



DENR 70/07/0243

## Commercial tour operator licensing and permitting

### Policy

#### Description:

A policy for the licensing of commercial tours in park and reserves, and the permitting of commercial marine mammal interactions.

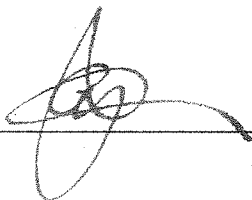
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## **1. POLICY STATEMENT**

### **1.1 Statement**

To facilitate sustainable tourism in parks and reserves, commercial tour operators will be licensed. To facilitate sustainable, commercial marine mammal interaction, businesses will be permitted as required.

### **1.2 Scope**

This policy applies to:

- tour activities conducted in parks or reserves for fee or reward
- marine mammal interactions conducted for fee or reward that require an approval under the *National Parks and Wildlife (Protected Animals – Marine Mammals) Regulations 2010* (NPWMM Regulations).

This policy is not intended to affect:

- the authority of co-management boards to issue licences
- any native title rights (Where an Indigenous Land Use Agreement (ILUA) exists, it will take precedence over this policy).

### **1.3 Policy principles**

This policy is based on the following principles:

- commercial tourism should be carefully managed within sustainable limits
- commercial tourism should enhance visitor understanding and appreciation of conservation values through quality visitor experiences
- a fair, equitable and consistent approach should apply to the assessment and management of licences and permits
- business development opportunities should be encouraged when compatible with conservation values
- marine mammal tourism should be managed in accordance with national guidelines.

## **2. OBJECTIVES**

This policy contributes to the following objectives:

- manage and minimise the impacts from commercial tourism on park, reserves, and marine mammals
- enable operators to comply with legislative requirements through an administratively efficient process
- manage risks to Government arising from commercial tourism operations
- encourage industry self-regulation
- build and maintain co-operative partnerships between industry and government that contributes to the sustainable management of park, reserves and the nature-based tourism industry.

### 3. BACKGROUND

South Australia's parks and reserves are a critical asset for the State's tourism industry with over 150 commercial tour operators operating in parks and reserves across the State. A number of commercial tour operators also offer opportunities for people to observe and interact with marine mammals in the State's coastal waters. Commercial tour operators provide unique opportunities for visitors, help support conservation efforts and contribute to the State's economy. Operators work in partnership with government to ensure sustainable use through a licensing and permitting system and industry self management.

This policy supports the requirement for tour operator licensing in the *National Parks and Wildlife (National Parks) Regulations 2001* (NPW Regulations) and *Wilderness Protection Regulations 2006*. It also supports the proposed NPWMM Regulations and is consistent with the *Australian National Guidelines for Whale and Dolphin Watching 2005*. The NPWMM Regulations also apply to interactions with other marine mammals including seals and sea-lions and support the *National Strategy to Address Interactions between Humans and Seals*.

### 4. POLICY APPLICATION

#### 4.1 When is a Commercial Tour Operator Licence required?

A Commercial Tour Operator Licence (licence) provides permission for a business to conduct 'tours' in a 'reserve' for 'fee or reward' (see definitions).

Businesses do not require a licence if they are:

- offering a public transport service, charter bus service or taxi service (and do not market their business as a tour)
- a school
- only traversing a reserve using a 'Public Access Route' or a road specified in Appendix 1 and not deviating from this
- acting purely as an agent selling tours on behalf of a tour operator.

#### 4.2 When is a Commercial Marine Mammal Interaction Permit required?

A Commercial Marine Mammal Interaction Permit (permit) provides permission for a business to undertake marine mammal interactions for 'fee or reward' (see definitions) that:

- are conducted within a prescribed area (see definitions) or
- require an approval under another provision of the NPWMM Regulations.

A permit is not required when licence holders use accredited guides to undertake beach tours at Seal Bay Conservation Park in accordance with their licence conditions.

#### 4.3 Non-competitive licences and permits

Most commercial tour operators are licensed or permitted through a non-competitive allocation process. There is no restriction on the number of non-competitively issued licences or permits except during a trial period or transition period.

#### **4.3.1 Trial/Review periods**

In some circumstances, unrestricted commercial tourism activity may present unacceptable risks. In this case, activities may be licensed or permitted for a Trial Period (new activities) or Review Period (existing activities) of up to two years. A carrying capacity (see definitions) will be determined during the trial or review period.

During a trial or review period, a limit will be set on the number of licences or permits to be made available. When activities are already occurring, licences or permits will be limited to operators holding a licence or permit at the commencement of the review period. Licences or permits for new activities will be non-competitively allocated up to the limit.

At the conclusion of the trial or review period the activity will either:

- be allowed through non-competitive allocation of licences or permits (where risks are acceptable)
- be allowed through competitive allocation of licences or permits (where risks can be managed by restricting the level of activity)
- not be licensed or permitted (where risks are unacceptable).

#### **4.3.2 Transition periods**

If a carrying capacity has been determined it may be necessary to limit the number of licences or permits available.

To transition from a non-competitive allocation process to a competitive allocation process, a transition period may be applied. This seeks to minimise the impact on existing businesses.

During a transition period licences or permits will be generally restricted to existing licence or permit holders. At the conclusion of a transition period, licences or permits will be offered through competitive allocation.

#### **4.4 Competitively allocated licences and permits**

Some tourism businesses may be licensed or permitted through a competitive allocation process. This may occur when unrestricted commercial tourism activity presents an unacceptable risk to a site or species and:

- a site carrying capacity (see definitions) has been defined and the demand from industry exceeds or is likely to exceed that carrying capacity, or
- legislation, park management plans or policies specify the establishment of limits to commercial tourism and the demand from industry exceeds or is likely to exceed those limits.

#### **4.5 Application**

An application for a licence or permit can be made at any time or may be invited through an expression of interest process. Applications must be in writing, in the approved format and be accompanied by payment of the relevant fee. Applications must also:

- provide sufficient information on the intended activities and locations (including an assessment of risks when required)

- provide evidence of approved accreditation where required
- demonstrate compliance with the *Environment Protection and Biodiversity Conservation Act 1999 (cwlth)*
- include a declaration of any offences committed including convictions and any current proceedings under relevant Commonwealth, State or Territory law
- demonstrate compliance with transport safety regulations relevant to the proposed activities
- be made by a duly authorised representative of the applicant, who must also provide a declaration of the accuracy of the information provided.

#### **4.6 Assessment and approval**

Applicants for licences or permits which are issued through a non-competitive allocation are required to meet all standard application requirements.

Assessment of licences or permits offered through a competitive allocation process will be undertaken by a panel against specific selection criteria relevant to the nature of the proposed activities.

The decision to approve a licence rests with the relevant authority. The authority to approve a permit rests with the Minister.

#### **4.7 Renewal**

A licence or permit is not renewable. Operators must apply for a new licence or permit upon expiry of an existing one.

#### **4.8 Refusal**

The relevant authority may refuse to issue a licence or permit if, in the relevant authority's opinion:

- the applicant has been unsuccessful in a competitive allocation process
- the applicant has not fulfilled requirements specified in the application process
- the issue of a licence or permit would be inconsistent with the objects of relevant legislation, policy, management plans or the *Australian National Guidelines for Whale and Dolphin Watching 2005*
- the issue of a licence or permit may be prejudicial to the interests of conservation including where the proposed level of use is likely to be in excess of an established site carrying capacity
- the applicant is not a fit and proper person to hold the licence or permit. This includes but is not limited to situations where the applicant:
  - has outstanding breaches from a previous licence or permit period which have not been addressed (e.g. outstanding visitor use fees)
  - does not have the capacity to undertake the activity that is the subject of the application
  - has committed offences (including convictions and proceedings) under any relevant Commonwealth, State or Territory law.

- the application proposes activities which are:
  - only available through a competitive application process
  - subject to a trial period or transition period which restricts the offer of new licences or permits.

#### **4.9 Terms**

##### **4.9.1 Two month**

This enables businesses to conduct single or seasonal activities and/or to test tourism products at a lower cost.

##### **4.9.2 One year**

A one year licence or permit will be issued unless businesses have successfully applied for longer term.

##### **4.9.3 Three year**

Three year licences or permits may be issued to businesses that have achieved and maintain certification under one or more of the following:

- Australian Tourism Accreditation Program
- Nature Based Eco Certification Program
- Climate Action Certification Program
- Green Globe Company Standard.

##### **4.9.4 Five year**

Five year licences or permits may be issued to businesses that have achieved and maintain certification under one or more of the following:

- Advanced Ecotourism Eco Certification Program
- Ecotourism Eco Certification Program
- Respecting our Culture.

##### **4.9.5 Up to ten year**

Terms up to ten years may be issued to businesses if a licence or permit has been competitively allocated and the business meets the requirements for a five year licence or permit. This will be considered on a case by case basis.

#### **4.10 Conditions**

Licences and permits provide permission to undertake specific activities subject to specified conditions. They do not exclude public access. Conditions may be location and/or activity specific. All licence and permit holders will be required to hold and maintain Public Liability Insurance for a minimum of \$10 million throughout the term of the licence or permit. This insurance policy must cover the nature of the activities undertaken and the area of operations.

Competitively allocated licences or permits may contain conditions which relate to matters identified during the application process such as a contribution to reserve management, education, or research. Audits may be carried out to verify compliance with these conditions. Competitively allocated



licences or permits will only contain permission to undertake a particular activity at one location.

DENR may change licence or permit conditions at any time to address risks in consultation with affected businesses.

#### **4.11 Subcontracting**

Licence or permit holders may subcontract the delivery of services to other licence or permit holders, provided their licence or permit contains the same conditions.

Under extraordinary circumstances, subcontracting to a licence or permit holder without the same level of permission may be approved by an authorised delegate.

#### **4.12 Transfer**

The assigning, conveying, charging, sub-licensing, sub-permitting, or otherwise transferring of any rights or obligations under a licence or permit is not legally allowed. If a business with a competitively allocated licence or permit has been sold, the issue of a new licence or permit to the purchaser may be considered if the new business owner is able to meet the same criteria as the original licence or permit holder.

#### **4.13 Fees**

##### **4.13.1 Licences**

Fees for licences in NPW Act reserves are set by the relevant authority. Fees for licences in Wilderness Protection Area are prescribed by regulation.

Fees applying to licences are generally increased annually in line with the Treasury Indexation. Changes may also be made to reflect the cost of administration, management of the activity and management of the reserve. Competitively allocated licences may also be influenced by market value.

Twelve months prior notice to operators of any fee increases exceeding the Treasury Indexation will be provided to operators where possible.

Fees for licences include licence fees, visitor use fees, DENR tour fees and camping fees.

##### **4.13.1.1 Licence Fee**

A licence fee applies upon issue of a licence. This fee is based on the cost of administration. Competitively allocated licences may be influenced by market valuation in addition to the cost of administration.

A licence fee is not applicable where the only activity in the reserve is a marine mammal interaction authorised by a permit.

##### **4.13.1.2 Visitor Use Fee**

A visitor use fee applies for each tour in a reserve and may vary for different reserves or activities. This fee is based on the cost of managing the activity and/or managing the reserve. Competitively

allocated licences may be influenced by market valuation in addition to the costs of management.

Generally, this fee is determined on a per client per day basis however other ways of determining visitor use fees may be used.

If more than one reserve is visited in one day, the fee will only be applied once and based on the reserve with the highest visitor use fee.

If staying in the reserve overnight or longer, a visitor use fee is only applied for the first day.

Visitor use fees are not applicable for tours when a tour operator:

- has already paid a DENR tour fee in that reserve
- visits a business in a reserve for the sole purpose of visiting that business.

#### **4.13.1.3 DENR Tour Fee**

A DENR tour fee applies for each client participating in a DENR tour. This includes an operator led Seal-Bay tour or self guided tours where a specific fee applies such as the Seal Bay boardwalk.

A discount on tour fees will be offered to operators for tours that are also available to the public.

#### **4.13.1.4 Camping Fee**

Camping fees apply for each client for each overnight stay in the park in designated DENR camping areas.

#### **4.13.1.5 Exemptions**

Visitor Use, DENR Tour and Camping Fees are not applicable to:

- commercial tour operator drivers, tour guides and support staff directly involved in a tour
- travel agents, trade wholesalers and inbound tour operators (commercial tour operator agents) involved in trade familiarisations with a commercial tour operator
- persons undertaking research, monitoring or compliance activities approved by DENR.

#### **4.13.2 Permits**

Fees for permits are prescribed by the NPWMM Regulations. Permit fees apply upon application for a permit and are based on the cost of administration.

Fees applying to permits are generally increased annually in line with the Treasury Indexation however changes may also be made to reflect other changes in the cost of administration or management of the activity.

Two levels of permit fees are prescribed:

- Level 1 – permits with standard conditions. These apply to non-competitively allocated permits that are consistent with Part 2 – Interaction with marine mammals of the MPWMM Regulations.
- Level 2 – any other permits. These apply to competitively allocated permits and/or permits which are not consistent with Part 2 – Interaction with marine mammals of the NPWMM Regulations.

#### **4.14 Fee Waivers and refunds**

The relevant authority may waive or refund the whole or part fees applying to licences. The Minister may remit the whole or part of permit fees.

#### **4.15 Compliance**

Compliance with this policy will rely on industry cooperation. The monitoring and investigation of compliance will be undertaken in accordance with relevant legislation and policies.

Non-compliance with licence or permit conditions may result in:

- agreement on a cooperative response to address the matter
- a formal written request to address the matter
- revocation of the licence or permit
- refusal of future licence or permit applications
- expiation or prosecution.

#### **4.16 Privacy**

All information provided by applicants, licence holders and permit holders will be managed in accordance with the Government of South Australia's *Information Privacy Principles Instruction (PC012)*.

#### **4.17 Aboriginal culture**

Protocols apply for the interpretation of Aboriginal culture. Licence and permit holders should respect the aspirations of local Aboriginal communities. Compliance with the *Guidelines for Interpreting Culture and Country* as published by the Interpretation Australia Association is recommended, including the engagement of appropriate, Aboriginal tour guides.

#### **4.18 Use of an approved logo**

Licence and permit holders may display the Approved Tour Operator logo subject to conditions.

### **5. MANDATE**

Commercial tour operator licensing as described in this policy is authorised under

- *National Parks and Wildlife Act 1972 (SA)*
- *National Parks and Wildlife (National Parks) Regulations 2001 (SA)*
- *Wilderness Protection Act 1992 (SA)*

- *Wilderness Protection Regulations 2006 (SA).*

Commercial marine mammal interaction permitting as described in this policy is authorised under:

- *National Parks and Wildlife Act 1972 (SA)*
- *National Parks and Wildlife (Protected Animals - Marine Mammals) Regulations 2010 (SA).*

## **6. ROLES AND RESPONSIBILITIES**

### **6.1 Minister for Environment and Conservation**

The Minister is responsible for:

- approving, refusing or revoking permits
- remitting fees for permits.

### **6.2 Relevant authority**

The relevant authority (see definitions) is responsible for:

- approving, refusing or revoking licences
- setting and waiving fees for licences.

### **6.3 Department of Environment and Natural Resources**

DENR is responsible for:

- determining the type of licence or permit available (non-competitive or competitive)
- assessing and approving licence applications (under delegation)
- administering fee payments
- responding to compliance matters.

## **7. MANAGEMENT**

This policy commences on the date of approval by the Chief Executive, however provisions relating to permits will not apply until NPWMM Regulations come into effect. The Chief Executive may revise the policy at any time.

## **8. DEFINITIONS**

**"Applicant"** means the legal entity, which includes but is not limited to companies, partnerships, individuals, incorporated associations and trusts, applying for a commercial tour operator licence.

**"Approved Tour Operator logo"** means a logo which is approved by DENR and signifies that the commercial tour operator is the holder of a licence or permit.

**"Carrying capacity"** in the context of this policy, means the type and amount of use that a site can support without compromising its environmental, cultural and social values.

**"Co-management Board"** means a board established under Division 6A of Part 3, or under any other Act, to manage a co-managed reserve

**"DENR"** means the Department of Environment and Natural Resources.

**"Director"** means the person for the time being holding, or acting in, the office of, Director of National Parks and Wildlife (South Australia).

**"Fee or reward",**

- (a) in relation to licensing it means - monetary payment, compensation or in kind payments.
- (b) with relation to permitting it means- monetary payment, compensation or in kind payments received as a result of planned or promoted marine mammal interaction.

**"Minister"** means the Minister for Environment and Conservation and his or her successors.

**"NPW Act"** means the *National Parks and Wildlife Act 1972 (SA)*.

**"NPW Act reserve"** means any national park, conservation park, game reserve, recreation park or regional reserve constituted under the NPW Act.

**"NPWMM Regulations"** means the proposed *National Parks and Wildlife (Protected Animals – Marine Mammals) Regulations 2010 (SA)*.

**"Prescribed area"** as defined in the NPWMM Regulations, means:

- (a) the Adelaide Dolphin Sanctuary as defined in the *Adelaide Dolphin Sanctuary Act 2005*; or
- (b) the Adelaide Metropolitan Beaches Restricted Area; or
- (c) the Encounter Bay Restricted Area; or
- (d) the Great Australian Bight Marine Park Whale Sanctuary.

**"Public Access Route"** means a route established under section 45 of the *Pastoral Land Management and Conservation Act 1989*

**"Relevant authority"**

- (a) in relation to licences for a co-managed reserve that has a co-management board it means the co-management board
- (b) in relation to licences for other reserves it means the Minister.

**"Reserve"** means any national park, conservation park, game reserve, recreation park or regional reserve constituted under the NPW Act and wilderness protection areas and zones constituted under the *Wilderness Protection Act 1992 (SA)*

**"School"** means an Australian school, college, university or other educational institution participating in an educational excursion or activity organised by that same Australian school, college, university or other educational institution.

**"Treasury Indexation"** is a composite of the Adelaide Consumer Price Index (CPI) and the South Australian Public Sector Wage Cost index.

**"Tour"** means an organised activity that provides transport, supervision, guidance, interpretation, information and/or education services to its participants or includes reserves in itineraries.

## 9. APPENDIX 1:

### 9.1 List of specified roads

Reserve	Road
Coorong National Park	Old Melbourne Road (from Cantara to The Granites)
Dudley Conservation Park	East-West Road
Flinders Chase National Park	West End Highway Gosse Ritchie Road
Flinders Ranges National Park	Wilpena to Wirrealpa Road Hawker to Blinman Road
Gawler Ranges National Park	Minnipa-Yardea Road (North - South) Barns Road / Paney-Thurlga Ramp Road (South - East)
Innamincka Regional Reserve	Cordillo Downs Road (Innamincka going north to Cordillo Downs). Nappa Merrie Road (Innamincka going east to Nappa Merrie). Dillons Highway (From Innamincka going south to Moomba)
Lake Gilles Conservation Park	Eyre Highway
Lashmar Conservation Park	Willoughby Road
Latham Conservation Park	North Coast Road
Ngarkat Conservation Park	Pinnaroo to Bordertown Road
Nullarbor National Park	Eyre Highway
Pinkawillinie Conservation Park	Stringers Highway
Vulkathunha-Gammon Ranges National Park	Copley/ Wooltana Road(East to North West) Yunta/ Arkaroola Road(South to North)
Witjira National Park	Eringa to Bloods Creek to Mount Dare section of the New Crown to Oodnadatta road.