



# Environment Protection and Biodiversity Conservation Amendment Regulations 2007 (No. 1)<sup>1</sup>

## Select Legislative Instrument 2007 No. 9

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Environment Protection and Biodiversity Conservation Act 1999*.

Dated 15 February 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

MALCOLM BLIGH TURNBULL  
Minister for the Environment and Water Resources

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**1 Name of Regulations**

These Regulations are the *Environment Protection and Biodiversity Conservation Amendment Regulations 2007 (No. 1)*.

**2 Commencement**

These Regulations commence on the commencement of item 1 of Schedule 1 to the *Environment and Heritage Legislation Amendment Act (No. 1) 2006*.

**3 Amendment of *Environment Protection and Biodiversity Conservation Regulations 2000***

Schedule 1 amends the *Environment Protection and Biodiversity Conservation Regulations 2000*.

**Schedule 1 Amendments**

(regulation 3)

**[1] After Part 4**

*insert*

**Part 4A Reconsideration of a decision under section 75 of the Act**

**4A.01 Notice of the outcome of reconsideration**

- (1) For subsection 78C (3) of the Act, a notice must be published:
  - (a) in the *Gazette*; and
  - (b) at an appropriate location on the Internet; and

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- (c) if the notice is relevant to Norfolk Island, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island — in the Government Gazette of the relevant Territory.
- (2) The notice must contain the following:
- (a) the identification number for the action, allocated by the Department;
  - (b) a brief description or descriptive title for the action;
  - (c) the location of the action;
  - (d) the name of the person intending to take the action;
  - (e) notice of the outcome of the reconsideration under subsection 78C (1) of the Act:
    - (i) to confirm the decision; or
    - (ii) to revoke the decision and substitute a new decision.

**[2] After Division 5.1**

*insert*

**Division 5.1A Assessment on referral information**

**5.03A Minister's decision on an assessment on referral information**

- (1) For subsection 87 (4A) of the Act, the criteria for a decision by the Minister are all of the following:
- (a) the potential scale and nature of the relevant impacts of the action can be predicted with a high level of confidence;
  - (b) the relevant impacts are expected to be short term, easily reversible or small in scale;
  - (c) adequate information is available about relevant impacts on the matters protected;
  - (d) the action is likely to have a significant impact on only a small number of protected matters or elements of each relevant protected matter;

- (e) if the information is available — the person proposing to take the action has a satisfactory record of responsible environmental management and compliance with environmental laws;
  - (f) the degree of public concern about the action is, or is expected to be, moderately low.
- (2) In making a decision on an assessment on referral information, the Minister must not consider financial or economic factors.

**[3] After Division 5.2**

*insert*

**Division 5.3 Extension of the period of effect of approval**

**5.05 Information for application to Minister to extend the period of effect of approval**

For subsection 145C (3) of the Act, the following information is prescribed:

- (a) the requested timeframe for the proposed extension to the period for which the approval has effect;
- (b) the reasons for the proposed extension;
- (c) where applicable, evidence that:
  - (i) the conditions of approval have been complied with; and
  - (ii) the conditions of approval have provided, and will continue to provide, adequate protection for matters of national environmental significance; and
  - (iii) the impacts of the action on matters of national environmental significance have been, and will continue to be, similar in character and magnitude to those identified during the assessment of the action.

**5.06 Publication of notice of decision to extend the period of effect of approval**

- (1) For paragraph 145D (4) (b) of the Act, notice of the decision must be published at an appropriate location on the Internet.
- (2) The notice must contain the following:
  - (a) the identification number for the action, allocated by the Department;
  - (b) a descriptive title for the action;
  - (c) a brief description of the action that may be taken;
  - (d) the location of the action;
  - (e) the name of the person to whom the approval was granted;
  - (f) notice that the period of effect of the approval has been extended;
  - (g) the period for which the approval has effect;
  - (h) any conditions attached to the approval;
  - (i) the date of the decision.

**Division 5.4 Variations of proposals to take actions****5.07 Manner of request to vary a proposal to take an action**

For paragraph 156A (3) (a) of the Act, a request under subsection 156A (1) of the Act must be:

- (a) made in writing or electronically; and
- (b) given or sent to the Department.

**5.08 Information for a request to vary a proposal to take an action**

For paragraph 156A (3) (b) of the Act, a request under subsection 156A (1) of the Act must contain the following information:

- (a) details of the proposed variation to the action;
- (b) the reasons for the proposed variation;

- (c) how the impacts of the proposed variation on matters of national environmental significance compare with those of the original proposal;
- (d) if applicable, the impacts of the proposed variation on matters of national environmental significance not considered in the referral or assessment of the original proposal;
- (e) if applicable, alternatives, mitigation measures and offsets to compensate for additional impacts on matters of national environmental significance.

#### **5.09 Publication of the notice of decision**

- (1) For subsection 156E (3) of the Act, notice of the decision must be published at an appropriate location on the Internet.
- (2) The notice must contain the following:
  - (a) the identification number for the action, allocated by the Department;
  - (b) a descriptive title for the action;
  - (c) a brief description of the original action;
  - (d) the location of the original action;
  - (e) the name of the person intending to take the action;
  - (f) notice that the Minister has accepted the variation of the referred action;
  - (g) a description of the varied action;
  - (h) the location of the varied action;
  - (i) the date on which the variation came into effect.

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## **Division 5.5      Change of person proposing to take an action**

### **5.10      Information for notice of change of person proposing to take an action**

For subsection 156F (3) of the Act, a notice under subsection 156F (1) of the Act must contain the following:

- (a) the identification number for the action, allocated by the Department;
- (b) a brief description or a descriptive title for the action;
- (c) the location of the action;
- (d) the name of the person who originally proposed to take the action;
- (e) the name of the person proposing to take the action instead of that person.

### **5.11      Publication of notice of change of person proposing to take an action**

For subsection 156F (5) of the Act, the notice must be published at an appropriate location on the Internet.

### **[4]      After regulation 6.02**

*insert*

### **6.03      Notice of decision that the Minister's advice is not required**

- (1) For paragraph 161A (3) (b) of the Act, the notice must be published at an appropriate location on the Internet.
- (2) The notice must contain the following:
  - (a) the identification number for the action, allocated by the Department;
  - (b) a brief description or a descriptive title for the action;
  - (c) identification of the paragraph of subsection 160 (2) of the Act that applies to the action;

- (d) for an action prescribed by regulations made for paragraph 160 (2) (d) of the Act — identification of the category of action prescribed by the Regulations;
- (e) the name of the agency or employee of the Commonwealth that referred the action to the Minister under subsection 160 (1) of the Act;
- (f) notice that assessment and advice is not required under Subdivision A of Division 4 of Part 11 of the Act.

**[5] After Part 6**

*insert*

## **Part 6A Publication of information relating to assessments**

### **6A.01 Request for commercial-in-confidence information not to be disclosed**

For subsection 170BA (3) of the Act, a request under subsection 170BA (2) of the Act must contain the following information:

- (a) a statement clearly identifying the information that the designated proponent does not want disclosed (the ***relevant information***);
- (b) evidence that release of the relevant information would cause competitive detriment to the person proposing to take the action;
- (c) confirmation that the relevant information is not in the public domain;
- (d) confirmation that the relevant information is not required to be disclosed under another law of the Commonwealth or a law of a State or a Territory;
- (e) confirmation that the relevant information is not readily discoverable.



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## Part 6B                      Withdrawal of referrals

### 6B.01    Publication of a notice withdrawing a referral

- (1) For subsection 170C (3) of the Act, the notice must be published at an appropriate location on the Internet.
- (2) The notice must contain the following:
  - (a) the identification number for the action, allocated by the Department;
  - (b) the name of the person originally proposing to take the action;
  - (c) a brief description or descriptive title for the action;
  - (d) the location of the action;
  - (e) notice that the referral of the action has been withdrawn;
  - (f) the date on which the referral of the action was withdrawn.

### [6]            Division 7.2

*substitute*

## Division 7.2                      Nominations for listing

### 7.03    Notices inviting nominations for an assessment period

- (1) For paragraph 194E (3) (a) of the Act, a notice under subsection 194E (1) of the Act must be published:
  - (a) at an appropriate location on the Internet; and
  - (b) in a daily newspaper that circulates in each State and self-governing Territory.
- (2) For paragraph 194E (3) (b) of the Act, a nomination to include a species, an ecological community or a threatening process in a list must:
  - (a) be made in writing or electronically; and
  - (b) be of a length, size and form that can be:
    - (i) understood by the public; and

- (ii) published on the Internet.
- (3) For paragraph 194E (3) (c) of the Act, a nomination must include the following:
- (a) the name of each person making the nomination (each *nominee*);
  - (b) if applicable, the name of the organisation each nominee represents;
  - (c) each nominee's:
    - (i) postal address; and
    - (ii) telephone number; and
    - (iii) if applicable, email address;
  - (d) if the Minister has determined a conservation theme as a priority theme for the assessment period — a statement indicating how the nomination fits within the conservation theme;
  - (e) if the nomination is of a native species — the information set out in regulation 7.04;
  - (f) if the nomination is of an ecological community — the information set out in regulation 7.05;
  - (g) if the nomination is of a threatening process — the information set out in regulation 7.06;
  - (h) for information under paragraph (e), (f) or (g):
    - (i) the source of the information; and
    - (ii) when the information became available.

#### **7.04 Nominations of native species**

- (1) A nomination of a native species must include information about the species, including the following:
- (a) the scientific name of the species, if any;
  - (b) any common names by which the species is known to a person making the nomination;
  - (c) if the species is not conventionally accepted:
    - (i) a taxonomic description of the species in a form suitable for publication in conventional scientific literature; or

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- (ii) if a description for subparagraph (i) is not available:
    - (A) evidence that a scientific institution has a specimen of the species; and
    - (B) a written statement, signed by a person who is a taxonomist and has relevant expertise, that the person thinks the species is a new species;
  - (d) the species' known or estimated current and past distribution, including a map, if available;
  - (e) the following information about the population of the species:
    - (i) the number of mature individuals;
    - (ii) whether there are smaller populations of the species within the total population and, if so, the degree of geographic separation between the smaller populations within the total population;
    - (iii) any biological, geographic, human-induced or other barriers enforcing separation;
    - (iv) whether the population trend is increasing or decreasing, or whether the population is static;
    - (v) estimated generation length, and the method used to estimate the generation length;
  - (f) the habitat requirements for the species;
  - (g) information about the species' life cycle, including:
    - (i) age at sexual maturity; and
    - (ii) life expectancy; and
    - (iii) natural mortality rates;
  - (h) for fauna:
    - (i) feeding behaviour and food preferences; and
    - (ii) daily and seasonal movement patterns;
  - (i) for flora — pollination and seed dispersal mechanisms.
- (2) The nomination must also include the following:
- (a) a description of past, current and future threats to the survival of the species, including:
    - (i) whether the threats are actual or potential; and

- (ii) how and where the species is affected by the threats; and
  - (iii) how the threats are being, or could be, abated;
- (b) a statement setting out:
  - (i) the category in subsection 178 (1) of the Act under which the nominee considers the species should be listed; and
  - (ii) the reasons why the species should be listed under that category, by reference to the criteria in regulation 7.01.
- (3) However, if information required for subregulation (1) or (2) is not available because of a lack of scientific data or analysis, those subregulations are satisfied if the nomination includes:
  - (a) the information that is available; and
  - (b) a statement identifying the data or analysis that is not available.
- (4) For sub-subparagraph (1) (c) (ii) (B), a person has *relevant expertise* if the person has worked with, or is a published author on, the class of species nominated.

#### **7.05 Nominations of ecological communities**

- (1) A nomination of an ecological community must include information about the ecological community, including the following:
  - (a) the name of the ecological community;
  - (b) any other names by which the ecological community is known;
  - (c) a description of the key components of the ecological community including:
    - (i) biological components; and
    - (ii) non-biological components; and
    - (iii) the key interactions and functional processes;
  - (d) a description of the characteristic features that distinguish the ecological community from other ecological communities;

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- (e) information about each key species in the ecological community;
  - (f) the ecological community's known or estimated current and past national distribution, including a map.
- (2) The nomination must also set out the following:
- (a) a description of past, current and future threats to the survival of the ecological community, including:
    - (i) whether the threats are actual or potential; and
    - (ii) how and where the ecological community is affected by the threats; and
    - (iii) how the threats are being, or could be, abated;
  - (b) a statement setting out:
    - (i) the category in subsection 181 (1) of the Act under which the nominee considers the ecological community should be listed; and
    - (ii) the reasons why the ecological community should be listed under that category, by reference to the criteria in regulation 7.02.
- (3) However, if information required for subregulation (1) or (2) is not available because of a lack of scientific data or analysis, those subregulations are satisfied if the nomination includes:
- (a) the information that is available; and
  - (b) a statement identifying the data or analysis that is not available.

## **7.06 Nominations of threatening processes**

- (1) A nomination of a threatening process must include the following:
- (a) a name for the threatening process;
  - (b) a description of the threatening process that distinguishes it from any other threatening process by reference to:
    - (i) its biological and non-biological components; and
    - (ii) the processes by which those components interact, if known;

- (c) the identity of any species:
  - (i) that is not a species listed in a category in the list mentioned in section 178 of the Act; and
  - (ii) that, by reference to the criteria prescribed in regulation 7.01, could become eligible for listing in 1 of those categories, other than the category of conservation dependent, because of the threatening process;
- (d) the identity of any ecological community:
  - (i) that is not an ecological community listed in the category in the list mentioned in section 181 of the Act; and
  - (ii) that, by reference to the criteria prescribed in regulation 7.02, could become eligible for listing in 1 of those categories because of the threatening process;
- (e) the identity of any species:
  - (i) that is included in the list mentioned in section 178 of the Act; and
  - (ii) that, by reference to the criteria prescribed in regulation 7.01, the person making the nomination considers will become eligible to be listed in a category representing a higher degree of endangerment because of the threatening process;
- (f) the identity of any ecological community:
  - (i) that is included in the list mentioned in section 181 of the Act; and
  - (ii) that, by reference to the criteria prescribed in regulation 7.02, the person making the nomination considers will become eligible to be listed in a category representing a higher degree of endangerment because of the threatening process;
- (g) the identity of 2 or more species:
  - (i) that are listed in the list mentioned in section 178 of the Act, other than in the category of conservation dependent; and

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- (ii) that, by reference to the criteria prescribed in regulation 7.01, the person making the nomination considers to be adversely affected by the threatening process;
  - (h) the identity of 2 or more ecological communities:
    - (i) that are listed in the list mentioned in section 181 of the Act; and
    - (ii) that, by reference to the criteria prescribed in regulation 7.02, the person making the nomination considers to be adversely affected by the threatening process.
- (2) However, if information required for subregulation (1) is not available because of a lack of scientific data or analysis, that subregulation is satisfied if the nomination includes:
- (a) the information that is available; and
  - (b) a statement identifying the data or analysis that is not available.

**[7] Subregulation 8.04 (3)**

*omit*

constant slow speed,

*insert*

constant speed of less than 6 knots,

**[8] Subregulation 8.04 (3)**

*insert*

*Note* A boat travelling at a speed that is the equivalent of a brisk walking pace is not exceeding 6 knots.

**[9] Paragraph 8.05 (2) (a)**

*omit*

constant slow speed

*insert*

constant speed of less than 6 knots

**[10] Paragraph 8.05 (2) (c)**

*omit*

constant slow speed;

*insert*

constant speed of less than 6 knots;

**[11] Subparagraph 8.06 (3) (b) (iii)**

*omit*

constant slow speed.

*insert*

constant speed of less than 6 knots.

**[12] Subregulation 8.12 (2)**

*omit*

regulation 8.05.

*insert*

regulations 8.05 and 8.06.

**[13] Division 8.3**

*omit*

**[14] After regulation 9A.06**

*insert*

**9A.06A Amendment of list of specimens suitable for import**

For paragraph 303ED (3) (b) of the Act, the report specified is a report of an assessment undertaken for the purpose of importing a biological control agent or releasing a biological control agent.



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**[15] Regulation 9A.07**

*substitute*

**9A.07 Application for amendment of list of specimens suitable for live import**

- (1) For subsection 303EE (1) of the Act, an application must:
  - (a) be in writing; and
  - (b) be in the form, if any, approved by the Minister; and
  - (c) identify the taxon to which the specimen belongs.
- (2) For paragraph 303EE (4) (b) of the Act, the report specified is a report of an assessment undertaken for the purpose of importing a biological control agent or releasing a biological control agent.

**[16] Regulation 10.01B**

*substitute*

**10.01B Nominations of places for inclusion in the National Heritage List**

For paragraphs 324J (3) (b) and (c) of the Act, a nomination of a place for inclusion in the National Heritage List must:

- (a) be in writing or electronic form; and
- (b) be made on a form approved by the Minister; and
- (c) include the full name, signature, address, telephone number and e-mail address (if any) of the person making the nomination; and
- (d) include the following:
  - (i) the name of the place, and any alternative name;
  - (ii) a description of the location of the place;
  - (iii) a map or plan showing the location and boundaries of the place;
  - (iv) a statement of the heritage significance of the place;
  - (v) a statement identifying 1 or more National Heritage criteria that the place satisfies;

- (vi) evidence showing how the place satisfies the criterion or criteria.

**[17] After regulation 10.03A**

*insert*

**10.03AB Nominations of places for inclusion in the Commonwealth Heritage List**

For paragraphs 341H (3) (b) and (c) of the Act, a nomination of a place for inclusion in the Commonwealth Heritage List must:

- (a) be in writing or electronic form; and
- (b) be made on a form approved by the Minister; and
- (c) include the full name, signature, address, telephone number and e-mail address (if any) of the person making the nomination; and
- (d) include the following:
  - (i) the name of the place, and any alternative name;
  - (ii) a description of the location of the place;
  - (iii) a map or plan showing the location and boundaries of the place;
  - (iv) a statement of the heritage significance of the place;
  - (v) a statement identifying 1 or more Commonwealth Heritage criteria that the place satisfies;
  - (vi) evidence showing how the place satisfies the criterion or criteria.

**[18] Before regulation 10.04**

*insert*

**10.03H IUCN categories for Commonwealth reserves**

For paragraph 346 (1) (e) of the Act, the categories in the following table are prescribed.

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Item	IUCN category number	IUCN category
1	Ia	Strict nature reserve
2	Ib	Wilderness area
3	II	National park
4	III	Natural monument
5	IV	Habitat/species management area
6	V	Protected landscape/seascape
7	VI	Managed resource protected area

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**[19] Paragraph 16.03 (1) (a)**

*substitute*

- (a) subsection 95 (2);
- (aa) subsection 95A (3);
- (ab) subsection 95B (2);
- (ac) subsection 95B (4);

**[20] Paragraph 16.04 (1) (a)**

*substitute*

- (a) subsection 95 (2);
- (aa) subsection 95A (3);
- (ab) subsection 95B (2);
- (ac) subsection 95B (4);

**[21] Subregulation 16.05A (1)**

*substitute*

- (1) This regulation sets out the publication requirements for material under the following provisions of the Act:
  - (a) paragraph 324J (2) (a);
  - (b) paragraph 324M (1) (b);
  - (c) subsection 324S (3);

- (d) paragraph 324S (6) (a);
- (e) paragraph 341H (2) (a);
- (f) paragraph 341M (1) (b);
- (g) subsection 341S (3);
- (h) paragraph 341S (6) (b).

**[22] Subregulation 16.05A (2)**

*omit*

(c), (g), (h) and (l)

*insert*

(e) and (h)

**[23] Subregulation 16.05A (3)**

*omit*

**[24] Subregulation 16.05A (4)**

*omit*

paragraphs (1) (e) and (j) applies

*insert*

paragraphs (1) (c) and (f) apply

**[25] Subregulation 16.05A (5)**

*omit*

paragraphs (1) (f) and (k) applies

*insert*

paragraphs (1) (d) and (g) apply

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**[26] Schedule 8, Part 2, clause 1 heading, including the note**

*substitute*

**1 Strict nature reserve (category Ia)**

**[27] Schedule 8, Part 2, clause 1, before subclause 1.01**

*insert*

1.01A This clause sets out the management principles for a strict nature reserve (IUCN protected area management category Ia).

**[28] Schedule 8, Part 2, clause 2 heading, including the note**

*substitute*

**2 Wilderness area (category Ib)**

**[29] Schedule 8, Part 2, clause 2, before subclause 2.01**

*insert*

2.01A This clause sets out the management principles for a wilderness area (IUCN protected area management category Ib).

**[30] Schedule 8, Part 2, clause 3 heading, including the note**

*substitute*

**3 National park (category II)**

**[31] Schedule 8, Part 2, clause 3, before subclause 3.01**

*insert*

3.01A This clause sets out the management principles for a national park (IUCN protected area management category II).

**[32] Schedule 8, Part 2, clause 4 heading, including the note**

*substitute*

**4 Natural monument (category III)**

**[33] Schedule 8, Part 2, clause 4, before subclause 4.01**

*insert*

4.01A This clause sets out the management principles for a natural monument (IUCN protected area management category III).

**[34] Schedule 8, Part 2, clause 5 heading, including the note**

*substitute*

**5 Habitat/species management area (category IV)**

**[35] Schedule 8, Part 2, clause 5, before subclause 5.01**

*insert*

5.01A This clause sets out the management principles for a habitat/species management area (IUCN protected area management category IV).

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**[36] Schedule 8, Part 2, clause 6 heading, including the note**

*substitute*

**6 Protected landscape/seascape (category V)**

**[37] Schedule 8, Part 2, clause 6, before subclause 6.01**

*insert*

6.01A This clause sets out the management principles for a protected landscape/seascape (IUCN protected area management category V).

**[38] Schedule 8, Part 2, clause 7 heading, including the note**

*substitute*

**7 Managed resource protected area (category VI)**

**[39] Schedule 8, Part 2, clause 7, before subclause 7.01**

*insert*

7.01A This clause sets out the management principles for a managed resource protected area (IUCN protected area management category VI).

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**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See [www.frli.gov.au](http://www.frli.gov.au).