

**STATEMENT OF REASONS FOR DECISION UNDER SECTION 303A OF THE
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

I, DAVID ALISTAIR KEMP, Minister for the Environment and Heritage, provide this statement of reasons under subsection 303A(7) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) for my decision under subsection 303A(3) to exempt the Commonwealth and certain other specified persons from the application of the provisions of Part 13 of the EPBC Act in relation to the following action:

Establishment and ongoing operation of an Immigration Reception and Processing Centre (IRPC), together with associated services and infrastructure, on the Territory of Christmas Island comprising:

- Design, construction and operation of an IRPC on that area of land shown as ML 138 and ML 139 on Map 94/068 produced by the Australian Surveying and Land Information Group.
- Construction of additional housing and associated infrastructure for staff and other persons associated with the IRPC, located within or immediately adjacent to the existing residential settlement in the north east corner of Christmas Island.
- Works associated with laying and operation of cables, pipes and other infrastructure within the currently cleared corridor along the road that commences as Murray road and proceeds from near the power station to the Central Area Workshop site and then to the IRPC site to enable the supply of power, water and other services to the IRPC.
- Construction and operation of a temporary construction camp on the area of land immediately north of the existing cricket ground, situated between Irvine Hill and Phosphate Hill and shown on Map 94/068 produced by the Australian Surveying and Land Information Group and delineated by Australian Surveying and Land Information Group Christmas Island 85 grid coordinates (24504,66783)(24739,66747)(24756,66658)
(24778, 66588)(24706,66573)(24681,66597)(24636, 66603)(24555,66581).

Legislation

1. Section 303A of the EPBC Act provides:

303A Exemptions from this Part

- (1) A person proposing to take an action that would contravene a provision of this Part apart from this section may apply in writing to the Minister for an exemption from the provision.
- (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 this Part 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

2. On 20 March 2002, the Hon. Philip Ruddock MP, Minister for Immigration and Multicultural and Indigenous Affairs, and the Hon. Wilson Tuckey MP, Minister for Regional Services, Territories and Local Government, applied for exemptions under sections 158 and 303A of the EPBC Act in relation to a proposal to establish an IRPC, and associated infrastructure, on Christmas Island.
3. On 3 April 2002, I decided, in accordance with section 303A of the EPBC Act, to exempt the Commonwealth and other specified persons from the application of the provisions of Part 13 in relation to the action involved in that proposal.

Evidence or other material on which the decision-maker's findings were based

4. The evidence and other material on which my findings were based is listed below:
 - a brief from the Department of the Environment and Heritage, dated 28 March 2002, which included the following attachments:
 - a copy of the application from Ministers Ruddock and Tuckey for an exemption under section 303A of the EPBC Act in relation to the proposed IRPC and associated infrastructure;
 - a copy of section 303A of the EPBC Act;

- a summary of communications from the Department of Immigration and Multicultural and Indigenous Affairs providing further information regarding the application for the exemption; and
- a copy of a brief from the Department of the Environment and Heritage, dated 21 March 2002.

Findings on material questions of fact

5. I found that the Government has a policy of mandatory detention of asylum seekers who enter or seek to enter Australia without authorisation. I found that the Cabinet is committed to the retention of that policy, and to the establishment and maintenance of appropriate detention infrastructure to give effect to it, including establishment and operation of an IRPC on Christmas Island.
6. I found that it is expected that there will continue to be arrivals of asylum seekers towards north-west Australia.
7. I found that the existing temporary accommodation on Christmas Island would not be adequate or suitable for accommodating asylum seekers on Christmas Island, particularly during the monsoon season.
8. I found that the monsoon season in Christmas Island usually commences in October/November, but can commence as early as September.
9. I found that the first stage of the proposed Christmas Island IRPC would need to be constructed and commissioned within the next six months if adequate accommodation for further arrivals of asylum seekers is to be available on Christmas Island, particularly after the onset of the monsoon season.
10. I found that, if the provisions of Part 13 of the EPBC Act applied in relation to the actions involved in the proposal, the permit requirements under that Part could have had the effect of preventing completion of the first stage of construction of the proposed IRPC within six months.
11. I found that Ministers Ruddock and Tuckey undertook to ensure that best practice environmental management measures would be implemented in relation to the establishment and ongoing operation of the proposed Christmas Island IRPC and associated infrastructure, including:
 - the development of an environmental management plan for the construction and operation of the IRPC and associated infrastructure;
 - the appointment of a suitably qualified environmental manager;

- monitoring for protected species, and the application of mitigation measures should the action prove to have adverse impacts on those species.

12. I found that these measures will be undertaken in consultation with Environment Australia.

13. I found that any works that affect the Christmas Island National Park will need to be consistent with the management plan for the Park and that the *Environment Protection and Biodiversity Conservation Regulations 2000* will apply to the proposed Christmas Island IRPC and associated infrastructure in relation to the protection of biodiversity in areas of Christmas Island outside the Park.

Reasons for decision

14. I decided to give the exemption under subsection 303A(3) because I was satisfied that:

- it was in the national interest that all of the provisions of Part 13 of the EPBC Act not apply in relation to the activities involved in the establishment and ongoing operation of the proposed IRPC on Christmas Island, together with associated services and infrastructure described above in this Statement of Reasons; and
- environmental management measures will be implemented for the purpose of ensuring that best practice management will be employed in relation to those activities were the exemption to be given.

15. In making my decision, I took into account that the Cabinet is committed to the retention of the Government's current policy on mandatory detention of asylum seekers who enter or seek to enter Australia without authorisation, and to the establishment and maintenance of appropriate detention infrastructure to give effect to it, including establishment and operation of an IRPC on Christmas Island. I considered that:

- an IRPC on Christmas Island is a central element of the infrastructure necessary to maintain the Government's current policies in relation to mandatory detention and processing of asylum seekers; and
- the establishment and ongoing operation of the proposed Christmas Island IRPC is also integral to the effective implementation of a strategy to protect the security of Australia's borders, including the determination of who can and cannot enter Australia.

16. In making my decision, I also considered that, without establishment and ongoing operation of the proposed Christmas Island IRPC, the accommodation for any asylum seekers arriving towards north-west Australia in the future would continue to be unsuitable and would not

facilitate their effective processing. This would particularly be the case during the monsoon season (which may begin as early as September in any year). I considered that the first stage of the proposed Christmas Island IRPC therefore needed to be completed within the next six months. In particular, this would ensure adequate accommodation was available before the next monsoon season.

17. I was also of the view that, in the absence of exemption from the provisions of Part 13 of the EPBC Act, the permit requirements under that Part could have had the effect that the first stage of the establishment and ongoing operation of the proposed Christmas IRPC would not occur within the next six months.
18. In the light of these considerations and the findings referred to above in this Statement of Reasons, I therefore concluded that it was in the national interest that all of the provisions of Part 13 of the EPBC Act not apply in relation to the actions described above in this Statement.
19. In making my decision, I also took into account the undertaking made by Ministers Ruddock and Tuckey in their application for the exemption referred to above in this Statement that best practice environmental management measures would be implemented in relation to the proposed Christmas Island IRPC. I took into account that these measures will be undertaken in consultation with Environment Australia. Further, I considered that the management plan for the Christmas Island National Park will provide adequate protection for the Park and the *Environment Protection and Biodiversity Conservation Regulations 2000* will provide adequate protection for biodiversity outside of the Park.


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MINISTER FOR THE ENVIRONMENT AND HERITAGE
16/4 /2002