

Public consultation on Victoria's Land (Regulated Watercourse Land) Regulations Submission from the Victorian National Parks Association

19/04/2021

Thank you for inviting public engagement into Victoria's new Land (Regulated Watercourse Land) Regulations.

The current discussion paper and regulations lack precision in definitions and the legislative amendments have resulted in a blunt and largely blind instrument which is in need of a significantly more detailed assessment and analysis before proceeding.

Riparian land plays a vital role in influencing river health, water quality and biodiversity across landscapes. Intact native riparian land and vegetation maintains river bank structure, controls erosion, filters nutrients and sediments from water, buffers adjoining land uses, and provides shade and temperate control to freshwater habitats. Riparian lands also form vital biolinks and habitat refuges. Riparian zones are important ecosystems in their own right. Consequently, while riparian zones may only represent a small proportion of the landscape, they often have disproportionately high biodiversity values and support distinct ecological communities. In modified, degraded and fragmented landscapes, riparian land is of very high conservation importance because it is often all that is left as natural habitat corridors for flora and fauna. Much of this important habitat is already in poor condition across Victoria.

The VNPA have long highlighted the impacts of cattle on river frontages, but we also acknowledge the stewardship of many adjoining landholders, especially those reflected in the uptake of riparian licences. The VNPA actively support ecologically appropriate well planned and safe access to nature – rivers and waterways are key ecotones and are attractors for wildlife and people alike.

There is a significant danger that the reform of Land (Regulated Watercourse Land) Regulations and associated landholder concerns around access to licensed watercourses will undermine riparian land restoration initiatives to the detriment of the environment and broader community benefits.

The VNPA does not see the attraction of 'camping with cows', which is essentially what the regulations propose, especially where it could lead to conflict with adjoining landholders, impact on sensitive ecological areas or simply be unsafe.

As well as some detailed comments on specific regulations we make the following key recommendations:

- **Camping access should be the exception and not the norm, should be properly planned and only occur in areas which have had a proper boundary survey and assessment for ecological impact.**
- **The VNPA supports that camping and/or public access should be prohibited on areas with riparian licences or areas subject to environmental restoration works and or of high conservation value This should be clearly articulated in the regulations and supported by a specific funding program**
- **The VNPA also supports the expansion and continued roll out of riparian licences and incentives for landholders to work on Crown land water frontages, such as that undertaken by the Regional Riparian Action plan, which was a very successful program, which has recently been cut.**

- **Before regulations are finalised, updated and refined figures relating to current uptake of riparian and conservation licences should be made available at both state wide and local spatial scales.**
- **Before new regulated watercourse land regulations are implemented, there should be a full state-wide assessment of the ecological values, neighbouring land uses, and accessibility of riparian land across Victoria and a proper consideration of the impacts of the regulatory changes on adjacent land owners and the natural environment.**
- **Before areas identified for camping access are allowed or regulations are brought into force, there should be a systematic state-wide review (such as by the Victorian Environmental Assessment Council or equivalent) of CWF conservation and restoration priorities. Camping should only occur in areas where a detailed assessment and survey of boundaries has been undertaken.**

Established in 1952, the VNPA is Victoria's leading community-based nature conservation organisation. We are an independent, non-profit, membership-based group, which exists to support better protection and management of Victoria's biodiversity and natural heritage. We also run extensive programs which promote the enjoyment and care of Victoria's natural environment; these include bushwalking and outdoor activity programs, as well as citizen science programs.

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1.0 Context and importance of Victoria's riparian land

Much of Victoria's landscape is densely woven with rivers and streams – the greatest concentration of waterways on Australia's mainland – and includes many heritage rivers, high-value wetlands and floodplains and important bird and biodiversity areas.

Victoria's freshwater ecosystems have great diversity and complexity and support more than 100 waterbird species, over 50 freshwater fish, 38 frogs, 40 crayfish and a large number of freshwater invertebrates. Some groups of freshwater organisms – crayfish, galaxiid fish and stygofauna (groundwater-inhabiting organisms) – have high levels of endemism in Victoria. Further, many of Victoria's frogs, freshwater fish and freshwater crayfish are threatened, as well as the recent listing of our State's most iconic riparian specialist species, the Platypus¹. Additionally, more than 800 vascular plants are associated with Victoria's wetlands.

Riparian land is subject to many threats, including uncontrolled stock access, weeds, erosion, firewood collection, recreational pressure and urbanisation. The most recent assessment of stream condition in Victoria found that 23 per cent of riparian land in Victoria was in excellent or good condition, 43 per cent was in moderate condition, and 32 per cent was in poor or very poor condition.²

Between 25% to 28% of Victorian river lengths have a substantial to severely modified riparian condition.³ Results of the SoE Report 2013 highlighted that 21 of 29 river basins had less than 50% of assessed river length with riparian vegetation in good condition.

In modified, degraded and fragmented landscapes, riparian land is of very high conservation importance because it is often all that is left as natural habitat corridors for flora and fauna. In such landscapes the conservation of rivers, streams and floodplains is highly dependent on restoration activities (such as restoring natural flow regimes and riparian vegetation) as well as addressing major threats such as damage by cattle and vehicles, pollution, and invasion by weeds, introduced fish and feral animals.

On World Rivers Day 2011, a report was launched titled ***Riverside rescue: solutions for riparian land in Victoria*** which was compiled by scientific experts from Monash University and commissioned by the Victorian National Parks Association. The report draws attention to significant threats from cattle such as trampling over valuable riverside habitats, fouling waterways, and potential human health implications.

Riverside Rescue highlighted the parlous condition of Victoria's rivers and streams and identifies policy solutions that would help repair rivers and improve water quality across the state. <https://vnpa.org.au/publications/riverside-rescue/>

The report found that there is a massive amount of research in this area from across the world. It finds that well-managed riparian land has a range of benefits for:

- water quality
- aquatic biodiversity
- terrestrial biodiversity
- resistance and resilience of plant and animal populations

¹ Flora and Fauna Guarantee nomination no. 884 – Scientific Advisory Committee final recommendation on a nomination for listing *Ornithorhynchus anatinus* https://www.environment.vic.gov.au/data/assets/pdf_file/0032/496346/03-FINAL-Platypus-FFR.pdf

² DEPI, 2013. Index of stream condition: The third benchmark of Victorian river condition. Department of Environment and Primary Industries: East Melbourne

³ Norris RH, Prosser I, Young B, Liston P, Bauer N, Davies N, Dyer F, Linke S, Thoms M, 2001, 'The assessment of river conditions (ARC): An audit of the ecological condition of Australian rivers', Cooperative Research Centre for Freshwater Ecology, University of Canberra; Commonwealth Scientific and Industrial Research Organisation, Division of Land and Water, Canberra

- conservation of threatened species.

Riparian land plays a vital role in influencing river health, water quality and biodiversity across landscapes. It filters nutrients and sediments from water, buffers adjoining land uses, and provides shade, habitat and breeding for native fauna. Intact native riparian land also offers immense benefits by controlling erosion and maintaining river bank structure. On top of all that, good quality riparian land looks good and adds value to the landscape and for the community.

The Monash University report identified serious human health impacts from giving stock access to rivers and streams that must be addressed as a priority. It found that:

- Cattle faeces contain pathogens (infectious agents or germs) that can be transmitted to humans.
- These pathogens can survive long periods in water.
- Transmission to humans can occur directly by ingesting contaminated water.
- Allowing cattle uncontrolled access to water has multiple impacts that increase the likelihood of pathogens entering the water supply.
- Nutrients from cows increase the potential for toxic algal blooms.
- Uncontrolled water access by cattle leads to increased costs of water treatment for human consumption, due to an increased risk of pathogen contamination and an increase in suspended solids.

Some of these potential Health impacts from cattle grazing were later confirmed by an independent review commissioned by the Department of Health Victoria.⁴

2.0 Scope of Riparian Land & Land (Regulated Watercourse Land) Regulations

The 2018 Andrews Government Election Commitment was to "guarantee access to fishing and camping on Crown land that has grazing licenses and river frontage"*(emphasis added)*. The proposed regulations broaden this to include licensed and unlicensed Crown land adjoining watercourses. This is defined in the Land Act as any river, creek, stream, watercourse, lake, lagoon, swamp or marsh.

We note that camping will remain prohibited on licensed Crown land water frontages to lakes, lagoons, marshes and swamps (regulation 35), but they remain in place for rivers, streams, creeks and watercourses, which in our view is a significant broadening of the strict intent of the election commitment. There are approximately 208 rivers in Victoria and many hundreds of creeks, streams and watercourses. If the intent of the policy was to improve access to fishing, rivers may have been a reasonable starting point, rather than now all CWF rivers, streams, creeks and watercourses, many of which would be ephemeral, some with no actual fish useful for recreational anglers.

The current discussion paper and regulations lack precision in definitions and the legislative amendments have resulted in a blunt and largely blind instrument which is in need of a significantly more detailed assessment and analysis. We note that while the legislation has passed, the key management tool will be via the regulations, which do not appear to be proceeding through a normal regulatory impact assessment process.

Approximately 30,000 kilometres (18 per cent) of Victoria's 170,000 kilometres of water frontage is Crown land. Of these frontages, 8,000 kilometres are within large public land blocks such as parks (which allow camping if specified in a management plan) and state forest (allows camping, subject to regulations). Of the 22,000 kilometres in areas outside existing national parks and state forest, Crown land widths vary

⁴ Billington, K., Deere, D., Ryan, U., Stevens, D., Davison, A., (2011) Public health issues associated with stock accessing waterways upstream of drinking water off-takes. Report. Document produced for Department of Health Victoria by Water Futures Pty Ltd.

considerably, however, most of CWF is between 20 to 30 metres wide. A further 5,000 kilometres is a mix of unlicensed Crown land, land managed by a Committee of Management, and land managed by Parks Victoria and by local councils.

About 17,000 kilometres of waterway frontage is largely managed by the adjacent landholder via approx. 10,000 agricultural or riparian licences, issued by DELWP.

Under existing rules, DELWP is the default CWF land manager and licensing is the main tool for the management of these lands. A licence gives the licence holder the right to use the land for a particular purpose but does not give them exclusive occupation of the land. Provided the uses are compatible, licensed and unlicensed Crown land water frontages are potentially available for multiple uses, and the public retains the right to enter and remain on the land for specified passive recreational purposes.

Currently DELWP may issue a licence for a CWF to an owner or occupier of the adjoining private land for grazing, cropping or riparian management. The conditions listed on the licence stipulate the responsibilities of the licensee and DELWP and the conditions of access. Grazing and cropping licences are largely peppercorn rents (average \$80 for five years).

Crown frontage grazing licences can be converted to riparian management licences (RMLs), which were introduced in 2010. Their focus is on protection of the riparian environment, rather than production.

A licence can now be issued or amended to recognise that all or part of the frontage is being managed to protect and improve the riparian environment (e.g. fenced out and supporting native vegetation). These licences are managed by Catchment Authorities and have been supported by various legal land management or work agreements, and are supported by funding.

The bulk of CWF are still licenced for agricultural purposes. Data from DELWP's 2018 technical report suggested around 15% in 2018 were riparian licences,⁵ but this has likely increased in following years due to the successful roll out of the Regional Riparian Action Plan, which targeted both crown and privately owned river frontages.

Table 1: Number and area (hectares) of water frontage licences as at July 2018. (Source: DELWP Portal database)

CROWN WATER FRONTAGE LICENCES	NO.		AREA GRAZED	AREA CROPPED	NON-PRODUCTIVE OR CONSERVATION	TOTAL AREA	
Agricultural – primary productive*	8 818	86%	36 855	360	10 745	47992	83%
Agricultural – non-productive**	152	1%	135	0	547	682	1%
Riparian management licence	1 112	11%	2 065	7	6 362	8439	15%
Conservation licence - WF	123	1%	0	0	749	749	1%
TOTAL			67%	1%	32%		
	10 205		39 055	367	18 403	57 862	

* Includes 'residential' (1), 'recreational' (1) and box-ironbark (2)

** Non-productive land licence is issued for \$25. This includes rocky outcrops, saline patches, water bodies and farm infrastructure.

⁵ DELWP (2019) Improving the Crown water frontage licensing system Technical scoping report.

A key State government program over the last five years has been the **Regional Riparian Action Plan**. It has been successful in working with landholders to manage these areas and has been delivering tangible improvement to public and privately-owned riversides.

The current Government allocated \$10 million in 2015/16 and a further \$30 million from 2016/17 to 2019/20 to implement the plan. This funding was for on-ground riparian works such as stock management fencing, revegetation, weed management and provision of infrastructure to support off-stream stock watering.

Key outcomes⁶ achieved between 2015-2020 include the protection and improvement of:

- nearly 3,500 kilometres of riparian land (140% of the five-year action plan target)
- over 53,000 hectares of riparian land (190% of the five-year target)

Assuming that 3,500 kilometres of works undertaken as part of the Regional Riparian Action Plan plus a number of licences implemented between 2010 – 2015, a rough estimate of 3,000- 4,000 kilometres (17 -23%) of the 17,000 kilometres of CWF is subject to riparian licences. These figures should be properly presented and refined by DELWP. The remaining approx. 13,000 -14,000 kilometres of river frontage should be the explicit key target of the Land (Regulated Watercourse Land) Regulations and this should be clear in the regulations and associated documentation, ideally supported by appropriate adjacent landholder stewardship programs.

2.1 Role of Riparian Licences and Water Way Restoration

The positive impacts of riparian restoration are reflected by the Riparian Intervention Monitoring Program (RIMP) which is a state-wide, long-term program developed by DELWP that aims to assess the impact and effectiveness of riparian management. RIMP examines three common management interventions used to improve riparian vegetation condition or to manage bank erosion.

1. weed control
2. replanting of native vegetation
3. fencing to restrict livestock access

ARI is working with Catchment Management Authorities (CMAs), landholders and botanists to establish monitoring sites on riparian land to assess changes in vegetation condition and bank stability attributes in response to these interventions. Sites are being monitored before, and several times after, interventions are undertaken.

The initial results from a fairly small number of sites are promising. They show that where works were undertaken the following significant changes in vegetation condition attributes were found:⁷

- total native vegetation cover increased ~2-fold;
- native species richness increased ~1.5-fold;
- planted and natural woody recruits increased ~9-fold;
- woody weed abundance decreased to almost zero at most sites;
- bare ground cover did not increase as found in unmanaged sites.

The positive outcomes of riparian restorations could help address a number of threatening processes listed under the *Flora and Fauna Guarantee Act 1988* including:

- Alteration to the natural flow regimes of rivers and streams.

⁶ <https://www.water.vic.gov.au/waterways-and-catchments/riparian-land/riparian-land/how-is-riparian-land-managed/regional-riparian-action-plan>

⁷ <https://www.ari.vic.gov.au/research/rivers-and-estuaries/riparian-intervention-monitoring-program>

- Alteration to the natural temperature regimes of rivers and streams.
- Degradation of native riparian vegetation along Victorian rivers and streams.
- Habitat fragmentation as a threatening process for fauna in Victoria.
- Increase in sediment input into Victorian rivers and streams due to human activities.
- Removal of wood debris from Victorian streams.
- Soil erosion and vegetation damage and disturbance in the alpine regions of Victoria caused by cattle grazing.
- Wetland loss and degradation as a result of change in water regime, dredging, draining, filling and grazing.

Even with these outstanding results, the Regional Riparian Action plan is no longer explicitly funded as an initiative and has been cut in 2019/2020 state budget. We understand that CMAs will continue to undertake riparian works on priority waterways with on-ground waterway management funding from EC5, though the amount of funding is significantly less and not explicitly tied to riparian land restoration. E.g riparian land will likely remain part of the river health programs (on-ground work), but will be only one of the priorities.

There is a significant danger that the reform of Land (Regulated Watercourse Land) Regulations and associated landholder concerns around access to licensed water courses will undermine riparian land restoration initiatives to the detriment of the environment and broader community benefits.

A continuation of the Regional Riparian Action Plan will support jobs and create positive ecological outcomes at a time when Victoria's communities, economy and environment needs it most. Nine regional Victorian Catchment Management Authorities (CMAs) have already worked with over 1,000 landholders and farmers and about 200 Traditional Owners, Landcare, angling, school and other community groups.

Consideration should be given for a refreshed policy (such as a continuation of the successful Regional Riparian Action Plan) to encourage the uptake of riparian licences to better protect the natural values of riparian land and to support land owners who may wish to undertake environmental restoration activities along riparian land adjoining their property.

The uptake of riparian licences may be a positive optional avenue for land holders and conservation groups who would like to restore river frontages adjoining their properties and who may have concerns about the impacts of public access and camping. It is disappointing that there is no longer dedicated funding for such a program.

There appears to be agreement between competing stakeholders that camping and public access should be excluded from areas under Riparian Management Licences. As quoted in the Weekly Times, October 14, 2020:

"Both Mr Scullin (VR Fish) and Dr McKinnon (farmer) did agree camping should be excluded from areas where landholders had converted their grazing license into a riparian management licence, under agreements with local catchment management authorities."

<https://www.weeklytimesnow.com.au/news/farmers-battle-to-stop-camping-on-water-frontages-anglers-fight-back/news-story/965f5db3b8e8f2563628458bd853044d>

Recommendations:

- **The VNPA supports that camping and/or public access should be prohibited on areas with riparian licences or areas subject to environmental restoration works and or of high conservation value This should be clearly articulated in the regulations and supported by a specific funding program**

- **The VNPA also supports the expansion and continued roll out of riparian licences and incentives for landholders to work on Crown land water frontages, such as that undertaken by the Regional Riparian Action plan, which was a very successful program, which has recently been cut.**
- **Before regulations are finalised, updated and refined figures relating to current uptake of riparian and conservation licences should be made available at both state wide and local spatial scales.**

3.0 Camping with Cows, boundaries, management and enforcement

Crown land water frontage management is made more complex because much of the CWF has not been formally surveyed and the boundaries are therefore uncertain.⁸ Adding to the confusion is the dynamic nature of waterways, sometimes changing their course during floods or gradually through erosion. As a result, the relationship between waterways and the CWF may have changed. This will contribute a great deal to conflict between adjacent CWF landholders and enforcement of the new rules. It will be extremely difficult if not impossible to enforce.

While the regulations limit camping and apply other restrictions at various distances (e.g. no disposal of human faeces within 50 meters of watercourses (reg 32), no camping or soap in strips less than 20 meters from watercourses), considering most CWF are only a “chain” and 20 or 30 meters wide, it seems difficult to see where the rules will and will not apply without detailed spatial analyses and clear signage. Without proper boundary survey, the regulations will be largely unenforceable.

Likewise, the definition of “watercourse” is used in the regulations, but the sub categories of various watercourses are excluded, which will further add to confusion in interpretation. For example, the proposed regulations will apply to certain Crown land adjoining all watercourses (any river, creek, stream, watercourse, lake, lagoon, swamp or marsh).

The VNPA have long highlighted the impacts of cattle on river frontages, but we also acknowledge the stewardship of many adjoining landholders, especially those reflected in the uptake of riparian licences. The VNPA actively support ecologically appropriate well planned and safe access to nature - rivers and waterways are key ecotones and are attractors for wildlife and people alike.

We don’t see the attraction of ‘camping with cows’, which is essentially what the regulations propose, especially where it could lead to conflict with adjoining landholders, impact on sensitive ecological areas or simply be unsafe.

Without proper regulation and well-informed planning ‘open camping access’ has the potential to result in an intensification or introduction of threats and risks directly associated with camping activity including for example:

- Increased risk of wildfires caused by campfires
- Increased pollution and litter along riparian land and adjoining private land
- Damage to riparian vegetation and habitats due to fire wood collection and vehicles
- Public health and safety risks arising due to conflicts between people and livestock
- Conflicts between pet dogs and livestock
- Social issues and conflicts between campers and local landholders
- Biosecurity risks both agricultural and ecological.

⁸ The Public Land Consultancy, 2007. Riparian Crown land — A report for Melbourne Water. The Public Land Consultancy: Melbourne

The introduction of camping into these lands also has the potential to result in an intensification or introduction of threats associated with a range of other associated recreational activities such as:

- Damage to riparian vegetation and habitats from four-wheel driving and trail-bike riding
- Damage to riparian vegetation, habitats and river banks from gold prospecting and fossicking
- Increased risks of accidental injury due to increased hunting activity (whether legal or not) in agricultural landscapes
- Death or injury of campers or wildlife or livestock due to the increased likelihood of simultaneous mixed use.

The VNPA support well planned an appropriate camping that avoids sensitive and significant habitats, and that is also practical and avoids conflict. **Camping access should be the exception and not the norm, and only occur in areas which have had a proper boundary survey and assessment for ecological impact.**

Clause 16 of the Land (Regulated Watercourse Land) Regulations, acknowledges the need to protect natural values and allowing the revegetation or restoration of land, but it provides no mechanism, definition or information about identifying and prioritising high conservation value riparian land or what “protecting natural values’ actually entails. Without this information, it is essentially a blunt and blind instrument and will likely lead to perverse outcomes.

Clause 16 Areas where access is restricted or prohibited

(1) The regulated land manager by determination may set aside an area of regulated land—

- (a) as an area to which access for recreational use is restricted; or*
- (b) as an area to which access for recreational use is prohibited.*

(2) The regulated land manager must not make a determination under subregulation (1) unless the regulated land manager considers the determination is necessary for the purposes of—

- (a) managing the recreational use of the regulated land to—*
 - (i) preserve or protect natural values of the regulated land; or*
 - (ii) protect or allow revegetation or restoration of the regulated land; or*
 - (iii) preserve or protect cultural values of the regulated land; or*
 - (iv) manage or prevent the likely occurrence of a biosecurity risk on the regulated land; or*
- (b) public safety on the regulated land.*

Before new regulated watercourse land regulations are implemented, there should be a full state-wide assessment of the ecological values, neighbouring land uses, and accessibility of riparian land across Victoria and a proper consideration of the impacts of the regulatory changes on land owners and the natural environment.

Before areas identified for camping access are allowed or regulations are brought into force, there should be a systematic state-wide review (such as by the Victorian Environmental Assessment Council or equivalent) of CWF conservation and restoration priorities as well as a detailed assessment of boundary alignments. A full survey of many thousands of kilometres of CWF would be complex, expensive and take many years and is largely unviable. Areas proposed for campaign access should instead be targeted, and boundary surveys undertaken between crown and private land for those designated sites. Without a boundary survey the regulation will largely be impossible to enforce.

Some of the other factors that could be assessed include:

- ecological values including the presence of threatened species and communities
- identifying and defining ‘sensitive natural areas’ to assist with decision making in regards to restricting access

- opportunities for riparian restoration and strategic habitat corridors
- priority landscapes where riparian licences could be encouraged
- clarification around what constitutes a river versus a creek, stream or other waterway
- locations expected to attract campers and how these locations align with ecological values and adjoining land uses

Social considerations

- appropriateness of enforcement and avenues of recourse for adjacent landholders
- a strategic review of appropriate camping sites
- spatial analysis and appropriateness of accessibility
- adjoining land uses
- appropriateness of other recreational activities likely to be associated with camping

Recommendations:

- **Camping access should be the exception and not the norm, should be properly planned and only occur in areas which have had a proper boundary survey and assessment for ecological impact.**
- **Before new regulated watercourse land regulations are implemented, there should be a full state-wide assessment of the ecological values, neighbouring land uses, and accessibility of riparian land across Victoria and a proper consideration of the impacts of the regulatory changes on adjacent land owners and the natural environment.**
- **Before areas identified for camping access are allowed or regulations are brought into force, there should be a systematic state-wide review (such as by the Victorian Environmental Assessment Council or equivalent) of CWF conservation and restoration priorities as well as a detailed assessment of boundary alignments.**
