

Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)



Australian Government

1 What is the EPBC Act?

The Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) is the Australian Government's central piece of environmental legislation.

The EPBC Act provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places — defined in the Act as matters of national environmental significance.

The seven matters of national environmental significance to which the EPBC Act applies are:

- world heritage sites
- national heritage places
- wetlands of international importance (often called 'Ramsar' wetlands after the international treaty under which such wetlands are listed)
- nationally threatened species and ecological communities
- migratory species
- Commonwealth marine areas
- nuclear actions.

In addition, the Act confers jurisdiction over actions that have a significant environmental impact on Commonwealth land, or that are carried out by a Commonwealth agency (even if that significant impact is not on one of the seven matters of 'national environmental significance'). Information about this special Commonwealth category is not included in this fact sheet.

2 Why do we have the EPBC Act?

Matters of national environmental significance are important to all Australians and, given the interconnectedness of the global biosphere, internationally as well. The Act aims to balance the protection of these crucial environmental and cultural values with our society's economic and social needs by creating a legal framework and decision-making process based on the guiding principles of ecologically sustainable development.

Specifically, the EPBC Act aims to:

- conserve Australia's biodiversity
- protect biodiversity internationally by controlling the international movement of wildlife
- provide a streamlined environmental assessment and approvals process where matters of national environmental significance are involved
- protect our world and national heritage
- promote ecologically sustainable development.

3 Who does the EPBC Act affect?

The Act affects any group or individual (including companies) whose actions may have a significant impact on a matter of national environmental significance. This includes:

- land owners
- developers
- farmers
- councils
- state and territory agencies.

Example: If a developer was planning a new resort close to the Great Barrier Reef, that developer would need to find out if the action of building and running that resort might have a significant impact on any matter of national environmental significance. In this instance, the matters the developer would need to carefully look into would include:

- whether the development would affect the Great Barrier Reef — because the Reef is a world heritage site
- whether the development would affect any nationally-threatened animals or ecological communities
- whether the development would affect any migratory animals.

If the developer concluded that the development might have a significant impact on any of these matters of national environmental significance then they would need to apply for approval to proceed under the Act.

This approval process under the Act would be in addition to any state or local government approval that might be required.

Anyone unsure of whether the Act applies to them, or of what they need to do to comply with the Act, is strongly encouraged to seek further information. A good starting point is the website of the Department of the Environment, Water Heritage and the Arts: www.environment.gov.au/epbc

4 When does a project need to be assessed?

The EPBC Act comes into play when a proposal has the potential to have a significant impact on a matter of national environmental significance.

When a person (a 'proponent') wants an action (often called a 'proposal' or 'project') assessed for environmental impacts under the Act, he or she must refer the project to the Department of the Environment, Water, Heritage and the Arts. This 'referral' is, then released to the public for comment

on whether the project is likely to have a significant impact on matters of national environmental significance.

Public comments are assessed and, if relevant to the Act, are taken into consideration. The Minister or his delegate will then decide whether the likely environmental impacts of the project are such that it should be assessed under the Act.

5 What is involved in an environmental assessment under the Act?

There are five different levels of assessment, depending on the significance of the project and how much information is already available. Each level involves considering technical information assembled by the proponent and comments made by the public.

6 Who approves a project after it is assessed?

Once a project has been assessed by the Department of the Environment, Water, Heritage and the Arts, the Department makes a recommendation to the Minister or delegate about whether or not the project should be approved to proceed.

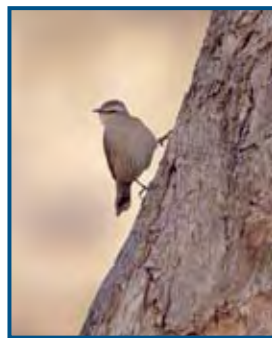
The Minister assesses all the information provided by the Department before making a decision about whether or not the project should proceed, and if so, whether any specific conditions need to be attached to that approval.

In addition to considering potential impacts on matters of national environmental significance, in making his or her decision the Minister also considers the social and economic impact of any project.

7 What is the role of the Australian Minister for the Environment?

The Australian (i.e. Federal) Minister's primary role under the EPBC Act is to protect areas of national environmental significance in accordance with the guiding principles of the Act. This means that the Minister will always consider these critical environmental decisions in the broader context of Australia's social and economic needs.

However, the Minister cannot intervene in a proposal if it has no significant impact on one of the seven matters of national environmental significance, even though there may be other undesirable environmental impacts. This is not because these other environmental matters are not important. It is because under the division of powers between the Federal Government and the states under the Australian Constitution, it is the states that have the primary responsibility for environmental protection. In contrast, the Federal Minister only has authority over the seven defined matters of national environmental significance.



Example: The Minister does not have power under the Act to regulate a proposal that will have impacts on matters such as air quality, noise, odour, general amenity or animals that are not listed as threatened or endangered under the Act. These environmental matters are the responsibility of the relevant state government to consider during any state assessment and approval process.

The EPBC Act includes a mechanism to ensure that the two levels of government do not duplicate their environmental protection functions or otherwise create inefficiencies by both being closely involved in the approval process for a single project that includes matters of both local and national environmental significance. Under this mechanism, the Australian Government may enter into an agreement with a state or territory government, under which the state or territory may assess and (if appropriate) approve actions that may impact on matters of national environmental significance. These are matters that the Australian Minister would otherwise have responsibility for under the EPBC Act.

8 Can the Australian Minister overturn a state decision?

Because the Australian Minister only has the power to make decisions in relation to matters of national environmental significance, the Minister has no power to intervene in decisions of state or local governments that do not impact on these matters. Thus the EPBC Act does not give the Minister the power to act as a general 'court of appeal' from any state or local government decision affecting the environment.

Example: In 2007 the Australian Government approved the Gunns Pulp Mill in Tasmania, imposing 48 conditions. The approval and the conditions related only to things within the Australian Government's jurisdiction — matters of national environmental significance — such as nationally-listed threatened species and the marine environment outside the 3 nautical mile limit of state waters. Although not as well publicised, the Tasmanian Government issued a much more extensive permit under special legislation, running to hundreds of pages. This permit covered all other aspects of the environment, such as air quality, noise and the protection of state waters. It also covered non-environmental matters such as planning and safety.

Community members or groups who want the Australian Government to intervene in state or local government decisions on environmental issues that are not matters of national environmental significance under the EPBC Act are asking the Minister to act beyond his or her legal authority. This means that apart from projects impacting on matters of national environmental significance (and projects significantly impacting on Commonwealth land or carried out by Commonwealth agencies), community concerns regarding government decisions impacting on the environment should be taken up with the relevant state or territory government.

Website

www.environment.gov.au/epbc

Photo credits

Royal Exhibition Building: National Trust of Australia
Baillon's crane: Andrew Tatnell
Legless Lizard: Andrew Tatnell
Southern right whale: Dave Watts
Island: Great Barrier Reef Marine Park Authority
White-browed treecreeper: Andrew Tatnell