



TERRITORY OF HEARD ISLAND AND McDONALD ISLANDS

Environment Protection and Management Amendment Ordinance 2009 (No. 1)¹

Ordinance 2009 No. 2

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Ordinance under subsection 10 (1) of the *Heard Island and McDonald Islands Act 1953*.

Dated 30 July 2009

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

PETER GARRETT
Minister for the Environment, Heritage and the Arts

An Ordinance to amend the *Environment Protection and Management Ordinance 1987*

1 Name of Ordinance

This Ordinance is the *Environment Protection and Management Amendment Ordinance 2009 (No. 1)*.

2 Commencement

This Ordinance commences on the day after it is registered.

3 Amendment of *Environment Protection and Management Ordinance 1987*

Schedule 1 amends the *Environment Protection and Management Ordinance 1987*.

4 Saving

The amendments made by this Ordinance do not affect the validity of a permit issued before commencement of the amendments.

Schedule 1 Amendments

(section 3)

[1] Section 4, after definition of *animal*

insert

environment includes:

- (a) ecosystems and their constituent parts; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) heritage value of places and things; and

(e) the social, economic and cultural aspects of a thing mentioned in paragraph (a), (b), (c) or (d).

[2] Section 4, definition of *inspector*

substitute

inspector means a person appointed under subsection 20 (1) or mentioned in subsection 20 (5).

[3] Section 4, definition of *plan of management*

omit

[4] Section 4, definition of *zone of special status*

omit

[5] Sections 7 to 11

omit

[6] Section 14, heading

substitute

14 Activities for which a permit is required

[7] Subsection 14 (2)

omit

if the act

insert

if the activity

[8] Section 15

substitute

15A Applications for permits

- (1) A person may apply to the Minister for a permit to:
 - (a) enter a specified part of the Territory; and
 - (b) carry out a specified activity that would otherwise be prohibited by subsection 14 (1).
- (2) The application for the permit must be in a form approved by the Minister for the purposes of this subsection.
- (3) An application by a body corporate, or by a person on behalf of an expedition or an association, must specify:
 - (a) in the case of an expedition — the name of every person who is a member of the expedition; and
 - (b) in the case of a body corporate or an association — the name of every person authorised by the body corporate or association to act on its behalf in the Territory.

15 Granting of permits

- (1) Subject to subsection (3) and section 16, the Minister may grant a permit, in writing, to a person to:
 - (a) enter a specified part of the Territory; and
 - (b) carry out a specified activity that would otherwise be prohibited by subsection 14 (1).
- (2) Subject to subsection (3) and section 16, the Minister may decide that a permit is subject to conditions, including the condition that the person who is granted the permit may authorise another person to enter the Territory and carry out an activity in accordance with the permit.
- (3) In deciding whether to grant a permit, and in deciding the conditions subject to which a permit is to be granted, the Minister must consider:
 - (a) the need to protect the environment of the Territory; and

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- (b) the safety of persons, aircraft, vehicles and vessels in the Territory.
- (4) If the Minister grants a permit, the permit must include the following information:
 - (a) the activities to be carried out under the permit, including particulars of any specimen to which the permit relates;
 - (b) the part of the Territory to which entry is permitted;
 - (c) the conditions to which the permit is subject;
 - (d) the name of the person to whom the permit is granted;
 - (e) the days on which the permit starts and expires;
 - (f) any other information that the Minister decides should be set out.
 - (5) A permit granted to a body corporate, or a person on behalf of an expedition or an association, may be expressed to apply to:
 - (a) all of the persons mentioned in the application under subsection 15A (3); or
 - (b) only those persons specified in the permit.
 - (6) The regulations may prescribe fees, not exceeding \$50, payable for the grant of a permit.

16A Authorities under permits

- (1) This section applies to a person named in a permit granted under subsection 15 (1).
- (2) The person may authorise, in writing, another person to enter a specified part of the Territory and carry out a specified activity in the Territory in accordance with the permit only if:
 - (a) the permit contains a condition allowing the person to make such an authorisation; and
 - (b) the authorisation is given in accordance with any requirements set out in that condition and any other conditions contained in the permit.
- (3) A permit is taken to authorise a person to enter the Territory and carry out an activity if the person is authorised to do so by an authorisation given to that person by a person named in the permit.

- (4) If a person named in the permit gives an authorisation under subsection (2), the person giving the authorisation is not prevented from entering the Territory and carrying out activities under the permit.
- (5) A person who gives an authorisation must give to the Minister written notice of the authorisation within 14 days after giving the authorisation.
- (6) A person who does not comply with subsection (5) commits an offence.

Penalty: 20 penalty units.

[9] Paragraph 16 (1) (a)

omit

reproduction;

insert

reproduction; and

[10] Subsection 16 (3)

omit

[11] Section 17

substitute

17 Register of permits

- (1) As soon as practicable after the commencement of this section, the Minister must establish a register of permits that includes the following for each permit granted under section 15 after the register is established:
 - (a) a copy of the permit;
 - (b) the name of any person authorised under section 16A to enter the Territory and carry out activities under the permit;

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- (c) any other information that the Minister decides should be included.
- (2) The Minister may decide that some or all of the information contained in a permit must not be included in the register if the disclosure of the information:
- (a) could adversely affect the commercial interests of a person who has been granted a permit under this Ordinance; or
 - (b) could result in a risk to the environment of the Territory; or
 - (c) would not be in the national interest.
- (3) Without limiting the matters the Minister may consider in deciding what is in the national interest, the Minister may consider the need to keep details about surveillance and enforcement activities in the Southern Ocean confidential.
- (4) The Minister must ensure that the register is:
- (a) updated as soon as practicable after each permit is granted or varied; and
 - (b) accessible to the public through the Internet.
- Note* The register may be accessed from the Department's website for the Territory of Heard Island and McDonald Islands at <http://www.heardisland.aq>.
- (5) If a permit expires, the Minister must ensure that:
- (a) the details of the permit are retained on the register; and
 - (b) the register is updated as soon as practicable after the permit expires to state that the permit is no longer in force.
- (6) The Minister must ensure that the register includes a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for the review of the Minister's decision to grant a permit by or on behalf of a person whose interests are affected by the decision.

[12] Section 18, except the heading

omit everything before the penalty, insert

A person who is named in a permit, or who has been authorised under section 16A, commits an offence if the person engages in conduct that contravenes a condition of the permit.

[13] Paragraph 19 (a)

omit

holder;

insert

holder; or

[14] Section 19A

substitute

19A Delegation of powers

The Minister may, by signed instrument, delegate any or all of his or her powers under this Ordinance, other than the power to make regulations under section 26, to the following:

- (a) the Director of the Australian Antarctic Division of the Department;
- (b) an SES employee, or acting SES employee, in the Australian Antarctic Division of the Department;
- (c) an APS employee who holds, or is acting in, an Executive Level 2 or equivalent position in the Australian Antarctic Division of the Department.

[15] Section 20, heading

substitute

20 Inspectors

Appointment of inspectors and issue of identity cards

[16] Subsection 20 (3)

substitute

- (3) The Minister must issue an identity card to a person appointed under subsection (1).
- (4) The identify card must be in a form approved by the Minister and it must bear a photograph of the holder and a statement to the effect that the person is an inspector for the purposes of this Ordinance.

Inspectors not requiring appointment or identity card

- (5) The following are taken to be inspectors for the purposes of this Ordinance:
 - (a) a member of the Australian Federal Police;
 - (b) a member of the police force of a Territory.
- (6) Subsection (3) does not apply to an inspector mentioned in subsection (5).

[17] Section 24

omit

paragraph 15 (2) (b)

insert

paragraph 15 (3) (b)

[18] Paragraph 26 (2) (a)*omit*

inspectors;

insert

inspectors; and

[19] Paragraph 26 (2) (b)*omit*

for the imposition of a fine not exceeding \$1,000; and

insert

for a penalty not exceeding 10 penalty units.

[20] Paragraph 26 (2) (c)*omit***[21] Further amendments**

<i>Item</i>	<i>Provision</i>	<i>omit</i>	<i>insert</i>
1	Section 4, definition of <i>permit</i>	issued	granted
2	Paragraph 14 (2) (b)	issued	granted
3	Paragraph 16 (1) (a)	issued	granted
4	Subsection 16 (2)	issuing	granting

Note

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