



## Commonwealth of Australia

### **Statement of reasons for granting an exemption under section 303A(3) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)***

I, Greg Hunt, Minister for the Environment, provide these reasons for my decision under section 303A(3) of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**), to exempt action or actions undertaken by any persons managing or responding to maritime environmental emergencies in accordance with the *National Plan for Maritime Environmental Emergencies (National Plan)*, from the application of all of the provisions of Part 13 of the EPBC Act.

#### **Legislation**

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Section 303A of the EPBC Act provides:

#### **303A Exemptions from this Part (Part 13)**

- (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**

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1. On 6 March 2014, I received an application from Mr Graham Peachey, the Chief Executive Officer, Australian Maritime Safety Authority (AMSA), seeking an exemption under section 158 and section 303A of the EPBC Act, on behalf of parties managing or responding to maritime environmental emergencies in accordance with the National Plan.
2. The National Plan defines a 'maritime environmental emergency' as the potential or actual pollution of the sea or harm to the marine environment by oil or other hazardous and noxious substances.
3. In summary, the National Plan:
  - a. sets out national arrangements, policies and principles for the management of maritime environmental emergencies; and
  - b. provides for a comprehensive response to maritime environmental emergencies through marine pollution 'contingency plans' prepared by all Australian states, the Northern Territory and the Commonwealth of Australia, as well as port corporations, industry, and operators of offshore petroleum facilities.
4. Under s303A of the EPBC Act, I may (as the Minister for the Environment) exempt a person proposing to undertake an action from the requirement to seek permits under Part 13 of the Act in relation to the action to which the exemption relates. Part 13 of the Act, among other things, prohibits the killing, injuring, taking, trading, keeping or moving listed threatened species or ecological communities, listed migratory species, cetaceans, or listed marine species in or on a Commonwealth area. Under section 303A, I may specify that any or all of the provisions in Part 13 do not apply to a person in relation to an action to which an exemption relates.

However, I may only grant an exemption under section 303A of the EPBC Act if I am satisfied that it is in the national interest to do so.

5. I have today revoked a prior exemption, issued on 28 August 2000 by the former Minister for the Environment and Heritage, Hon. Robert Murray Hill, exempting action or actions undertaken by persons acting in accordance with the *National Plan to Combat Pollution of the Sea by Oil and Other Noxious and Hazardous Substances (Old Plan)* from the application of all of the provisions of Part 3 of the EPBC Act. The Old Plan was replaced on 5 March 2014 by the National Plan.
6. I have also today granted a new exemption, under section 158 of the EPBC Act, exempting action or actions undertaken by persons managing or responding to maritime environmental emergencies in accordance with the National Plan, from the application of Part 3 of the EPBC Act.

## **Evidence**

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7. The evidence or other material on which my findings were based was a brief from the Department of the Environment dated 6 March 2014. That brief attached the

application of 6 March 2014 from the AMSA referred to in paragraph 1 above, and included a copy of the National Plan.

## **Findings**

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8. The National Plan is a strategic standing arrangement that will be implemented in the event of a maritime environmental emergency. Consistent with international practice, the National Plan classifies incidents so as to provide direction on the potential consequence and impact of the incident and to provide guidance for agency readiness levels, incident notifications, response actions and potential response escalation. 'Response' within the scope of the National Plan refers to the management of operations directed to coordinate and control a maritime environmental emergency. The aim of response operations is to minimise the impacts of marine pollution from vessels, maritime facilities and oil and chemical terminals, and offshore petroleum facilities upon the Australian community, environment, economy and infrastructure.
9. The National Plan recognises that the majority of incidents are managed locally but enables the management system to adapt to meet the additional demands of larger or more complex incidents. The National Plan draws upon jurisdiction governments' legislation that underpins government agencies' response powers and places preparedness and response obligations on relevant industry sectors. Arrangements for response are generally detailed within jurisdictional, regional and local contingency plans. The National Plan outlines the national arrangements that support these contingency plans. Taken together, the National Plan and its subsidiary contingency plans (consistent with the relevant administrative or legislative requirements for each responsible jurisdiction) provide a cascade of response measures with initial actions at the local level, supported and/or overseen by regional and state/Northern Territory level resources and management, as needed.
10. A 'Control Agency' is the agency or company assigned by legislation, administrative arrangement or within the relevant contingency plan, to control response activities to a maritime environmental emergency. The jurisdiction governments ensure that there is an appointed Control Agency for each of the hazards identified within their overall emergency management arrangements. Agencies that have jurisdictional or legislative responsibilities for maritime environmental emergencies are obligated to work closely with the Control Agency to ensure that incident response actions are adequate. The National Plan states that such arrangements should be clearly identified in contingency plans detailing the procedures for initiating a response to a maritime environmental emergency, including: initiation triggers, required actions and the responsibilities of key agencies and personnel.
11. The National Plan states that such a response should be initiated by a Control Agency where there is a need to monitor a maritime environmental emergency, potential or actual, and to implement measures to mitigate the impacts of the emergency. When a decision is made by a Control Agency to respond to a maritime environmental emergency, response arrangements appropriate to the jurisdiction and incident type will be activated. The Control Agency will have responsibility for appointing the Incident Controller to control the operational response to an incident.

## Reasons

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12. In light of the matters discussed in paragraphs 6-9 above, I was satisfied that it is in the national interest that all of the provisions of Part 13 of the EPBC Act not apply in relation to persons managing or responding to maritime environmental emergencies in accordance with the National Plan.
13. I understand that the National Plan gives effect to a number of international conventions and agreements to which Australia is a party; for example: Article 221 of the *United Nations Convention on the Law of the Sea, 1982*; *International Convention for the Prevention of Pollution from Ships*; and the *International Convention on Civil Liability for Oil Pollution Damage, 1992*.
14. It is in the national interest to allow rapid and unimpeded responses to maritime environmental emergencies, in accordance with the National Plan, to maximise the chances of containing pollution and minimising the threat of damage to the environment. To illustrate:
  - a. In the event of a maritime environmental emergency, response actions undertaken in accordance with the National Plan and subsidiary contingency plans may harm a species listed under Part 13 of the EPBC Act, which may expose the responder to legal action for breaches of the Act.
  - b. Processes under the EPBC Act typically take a period of weeks or months to complete whereas maritime environmental emergencies can cause serious damage to the marine environment within hours. Even obtaining an exemption at the time of an incident would delay urgent response action.
  - c. Examples of the kind of damage to the marine environment caused by maritime environmental emergencies include marine animals covered in oil, fish deaths and damaged and oiled beaches, mangroves and other coastal areas.
  - d. As noted in paragraph 5 above, an exemption under section 158 of the EPBC Act was granted on 28 August 2000, for action or actions undertaken by persons acting in accordance with the Old Plan, being the predecessor plan to the National Plan, from all the provisions of Part 3 of the EPBC Act. This exemption allowed a rapid response that minimised damage to the marine environment after an uncontrolled release of crude oil commenced from the Montara Wellhead platform on 21 August 2009.
  - e. In its *National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances Annual Report 2009-10*, AMSA explain more than 130 surveillance flights were conducted over the duration of the Montara response operation to gather oil spill intelligence, environmental data and to direct response efforts to the heaviest concentrations of oil. Aerial dispersant spraying operations were supported by vessels spraying dispersant. Observations and sampling indicated that the use of dispersant was highly effective in assisting the natural process of degradation and in minimising the risk of oil impacting reefs and shorelines.
15. Any maritime environmental emergency response operations that are conducted in a manner which is contrary to the National Plan would remain subject to the

provisions of Part 13 of the EPBC Act and any other applicable provisions of that Act.

16. Accordingly, I decided to exempt persons managing or responding to maritime environmental emergencies in accordance with the National Plan, from the application of all of the provisions of Part 13 of the EPBC Act.
17. To avoid doubt, to the extent 'contingency plans' made under the National Plan are consistent with the National Plan, and the actions taken in accordance with those contingency plans are consistent with the National Plan, then I consider that the actions taken in accordance with contingency plans are within the scope of the exemption I have granted under section 303A of the EPBC Act and are exempt from the application of all of the provisions of Part 13 of the EPBC Act.



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Minister for the Environment

6/3 / 2014