not enter Aboriginal Land or any part of Aboriginal Land in contravention of a sign or notice erected by the Council.
- (2) Subsection (1) does not apply to a person who is:
 - (a) authorised by the Council; and
 - (b) performing his or her duties in accordance with the authorisation.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

- (3) The Council may erect signs and notices relating to:
 - (a) a prohibition or restriction of entry; or
 - (b) conditions relating to entering Aboriginal Land to which a restriction applies.
- (4) Notice of a prohibition or restriction must be prominently displayed at all entrances to the place to which the prohibition or restriction applies unless the prohibition or restriction deals with an emergency, or meteorological conditions, that:
 - (a) may endanger public safety; and
 - (b) were not known in sufficient time for publication.
- (5) A contravention of subsection (1) is an offence.

34 Capturing images or recording sound

- (1) A person must not:

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- (a) capture an image in or of Aboriginal Land; or
 - (b) make a sound recording on Aboriginal Land;
- in contravention of a sign or notice erected by the Council.
- (2) Subsection (1) does not apply to a person authorised by the Council, in the part of Aboriginal Land where the image is captured or the sound is recorded, who is performing his or her duties in accordance with an authorisation from the Council.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.
- (3) The Council may erect signs and notices relating to:
- (a) a prohibition or restriction of:
 - (i) capturing an image in or of Aboriginal Land; or
 - (ii) making a sound recording on Aboriginal Land; or
 - (b) conditions relating to entering Aboriginal Land to which a restriction applies.
- (4) Notice of a prohibition or restriction must be prominently displayed at all entrances to the Aboriginal Land or part of the Aboriginal Land to which the prohibition or restriction applies.
- (5) The Council or a warden may, at any time:
- (a) direct a person who has captured an image in contravention of subsection (1) to surrender either or both of the following:
 - (i) all copies and forms of the image;
 - (ii) any device or means used to capture the image; or
 - (b) direct a person who has made a sound recording in contravention of subsection (1) to surrender either or both of the following:
 - (i) all copies and forms of the recording;
 - (ii) any device or means used to record the sound.
- (6) A person who is given a direction under subsection (5) must comply with the direction.
- (7) A contravention of subsection (1) or (6) is an offence.

35 Failing to comply with safety directions

- (1) If the Council or a warden believes that the safety of a person on Aboriginal Land is, or is likely to be, endangered, the Council or warden may give to the person or another person directions necessary to ensure the person's safety.
- (2) A person must comply with a reasonable direction given to the person under subsection (1).
- (3) A contravention of subsection (2) is an offence.

36 Adventurous activities

- (1) A person must not carry out a recreational activity on Aboriginal Land that:
 - (a) is hazardous to individuals; or

(b) is capable of causing damage to the environment;
otherwise than in an area provided for the activity under a determination made by
the Council under subsection (2).

Note: Examples of activities that may be treated as hazardous include the following:

- (a) climbing, abseiling on, or jumping from, rock faces;
- (b) bungee jumping or BASE-jumping;
- (c) hang gliding or paragliding.

- (2) The Council may, by notifiable instrument, determine that:
 - (a) a specified area is provided for a recreational activity that:
 - (i) is hazardous to individuals; or
 - (ii) is capable of causing damage to the environment; and
 - (b) an activity may be carried out in that area:
 - (i) in a specified manner; and
 - (ii) by specified persons or a specified class of persons; and
 - (iii) at all times, at specified times or during a specified period.
- (3) A contravention of subsection (1) is an offence.
- (4) The Council must publish notice of the effect of subsections (1) and (2) on its website.

37 Public nuisance

- (1) A person must not do any of the following on Aboriginal Land:
 - (a) disturb the peace, quiet and enjoyment of the Community in any of the following ways (whether or not in a public place):
 - (i) making loud sounds by any means;
 - (ii) engaging in drunkenness;
 - (iii) swearing or using indecent, obscene or insulting language;
 - (b) impede or obstruct a person in a public place;
 - (c) participate in a fight or another physical confrontation in a public place;
 - (d) deposit bottles, broken glass or other rubbish in a public place otherwise than in a receptacle designed for the collection of rubbish;
 - (e) throw bottles, broken glass or other rubbish in a public place;
 - (f) place graffiti on a wall, fence or other surface that is visible in a public place;
 - (g) urinate or defecate in a public place, otherwise than in a facility designed for that purpose;
 - (h) operate, or cause to be operated, a remote-controlled device in a way that disturbs the peace, quiet and enjoyment of the Community;
 - (i) appear in public, or be seen by the public, dressed in a way that is likely to cause offence.
- (2) A contravention of subsection (1) is an offence.

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38 Camping

- (1) A person must not camp on Aboriginal Land unless the person has the written permission of the Council to do so.
- (2) For subsection (1), in considering an application for permission to install a moveable dwelling or associated structure on any Aboriginal Land, the Council must take the following matters into consideration:
 - (a) whether any development approval that is required under:
 - (i) the *Planning and Development Act 2007* (ACT) as in force in the Jervis Bay Territory under section 4A of the *Jervis Bay Territory Acceptance Act 1915*; or
 - (ii) the *Environment Protection Act 1997* (ACT) as in force in the Jervis Bay Territory under section 4A of the *Jervis Bay Territory Acceptance Act 1915*;
for the installation of the moveable dwelling or associated structure on the Aboriginal Land has been given;
 - (b) whether the installation of the moveable dwelling or associated structure on the Aboriginal Land contravenes the provisions of:
 - (i) the *Planning and Development Act 2007* (ACT) as in force in the Jervis Bay Territory under section 4A of the *Jervis Bay Territory Acceptance Act 1915*; or
 - (ii) the *Environment Protection Act 1997* (ACT) as in force in the Jervis Bay Territory under section 4A of the *Jervis Bay Territory Acceptance Act 1915*; or
 - (iii) any other environmental planning instrument;
 - (c) any other matter that the Council considers relevant to its consideration of the application.
- (3) A person must not camp on Aboriginal Land in a place other than a camping area or a camping site:
 - (a) described in the Town Plan mentioned in section 13; or
 - (b) determined by the Council.
- (4) For subsection (3), the Council may determine, in writing, that a part of Aboriginal Land is a camping area.
- (5) A person must not camp on Aboriginal Land using:
 - (a) a tent; or
 - (b) a mobile home; or
 - (c) a campervan; or
 - (d) a caravan; or
 - (e) another mobile or temporary structure;
that does not comply with any law in force in the Jervis Bay Territory relating to standards of construction and safety.
- (6) If a person contravenes subsection (1), (3) or (5), a warden may give the person a notice:
 - (a) identifying the alleged contravention; and
 - (b) requiring the person:

- (i) to vacate the place at which he or she is camping within a specified time; and
 - (ii) to remove from the place all material that the person has brought onto the site, or that is under the person's care or control; and
 - (c) explaining the effect of subsections (7), (8) and (9).
- (7) A person to whom a warden gives a notice under subsection (6) must comply with the notice within the specified time.
- (8) If a person to whom a warden gives a notice under subsection (6) does not comply with the notice within the specified time, a warden may do either or both of the following:
- (a) remove the person from the place;
 - (b) remove from the place any material that the person has brought onto the site, or that is under the person's care or control.
- (9) If a person to whom a warden gives a notice under subsection (6) does not remove from the place any material that the person has brought onto the site, or that is under the person's care or control:
- (a) the Council may dispose of the material in any way it considers appropriate; and
 - (b) the person is liable for the cost of the removal and disposal.
- (10) A contravention of subsection (1), (3), (5) or (7) is an offence.
- (11) The Council must display one or more notices, explaining the effect of this section, where a camping area or camping site is located.

39 Failing to comply with directions about camping

- (1) To give effect to section 38, a warden may direct a person to camp only in a specified camping area or camping site.
- (2) A person who is given a direction by a warden under subsection (1) must camp only in the specified camping area or camping site.
- (3) A contravention of subsection (2) is an offence.

40 Lighting fires

- (1) A person must not light, maintain or use a fire on Aboriginal Land while a total fire ban declared by the Council is in force.
- (2) A person must not light, maintain or use a fire on Aboriginal Land other than by using:
 - (a) a gas barbecue or stove; or
 - (b) a barbecue operated by either or both of wood and heat beads; or
 - (c) a fireplace provided by the Council; or
 - (d) a fireplace of a kind approved by the Council; or
 - (e) another object approved by the Council.
- (3) For subsection (2), if the person uses:

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- (a) any form of heat bead within a gas barbecue or stove; or
 - (b) a barbecue operated by either or both of wood and heat beads;
- the person must ensure that a hose, connected to a tap and in working order, is available in the immediate vicinity of the barbecue or stove in order to control the fire.
- (4) A person who lights, maintains or uses a fire must not leave the fire unattended.
 - (5) A person who lights or uses a fire for cooking or heating must not use any fuel that is prohibited under the Management Plan to be used in that part of Aboriginal Land.
 - (6) A person who lights, maintains or uses a fire must ensure that the fire is extinguished completely when the fire is no longer required.
 - (7) A contravention of subsection (1), (2), (3), (4), (5) or (6) is an offence.
 - (8) The Council must publish notice of the effect of subsection (1) on its website.

41 Burials

- (1) Regulation 12.32 of the EPBC Regulations is applied to Aboriginal Land as if:
 - (a) a reference to a Commonwealth reserve were a reference to Aboriginal Land; and
 - (b) a reference to the Director were a reference to the Council.

Note: Regulation 12.32 of the EPBC Regulations sets out requirements relating to the burial of human remains.

- (2) For subsection (1), the place commonly known as “the old burial ground” is determined to be a burial area.

42 Erection of commemorative markers

- (1) A person must not, on Aboriginal Land:
 - (a) erect or display a commemorative marker, whether temporarily or permanently; or
 - (b) engage in commemorative activities associated with a commemorative marker.
- (2) Subsection (1) does not apply in relation to an area designated by the Council as a burial area.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

- (3) A contravention of subsection (1) is an offence.

43 Fishing

- (1) A person must not fish (including by removing crayfish or other marine life for commercial purposes) on Aboriginal Land in the waters of Mary Creek or Flatrock Creek.
- (2) A contravention of subsection (1) is an offence.

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- (3) The Council must publish notice of the effect of subsection (1) on its website.

44 Commercial activities

- (1) A person must not carry out a commercial activity on Aboriginal Land.
- (2) For subsection (1), an activity (the *first activity*) that:
- (a) is carried out in airspace between Aboriginal Land and 3 000 metres above mean sea level; or
 - (b) results in a commercial activity being carried out on Aboriginal Land, whether or not the first activity took place on Aboriginal Land;
- is taken to be carried out on Aboriginal Land.
- (3) Subsection (1) does not apply to a person who is:
- (a) removing crayfish or other marine life for commercial purposes; or
 - (b) travelling on a merchant vessel in passage through a marine area.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

- (4) A contravention of subsection (1) is an offence.

45 Deriving commercial gain from images captured

- (1) A person must not use:
- (a) a captured image of Aboriginal Land; or
 - (b) a sound recording made on Aboriginal Land;
- to derive commercial gain.

- (2) For subsection (1):

captured image includes an image that was not captured for a commercial purpose or in contravention of the Act or these by-laws.

sound recording includes a sound recording that was not made for a commercial purpose or in contravention of the Act or these by-laws.

- (3) A contravention of subsection (1) is an offence.

46 Collections

- (1) A person must not, on Aboriginal Land, collect money or goods as gifts from members of the public.
- (2) A contravention of subsection (1) is an offence.

47 Erecting signs

- (1) A person must not display or erect on Aboriginal Land a sign that is likely to be mistaken for a sign erected under these by-laws.
- (2) A person must not display or erect on Aboriginal Land a flag, banner, promotional device or image.

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- (3) Subsection (2) does not apply to displaying or erecting a sign, flag, banner, promotional device or image:
- (a) on Aboriginal Land held under a licence or lease granted by the Council; and
 - (b) in accordance with the licence or lease.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

- (4) A sign or other device displayed or erected on Aboriginal Land that purports to be a sign erected under these by-laws is, unless the contrary is established, taken to have been displayed or erected by the Council.
- (5) A contravention of subsection (1) or (2) is an offence.

Subdivision 5.2.3—Traffic

Note 1: For the penalty that applies to an offence against a provision of this Subdivision, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

Note 2: An offence is not committed against a provision of this Subdivision if the activity that constitutes the contravention is:

- (a) described in section 17; or
- (b) authorised by a permit issued in accordance with Part 7.

48 Vehicle use of tracks or roads

- (1) A person may drive, ride or tow a vehicle only:
- (a) on a road that is not a restricted access road; or
 - (b) on a public access track; or
 - (c) in a camping area or parking area.
- (2) Subsection (1) does not apply to a member of the Council who:
- (a) is a member in relation to the part of Aboriginal Land where the vehicle is; and
 - (b) is performing his or her duties as a member of the Council.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.

- (3) A contravention of subsection (1) is an offence.

49 Speed limits and one-way traffic

- (1) A person must not:
- (a) drive a vehicle on a part of a road or public access track at more than the maximum speed for that part of the road or track; or
 - (b) drive a vehicle in a parking area or camping area at more than 20 kilometres per hour; or
 - (c) drive or ride a vehicle on a road or public access track along a one-way traffic carriageway except in the direction indicated by an arrow on a traffic sign mentioned in subsection 52(3) for the road or track.
- (2) For paragraph (1)(a), the maximum speed for a part of a road or public access track between a speed limit sign and another speed limit sign or a de-restricting

sign facing the direction from which the vehicle approaches is the number of kilometres per hour that is shown in numbers on the first speed limit sign.

- (3) For paragraph (1)(c), the Council may designate a road or public access track as a one-way traffic carriageway.
- (4) The Council must give notice of a designation under subsection (3) by displaying a suitable sign, in accordance with subsection 52(3), near any area affected by the designation.
- (5) A contravention of subsection (1) is an offence.

50 Parking, stopping and using vehicles

- (1) A person must not park or stop a vehicle on Aboriginal Land:
 - (a) in a place other than:
 - (i) a parking area; or
 - (ii) a road or public access track; or
 - (iii) if the person is camping in a camping area on Aboriginal Land, the camping area; or
 - (b) in contravention of a sign erected by the Council; or
 - (c) in a way that would unreasonably obstruct the passage of other vehicles; or
 - (d) in a way that would obstruct access to a boat ramp in a launching area.
- (2) A person must not use a vehicle on Aboriginal Land, otherwise than by parking or stopping the vehicle, in contravention of a sign erected by the Council.
- (3) A contravention of subsection (1) or (2) is an offence.

51 Parking permits

- (1) The Council may issue a parking permit to a person.
- (2) A parking permit:
 - (a) authorises the parking of the vehicle for which it was issued in the parking area to which the permit relates; and
 - (b) remains in force until the end of the period specified in the permit.
- (3) A person to whom a parking permit is issued may surrender the permit by removing it from the vehicle.

52 Signs for controlling traffic etc.

- (1) A sign displayed to prohibit the stopping or parking of vehicles must:
 - (a) indicate the area within which a vehicle must not stop or park; and
 - (b) if parking or stopping is prohibited during specified hours—specify the hours within which vehicles may be parked or stopped; and
 - (c) be in a form approved for a sign of that kind by a law of the Jervis Bay Territory.
- (2) A sign displayed to designate a part of Aboriginal Land within which vehicles may be parked must, in addition to including words designating that part:

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- (a) if parking is permitted only during a specified hours—specify the hours within which vehicles may be parked; and
 - (b) if parking is restricted to, or prohibited for, a class of vehicles—specify the class of vehicles to which the restriction or prohibition applies; and
 - (c) be in a form approved for a sign of that kind by a law of the Jervis Bay Territory.
- (3) A sign displayed to designate a road or public access track as a one-way traffic carriageway must include:
- (a) the words “ONE WAY”; and
 - (b) an arrow indicating the direction in which a vehicle using the road or track must proceed.

53 Vehicles to stop as required

- (1) A person must not drive or ride a vehicle on Aboriginal Land beyond a location at which a warden or a person authorised to operate an entrance station requires the person to stop until the warden or authorised person indicates that the driver or rider may proceed.
- (2) A person must not drive or ride a vehicle on Aboriginal Land beyond a sign, erected near an entrance station, that requires the person to stop, whether at all times or at specified times, until a person authorised to operate the station indicates that the driver or rider may proceed.
- (3) A contravention of subsection (1) or (2) is an offence.

54 Walking or riding on roads or marked tracks

- (1) A person may walk or ride on a part of Aboriginal Land only on:
 - (a) a road or track that is available for public use; or
 - (b) a track provided by the Council for walking or riding.
- (2) For paragraph (1)(b), a track is provided by the Council for walking or riding if:
 - (a) a sign or other marker is displayed near the track, indicating that the track is for walking or riding; or
 - (b) the track is indicated as a track for walking or riding under the Management Plan.
- (3) Subsection (1) does not apply to a member of the Council who:
 - (a) is performing his or her duties as a member of the Council; and
 - (b) is not otherwise acting in contravention of any other section of these by-laws or the Management Plan.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

- (4) A contravention of subsection (1) is an offence.

55 Use of aircraft

- (1) A person must not:

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- (a) land or take-off an aircraft on Aboriginal Land; or
 - (b) land a parachutist on Aboriginal Land; or
 - (c) use an aircraft to drop or lower an object onto Aboriginal Land.
- (2) Subsection (1) does not apply to an action undertaken in an emergency or in bad weather.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (2), see subsection 13.3(3) of the *Criminal Code*.
- (3) A contravention of subsection (1) is an offence.

Subdivision 5.2.4—Administration

Note 1: For the penalty that applies to an offence against a provision of this Subdivision, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

Note 2: An offence is not committed against a provision of this Subdivision if the activity that constitutes the contravention is:

- (a) described in section 17; or
- (b) authorised by a permit issued in accordance with Part 7.

56 Obligation to produce permit

- (1) A person authorised by a permit to carry on an activity on Aboriginal Land must, when requested by a warden, produce the permit for inspection by the warden.
- (2) A contravention of subsection (1) is an offence.

57 Removal of trespassers and offenders

- (1) A warden may require a person on Aboriginal Land whom the warden finds committing, or suspects on reasonable grounds to be committing or to have committed, an offence against the Act or these by-laws to leave Aboriginal Land for a specified time.
- (2) A person who is required under subsection (1) to leave Aboriginal Land must comply with the requirement.
- (3) However, subsection (2) does not apply unless the warden produces the warden's identity card for inspection by the person.
- (4) A contravention of subsection (2) is an offence.

58 Restrictions on animals

Dogs

- (1) A person must not, on Aboriginal Land, own or keep a dog that is not registered in accordance with the requirements applicable in the Jervis Bay Territory for the registration of dogs.
- (2) A person who is in charge of a household on Aboriginal Land must ensure that not more than 2 dogs are kept as part of the household.

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- (3) Subsection (2) does not apply to the keeping of a dog that is a guide dog used by a blind person, a hearing dog used by a deaf person or an assistance animal used by a person with a disability.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.

- (4) A person who owns a dog must, on Aboriginal Land, keep the dog on a leash not more than 3 metres in length.

- (5) Subsection (4) does not apply if the dog is:

- (a) inside the property of its owner; or
- (b) in another area that is declared by the Council to be an “off-leash” area.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

- (6) For the purposes of paragraph (5)(b), the Council may, by notifiable instrument, declare an area to be an “off-leash” area.

Cats

- (7) A person who is in charge of a household on Aboriginal Land must ensure that not more than 2 cats are kept as part of the household.

Other animals

- (8) A person must not, on Aboriginal Land, own or keep any of the following animals:
- (a) a farm animal;
 - (b) an animal (other than a dog or cat) that is large enough to disturb the peace, quiet and enjoyment of members of the Community;
 - (c) an animal (other than a dog or cat) that:
 - (i) is not an adult animal; and
 - (ii) would, as an adult, be large enough to disturb the peace, quiet and enjoyment of members of the Community;
 - (d) an animal (other than a dog or cat) that is large enough to be capable of causing damage to the environment;
 - (e) an animal (other than a dog or cat) that:
 - (i) is not an adult animal; and
 - (ii) would, as an adult, be large enough to be capable of causing damage to the environment.

Offence

- (9) A contravention of subsection (1), (2), (4), (7) or (8) is an offence.

59 Impounding animals

- (1) A warden may impound an animal that:
- (a) is not a member of a native species; and
 - (b) is found straying on Aboriginal Land.

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- (2) For subsection (1), the Council may:
 - (a) establish and maintain a pound; or
 - (b) enter into an agreement with a person or body for the use of a pound established by the person or body.
 - (3) If a warden impounds an animal, the warden must:
 - (a) remove the animal to a pound; and
 - (b) take reasonable steps:
 - (i) to identify the owner of the animal; and
 - (ii) to tell the owner of the impounding.
 - (4) For paragraph (3)(b), if the animal is not identified in a way that allows its owner to be determined, the steps may include publishing, in an appropriate place, a notice that includes:
 - (a) a description of the animal; and
 - (b) the date when, and the part of Aboriginal Land where, the animal was impounded.
 - (5) A warden must release an impounded animal to the owner of the animal on payment of the cost of impounding the animal to the Council.
 - (6) The cost of impounding an animal includes:
 - (a) the cost of removing the animal to a pound; and
 - (b) the cost of identifying the owner of the animal; and
 - (c) if the pound is maintained by the Council:
 - (i) the cost of providing staff at the pound that is reasonably attributable to the management of the animal; and
 - (ii) the cost of feeding and watering the animal; and
 - (d) if the pound is not maintained by the Council—the amount that the Council is charged for the use of the pound for the animal; and
 - (e) any other expenses of the Council for the animal.
 - (7) A warden may dispose of or destroy an impounded animal after 7 days after any of the following events:
 - (a) the owner was informed of the impounding and has not paid the cost of impounding;
 - (b) the later of:
 - (i) if the owner cannot be contacted—the animal was impounded; and
 - (ii) if the owner cannot be determined—a notice mentioned in subsection (4) was published.
 - (8) The Council, and a warden who impounds an animal under this section, are not liable for any damage to the animal caused by its impounding.

60 Control of non-native species

If a warden considers it necessary for the protection of public safety, or for the protection and conservation of biodiversity and heritage, on Aboriginal Land or a part of Aboriginal Land, the warden may take any suitable measure to control or remove an organism that is:

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- (a) not a member of a native species; or
- (b) not indigenous to Aboriginal Land or that part of Aboriginal Land.

61 Approval for building and construction work

- (1) A person must construct, install, modify or extend a structure on Aboriginal Land only in accordance with:
 - (a) a permit issued in accordance with Part 7; and
 - (b) all relevant laws and other requirements relating to building and engineering.
- (2) A contravention of subsection (1) is an offence.

62 Approval for operating a business activity

- (1) A person must operate a business or other commercial activity from a structure on Aboriginal Land only in accordance with a permit issued in accordance with Part 7.
- (2) A contravention of subsection (1) is an offence.

63 Fee for entrance to Aboriginal Land

- (1) The Council may, in writing, determine fees for entrance to Aboriginal Land.
- (2) A person who has not paid an entrance fee applicable to the person must not enter Aboriginal Land.
- (3) A contravention of subsection (2) is an offence.
- (4) The Council must publish notice of the entrance fees on its website.

Part 6—Enforcement

Division 6.1—Wardens

64 Appointment of wardens

The Council may, in writing, appoint:

- (a) an officer or employee of the Council; or
 - (b) a person covered by an arrangement made under section 65;
- to be a warden.

65 Arrangements for certain officers or employees to exercise powers etc. of wardens

- (1) The Council may make arrangements with an authority of the Commonwealth for the performance or exercise of all or any of the functions or powers of a warden under the Act or these by-laws by officers or employees in that authority, as the case may be.
- (2) The Council may enter into an arrangement with an authority of a State or of the Australian Capital Territory for:
 - (a) officers or employees in the Public Service of the State or Territory; or
 - (b) officers or employees in an authority of the State or Territory (including a local government body); or
 - (c) members of the police force of the State or Territory;to perform or exercise all or any of the functions or powers of a warden under these by-laws.
- (3) The Council may enter into an arrangement with a local government body, a company or an individual for an individual to perform or exercise any or all of the functions or powers of a warden under these by-laws.

66 Identity cards

- (1) The Council must issue to each warden an identity card, in a form approved by the Council, containing a photograph of the person to whom it is issued.
- (2) If a person stops being a warden, the person must immediately return his or her identity card to the Council.

67 Impersonating a warden

- (1) A person must not impersonate a warden at a time when a warden would be:
 - (a) on duty; and
 - (b) doing an act or attending a place.
- (2) A person must not:
 - (a) falsely represent himself or herself to be a warden; and
 - (b) do an act or attend a place in the assumed character of a warden.

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- (3) A person must not impersonate a warden, or falsely represent himself or herself to be a warden with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.
- (4) A warden must not impersonate another warden at a time when the other warden would be:
 - (a) on duty; and
 - (b) doing an act or attending a place.
- (5) A warden must not:
 - (a) falsely represent himself or herself to be another warden; and
 - (b) do an act or attend a place in the assumed character of that warden.
- (6) A warden must not impersonate another warden, or falsely represent himself or herself to be another warden with the intention of obtaining a gain, causing a loss or influencing the exercise of a public duty.
- (7) A contravention of subsection (1), (2), (3), (4), (5) or (6) is an offence.

Note: For the penalties that apply to offences against this section, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

68 Offences against a warden

- (1) A person must not use or threaten violence against a warden because of the warden's status as a warden.
- (2) A person must not obstruct, intimidate, resist or hinder a warden who is:
 - (a) exercising his or her powers or duties; or
 - (b) performing his or her functions.
- (3) A contravention of subsection (1) or (2) is an offence.

Note: For the penalty that applies to an offence against subsection (1) or (2), see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.
- (4) For subsection (3), it is immaterial whether the person was aware that the warden was engaged in:
 - (a) the exercise, or attempted exercise, of any of his or her powers or duties; or
 - (b) the performance, or attempted performance, of any of his or her functions.
- (5) It is a defence in proceedings for an offence against subsection (1), if at the time of the conduct constituting the offence:
 - (a) the person did not know that the warden was a warden; or
 - (b) the warden was abusing his or her power.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.
- (6) This section does not limit the power of a court to punish a contempt of that court.
- (7) Subsections (1) and (2) are not intended to exclude or limit the concurrent operation of any law of the Australian Capital Territory in a case in which the

other person referred to in that subsection is a member or special member of the Australian Federal Police.

69 Warden may ask for person's name and address

- (1) A warden may ask a person to tell the warden the person's name and address if:
 - (a) the warden finds the person committing an offence against the Act or these by-laws; or
 - (b) there are reasonable grounds for suspecting that the person has committed an offence against the Act or these by-laws.
- (2) A warden may:
 - (a) ask a person to show the warden any authority, licence, permission or permit issued to the person under the Act or these by-laws; or
 - (b) ask a person to show the warden any permit, licence, permission or authority needed for an activity the warden suspects on reasonable grounds the person has carried on.
- (3) A person must comply with a request under subsection (1) or (2).
- (4) However, a warden is not entitled to exercise powers under this section if:
 - (a) the person to whom a request has been made has asked the warden to produce his or her identity card for inspection by the person; and
 - (b) the warden fails to do so.
- (5) A person must not knowingly give or produce false or misleading information or documents to a warden who makes a request under subsection (1) or (2).
- (6) A contravention of subsection (3) or (5) is an offence.

Note: For the penalties that apply to offences against this section, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

Division 6.2—Review of administrative decisions

70 Definition for this Division

In this Division:

decision means a decision of an administrative character made, proposed to be made, or required to be made (whether in the exercise of a discretion or not and whether before or after the commencement of this definition), by the Council.

71 Consideration and review of decisions of the Council

- (1) This section applies to a decision of the Council under Part 7 about a permit, other than a decision under subsection 80(1) or 83(3).
- (2) The Council must give to any person whose interests are affected by the decision written notice of the decision, including a statement that the person may apply to the Council to reconsider the decision under subsection (4).
- (3) A failure to comply with subsection (2) does not affect the validity of the decision.
- (4) A person:
 - (a) whose interests are affected by the decision; and
 - (b) who is dissatisfied with the decision;may, by written notice to the Council within 21 days after the decision first comes to the person's notice, ask the Council to reconsider the decision.
- (5) A request under subsection (4) must set out the reasons for making the request.
- (6) The Council must:
 - (a) reconsider the decision within one month after the Council receives the request; and
 - (b) give to the person who requested the reconsideration written notice of the result of the reconsideration and of the grounds for the result.
- (7) The Council's decision following a reconsideration of the initial decision is final.

72 Objects or purposes of organisation or association

- (1) An organisation or association of persons, whether incorporated or not, is to be taken to have interests that are affected by a decision if the decision relates to a matter included in the objects or purposes of the organisation or association.
- (2) Subsection (1) does not apply to a decision given before the organisation or association was formed or before the objects or purposes of the organisation or association included the matter.

Part 7—Permits

73 Application of this Part

This Part applies to permits issued by the Council:

- (a) under Part 3, authorising a person to take an action stated in the permit for a protected species; or
- (b) authorising a person to carry out an activity that is prohibited under Division 5.2; or
- (c) authorising a person to carry out an activity to which section 19 applies; or
- (d) authorising a person to carry out an activity to which subsection 87(1) applies.

74 Application for a permit

- (1) A person may apply for a permit to which this Part applies.
- (2) The application for the permit must be in writing or electronic form and must include the following information:
 - (a) the full name of each person to whom the permit is to be issued;
 - (b) if the application is not made by any of those persons—the name of the applicant;
 - (c) the name, business address and postal address of any group to which the permit is to be issued;
 - (d) the contact details of each person to whom the permit is to be issued;
 - (e) details of the action for which the permit is sought, including the following:
 - (i) whether the action will result in the death or injury of a member of a native species, involve taking, trading, keeping or moving a member of a native species or result in damage to, or destruction of, the nest or dwelling place of a member of a native species;
 - (ii) how many members of each listed species or native species will be affected;
 - (iii) when and where the action is proposed to be taken;
 - (iv) a description of the action, including the methods to be used to comply with these by-laws and to minimise impact on any listed species or native species;
 - (v) the relevant qualifications or experience of each person proposing to take the action;
 - (vi) the objectives or purpose of the action;
 - (f) a declaration stating whether the applicant has been convicted of, or is subject to proceedings for, an offence mentioned in section 78;
 - (g) a declaration that the information in the application is correct to the best of the applicant's knowledge;
 - (h) for a permit described in paragraph 73(a):
 - (i) any common name of the native species for which the application is made; and

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- (ii) any scientific name of the native species; and
- (iii) if it is a listed species—the category in which it is listed;
- (i) for a permit to which paragraph 73(a) applies—a statement of the matters mentioned in section 84.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (3) For the purposes of paragraph (2)(f), the applicant is taken to have been convicted of an offence if, within 5 years before the application is made:
 - (a) the applicant has been convicted, whether summarily or on indictment, of the offence;
 - (b) the applicant has been charged with, and found guilty of, the offence but discharged without conviction; or
 - (c) the applicant has not been found guilty of the offence, but a court has taken it into account in passing sentence on the person for another offence.

Note: See section 85ZV of the *Crimes Act 1914*.

75 Issue of permit

- (1) The Council may issue a permit only if:
 - (a) for a permit to which paragraph 73(a) applies—there are reasonable grounds for believing that the action will not, or is not likely to, adversely affect the conservation status of a protected species or a population of a protected species; and
 - (b) for a permit to which paragraph 73(b) or (c) applies—the circumstances mentioned in section 77 apply; and
 - (c) for a permit to which paragraph 73(d) applies—the Council is satisfied that the relevant requirements set out in the Parts to which the permit applies will be met; and
 - (d) the applicant has not been convicted of, nor is subject to proceedings for, an offence under a law mentioned in section 78; and
 - (e) for a permit that applies in a jointly managed reserve:
 - (i) consultation with the Board for the reserve and the Council is required under any agreement between the Council and the Board and has been carried out in accordance with the agreement; or
 - (ii) there is no such agreement but the activity is consistent with the Council's obligations under the lease for the Aboriginal Land.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (2) For the purposes of paragraph (1)(d), the applicant is taken to have been convicted of an offence if, within 5 years before the application is made:
 - (a) the applicant has been convicted, whether summarily or on indictment, of the offence;
 - (b) the applicant has been charged with, and found guilty of, the offence but discharged without conviction; or

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- (c) the applicant has not been found guilty of the offence, but a court has taken it into account in passing sentence on the person for another offence.

Note: See section 85ZV of the *Crimes Act 1914*.

- (3) The Council must:
- (a) give each permit a reference number by which it can be identified; and
 - (b) tell the applicant the reference number; and
 - (c) give the applicant written notice if the Council refuses to issue a permit.

76 Content of permits

A permit must:

- (a) be in writing; and
- (b) state:
 - (i) the provision of these by-laws for which it is issued; and
 - (ii) the activity that is permitted; and
 - (iii) the Aboriginal Land area where the activity may be carried out; and
 - (iv) when the permit expires; and
 - (v) the conditions subject to which it is issued.

77 Circumstances that must apply

For paragraph 75(1)(b), the circumstances for an activity mentioned in an item of the following table are those mentioned in the item:

| Circumstances that must apply | | |
|--------------------------------------|---|--|
| Item | Activity | Circumstances |
| 1 | Any activity | If there is a Management Plan in force for Aboriginal Land, it must be consistent with the Management Plan. If there is no Management Plan in force for Aboriginal Land, it must be consistent with the functions of the Council set out in paragraphs 6(cc), (cd) and (ce) of the Act. |
| 2 | Any activity | It must not be likely to: <ul style="list-style-type: none"> (a) endanger public safety; or (b) unduly damage Aboriginal Land; or (c) unduly interfere with the preservation or conservation of biodiversity or heritage on Aboriginal Land; or (d) unduly interfere with the protection of other features or facilities on Aboriginal Land; or (e) interfere with the privacy of a cultural event held on Aboriginal Land; or (f) interfere with the continuing cultural use of Aboriginal Land (including residence on Aboriginal Land); or (g) interfere with the privacy of other persons on Aboriginal Land. |
| 3 | An activity prohibited under section 29 (except | The animal must be kept under any restraint necessary to prevent it from straying on Aboriginal Land. |

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| Circumstances that must apply | | |
|--------------------------------------|---|---|
| Item | Activity | Circumstances |
| | subsection (6) | |
| 4 | An activity prohibited under section 30 or 31 | The plant must not be a member of a species that is determined by the Council in a Management Plan for Aboriginal Land to be a pest species. |
| 5 | An activity prohibited under section 41 | The burial must be authorised by a permit issued by the Council before the burial occurs. |
| 6 | An activity prohibited under section 43 | Removing crayfish or other marine life for commercial purposes must not contravene a law of the Commonwealth or a relevant State or Territory about such removal. |
| 7 | An activity prohibited under section 44 | The activity must benefit the public or persons using Aboriginal Land. |
| 8 | An activity prohibited under section 48 | The use of the vehicle must not be likely: (a) to cause the condition of the track or road to which the permit relates to deteriorate significantly; or (b) to cause the condition of another part of Aboriginal Land to be significantly degraded. |

78 Relevant offences

For paragraphs 74(2)(f), 75(1)(d) and 82(2)(c) and (3)(f), the offences are offences under:

- (a) a law of the Commonwealth or a State or Territory about the protection, conservation or management of native species or ecological communities; or
- (b) a legislative instrument made under a law mentioned in paragraph (a); or
- (c) offences under:
 - (i) section 6 of the *Crimes Act 1914* or section 11.1, 11.4 or 11.5 of the *Criminal Code*; and
 - (ii) a provision of a law of the State or Territory that is equivalent to a provision mentioned in subparagraph (i);
 that relate to an offence described in paragraph (a) or (b) of this section.

79 Contravention of condition of permit

- (1) A holder of a permit to which paragraph 73(a), (b) or (d) applies must not take an action, or omit to take an action, that contravenes a condition of the permit.
- (2) A contravention of subsection (1) is an offence.

Note: For the penalty that applies to an offence against this section, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

80 Varying or revoking conditions

- (1) The Council may, by written notice to a holder of a permit issued by the Council, vary or revoke a condition of the permit, or impose a further condition on the permit, in accordance with subsection (2).

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- (2) However, the Council may take action under subsection (1) only if the permit, as changed by the action, could have been issued in accordance with subsection 75(1).
 - (3) A holder of a permit may apply, in writing, for the variation or revocation of a condition of the permit.
 - (4) An application for a permit to which paragraph 73(a), (b) or (d) applies must be accompanied by:
 - (a) the reference number given to the permit; and
 - (b) a statement of the reasons the holder thinks the condition of the permit should be varied or revoked.
 - (5) The Council who makes a decision under subsection (1) must give each holder of the permit written notice of the decision.
 - (6) If a condition of a permit must be varied, revoked or imposed to make sure that matters or circumstances, about which the Council must be satisfied when issuing the permit, continue to apply, the Council must:
 - (a) vary or revoke the condition (whether or not an application has been made under this section); or
 - (b) impose the further condition.
 - (7) The Council must give a holder of the permit written notice of a decision under subsection (1) or (6).

81 Authorities under permits

- (1) A holder of a permit to which paragraph 73(a), (b) or (d) applies may authorise a person to take an action under the permit.
- (2) An authority may be given only if:
 - (a) it is in writing; and
 - (b) the permit has a condition that allows a holder of the permit to give an authority; and
 - (c) it is given in accordance with the condition; and
 - (d) for a permit to which paragraph 73(b) applies—paragraphs 75(1)(b) and (d) will continue to be satisfied if the authority is given; and
 - (e) for a permit to which paragraph 73(d) applies—paragraphs 75(1)(c) and (d) will continue to be satisfied if the authority is given.
- (3) A permit is taken to allow an action that is taken by an authorised person in accordance with an authority.
- (4) A holder of a permit may also take an action for which the holder has authorised another person.
- (5) A person who gives an authority under this section must, within 14 days after giving the authority, give written notice of it to the Council.

82 Transfer of a permit

- (1) The Council may transfer a permit issued by the Council.
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- (2) A permit may be transferred only if:
- (a) a holder of the permit applies in writing; and
 - (b) there are reasonable grounds for believing that the proposed transferee will meet the conditions of the permit; and
 - (c) the proposed transferee has not been convicted of, nor is subject to proceedings for, an offence under a law mentioned in section 78.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (3) The application must include the following:
- (a) the full name of the holder of the permit;
 - (b) a copy of the permit;
 - (c) the reasons for the proposed transfer;
 - (d) the full name and contact details for the proposed transferee;
 - (e) the relevant qualifications or experience of the proposed transferee;
 - (f) a declaration by the proposed transferee stating whether he or she has been convicted of, or is subject to proceedings for, an offence mentioned in section 78;
 - (g) a declaration that the information in the application is correct to the best of the knowledge of the holder of the permit and the proposed transferee.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (4) For the purposes of paragraphs (2)(c) and (3)(f), the proposed transferee is taken to have been convicted of an offence if, within 5 years before the application is made:
- (a) the proposed transferee has been convicted, whether summarily or on indictment, of the offence;
 - (b) the proposed transferee has been charged with, and found guilty of, the offence but discharged without conviction; or
 - (c) the proposed transferee has not been found guilty of the offence, but a court has taken it into account in passing sentence on the person for another offence.

Note: See section 85ZV of the *Crimes Act 1914*.

- (5) The Council must give the applicant and the proposed transferee written notice of whether the transfer of the relevant permit has been allowed.

83 Suspension or cancellation of a permit

- (1) Subsections (2) and (3) apply if:
- (a) a holder of a permit contravenes a condition of the permit; or
 - (b) there are reasonable grounds for believing that:
 - (i) a holder of a permit is likely to contravene a condition of the permit; or
 - (ii) if an application for a permit that has been issued were being considered again, the permit would not be issued.

- (2) The Council may, by written notice to a holder of a permit issued by the Council, cancel the permit.
- (3) The Council may, by written notice given to a holder of the permit, suspend the permit for the period stated in the notice.
- (4) A permit must not be suspended for more than 28 consecutive days.
- (5) A permit has no effect while it is suspended.
- (6) Suspension of a permit does not affect the period for which the permit was issued.
- (7) If a permit expires before the end of a period for which the permit is suspended, the holder of the permit is not eligible for another permit until the period of suspension is over.

84 Statement by applicant

For a permit to which paragraph 73(a) applies, the applicant must state:

- (a) whether the action will, or is likely to, adversely affect the conservation status of a protected species or a population of protected species; and
- (b) the steps to be taken to minimise the impact of the action on the native species.

Part 8—Water, sewerage and drainage

85 The Council to prevent waste and misuse of water

- (1) To prevent the waste of water supplied by the Council to premises, the Council may, by order in writing, require the owner or occupier of the premises to take immediate action to repair leaking taps, pipes or fittings located on the premises.
- (2) If the owner or occupier does not comply with an order given under subsection (1), the Council may nominate a tradesperson to comply with the order, at the expense of the owner or occupier of the premises.

86 Misuse of water

- (1) An occupier of premises that is supplied with water from the Council's water supply system must not misuse water as described in subsection (2).
- (2) The occupier is taken to misuse water for the purposes of this section if the person:
 - (a) takes any of the water away from the premises; or
 - (b) allows any other person to take any of the water away from the premises; or
 - (c) uses water contrary to an order under subsection 85(1).
- (3) A person must not wash personal items (such as clothes or vehicles) or animals at a public trough, public fountain or public standpipe.
- (4) A contravention of subsection (1) or (3) is an offence.

Note: For the penalties that apply to offences against this section, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

87 Certain water not to be used otherwise than for domestic purposes

- (1) An occupier of premises supplied with water from the Council's water supply system must not use the water for purposes other than domestic purposes, unless the Council has issued a permit in accordance with Part 7.
- (2) Subsection (1) does not apply if the water:
 - (a) is supplied under a special contract with the Council that complies with subsection (3); or
 - (b) is supplied through a water meter.
- (3) For paragraph (2)(a), if:
 - (a) the premises are subject to a water rate; and
 - (b) the water supply to the premises is measured by a water meter;the special contract must allow a specified maximum quantity of water to be consumed for domestic purposes free of any charge other than the amount of the rate, with that maximum quantity being fixed by reference to the amount of the rate.

88 Access to facilities other than mains

- (1) A person must not interfere with, or alter, a pipe on Aboriginal Land that is connected to:
 - (a) a water main; or
 - (b) a drainage main.
- (2) A person must not interfere with, or alter, a line or conduit on Aboriginal Land that is connected to an electricity main.
- (3) A contravention of subsection (1) or (2) is an offence.

Note: For the penalties that apply to offences against this section, see the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

Schedule 1—Repeals

Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2005

1 The whole of the By-laws

Repeal the By-laws.