

EXPLANATORY STATEMENT

Aboriginal Land Grant (Jervis Bay Territory) Act 1986

Aboriginal Land Grant Regulations (Jervis Bay Territory) Regulations 2016

Section 53(1) of the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for the purpose of carrying out or giving effect to the Act.

The Act provides for Aboriginal land within the Jervis Bay Territory and establishes the Wreck Bay Aboriginal Community Council (the Council) for a number of purposes including holding title to and administering the Aboriginal Land within the Jervis Bay Territory for the benefit of the local Aboriginal community.

Subsection 52A(2) of the Act provides the Council with the power to make by-laws in respect of certain matters. Subsection 52A(6) provides that the by-laws may provide that a contravention of a by-law is an offence. Subsection 52A(7) provides that the regulations may provide, in respect of an offence against the by-laws, for the imposition of:

- (a) if the offender is a natural person--a fine not exceeding 5 penalty units; or
- (b) if the offender is a corporation--a fine not exceeding 25 penalty units.

Background

These regulations provide for certain penalties in respect of offences against the *Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2016* (the By-Laws).

The By-Laws repealed and replaced the *Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2005* (the 2005 By-Laws), which were due to sunset on the 1 April 2016 in accordance with section 50 of the *Legislation Act 2003*.

These regulations repeal and replace the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*, which applied certain penalties for offences against the 2005 By-Laws.

Commencement

The Regulation commences on the day after it is registered.

Regulatory Impact Statement

The Office of Best Practice Regulation has advised that a Regulatory Impact Statement is not required.

Consultation

Consultations took place with members of the Wreck Bay Community Council's Executive Committee regarding the suitable levels of penalties.

Explanation of provisions

Regulation 1 – Name of Regulation

This regulation sets out the name of the Regulation, being the *Aboriginal Land Grant (Jervis Bay Territory) Regulation 2016* (the Regulation).

Regulation 2 – Commencement

This regulation provides that the Regulation commences the day after registration.

Regulation 3 – Authority

This regulation provides that the Authority for the Regulation is the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (the Act).

Regulation 4 – Schedules

This regulation provides that 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.

Regulation 5 – Definitions

This regulation provides that in the Regulation, the word Act means the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* and the word By-Laws means the *Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2016*.

Regulation 6 – Penalties for offences against the By-Laws

This regulation sets out the penalties for the purposes of subsection 52A(7) of the Act. Subsection 52A(7) provides that the regulation may provide, in respect of an offence against the By-Laws, for the imposition of (a) if the offender is a natural person -- a fine not exceeding 5 penalty units; or (b) if the offender is a corporation – a fine not exceeding 25 penalty units.

At the time of registration of this instrument, and pursuant to section 4AA of the Crimes Act 1914, a penalty unit has a value of \$180, indexed in accordance with the formula set out in that section.

The table in regulation 6 specifies the maximum penalties that may be imposed on a person for the various offences against the respective provisions of the By-Laws specified in the table.

Item 1 of the table in Regulation 6 provides that the maximum penalty for an offence against subsection 20(1) of the By-Laws, relating to carrying out scientific research on Aboriginal Land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 2 provides that the maximum penalty for an offence against subsection 21(1) of the By-Laws, relating to excavation, erecting a building or other structure, or carrying out works on Aboriginal Land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 3 provides that the maximum penalty for an offence against subsection 22(1) of the By-Laws, relating to damaging, defacing, obstructing, removing or interfering with a natural feature or an object, sign or structure on Aboriginal land is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 4 provides that the maximum penalty for an offence against subsection 23(1) of the By-Laws, relating to damaging, defacing, moving, possessing or interfering with heritage on Aboriginal Land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 5 provides that the maximum penalty for an offence against subsection 24(1) of the By-Laws, relating to discharging or leaving minerals, mineral waste or other solid waste or another noxious, offensive or polluting substance on Aboriginal Land in an area that is not approved or provided for that purpose by the Council, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 6 provides that the maximum penalty for an offence against subsection 24(2) of the By-Laws, relating to certain releases of liquid or gaseous material on Aboriginal Land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 7 provides that the maximum penalty for an offence against subsection 24(3) of the By-Laws, relating to leaving 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, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 8 provides that the maximum penalty for an offence against subsection 25(1) of the By-Laws, relating to introductions of pesticide, herbicide or other poisonous substances on Aboriginal Land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 9 provides that the maximum penalty for an offence against subsection 26(1) of the By-Laws, relating to the introduction, disturbance, or removal of earth materials or fossicking on Aboriginal Land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 10 provides that the maximum penalty for an offence against subsection 27(1) of the By-Laws, regarding certain activities relating to caves and karst areas on Aboriginal Land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 11 provides that the maximum penalty for an offence against subsection 28(1) of the By-Laws, relating to use or possession of certain items on Aboriginal Land, including certain hunting or fishing items, for a natural person is 5 penalty units and for a corporation is 25 penalty units.

Item 12 provides that the maximum penalty for an offence against subsection 29(1) of the By-Laws, relating to animals entering bushland on Aboriginal land, for a natural person is 5 penalty units and for a corporation is 25 penalty units.

Item 13 provides that the maximum penalty for an offence against subsection 29(5) of the By-laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 29(5) provides that a person who, in accordance with a permit or other authority under the By-Laws, takes an animal onto, or has in his or her possession an animal on the bushland must not allow the animal to be at large, or fail to remove the animal when the person ceases to live there or otherwise leaves the bushland.

Item 14 provides that the maximum penalty for an offence against subsection 29(6) of the By-laws, relating to dismembering, disemboweling or skinning an animal carcass on Aboriginal land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 15 provides that the maximum penalty for an offence against subsection 30(1) of the By-laws, relating to possession of certain plants on Aboriginal land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 16 provides that the maximum penalty for an offence against subsection 31(1) of the By-laws, relating to cultivation of certain plants on Aboriginal land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 17 provides that the maximum penalty for an offence against subsection 32(2) of the By-laws, regarding failure to comply with a direction of the Council to remove certain plants from Aboriginal land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 18 provides that the maximum penalty for an offence against subsection 33(1) of the By-laws, relating to entering Aboriginal land in contravention of a sign or notice erected by the Council, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 19 provides that the maximum penalty for an offence against subsection 34(1) of the By-laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 34(1) of the By-Laws provides that a person must not capture an image in or of Aboriginal Land or make a sound recording on Aboriginal Land in contravention of a sign or notice erected by the Council.

Item 20 provides that the maximum penalty for an offence against subsection 34(6) of the By-laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 34(6) of the By-Laws provide that a person who is given a direction to surrender certain images or sound recordings captured in contravention of subsection 34(1) of the By-Laws must comply with the direction.

Item 21 provides that the maximum penalty for an offence against subsection 35(2) of the By-laws, relating to failure to comply with certain safety directions, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 22 provides that the maximum penalty for an offence against subsection 36(1) of the By-laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 36(1) of the By-Laws provides that a person must not carry out a recreational activity on Aboriginal Land that is hazardous to individuals; or is capable of causing damage to the environment; otherwise than in an area provided for the activity under a determination made by the Council.

Item 23 provides that the maximum penalty for an offence against subsection 37(1) of the By-laws, relating to certain public nuisance activities on Aboriginal land, is 5 penalty units for a natural person.

Item 24 provides that the maximum penalty for an offence against subsection 38(1) of the By-laws, relating to camping on Aboriginal land without permission, is 5 penalty units for a natural person.

Item 25 provides that the maximum penalty for an offence against subsection 38(3) of the By-laws, relating to camping on Aboriginal land in a place other than a camping area, is 5 penalty units for a natural person.

Item 26 provides that the maximum penalty for an offence against subsection 38(5) of the By-Laws is 5 penalty units for a natural person. Subsection 38(5) of the By-Laws provides that a person must not camp on Aboriginal Land using a tent, mobile home, campervan, caravan or other 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.

Item 27 provides that the maximum penalty for an offence against subsection 38(7) of the By-Laws, regarding failure to comply with a notice to vacate a camp, is 5 penalty units for a natural person.

Item 28 provides that the maximum penalty for an offence against subsection 39(2) of the By-Laws is 5 penalty units for a natural person. Subsection 39(2) of the By-Laws requires a person who is given a direction by a warden to camp at a specified camping area or site to camp only in that area or site.

Items 29 to 34 provide for a maximum penalty of 5 penalty units for a natural person for certain offences under section 40 of the By-Laws relating to lighting, maintaining and using fire on Aboriginal land.

Item 35 provides that the maximum penalty for an offence against subsection 42(1) of the By-Laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 42(1) prohibits a person from erecting or displaying a commemorative marker or engaging on commemorative activities associated with a commemorative marker except in areas designated by the Council as burial areas.

Item 36 provides that the maximum penalty for an offence against subsection 43(1) of the By-Laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 43(1) provides that a person must not fish on Aboriginal Land in the waters of Mary Creek or Flatrock Creek.

Item 37 provides that the maximum penalty for an offence against subsection 44(1) of the By-Laws, relating to carrying out commercial activities on Aboriginal land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 38 provides that the maximum penalty for an offence against subsection 45(1) of the By-Laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 45(1) provides that a person must not use a captured image of Aboriginal Land or a sound recording made on Aboriginal Land to derive commercial gain.

Item 39 provides that the maximum penalty for an offence against subsection 46(1) of the By-Laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 46(1) of the By-Laws provides that a person must not, on Aboriginal Land, collect money or goods as gifts from members of the public.

Item 40 provides that the maximum penalty for an offence against subsection 47(1) of the By-Laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 47(1) provides that a person must not display or erect on Aboriginal Land a sign that is likely to be mistaken for a sign erected under the By-Laws.

Item 41 provides that the maximum penalty for an offence against subsection 47(2) of the By-Laws is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 47(2) provides that a person must not display or erect on Aboriginal Land a flag, banner, promotion device or image. This is subject to certain specified exceptions in subsection 47(3) of the By-Laws.

Item 42 provides that the maximum penalty for an offence against 48(1) of the By-Laws, relating to vehicle use of roads and tracks, is 5 penalty units for a natural person.

Item 43 provides that the maximum penalty for an offence against subsection 49(1) of the By-Laws, relating to speed limits and one-way traffic, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Items 44 and 45 provide that the maximum penalty for an offence against subsection 50(1) or 50(2) of the By-Laws, relating to parking, stopping and using vehicles, is 5 penalty units for a natural person.

Items 46 and 47 provide that the maximum penalty for an offence against subsection 53(1) or 53(2) of the By-Laws, relating to vehicles on Aboriginal land stopping as required, is 5 penalty units for a natural person.

Item 48 provides that the maximum penalty for an offence against subsection 54(1) of the By-Laws, relating to walking or riding on roads or tracks, is 5 penalty units for a natural person.

Item 49 provides that the maximum penalty for an offence against subsection 55(1) of the By-Laws, relating to use of aircraft, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 50 provides that the maximum penalty for an offence against subsection 56(1) of the By-Laws, relating to producing permits for inspection by wardens, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 51 provides that the maximum penalty for an offence against subsection 57(2) of the By-Laws, relating to wardens removing offenders, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 52 provides that the maximum penalty for an offence against subsection 58(1) of the By-Laws, in relation to registration of dogs, is 1 penalty unit for a natural person and 5 penalty units for a corporation.

Items 53 to 56 provides that the maximum penalty for an offence against subsections 58(2), (4), (7) and (8) (respectively) of the By-Laws, relating to restrictions on animals, is 1 penalty unit for a natural person.

Item 57 provides that the maximum penalty for an offence against subsection 61(1) of the By-Laws is, relating to approval for building and construction work, 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 58 provides that the maximum penalty for an offence against subsection 62(1) of the By-Laws, relating to approval for operating a business or commercial activity on Aboriginal land, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 59 provides that the maximum penalty for an offence against subsection 63(2) of the By-Laws, relating to paying fees for entrance to Aboriginal land, is 5 penalty units for a natural person.

Items 60 to 65 provides that the maximum penalty for the various offences in section 67 of the By-Laws, relating to impersonating a warden, is 5 penalty units for a natural person.

Items 66 and 67 provides that the maximum penalty for an offence against subsection 68(1) or 68(2) (respectively) of the By-Laws, relating to offences against wardens, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Items 68 and 69 provides that the maximum penalty for an offence against subsections 69(3) or 69(5) of the By-Laws, relating to disclosing certain information or documents to a warden when asked, is 5 penalty units for a natural person.

Item 70 provides that the maximum penalty for an offence against subsection 79(1) of the By-Laws, relating to contravention of permit conditions, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Items 71 and 72 provides that the maximum penalty for an offence against subsection 86(1) or 86(3) (respectively) of the By-Laws, relating to misuse of water, is 5 penalty units for a natural person and 25 penalty units for a corporation.

Item 73 provides that the maximum penalty for an offence against subsection 88(1) of the By-Laws is 5 penalty units for a natural person and 25 penalty units for a corporation.

Subsection 88(1) provides that a person must not interfere with, or alter, a pipe on Aboriginal Land that is connected to a water main or drainage main.

Item 74 provides that the maximum penalty for an offence against subsection 88(2) is 5 penalty units for a natural person and 25 penalty units for a corporation. Subsection 88(2) of the By-Laws prohibits a person from interfering with or altering a line or conduit on Aboriginal Land that is connected to an electricity main.

Schedule 1 – Repeals

Item 1 of Schedule 1 repeals the whole of the *Aboriginal Land Grant (Jervis Bay Territory) Regulations 2006*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aboriginal Land Grant Regulations (Jervis Bay Territory) Regulations 2016

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill/Disallowable Legislative Instrument

The *Aboriginal Land Grant (Jervis Bay Territory) Act 1986* (the Act) provides for Aboriginal land within the Jervis Bay Territory. The Act establishes the Wreck Bay Aboriginal Community Council (the Council) for a number of purposes including holding title to and administering Aboriginal Land within the Jervis Bay Territory.

Subsection 52A(2) of the Act provides the Council with the power to make by-laws in respect of certain matters. Subsection 52A(6) provides that the by-laws may provide that a contravention of a by-law is an offence. Subsection 52A(7) provides that the regulations may provide, in respect of an offence against the by-laws, for the imposition of:

- (a) if the offender is a natural person--a fine not exceeding 5 penalty units; or
- (b) If the offender is a corporation--a fine not exceeding 25 penalty units.

These Regulations provide for certain penalties in respect of offences against the *Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2016*.

Human rights implications

This Bill/Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Bill/Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.