



Achieving Sustainability Through Australia's New Impact Assessment Regime

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Introduction

- Recent changes to the Australian system of environmental impact assessment:
 - New framework legislation – the *Environment Protection and Biodiversity Conservation Act*:
 - Replaced / consolidated 7 pieces of legislation.
 - Followed a comprehensive review of Australian Government environmental legislation that occurred in the late 1990s.
 - Designed to update environmental protection:
 - Previous regime dated from the 1970s.
 - Came into effect in July 2000.

The System

- **An integrated system between all the Governments of Australia:**
 - **Australian Government:**
 - **Matters of national environmental significance,**
 - **Australian Government land, and**
 - **Australian Government activities.**
 - **State and Territory Governments:**
 - **Aspects of the environment of State, regional and/or local significance.**



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Objectives

- **Best possible protection for the environment.**
- **Certainty of process for stakeholders:**
 - **Especially industry.**
 - **Increased cooperation between Governments in a federal system.**
 - **Greater streamlining of processes between Governments.**
- **Full transparency:**
 - **Public comment / consultation at every stage.**

Matters of National Environmental Significance

World heritage properties



National heritage places



Ramsar wetlands



Migratory species



Threatened species and ecological communities



The Australian Government marine area

Nuclear actions

Environment Protection & Biodiversity Conservation



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Need for Referral

- **Any action likely to have a significant impact on a matter of national environmental significance or the environment (if Australian Government land or action) must be referred to the Environment Minister.**
- **Not all referrals require approval:**
 - **Average to date about 26 per cent.**
- **Another 15 per cent have not required assessment and approval because they will be taken in a ‘specified manner’ to avoid adverse impacts:**
 - **The ‘specified manner’ legally enforceable under the legislation.**



Decision on Referral

- **Notice and invitation to comment on web site.**
- **Minister invites comment from relevant Australian Government, State and Territory Ministers.**
- **Decision within 20 business days.**
- **Proponent and relevant State or Territory Ministers are notified - decision published on web site.**
- **If approval not required, proponent has certainty if action is taken as per the referral.**
- **No further approval required if action is taken in a “specified manner”.**

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Ecologically Sustainable Development (ESD)

- **Cornerstone of legislation.**
- **Environment Minister makes decisions.**
- **Minister must take ESD into account in approval decisions:**
 - **Environmental,**
 - **Economic,**
 - **Social, and**
 - **Equitable.**

***Both
long-term
and
short-term***



Focus on Projects

- **Australian focus still primarily on projects.**
- **Nature of actions covered:**
 - **real physical impact, or**
 - **leading to real physical impact.**
- **However, new regime has provision for a broad approach :**
 - **Secondary or consequential impacts, including cumulative impacts, are considered.**
 - **Strategic assessment a key feature.**

Certainty of Process - Strict Timeframes

- **Decision on referral:**
 - *20 business days*
- **Reasons for decision:**
 - *28 days*
- **Decision on assessment approach:**
 - *20 business days*
- **Assessment report:**
 - *20 or 30 business days*
- **Approval decision:**
 - *30 business days*



Monitoring, Compliance and Enforcement

- **Compliance and audit capability.**
- **Power to “call in” proposals.**
- **General provisions containing search and seizure powers.**
- **Directed environmental audits.**
- **Conservation orders.**
- **Wide standing for injunctions and judicial review.**





Penalties

- **A matter of national environmental significance:**
 - *Civil penalty of up to \$5.5 million.*
 - *Criminal penalty of up to 7 years imprisonment.*
- **Australian Government action or land:**
 - *Civil penalty of up to \$1.1 million.*
 - *Criminal penalty of up to 2 years imprisonment.*
- **Penalties for provision of false or misleading information.**
- **Extension of liability to executive officers of corporations.**
- **Power to publicise contraventions of the Act.**
- **Liability for damage from contravention of the Act.**

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Experience to Date

- **Successful implementation of the new regime – greater certainty of environmental outcome and process.**
- **Over 1,100 referrals (about 25 per month):**
 - **Reflecting national significance criteria.**
- **All sectors of the economy.**
- **All States and Territories of Australia.**
- **All matters of national environmental significance.**
- **About 60 strategic assessments:**
 - **Mostly fisheries.**

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Other People's Judgements

“The Act is an immensely important development in Australian law which has and will continue to fundamentally and radically change the Australian environmental legal system.”

Christopher Shaw, Barrister, Andersen Legal, Sydney.

“The EPBC Act has shown itself to be a dramatic improvement on previous Federal environmental legislation.”

Sophie Chapple, WWF-HSI, Canberra.

“There can be little doubt about the Act’s new powers and environmental advances, bringing Australian conservation management into the twenty-first century.”

Michael Kennedy, Nicola Benyon, Alistair Graham & Jamie Pittock,
Conservationists, HSI, WWF, TCT.

Environment Protection & Biodiversity Conservation

More Information on Website



<http://www.deh.gov.au/>

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The End - Thank You



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