

EXPLANATORY STATEMENT

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

Antarctic Treaty (Environment Protection) Act 1980 (Cth)

Antarctic Treaty (Environment Protection) Amendment (Protected Areas and Managed Areas) Proclamation 2016

Subsection 8(2) of the *Antarctic Treaty (Environment Protection) Act 1980* (the **Act**) provides that the Governor-General may, by Proclamation, declare an area specified in the Proclamation to be an Antarctic specially protected area (**ASPA**) and, by the same or another Proclamation, may declare an area specified in the Proclamation to be an Antarctic specially managed area (**ASMA**). However, subsection 8(3) of the Act provides that an area may not be declared to be an ASPA or an ASMA unless the Antarctic Treaty Consultative Parties have adopted a management plan in respect of the area under Article 6 of Annex V to the Madrid Protocol. Subsection 8(6) of the Act provides that the Governor-General may, by Proclamation, vary the boundaries of an ASPA or ASMA in accordance with an amendment of the management plan adopted by the Antarctic Treaty Consultative Parties.

Australia is an Antarctic Treaty Consultative Party under the Antarctic Treaty and the Proclamation seeks to give effect to measures agreed to by Antarctic Treaty Consultative Parties under the Protocol on Environmental Protection to the Antarctic Treaty in domestic law.

The purpose of the Proclamation is to amend the *Antarctic Treaty (Environment Protection) Proclamation 2007* (the **Principal Proclamation**) by varying the boundaries of four ASPAs and one ASMA. The Proclamation also makes technical amendments to amend naming terminology and correct spelling mistakes.

The Proclamation varies the boundaries of the following existing four ASPAs and one ASMA declared under the Principal Proclamation:

- Taylor Rookery, Mac.Robertson Land (ASPA No. 101);
- Davis Valley and Forlidas Pond, Dufek Massif, Pensacola Mountains (ASPA No. 119);
- Backdoor Bay, Cape Royds, Ross Island (ASPA No. 157);
- Scullin and Murray Monoliths, Mac.Robertson Land (ASPA No. 164);
- McMurdo Dry Valleys, Victoria Land (ASMA No. 2).

The variation of the boundaries of these ASPAs and one ASMA in the Proclamation reflects amendments adopted by the 38th ATCM to vary the boundaries in the management plans of these ASPAs and ASMA.

ASPAs and ASMAs are designated in order to protect outstanding environmental, scientific, historic, aesthetic or wilderness values or ongoing planned scientific research. Paragraph 19(1)(d) of the Act makes it an offence for a person to enter or carry on any other

activity in an ASPA. Paragraph 19(1)(e) of the Act makes it an offence for a person to carry on any activity in an ASMA otherwise than as authorised by the plan of management relating to the area.

Where an area is proclaimed to be an ASPA or an ASMA, the subsoil extending 1000 metres below the surface of any land or the sea-bed, as specified in subsections 5(3) and (4) of the Principal Proclamation, is deemed to be within the area.

The Office of Best Practice Regulation has indicated that a Regulatory Impact Assessment is not required for the Proclamation as it is likely to have minor impacts on business (OBPR ID: 21151).

Prior to the 38th ATCM the Australian Government conducted consultations with Antarctic scientists, tourism operators and non-government organisations on proposals being taken to the ATCM, including the amended management plans for ASPAs and ASMAs.

The Proclamation is a legislative instrument for the purposes of the *Legislation Act 2003* and commences on the day after it is registered on the Federal Register of Legislation.

The details of the Proclamation are included in the **Attachment**.



Australian Government

Department of the Environment and Energy

Australian Antarctic Division

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Antarctic Treaty (Environment Protection) Amendment (Protected Areas and Managed Areas) Proclamation 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

Australian legislation implements components of the Antarctic Treaty system into Australian law, including the *Antarctic Treaty (Environment Protection) Act 1980*, giving effect to the Protocol on Environmental Protection to the Antarctic Treaty, which sets out environmental protection obligations. Annex V to the Protocol provides a legal framework for the establishment of specially protected and managed areas within Antarctica. At each year's Antarctic Treaty Consultative Meeting new areas may be nominated, and existing areas may be updated and existing areas may be de-designated. This Legislative Instrument reflects changes made in 2015.

Human rights implications

The Legislative Instrument engages the right to freedom of movement. The Antarctic Specially Protected Areas (ASPAs) possess outstanding scientific, historical, environmental, aesthetic or wilderness values. It is reasonable, necessary and proportionate to restrict access to those areas in order to protect these values. This restriction is not absolute. Persons may still access an ASPA with a permit. To obtain a permit, persons must meet the prescriptions of the management plan.

Conclusion

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* for it is reasonable, necessary and proportionate.

Dr. Nick Gales – Director

Australian Antarctic Division

November 2016

ATTACHMENT

Details of the *Antarctic Treaty (Environment Protection) Amendment (Protected Areas and Managed Areas) Proclamation 2016*

Section 1 – Name

This section provides that the name of the instrument is the *Antarctic Treaty (Environment Protection) Amendment (Protected Areas and Managed Areas) Proclamation 2016*.

Section 2 – Commencement

This section provides for the instrument to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the instrument is made under subsection 8(6) of the *Antarctic Treaty (Environment Protection) Act 1980* (the **Act**).

Section 4 – Schedules

This section provides that each instrument specified in the Schedules is amended or repealed in accordance with the terms of the Schedule.

Schedule 1 - Amendments

Amendments in this Schedule refer to the *Antarctic Treaty (Environment Protection) Proclamation 2007* (the **Principal Proclamation**).

Items 1, 5, 6 and 7 replace the existing boundaries of four Antarctic Specially Protected Areas with new boundaries in accordance with management plans adopted by the 38th Antarctic Treaty Consultative Meeting (ATCM) in 2015.

Items 2, 4 and 8 make a minor technical amendment to ensure consistency in the naming of “Mac.Roberston Land.”

Item 3 corrects a spelling mistake.

Item 9 replaces the existing boundaries of one Antarctic Specially Managed Area with new boundaries in accordance with the management plan adopted by the 38th ATCM in 2015.