

Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No. 1) 2001 No. 179

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 179

Issued by the Authority of the Minister for the Environment and Heritage

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No. 1)

Subsection 520 (1) of the *Environment Protection and Biodiversity Conservation Act 1999* (the 'Act') provides that the Governor-General may make regulations prescribing all matters: (a) required or permitted by the Act to be prescribed; or (b) necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under Part 5 of the Act the Environment Minister may enter into bilateral agreements which can declare that a class of actions need not be assessed under Part 8 of that Act as they will be assessed under accredited State or Territory environmental impact assessment procedures. Before entering into such an agreement the Minister must be satisfied that the State or Territory procedures meet the criteria set out in Part 3 and Schedule 1 of the Environment Protection and Biodiversity Conservation Regulations 2000. The primary purpose of the Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No. 1) (the Amendment Regulations) is to adjust the criteria to ensure that the accredited assessment processes under bilateral agreements will be best practice.

In addition the Amendment Regulations make it clear that Regulation 12.24 covers both visual and sound images. This amendment is being made in response to a recommendation from the Senate Standing Committee on Regulations and Ordinances who expressed concern that regulation 12.24 could be confusing,

The Amendment Regulations also contain technical amendments to correct cross references in the Environment Protection and Biodiversity Conservation Regulations 2000.

Details of the proposed Amendment Regulations are set out in the Attachment.

The Amendment Regulations commence on the day on which they are gazetted.

Attachment

Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No. 1)

Regulations 1 - 3

Provides the name and commencement date of the regulations and that Schedule 1 contains the amendments to the Environment Protection and Biodiversity Conservation Regulations 2000. The Regulations commence on gazettal.

Item 1 Regulation 3.05 Schedule 1 Amendments (regulation 3)

This is a technical amendment which corrects existing Regulation 3.05 within which subregulation 3.05(1) specifies that Division 3.3 of the Regulations applies to each manner of assessment in an agreement. Subregulation 3.05(2) does not concern the application of Division 3.3) rather it requires that the specified manner of assessment in an agreement meet the criteria in Schedule 1. The amendment separates the subregulations into two regulations with separate headings.

Item 2 Sub-Regulation 5.03(3)

This is technical amendment to correct a cross-reference to a section of the Act.

Items 3 to 8 Regulation 12.24

This amendment is to make it clear that the relations apply to both the capturing of visual images and the recording of sound.

Item 9 Paragraph 17.02(2)(e)

This is a technical amendment to correct cross -references in the Regulations.

Item 10 Schedule 1 Heading

The change in the heading, from 3.05 to 3.06 results from the amendment at item 1.

Item 11 Schedule 1 item 3.01

This item requires that State or Territory decision-makers have adequate information when deciding on the assessment approach. This item will only apply when the bilateral agreement provides for a choice between two or more assessment approaches of the type mentioned in Regulation 3.02(b).

Items 12 and 13 Schedule 1 item 4.04(b)

These items outline extra criteria which must be met if the form of environmental assessment is an inquiry. Where environmental assessments are conducted, by an inquiry the terms of reference must be published, commissioners must be independent and have sufficient powers, and unless it is not in the public interest the hearings must be held in public.

Item 14 Schedule 1 after item 5.01

This items requires that for environmental assessment approaches that correspond to public environment reports and environmental impact statements under the Act, the environmental assessment documentation released for public comment must adequately address the written guidelines on the content of such documents.

Item 15 Schedule 1 after item 6.03

This item requires that a State or Territory or an agency of the State or Territory prepare assessment reports. It is not acceptable for proponents to prepare assessment reports.

Item 16 Schedule 1 after paragraph 7.04(a)

This item ensures that invitations to the public to comment on draft environmental assessment documentation or guidelines under a State or Territory process contain information which corresponds to the information required to be made available to the public under the Commonwealth environmental assessment process. This includes the name of the action; the name of the person intending to take the action; and the name of the designated proponent (if this is not the person intending to take the action).

Items 17 and 18 Dictionary

These items insert definitions of the terms 'agency' and 'designated proponent'.