

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 9

Issued by the Authority of the Minister for the Environment and Water Resources

Environment and Heritage Legislation Amendment Act (No. 1) 2006

*Environment Protection and Biodiversity Conservation Amendment Regulations
2007 (No. 1)*

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance. Section 520 of the EPBC Act provides that the Governor-General may make regulations prescribing all matters: required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying or giving effect to the Act.

The *Environment and Heritage Legislation Amendment Act (No. 1) 2006* (the EHLA Act) amends the EPBC Act to make the EPBC Act more efficient and effective, to allow for greater use of strategic approaches, and to provide greater certainty in decision-making.

As a consequence of the amendments to the EPBC Act by the EHLA Act it is necessary to repeal and replace certain regulations under the EPBC Act and also to make new regulations. The Regulations amend the *Environment Protection and Biodiversity Conservation Regulations 2000*. The Regulations consist of high priority regulations that are necessary for the continued effective operation of EPBC Act regulatory processes after the commencement of the majority of the amendments in the EHLA Act.

The content of the Regulations is summarised below by reference to relevant parts of the amended EPBC Act.

EPBC Act - Chapter 4 – Environmental assessment and approval processes

- publication requirements for assessment documents, public notices and other information;
- criteria for the Minister to decide on an assessment by referral information;
- matters which must be addressed by Public Environment Reports and Environmental Impact Statements; and
- requirements for requests to the Minister to:
 - accept a variation to a proposal to take an action;
 - extend the term of an approval to take an action; or
 - permit non-disclosure of commercial-in-confidence information in assessment documentation.

EPBC Act – Chapter 5, Part 13 – Species and ecological communities

- requirements for nominations of threatened species, ecological communities, or threatening processes for listing under the Act; and
- requirements for whale watching activities.

EPBC Act – Chapter 5, Part 13A – International movement of wildlife specimens

- identification of biosecurity reports that can be utilised for assessing permit applications for live imports under the EPBC Act.

EPBC Act – Division 4 – Management of Commonwealth Reserves

- prescription of International Union for the Conservation of Nature categories for Commonwealth reserves.

The Regulations are outlined in more detail in the attachment.

Consultation was undertaken in relation to the EHLA Bill. Specific consultation on these regulatory amendments was not undertaken, as they are of a minor and technical nature only.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on the commencement of Item 1 of Schedule 1 to the EHLA Act.

ATTACHMENT

Details of the *Environment Protection and Biodiversity Conservation Amendment Regulations 2007 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Environment Protection and Biodiversity Conservation Amendment Regulations 2007 (No. 1)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on the commencement of Item 1 of the Schedule 1 to the *Environment and Heritage Legislation Amendment Act (No.1) 2006*.

Regulation 3 – Amendment of *Environment Protection and Biodiversity Conservation Regulations 2000*

This regulation provides that the *Environment Protection and Biodiversity Conservation Regulations 2000* (the Principal Regulations) are amended as set out in Schedule 1.

Schedule 1 - Amendments

Item [1] – Part 4A

Item 1 inserts a new Part 4A containing regulation 4A.01 into the Principal Regulations.

Regulation 4A.01 specifies requirements for the publication of a notice of the outcome of the reconsideration of a decision under section 75 of the EPBC Act (on whether an action requires assessment and approval under the EPBC Act) and the information that the notice must contain.

Item [2] – Division 5.1A – Assessment on referral information

Item 2 inserts a new Division 5.1A containing regulation 5.03A into the Principal Regulations.

Regulation 5.03A specifies criteria for a decision by the Minister in accordance with section 87 of the EPBC Act that a proposed action should be assessed by an assessment on referral information.

Item [3] – Divisions 5.3, 5.4 and 5.5

Item 3 inserts a new Division 5.3, containing regulations 5.05 and 5.06, Division 5.4, containing regulations 5.07, 5.08 and 5.09, and Division 5.5, containing regulations 5.10 and 5.11, into the Principal Regulations.

Regulation 5.05 specifies the information that must be provided in an application to the Minister under section 145C of the EPBC Act for an extension of the period of effect of an approval for a proposed action.

Regulation 5.06 specifies requirements for the publication of a notice of a decision by the Minister under section 145C of the EPBC Act to extend the period of effect of an approval to take an action.

Regulation 5.07 specifies the way in which a request to the Minister under section 156A of the EPBC Act, to accept a variation of a proposal to take an action, must be made.

Regulation 5.08 specifies the information which must be included in a request to the Minister under section 156A of the EPBC Act, to accept a variation of a proposal to take action which has been referred under the Act.

Regulation 5.09 specifies requirements for the publication of a notice of a decision by the Minister under section 156B of the EPBC Act to accept a variation of a proposal to take an action which has been referred under the Act.

Regulation 5.10 specifies the information which must be included in a notice under section 156F of the EPBC Act of a change in identity of the person proposing to take an action which has been referred under the Act.

Regulation 5.11 specifies the way in which a notice of a change in identity of the person proposing to take an action must be published.

Item [4] – Regulation 6.03 – Notice of decision that Minister’s advice is not required

Item 4 inserts new regulation 6.03 into the Principal Regulations. Regulation 6.03 specifies requirements for the publication of a notice of a decision by the Minister under section 161A of the EPBC Act that assessment of an action and the provision of advice are not required under Subdivision A of Division 4 of Part 11 of the Act.

Item [5] – Parts 6A and 6B

Item 5 inserts Part 6A, containing regulation 6A.01, and Part 6B containing regulation 6B.01 into the Principal Regulations.

Regulation 6A.01 specifies the information which must be included in a request to the Minister under section 170BA to agree to the non-disclosure of commercial-in-confidence information in assessment documentation.

Regulation 6B.01 specifies publication requirements and information that must be included in a notice of the withdrawal of a referral of a proposal by a person to take an action.

Item [6] – Division 7.2 – Nominations for listing

Item 6 substitutes a new Division 7.2, containing regulations 7.03, 7.04, 7.05 and 7.06.

Subregulation 7.03(1) specifies requirements for a notice under section 194E of the EPBC Act inviting nominations of species, ecological communities or threatening processes for listing under the Act. Subregulations 7.03(2) and (3) specify the way in which a nomination must be made and the information which must be included in a nomination.

Regulation 7.04 specifies more detailed requirements for information which must be included in a nomination of a native species for listing as a threatened species.

Regulation 7.05 specifies more detailed requirements for information which must be included in a nomination of an ecological community for listing as a threatened ecological community.

Regulation 7.06 specifies more detailed requirements for information which must be included in a nomination of a process for listing as a key threatening process.

Items [7], [8], [9], [10] & [11] – Subregulation 8.04(3), paragraphs 8.05(2)(a) and 8.05(2)(c), and subparagraph 8.06(3)(b)(iii)

Items 7, 8, 9, 10 and 11 amend subregulation 8.04(3), paragraph 8.05(2)(a), paragraph 8.05(2)(c) and subparagraph 8.06(3)(b)(iii) to replace references to a “constant slow speed” with references to “a constant speed of less than 6 knots”. These provisions relate to the movement of vessels which are in close proximity to cetaceans.

Item 8 inserts a new note in subregulation 8.04(3) stating: “*Note* A boat travelling at a speed which is the equivalent of a brisk walking pace is not exceeding 6 knots.” The purpose of this note is to give further guidance to operators of boats which do not contain speedometers.

Item [12] – Subregulation 8.12(2)

This item inserts a new reference to regulation 8.06 in subregulation 8.12(2) which was mistakenly omitted from this provision.

Item [13] – Division 8.3

Item 13 repeals Division 8.3 of the Principal Regulations. The regulations in this Division are no longer required because the sections of the EPBC Act under which they are made are being repealed by the EHLA Act.

Item [14] – Regulation 9A.06A

Item 14 inserts new regulation 9A.06A into the Principal Regulations. Regulation 9A.06A specifies the types of report, prepared by Biosecurity Australia, which the

Minister may use as the basis for a decision to amend the list of specimens suitable for live import into Australia.

Item [15] – Regulation 9A.07

Item 15 substitutes a new regulation 9A.07 in the Principal Regulations. Subregulation 9A.07(1) specifies requirements for an application to the Minister under section 303EE of the EPBC Act to amend the list of specimens suitable for live import into Australia. Subregulation 9A.07(2) specifies the types of report, prepared by Biosecurity Australia, which the Minister may use as the basis for a decision to amend the list of specimens suitable for live import into Australia, in response to an application under section 303EE of the Act.

Item [16] – Regulation 10.01B

Item 16 substitutes a new regulation 10.01B in the Principal Regulations. Regulation 10.01B specifies the way in which a nomination of a place for inclusion in the National Heritage list must be made and the information a nomination must contain.

Item [17] – Regulation 10.03AB

Item 17 inserts new regulation 10.03AB into the Principal Regulations. Regulation 10.03AB specifies the way in which a nomination of a place for inclusion in the Commonwealth Heritage list must be made and the information a nomination must contain.

Item [18] – Regulation 10.03H – IUCN categories for Commonwealth reserves

Item 18 inserts new regulation 10.03H into the Principal Regulations. Regulation 10.03H prescribes International Union for the Conservation of Nature (IUCN) categories to which reserves may be assigned under section 346 of the EPBC Act.

Item [19] – Paragraphs 16.03(1)(a), (aa), (ab) & (ac) – Place of publication

Item 19 substitutes new paragraphs 16.03(1)(a), (aa), (ab) and (ac) for the existing paragraph 16.03(1)(a) in the Principal Regulations. These paragraphs list subsections 95(2), 95A(3), 95B(2) and 95B(4) as subsections to which the publication requirements specified in regulation 16.03 apply.

Item [20] – Paragraphs 16.04(1)(a), (aa), (ab) & (ac) – Additional publication requirements for designated proponent

Item 20 substitutes new paragraphs 16.04(1)(a), (aa), (ab) and (ac) for the existing paragraph 16.03(1)(a) in the Principal Regulations. These paragraphs list subsections 95(2), 95A(3), 95B(2) and 95B(4) as subsections to which the publication requirements in specified in regulation 16.04 apply.

Item [21] – Subregulation 16.05A(1) – Publication requirements

Item 21 substitutes new subregulation 16.05A(1) in the Principal Regulations. Regulation 16.05A specifies requirements for the publication of notices and other documents under specified provisions of the EPBC Act which relate to the National and Commonwealth Heritage lists.

Item [22] – Subregulation 16.05A(2)

Item 22 amends subregulation 16.05A(2) to replace references to paragraphs 16.05A(1)(c), (g), (h) and (l) with references to paragraphs 16.05A(1)(e) and (h). This amendment is consequential to the substitution of subregulation 16.05A(1) by item 21.

Item [23] – Subregulation 16.05A(3)

Item 23 repeals subregulation 16.05A(3). This amendment is consequential to the substitution of subregulation 16.05A(1) by item 21.

Item [24] – Subregulation 16.05(4)

Item 24 amends subregulation 16.05A(4) to replace references to paragraphs 16.05A(1)(e) and (j) with references to paragraphs 16.05A(1)(c) and (f). This amendment is consequential to the substitution of subregulation 16.05A(1) by item 21.

Item [25] – Subregulation 16.05(5)

Item 25 amends subregulation 16.05A(5) to replace references to paragraphs 16.05A(1)(f) and (k) with references to paragraphs 16.05A(1)(d) and (g). This amendment is consequential to the substitution of subregulation 16.05A(1) by item 21.

Item [26] – Schedule 8, Part 2, Clause 1 heading

Item 26 substitutes a new heading for the existing heading and note above clause 1 of Part 2 of Schedule 8 to the Principal Regulations. The substituted heading includes the International Union for the Conservation of Nature (IUCN) category number for the strict nature reserve category to avoid confusion with the numbering of the regulations.

Item [27] - Schedule 8, Part 2, Subclause 1.01A

Item 27 inserts new subclause 1.01A in Part 2 of Schedule 8 to the Principal Regulations. Subclause 1.01A clarifies that clause 1 sets out the management principles for the strict nature reserve category.

Item [28] - Schedule 8, Part 2, Clause 2 heading

Item 28 substitutes a new heading for the existing heading and note above clause 2 of Part 2 of Schedule 8 to the Principal Regulations. The substituted heading includes the IUCN category number for the wilderness area category to avoid confusion with the numbering of the regulations.

Item [29] - Schedule 8, Part 2, Subclause 2.01A

Item 29 inserts new subclause 2.01A in Part 2 of Schedule 8 to the Principal Regulations. Subclause 2.01A clarifies that clause 2 sets out the management principles for the wilderness area category.

Item [30] – Schedule 8, Part 2, Clause 3 heading

Item 30 substitutes a new heading for the existing heading and note above clause 3 of Part 2 of Schedule 8 to the Principal Regulations. The substituted heading includes the IUCN category number for the national park category to avoid confusion with the numbering of the regulations.

Item [31] - Schedule 8, Part 2, Subclause 3.01A

Item 31 inserts new subclause 3.01A in Part 2 of Schedule 8 to the Principal Regulations. Subclause 3.01A clarifies that clause 3 sets out the management principles for the national park category.

Item [32] – Schedule 8, Part 2, Clause 4 heading

Item 32 substitutes a new heading for the existing heading and note above clause 4 of Part 2 of Schedule 8 to the Principal Regulations. The substituted heading includes the IUCN category number for the natural monument category to avoid confusion with the numbering of the regulations.

Item [33] - Schedule 8, Part 2, Subclause 4.01A

Item 33 inserts new subclause 4.01A in Part 2 of Schedule 8 to the Principal Regulations. Subclause 4.01A clarifies that clause 4 sets out the management principles for the natural monument category.

Item [34] – Schedule 8, Part 2, Clause 5 heading

Item 34 substitutes a new heading for the existing heading and note above clause 5 of Part 2 of Schedule 8 to the Principal Regulations. The substituted heading includes the IUCN category number for the habitat/species management area category to avoid confusion with the numbering of the regulations.

Item [35] - Schedule 8, Part 2, Subclause 5.01A

Item 35 inserts new subclause 5.01A in Part 2 of Schedule 8 to the Principal Regulations. Subclause 5.01A clarifies that clause 5 sets out the management principles for the habitat/species management area category.

Item [36] – Schedule 8, Part 2, Clause 6 heading

Item 36 substitutes a new heading for the existing heading and note above clause 6 of Part 2 of Schedule 8 to the Principal Regulations. The substituted heading includes the IUCN category number for the protected landscape/seascape category to avoid confusion with the numbering of the regulations.

Item [37] - Schedule 8, Part 2, Subclause 6.01A

Item 37 inserts new subclause 6.01A in Part 2 of Schedule 8 to the Principal Regulations. Subclause 6.01A clarifies that clause 6 sets out the management principles for the protected landscape/seascape area category.

Item [38] – Schedule 8, Part 2, Clause 7 heading

Item 38 substitutes a new heading for the existing heading and note above clause 7 of Part 2 of Schedule 8 to the Principal Regulations. The substituted heading includes the IUCN category number for the managed resource protected area category to avoid confusion with the numbering of the regulations.

Item [39] - Schedule 8, Part 2, Subclause 7.01A

Item 39 inserts new subclause 7.01A in Part 2 of Schedule 8 to the Principal Regulations. Subclause 7.01A clarifies that clause 7 sets out the management principles for the managed resource protected area category.