



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 for the State of New South Wales, the **agencies of the State** and those acting on behalf of the State of New South Wales, or the **agencies of the State**, from the application of all of the provisions of Part 3 (other than sections 21, 22A, 24D, 24E, 27B and 27C) of the EPBC Act, in relation to the following **action**:

The taking of **firefighting activities**, **fire prevention activities** and **fire recovery activities** in New South Wales in response to any bushfires that occur or have occurred during the 2019/2020 bushfire season.

Definitions:

Firefighting activities means emergency actions taken to prevent bushfires damaging life, property or matters of national environmental significance.

Fire prevention activities means urgent preventative actions taken to prevent the spread or reduce the severity of fires. This includes back burning, clearance of vegetation and building of fire breaks.

Fire recovery activities means urgent actions taken in the recovery from damage from bushfires. This includes clearance of vegetation that has been damaged as a result of bushfires, and urgent repair or replacement of essential infrastructure damaged by bushfire.

agencies of the State has the meaning given by section 528 of the EPBC Act and includes councils established under the *Local Government Act 1993* (NSW).

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 9 January 2020, Mr Jim Betts, Secretary of the New South Wales Department of Planning, Industry and Environment, made an application on behalf of the New South Wales Government, to seek an exemption under section 158 of the EPBC Act to undertake emergency works and recovery actions associated with the New South Wales bushfires.
2. The New South Wales Government sought an exemption for the State of NSW and those acting on behalf of the State of NSW (including any public authority or firefighting authority under the Rural Fires Act 1997 (NSW), this may include; Fire and Rescue NSW, NSW Rural Fire Service, State Emergency Service, State land management authorities including, but not limited to, Forestry Corporation of NSW, Crown Lands, Local Lands Services, and National Parks and Wildlife Service), and Councils under the Local Government Act 1993 (NSW) and anyone acting on behalf of a council from the application of Part 3 of the EPBC Act.

3. The action includes all activities being taken in response to current severe bushfires in New South Wales, including but not limited to clearance of vegetation, building of fire breaks, hazard reduction burns, back-burning and ensuring the provision of essential services.

Evidence

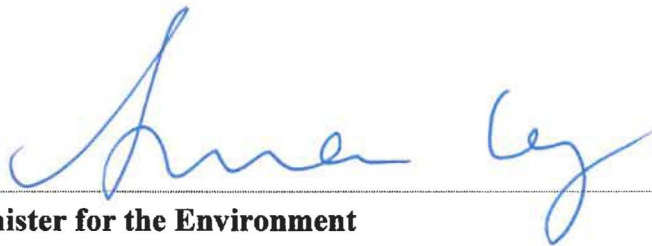
4. The evidence or other material on which my findings were based was a brief from my Department dated 9 January 2020, including its attachments (the **Departmental brief**). That brief attached the application from the New South Wales Government and the Department's *Bushfire management and national environment law factsheet 2010*.

Findings

5. An exemption is in the national interest to enable New South Wales State and local authorities to take urgent action in response to the bushfires to minimise any further impacts on the ground. The current fires are part of a broader national emergency requiring extraordinary management measures as demonstrated by the following:
 - a. The New South Wales Government has declared the third State of Emergency for New South Wales during the 2019/2020 bushfire season.
 - b. A total of 4,863 structures across the State have been destroyed as of 7 January 2020 including: 1,588 homes, 153 facilities, and 3,122 outbuildings.
 - c. A further 653 homes have been damaged as of 7 January 2020.
 - d. The death toll was 17 as of 5 January 2020 but is expected to rise with numerous people still unaccounted for.
 - e. Total area burnt is in excess of four million hectares as of 1 January 2020.
 - f. Loss and injury to significant numbers of wildlife and livestock across the State.
 - g. Impacts to infrastructure including major arterial roads and highways potentially impacting logistics and evacuation routes.
 - h. Multiple consecutive days of hazardous air quality in populated areas of the State.
 - i. The Australian Defence Force and its Reservists have begun providing support to areas of New South Wales indicating the scale of the bushfire emergency is national.
 - j. Many of the fires continue to burn throughout New South Wales and fire-fighting activities will continue across New South Wales.

Reasons

6. Under section 158(4), I may grant an exemption if I have received a written exemption application and I am satisfied that it is in the national interest to do so. Section 158(5) states that in determining the national interest, I may consider Australia's defence or security or a national emergency.
7. I considered that the exemption will enable bushfire preparation, response and recovery activities to be undertaken by the State to respond in a timely way to the current bushfire emergency. The application of the normal assessment and approval requirements of Part 3 of the EPBC Act may hinder the critical bushfire preparation, response and recovery actions due to the time it would take to undertake the normal EPBC assessments and approvals.
8. I decided to grant the exemption under subsection 158(3) because I was satisfied that given the national emergency arising from the bushfires it was in the national interest that all of the provisions of Part 3 (other than 21, 22A, 24D, 24E, 27B and 27C) of the EPBC Act not apply in relation to the action described above.



Minister for the Environment

10 / 1 / 2020