



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 the State of South Australia, the **agencies of the State** and those acting on behalf of the State of South Australia, or the **agencies of the State**, from the application of all of the provisions of Part 3 (other than sections 21, 22A, 24B, 24C, 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 South Australia 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.

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 13 January 2020, Mr John Schutz, Chief Executive of the South Australia Department for Environment and Water, made an application on behalf of the South Australia Government, to seek an exemption under section 158 of the EPBC Act to undertake emergency works and recovery actions associated with the South Australia bushfires.
2. The South Australia Government is seeking an exemption for the State of South Australia and those acting on behalf of the State of South Australia from the application of the relevant provision of Part 3 of the EPBC Act.
3. The action includes all activities being taken in response to current severe bushfires in South Australia, including but not limited back-burning, clearance of vegetation and building of fire breaks.

Evidence

4. The evidence or other material on which my findings were based was a brief from my Department dated 13 January 2020, including its attachments (the **Departmental brief**). That brief attached the application from the South Australia Government and the Department's *Bushfire management and national environment law factsheet 2010*.

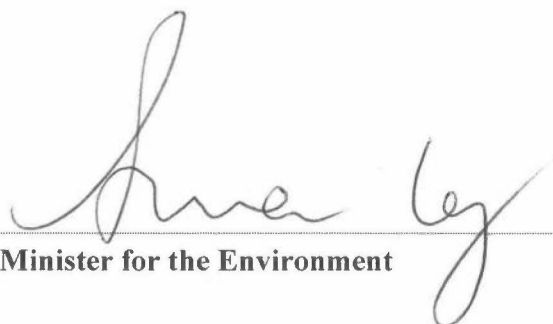
Findings

5. An exemption is in the national interest to enable South Australia 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. A total of 153 structures across the State have been destroyed as of 10 January 2020.
 - b. The death toll was 3 as of 10 January 2020, and 22 people have been injured.
 - c. The bushfires on Kangaroo Island alone have burnt more than 165,000 hectares. Infrastructure and facilities in state reserves have been severely damaged or completely destroyed by bushfires.
 - d. Significant numbers of wildlife and livestock across the State have been lost or injured.
 - e. The Australian Defence Force and its Reservists have begun providing support in South Australia, indicating the scale of the bushfire emergency is national.
 - f. Many of the fires continue to burn throughout South Australia and fire-fighting activities will continue across South Australia.

Reasons

6. 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.
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 sections 21, 22A, 24B, 24C, 24D, 24E, 27B and 27C) of the EPBC Act not apply in relation to the action described above.



Minister for the Environment

14/11/2020