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Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)

Technical Advisory Group

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Want to know more?.....www.environment.gov.au/epbc



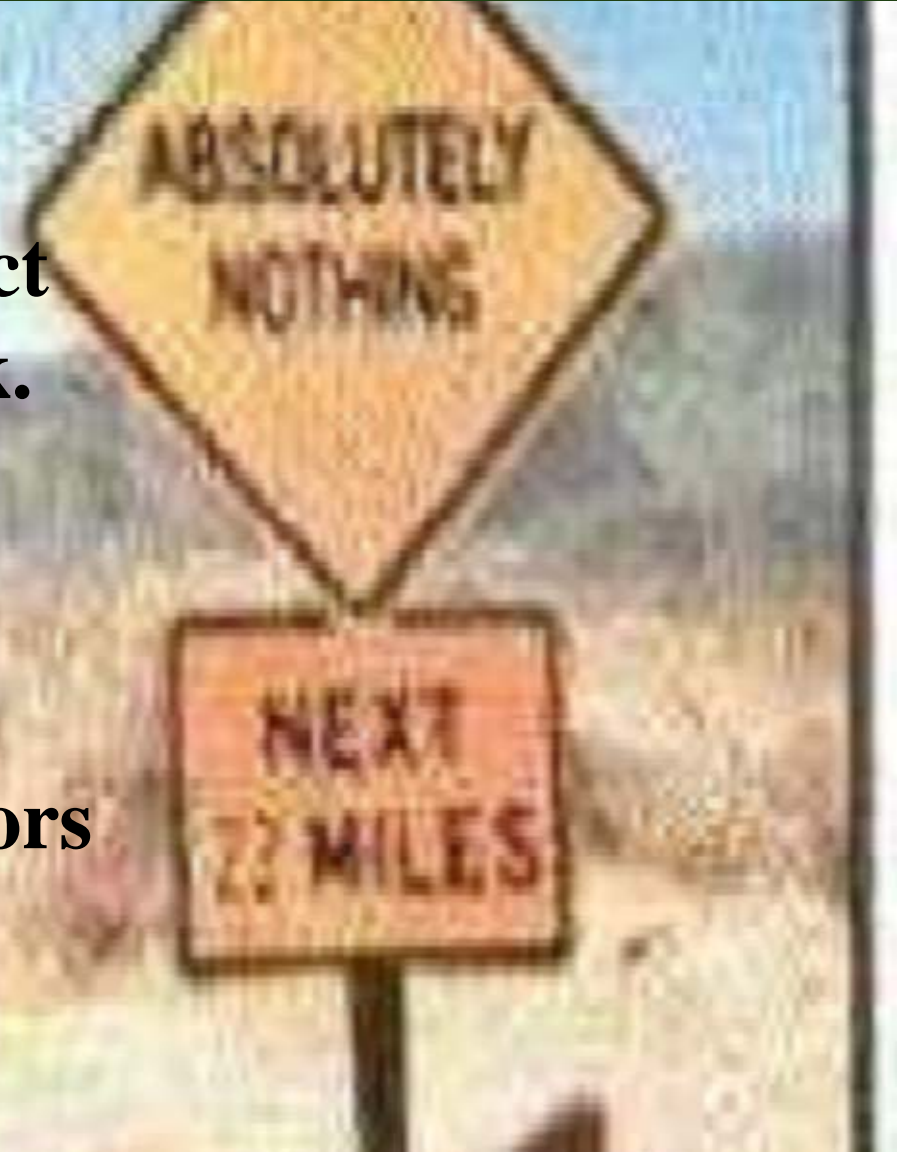


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Content

- What is the EPBC Act and how does it work.
- Assessment of significance
- Duty of approval agencies and regulators





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EPBC Act: Three main parts

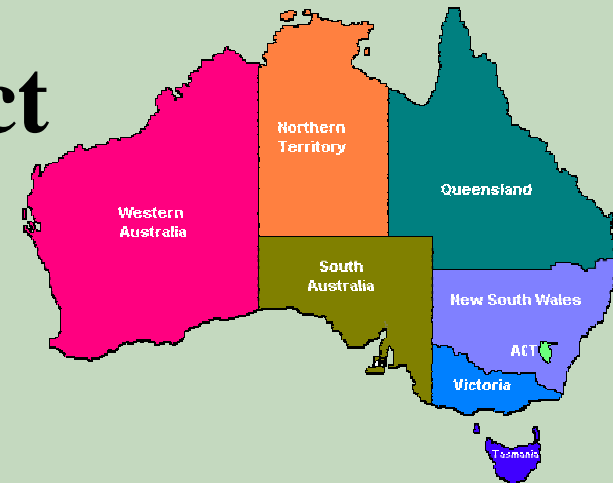
- **Identification, listing and protection of matters of National Environmental Significance:**
 - species/heritage assessments and listings
 - protected area management
 - recovery plans
- **Environmental impact assessment and approval:**
 - matters of NES
 - Commonwealth land
 - Commonwealth agencies
- **Biodiversity/Heritage Conservation:**
International Wildlife Trade





Key Features of EPBC Act

- Focus on nationally significant aspects of the environment.
- Direct powers of approval and enforcement for the Environment Minister.
- Limits on the matters to be considered by the Commonwealth.
- **Nobody can undertake a development that is likely to have a significant impact on a matter of national environmental significance without the approval of the Minister.**
- Approval is required only where the impacts are significant.
- Statutory timeframes and predictable processes.
- Accreditation of State processes (for assessment).
- Third Party rights.





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Matters of National Environmental Significance



World heritage properties



Ramsar wetlands



Migratory species

Threatened species and ecological communities

The Commonwealth marine area



Nuclear actions



National Heritage (New)



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What is an Action?

Includes a project, development, undertaking, activity or a series of activities.

Decision by a gov't body to grant an approval is not an action.

Providing government funding is not an action.

Preparation of a plan, zoning/rezoning, issue of a DA or permit is not an "action"

Ongoing legal land use is exempt
(eg routine farming and land management).

Must be a physical interaction or material change to the environment.





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Need for Approval

- Any **action** likely to have a **significant impact** on a matter of **NES** requires the approval of the Commonwealth Environment Minister.
- If a person thinks that a significant impact is likely they must refer the proposal to the Minister. If they are not certain, they can still refer.





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Regulation - Three Step Process

Referral (ch7)

screening phase
"In or Out"

Significance Test

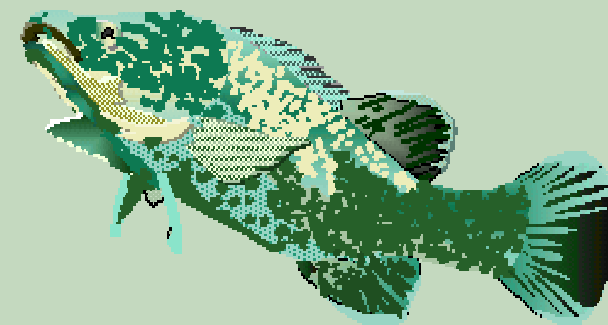
Assessment (ch8)

Information gathering,
analysis and
consultation phase

Approval (ch9)

decision phase

Monitoring and
Enforcement





A Referral

- Form and guide at environment.gov.au/epbc and home page for people wanting to make a referral
- Components of a referral
 - identity of person taking the action (proponent)
 - description of the “action”
 - Location, clear figures, maps and aerial photographs
 - the environment
 - likely impacts on matters of NES
 - About 10-20 pages. Must be ‘stand alone’.
 - Attach any more detailed reports (flora and fauna surveys etc)





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Referral

A Referral

- Only three parties can submit a referral:
 - The person responsible or proposing to take the action.
 - A Commonwealth agency with administrative responsibilities
 - A State agency with administrative responsibilities





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Referral

General Process

- Decision on whether approval is required within 20 business days.
- Public comment period - first 10 days.
- Comment from relevant Commonwealth, State and Territory Ministers?
- Proponent and relevant State or Territory Ministers are notified
- decision published on web site - identifies controlling provisions (why approval is required).





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What is a Significant Impact?

- Administrative Guidelines (currently under revision)
 - give general guidance on factors to be considered
 - set out the criteria to be applied for each NES matter.
 - include examples to illustrate the application of those criteria in particular sectors.
- Precedent, court findings and other official documents (eg. recovery or management plans) may also be relevant.
- Supplementary guidelines have been issued where greater clarity is needed (eg, Bluegrass, Flying Fox)





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Edithvale-Seaford Ramsar Wetlands

The ecological character of the wetland (the reason why it was listed in the first place) is what is protected, including:

- representative character of the wetland as the last remaining examples of the Carrum Carrum swamp, a large Southern Australian freshwater wetland underlain by peat beds that limit saline groundwater entering the wetlands;
- character of permanent and seasonal freshwater and saline ponds, that partially dry in warmer months, and which support a rich biodiversity including bird species and populations of international importance (Australasian Bittern and Sharp-tailed Sandpiper);
- character of indigenous vegetation communities, many of which are remnants or regenerating representatives of native communities that once occupied the greater Carrum Carrum Swamp.





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Agency Responsibilities

- As “developers”
- As “regulators” of development
- As land-use planners





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As ‘Developers’

- Actions by, or on behalf of, local and State authorities may require referral/approval
 - eg. clearing vegetation, new roads, mosquito control, upgrades to sewage treatment plants, flood mitigation works, weirs and dams
- BUT – only where there is a potential significant impact on matters protected by the Act
- Be aware of third-party right to seek injunctions
- Due diligence and risk management strategies





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As ‘Developers’

- **Examples – not significant**
 - Maintaining existing facilities (public infrastructure, utilities, open space, channels, levee banks, recreation parks etc).
 - Routine vegetation and land management adjacent to or within Ramsar wetlands or National Heritage property (prescribed burns, weed control, mowing etc).
 - Maintenance or minor works (road verges, irrigation water distribution networks, weirs).





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As ‘Developers’

- **Examples – may be significant**
 - Capital works (roads, public infrastructure, new channels or pipelines etc) requiring clearing of quality remnant vegetation and permitting from State agencies.
 - Capital works within or adjacent to Ramsar wetlands or tracts of native vegetation likely to be important for listed species.
 - Changes to hydrological regimes or interference with fish passage or waterbird usage (new weirs, increased abstractions, changed water flows or salinity risks)
 - Works posing credible risks of off-site or downstream impacts (erosion, pollutants, noise/light disturbance to wetlands etc).





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‘Regulators’ of Development

- Duty of care to inform clients of possible application of the EPBC Act (1800 803 772 or <http://www.environment.gov.au/epbc>)
- No requirement on local/State government to refer actions by others, but may be possible, depending on State law.
- Unless specifically provided for in LG legislation, cannot force others to refer.
- Where dual approval is required, State must usually assess first and may need to provide certification that non-NES impacts have been assessed.
- Consultation with State Agency or DEH when unsure.





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‘Regulators’ of Development

- **Examples**

- Consider applications against known matters of NES. Application for development within a Ramsar site, clearing of remnant bushland or irreversible changes to hydrological regimes.
- Concerns expressed by advisory bodies/agencies or the public about impacts on listed threatened species, conservation reserves or matters of NES.
- Proposal is controversial and may involve matters of NES (Ramsar).
- Large scale development or critical timing.





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Land-use Planning

- Consider future development implications of matters protected under the EPBC Act.
- Check for Commonwealth guidelines, management and recovery plans.
- Areas could be flagged as having possible EPBC implications.
- Plan to minimise or eliminate impacts and regulatory risk.
- Matters of NES are priority targets for NHT funding.

Planning instruments and decisions are not “actions” that need to be referred





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Steps to Assessment of Significance

- Is a matter of NES present (EPBC web site)?
- What is the 'ecological character' of the Ramsar site (get the Information Sheet from the EPBC Act web site)?
- What is the context and conservation values (local, regional and national level)?
- What are the impacts (onsite/**offsite**, **direct**/indirect, temporary/**permanent**, short term/**long term**)?
- What are the uncertainties (worst case credible consequences for the matter of NES)?
- Mitigation measure (avoidance of impacts, timing, design and engineering, work practices)?
- Consistency with any environmental policies or guidelines?
- Beneficial impacts can not be taken into account in deciding significance (but are relevant in deciding approval).





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What might be Significant and require referral under the EPBC Act?

- Clearing or loss of part of the Ramsar site.
- Developments adjacent to a Ramsar site with offsite discharges into the Ramsar wetland, and that may pose a threat to the ecological character.
- Disturbance to waterbirds using the Ramsar site such that they abandon the wetland or their 'condition' for migration may be compromised.
- Decommissioning or construction of water regulatory structures such that hydrological regimes are altered.
- Dredging or other works altering depths of water, fringing vegetation or other important habitat.
- Changes in hydrological regimes (surface water or groundwater) on which the wetland is likely to be dependent.





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What might not be Significant?

- Minor and routine maintenance by State agencies and Local Government (bridge and irrigation infrastructure repairs)
- Routine irrigation discharges and management of hydrological regimes.
- One-off discharges and decommissioning of storage basins where risks to listed species are negligible or low
- Property upgrade or repair by individual landholders.
- Temporary works planned to avoid peak migratory bird periods or cold water discharges outside cod breeding season.
- Works planned to avoid significant habitat areas
- Works where impacts are likely to be temporary or reversible.





<i>EPBC #</i>	<i>Title</i>	<i>Decision</i>	<i>Date</i>
2002/581	Scoresby Freeway – Monash to Frankston Section	Approval required (now approved)	18/8/04
2004/1325	Sporting Facility – City of Kingston	Approval not required - Manner specified	4/3/04
2004/1932	New Dimension Homes – Austin Road, Seaford	Approval not required	7/2/05



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QUESTIONS?

