



Environmental Defender's Office

EPBC Act – recent changes

Environmental Defender's Office WA (Inc)

This information is for education purposes only and should not be relied upon in a legal context. Contact the EDO if you have a specific query.

Background

- Environmental Protection and Biodiversity Conservation Act 1999 – commenced July 2000.
 - The 2006 amendments were the first major amendments.
 - Passed 7 December 2006.
Will come into force within 6 months.
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According to the Government the Act will:

- ❑ ensure matters of national environmental significance continue to receive the highest possible level of protection
 - ❑ cut red tape and enable quicker and more strategic action to be taken on emerging environmental issues
 - ❑ provide greater certainty for industry
 - ❑ make environmental decision-making more efficient and cost-effective
 - ❑ strengthen the enforcement provisions of the Act
 - ❑ encourage the use of regional plans to create more certainty about the outcomes of environmental decisions, and
 - ❑ increase the general understanding of the processes and mechanisms of the EPBC Act.
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Main changes

- **Threatened species nomination and listing**
 - **Heritage nomination and listing**
 - **Consideration of ‘impacts’**
 - **Streamlining of referrals and assessment procedures**
 - **Review of Ministerial Decisions**
 - **Compliance and enforcement**
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Threatened species nomination and listing

- Public nomination process for listing of threatened species changed
 - Minister will have discretion over which species are assessed
 - Recovery plans for listed threatened species no longer mandatory
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Heritage nomination and listing

- Changes to process for listing heritage places on the national heritage list
 - Minister and Australian Heritage Committee have great discretion over what is assessed
 - Changes to emergency heritage listing
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Consideration of 'impacts'

- Definition of “impact” changed to take into account indirect impacts
 - Act prohibits the Minister from looking at some indirect impact eg RFA
 - Cumulative impacts still not assessed properly
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Streamlining of referrals and assessments

- New level of assessment – ‘assessment on referral information’
 - ‘Clearly unacceptable’ decision by Minister
 - Proponent can submit alternative actions for assessment
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Streamlining - exemptions

- Accredited plans (Cth agencies)
 - Already limited accreditation under the Act
 - Will broaden the plans and processes that can be accredited
 - Any actions taken in accordance with the accredited plan do not have to be further assessed under the EPBC Act
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Streamlining - exemptions (2)

- Bioregional plans
 - Public consultation is required when making a plan
 - Actions under a plan will be exempt from assessment
 - Must not have unacceptable or unsustainable impacts on NES matters
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Streamlining - exemptions (3)

- Bilateral agreements (States and territories)
 - Amendments will allow a broader range of actions to be exempt.
 - Potential for large areas or classes of actions to avoid EIA under the EPBC Act.
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Streamlining - exemptions (4)

- Conservation agreements
 - Currently exist under the Act
 - Actions listed in a conservation agreement will not require assessment under the Act
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Streamlining - exemptions (5)

- Strategic assessments
 - No further assessment required for actions done under a strategic assessment.
 - No consultation required for approving actions taken in accordance with a strategic assessment.
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Review of Ministerial Decisions

- Provisions allowing an extended group of people to seek Court review of certain decisions have been retained
 - Removal of right of review of Minister's decision in the Administrative Appeals Tribunal
 - Decisions of a delegate of the Minister are still reviewable in the AAT
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Compliance and enforcement

- Undertakings for damages can now be required by the Court
 - Actions taken by employees on behalf of a company will be attributed to the Directors
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Where can you go for more information?

- DEH EPBC website – www.deh.gov.au/epbc or call them.
 - ANEDO's submission – www.edo.org.au
 - Full text of the Act – www.comlaw.org.au
 - Second reading speech, explanatory memoranda, Senate committee report - www.aph.gov.au
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How you could help the EDO

- **Referrals** where someone needs legal advice on an environmental matter **and** is likely to meet our criteria
 - **Attend** our seminars, **buy** our **books**, as professional development
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How you could help (cont'd)

- **Volunteer** for non-legal tasks – conference organisation, fundraising and newsletter contributions
- **Become a member**
- **Donate**, (amounts over \$2 are tax deductible)

www.edowa.org.au
