EXPLANATORY STATEMENT

Issued by the Authority of the Minister for the Environment and Water Resources

Environment and Heritage Legislation Amendment Act (No.1) 2006

Determination

The Environment and Heritage Legislation Amendment Act (No. 1) 2006 (the EHLA Act) amends the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) to make the EPBC Act more efficient, effective and flexible; to allow for the use of more strategic approaches; improve processes and environmental outcomes; and to provide greater certainty in decision-making.

Item 4 of Division 1 of Part 2 of Schedule 2 to the EHLA Act provides that the Minister may determine in writing, that some or all of specified amendments of the EPBC Act to which subitem 3(3) applies are to apply in relation to an action to which Item 4 applies, subject to such modifications of Part 7 and Division 3 of Part 8, as are specified in the determination. Subitem 3(3) applies to all of the amendments of Part 7, Part 8, Division 1 of Part 9 and s.170A made by the EHLA Act with the exception of the following items: 172, 173, 178, 179, 188, 189, 194, 201, 202, 255, 256, 257, 258, 260, 261, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277 and 285. Item 4 applies to actions referred to the Minister under Division 1 of Part 7 of the EPBC Act before the amendments commenced, but only if the Minister had not, before that time, decided under s.87 of the EPBC Act on the approach to be used for the assessment of the relevant impacts of the relevant action.

The purpose of the Determination is to allow the Minister to apply amendments made to the EPBC Act by the EHLA Act to actions which, under the transitional provisions in Schedule 2 to the EHLA Act, would otherwise be subject to the referral, assessment and approval processes which were in place before the EHLA Act amendments came into force on 19 February 2007. The Determination modifies Division 3 of Part 8 in order to ensure that the Minister is not automatically in breach of statutory timeframes which, without such modification, would result from differences between the pre- and post-amendment processes.

Persons proposing to take actions which are the subject of the determination, and designated proponents for these actions (where relevant) were notified of the Minister’s proposal to make the Determination and given the opportunity to comment on the proposal. Appropriate Ministers, in States and Territories where actions which are the subject of the determination are proposed to be taken, were also notified of the Minister’s proposal to make the Determination.

The Determination is a legislative instrument for the purposes of the Legislative Instruments Act 2003.