



Commonwealth of Australia

Reasons for granting an exemption under section 158 of the *Environment Protection and Biodiversity Conservation Act 1999*

I, Peter Garrett, Minister for the Environment, Heritage and the Arts, provide these reasons under subsection 158(7) of the *Environment Protection and Biodiversity Conservation Act 1999*, for granting an exemption for the State of Victoria, and those acting on behalf of the State of Victoria, from the application of all of the provisions of Part 3 of the EPBC Act in relation to the following action:

All actions taken in response to the current severe bushfires in Victoria, including but not limited to clearance of vegetation, building of fire breaks and back-burning.

Legislation

1. 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

2. On 11 February 2009, the acting Secretary of my Department, Mr Gerard Early, received a request made under s.158 of the EPBC Act, from the Secretary of the Victorian Department of Sustainability and Environment (DSE), Mr Peter Harris. Mr Harris noted that that DSE would be undertaking emergency works in relation to the Victorian bushfires. Mr Harris indicated that the works would include building firebreaks, but might include other works, within the Upper Yarra and possibly other catchments. Mr Harris noted that the State of Victoria would seek to minimise environmental impacts with these efforts. Mr Harris' email attached a document describing the then latest 'state of play' in relation to the fires.

Evidence

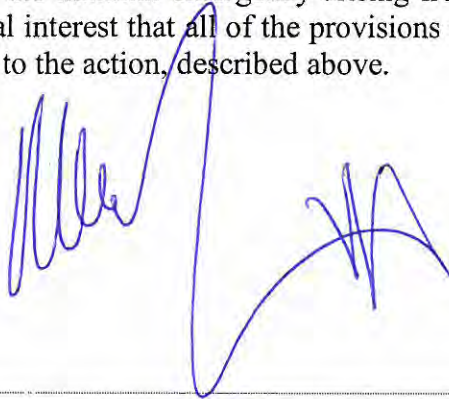
3. The evidence or other material on which my findings were based was a brief from my Department dated 11 February 2009. That brief attached the request of 11 February 2009 from the Secretary of DSE.

Findings

4. Unprecedented severe fire weather on 7 February 2009 resulted in significant bushfires across Victoria. Those bushfires constituted a national emergency.
5. There has been significant loss of life and property across Victoria. The total area burnt between 7 February 2009 and 11 February 2009 was in excess of 340,000 ha.
6. As at 11 February 2009, loss of life was confirmed at 181 but this was expected to rise.
7. Victoria had earlier referred a proposed action (EPBC 2007/3897) to construct strategic fire breaks in Victoria's central highlands, for which a decision was made in February 2008. That decision was that the then proposed action was not a 'controlled action' under the EPBC Act. That decision applied to certain areas and circumstances. The actions which Victoria may have needed to undertake in response to the February 2009 bushfires were more wide-ranging.

Reasons

8. I decided to give the exemption under subsection 158(3) because I was satisfied that given the national emergency arising from the Victorian bushfires it was in the national interest that all of the provisions of Part 3 of the EPBC Act not apply in relation to the action described above.



Minister for the Environment, Heritage and the Arts

27 / 2 / 2009