



Commonwealth of Australia

Statement of reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*

I, Sussan Ley, Minister for the Environment, provide these reasons for my decision under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (EPBC Act), to grant an exemption to EnergyAustralia Yallourn Pty Ltd and all persons acting on behalf of EnergyAustralia Yallourn Pty Ltd, from the application of all provisions of Part 3 (other than sections 21, 22A, 24B, 24C, 27B and 27C) of the EPBC Act, in relation to the following action:

The taking of **Emergency Works and Rectification Works** associated with the potential flooding of the Yallourn coal mine.

Definitions:

Emergency Works and Rectification Works mean the activities described as such in the request for exemption dated 2 August 2021 including:

- diverting Morwell River flows around the existing Morwell River Diversion via pipelines directly to the Latrobe River
- channelling water into the disused Hazelwood mine
- diverting water through an engineered spillway into part of the Yallourn mine
- completing permanent rectification works to the Morwell River Diversion.

Legislation

Section 158 of the EPBC Act provides:

158 Exemptions from Part 3 and this Chapter

- (1) A person proposing to take a controlled action, or the designated proponent of an action, may apply in writing to the Minister for an exemption from a specified provision of Part 3 or of this Chapter.
- (2) The Minister must decide within 20 business days of receiving the application whether or not to grant the exemption.
- (3) The Minister may, by written notice, exempt a specified person from the

application of a specified provision of Part 3 or of this Chapter in relation to a specified action.

- (4) The Minister may do so only if he or she is satisfied that it is in the national interest that the provision not apply in relation to the person or the action.
- (5) In determining the national interest, the Minister may consider Australia's defence or security or a national emergency. This does not limit the matters the Minister may consider.
- (6) A provision specified in the notice does not apply in relation to the specified person or action on or after the day specified in the notice. The Minister must not specify a day earlier than the day the notice is made.
- (7) Within 10 business days after making the notice, the Minister must:
 - (a) publish a copy of the notice and his or her reasons for granting the exemption in accordance with the regulations; and
 - (b) give a copy of the notice to the person specified in the notice.

Background

1. On 2 August 2021, Ms Liz Westcott, the Chief Operating Officer at EnergyAustralia Group, requested an exemption under section 158 of the EPBC Act to undertake emergency works and rectification works to mitigate the risk of flooding of Yallourn coal mine (the **proposed action**).
2. Ms Westcott sought an exemption for EnergyAustralia Yallourn Pty Ltd (**EnergyAustralia**), all persons acting on behalf of EnergyAustralia, and all persons undertaking the works, from the application of Part 3 and Chapter 4 of the EPBC Act
3. The proposed action comprises the emergency works and rectification works taken in response to the flood risk to the Yallourn coal mine, including diversion of the Morwell River, and construction of the requisite infrastructure, as described in the application dated 2 August 2021. Specifically, this includes:
 - diverting Morwell River flows around the existing Morwell River Diversion (MRD) via pipelines directly to the Latrobe River
 - channelling water into the disused Hazelwood mine
 - diverting water through an engineered spillway into part of the Yallourn mine
 - completing permanent rectification works to the Morwell River Diversion.

Evidence

4. The evidence or other material on which my findings were based was a brief from my department, including its attachments (the **departmental brief**). That brief attached the application from EnergyAustralia.

Findings

5. The proposed action has the potential to impact matters of national environmental significance. For example, offset sites for Strzelecki Gum (*Eucalyptus strzeleckii*) relating to previous EPBC Act approvals at the mine are present along the Morwell River, and this species may be impacted by the proposed action. There may be potentially other impacts to MNES as a result of the proposed action.
6. EnergyAustralia considered, and I agreed, that the requested exemption is in the national interest to enable EnergyAustralia to take urgent action in response to the potential flooding of the Yallourn coal mine. This was demonstrated by the following:
 - There is a risk of further rainfall events in the coming weeks or months that will compromise the structure of the MRD and flooding the mine.
 - If the mine floods and the Yallourn Power Station shuts down as a result, there would be the potential loss of 20% of Victoria's energy generation, and 8% of the generation into the national electricity market (NEM).
 - This potential generation loss would have significant adverse implications for energy security and electricity prices in Victoria and the eastern states of Australia serviced by the NEM.
 - The availability of the Yallourn Power Station is essential for providing reliable baseload power, particularly during periods of high electricity demand during the summer months.

Reasons

7. Under subsection 158(4), I may grant an exemption if I am satisfied that it is in the national interest to do so. Subsection 158(5) states that in determining the national interest, I may consider Australia's defence or security or a national emergency, but that this does not limit the matters that I may consider.
8. As noted above, I considered that there is currently a risk to the Yallourn mine, which is a significant contributor to the Victorian and national electricity markets. I consider that it is in the national interest for EnergyAustralia to respond and address these risks in a timely manner. I consider that the exemption will enable EnergyAustralia to undertake emergency works and rectification works in response to damage caused by severe weather events. The application of the normal assessment and approval requirements of the EPBC Act would hinder EnergyAustralia from commencing emergency works and rectification works immediately.
9. In deciding to grant the exemption, I noted and agreed with the department's advice that:
 - a. Although EnergyAustralia requested that an exemption apply to EnergyAustralia, all persons acting on behalf of EnergyAustralia and all persons undertaking the works as described in the request, it was sufficient to grant an exemption to EnergyAustralia and all persons acting on behalf of EnergyAustralia only, on the

basis that all persons undertaking the works will be acting on behalf of EnergyAustralia.

- b. Although EnergyAustralia requested that an exemption apply to all provisions of Part 3 and Chapter 4 of the EPBC Act, it was sufficient to grant an exemption from the relevant provisions of Part 3 only, as this would allow EnergyAustralia to undertake the necessary works without contravening the requirements of the EPBC Act. It was not necessary to grant an exemption from the following provisions of Part 3 as these were clearly unlikely to be applicable: ss 21 and 22A (offences relating to nuclear actions), ss 24B and 24C (offences relating to the Great Barrier Reef Marine Park), and ss 27B and 27C (offences relating to Commonwealth heritage places overseas).

10. As such, I decided to grant the exemption under subsection 158(3) because I was satisfied that it was in the national interest that all provisions of Part 3 (other than sections 21, 22A, 24B, 24C, 27B and 27C) of the EPBC Act not apply in relation to the action described above.



Minister for the Environment

5 / 8 / 2021