

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 191**

Issued by the Authority of the Minister for Sustainability, Environment, Water,  
Population and Communities

*Environment Protection and Biodiversity Conservation Act 1999*

*Environment Protection and Biodiversity Conservation Amendment  
Regulations 2011 (No. 1)*

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance. One of the prescribed matters of national environmental significance is the National Heritage values of National Heritage places.

Generally it is an offence for a person to take an action which has, will have, or is likely to have a significant impact on matter of national environmental significance. Specifically, Sections 15B and 15C of the EPBC Act require approval for activities that “have, will have, or are likely to have a significant impact on the National Heritage values” of a National Heritage place, and set out both civil and criminal penalties for taking an action without approval.

Subsection 520(1) of the EPBC Act provides that the Governor General may make regulations prescribing all matters required or permitted by the EPBC Act or necessary or convenient to be prescribed for carrying out or giving effect to the EPBC Act.

Section 25A of the EPBC Act allows the regulations to effectively deem that particular actions have a significant impact on particular matters of national environmental significance. Subsection 25A(3) sets out various limitations on the power to make such a regulation, consistent with corresponding constitutional powers. Paragraph 25A(3)(e) allows for such a regulation to specify actions whose regulation is appropriate and adapted to give effect to Australia’s obligations under an agreement with one or more other countries.

The purpose of the Regulations is to amend the *Environment Protection and Biodiversity Conservation Regulations 2000* (the Principal Regulations) to prescribe an action whose regulation is appropriate and adapted to give effect to Australia’s obligations under the Convention on Biological Diversity (the Convention). Article 8 of the Convention requires parties to, among other things, establish areas where special measures need to be taken to conserve biological diversity.

The Regulations prescribe grazing of domestic stock in the Australian Alps National Parks and Reserves as a specified action in accordance with section 25A. The specified

regulatory provisions that apply to this action are subsections 15B(5), 15C(9) and 15C(10) of the EPBC Act.

The Australian Alps National Parks and Reserves was listed as a National Heritage place on 4 November 2008. The Australian Alps National Parks and Reserves has listed biological heritage values including that it is a vital refuge for alpine and sub-alpine flora and fauna species, with a high level of richness and endemism across a wide range of taxa, and therefore has outstanding value to the nation for encompassing a significant and unique component of Australia's biological heritage.

There is a substantial body of evidence that grazing of domestic stock within the Australian Alps National Parks and Reserves has broad negative impacts on biodiversity within the Parks. A desktop assessment of the scientific adequacy of grazing studies in the Victorian High Country 1945-1998 by Dr Richard Groves, Senior Principal Research Scientist CSIRO found

*Results of scientific research assessed in this study on the effects of excluding grazing on vegetation composition in the high country of both New South Wales and Victoria, without exception, reveal the deleterious effect of grazing on native plant biodiversity and, to a lesser extent, on water yield.*

The Minister for Sustainability, Environment, Water, Population and Communities (the Minister) has consulted with states and territories as well as affected stakeholders on a related proposal to protect biodiversity in terrestrial national parks. If implemented the related proposal would, among other things, prohibit grazing of domestic stock within national parks without assessment and approval under the EPBC Act.

No additional consultation was necessary for the Regulation as it reflects well established science and the Minister already consulted with relevant jurisdictions and stakeholders in relation to the regulation of grazing within national parks. The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this Regulation.

Details of the Regulations are set out in the Attachment.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

## **Details of the *Environment Protection and Biodiversity Conservation Amendment Regulations 2011 (No.1)***

### **Regulation 1 – Name of Regulations**

This regulation provides that the title of the Regulations is the *Environment Protection and Biodiversity Conservation Amendment Regulations 2011 (No. 1)*.

### **Regulation 2 – Commencement**

This regulation provides for the Regulations to commence on the day after they are registered.

### **Regulation 3 – Amendment of *Environment Protection and Biodiversity Conservation Regulations 2000***

This regulation provides that the *Environment Protection and Biodiversity Conservation Regulations 2000* (the Principal Regulations) are amended as set out in Schedule 1.

### **Schedule 1 Amendments**

#### **Item 1 – Before regulation 2.01**

This item inserts a new heading to differentiate existing provision from those inserted by item 2.

#### **Item 2 – After regulation 2.03**

Item 2 inserts a new Division 2.2, which is reserved for future use.

#### **Division 2.3 – Actions taken to be covered by Division 1 of Part 3 of the Act**

Regulation 2.10 prescribes grazing domestic stock in the Australian Alps National Parks and Reserves to which subsections 15B (5), 15C (9) and 15C (10) of the EPBC Act apply.

Subsection 15B(5) of the EPBC Act creates a civil penalty for taking an action that has, will have or is likely to have a significant impact on the National Heritage values of a National Heritage place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

Subsections 15C (9) and 15C (10) of the EPBC Act create a criminal penalty for taking an action that has, will have or is likely to have a significant impact on the National Heritage values of a place in an area in respect of which Australia has obligations under Article 8 of the Biodiversity Convention.

The regulation of grazing of domestic stock within the Australian Alps National Parks and Reserves is appropriate and adapted to give effect to Australia's obligations under the Convention on Biological Diversity (the Convention). Article 8 of the Convention on Biological Diversity provides that each contracting party shall, as far as possible and as appropriate, establish a system of protected areas or areas where special measures

need to be taken to conserve biological diversity (Art 8(a)) and promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings (Art 8(d)).

The Australian Alps National Parks and Reserves area was listed as a National Heritage place in accordance with section 324JJ of the EPBC Act on 4 November 2008. The area comprises of eleven areas that are designated as Australian national parks and reserves that span collectively across New South Wales, Australian Capital Territory and Victorian borders. This includes the Alpine National Park which covers approximately 646 000 hectares located south east of Mount Beauty in Victoria.

The listed values of the Australian Alps National Parks and Reserves area include biodiversity values including its support of a rich and unique assemblage of cold-climate specialist species that have evolved unique physiological characteristics, and its role as vital refuge for alpine and sub-alpine flora and fauna species. It has outstanding value to the nation for encompassing a significant and unique component of Australia's biological heritage.