



Australian Government

**ENVIRONMENT PROTECTION AND
BIODIVERSITY CONSERVATION ACT 1999**



Guide to the EPBC Act

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GPO Box 787, Canberra ACT 2601 Australia

Email: ciu@environment.gov.au • Phone: 1800 803 772

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Front cover – Ramsar wetland (Bruce Gray), Great Barrier Reef Marine Park (iStockphoto), Australian War Memorial (DEW-Steve Wray), Southern Right Whale (Dave Watts), Box Gum woodland (DEW-J Vranjic)

Page 5 – Barramundi aquaculture farming (Julie Jones-GBRMPA), Southern Bell Frog (Nathan Litjens), Brisbane Airport (courtesy of Brisbane Airport Corporation)

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■ Introduction

This guide provides general information about the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) – Australia’s premier environment and heritage legislation. It is designed to provide information about the operation and scope of the legislation to a range of audiences including industry, developers and the general community.

The EPBC Act enables the Australian Government to join with the states and territories in providing a truly national scheme of environment and heritage protection and biodiversity conservation. The EPBC Act focuses Australian Government interests on the protection of matters of national environmental significance, with the states and territories having responsibility for matters of state and local significance.

■ Objectives of the EPBC Act

- Provide for the protection of the environment, especially matters of national environmental significance
- Conserve Australian biodiversity
- Provide a streamlined national environmental assessment and approvals process
- Enhance the protection and management of important natural and cultural places
- Control the international movement of wildlife, wildlife specimens and products made or derived from wildlife, and
- Promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.

What are the matters of national environmental significance?

There are seven matters of national environmental significance:

- World Heritage properties
- National Heritage places
- Wetlands of international importance
- Threatened species and ecological communities
- Migratory species
- Commonwealth marine areas
- Nuclear actions (including uranium mining)

■ Environment assessment process

Under the EPBC Act, a person must not take an action that has, will have or is likely to have a significant impact on any of the matters of national environmental significance without approval from the Australian Government Environment Minister (the Minister).

There are substantial penalties for taking such an action without approval (civil penalties up to \$5.5 million or criminal penalties up to seven years imprisonment).

The EPBC Act also provides that:

- A person must not take an action on Commonwealth land that has, will have or is likely to have a significant impact on the environment.
- A person must not take an action outside Commonwealth land that has, will have or is likely to have a significant impact on the environment on Commonwealth land.
- The Commonwealth must not take an action that has, will have or is likely to have a significant impact on the environment on Commonwealth land.

Unlawful taking of an action in these categories may attract a civil penalty of up to \$1.1 million or a criminal penalty of up to two years imprisonment.

What is the process for obtaining a decision on approval?

Referral

Submitting a 'referral' is the first step in the Australian Government assessment and approval process. Referral involves filling out a referral form and sending it to the Department of the Environment and Water Resources (the Department).

The referral identifies the person proposing to take the action and includes a brief description of the proposed action, including the location, the nature and extent of any potential impacts, and any proposed mitigation measures.

What is an action?

An action includes a project, a development, an undertaking, an activity, or series of activities, or an alteration to any of these things.



A fact sheet on the environment assessment process and the referral form are available on the Department's website at: www.environment.gov.au/epbc/forms or by contacting the Community Information Unit on 1800 803 772.

The Minister makes a decision as to whether assessment and approval is required under the EPBC Act usually within 20 business days of receiving a referral. If the Minister decides that the proposed action is likely to have a significant impact on a matter protected by the EPBC Act (a 'controlled action'), the action will need to undergo a formal assessment and approval process and cannot proceed unless approval is granted.

If it is determined that the proposed action is not likely to have a significant impact, then approval from the Australian Government is not required and the action may proceed. A person will not contravene the EPBC Act if the action is then taken in accordance with that decision and in line with any measures or undertakings in the referral.

EPBC Act Policy Statements are available to provide guidance in relation to the practical application of the EPBC Act. The *Significant Impact Guidelines 1.1 – Matters of National Environmental Significance* provides guidance as to whether an action is likely to have an impact on a matter of national environmental significance.

EPBC Act Policy Statements are available on the Department's website at: www.environment.gov.au/epbc/policy or by contacting the Community Information Unit on 1800 803 772.

Assessment and decision

A proposed action can be assessed by state or territory governments on behalf of the Australian Government, or by the Australian Government, using one of the following assessment methods:

See pages 7 and 8 for flowcharts outlining the EPBC Act environment assessment process including timing.

- Accredited assessment
- Assessment on referral information (assessment undertaken solely on the information provided in the referral form)
- Assessment on preliminary documentation (referral form and any other relevant material identified by the Minister as being necessary to adequately assess a proposed action)
- Assessment by Environmental Impact Statement (EIS) or Public Environment Report (PER)
- Assessment by public inquiry.

After the assessment process is complete, the Minister has to decide whether to grant approval. When deciding whether to approve an action and what conditions to impose, the Minister must consider social and economic matters and relevant environmental impacts.

The Minister must also take into account:

- principles of ecologically sustainable development
- outcomes of the assessment of the impacts of the action
- referral documentation
- community and stakeholder comment
- any relevant information available on the impacts of the action, and
- relevant comments from other Australian Government and state and territory government ministers (such as information on social and economic factors).

The Australian Government may also take into account the environmental history of the individual or organisation proposing to take the action.

EPBC Act Environment Assessment Process – Referral

Deciding if a proposed action needs to be referred

- Is the proposed action likely to have a significant impact on a matter of national environmental significance?
The matters of national environmental significance are:
 - Nationally threatened species and ecological communities
 - Migratory species protected under international agreements
 - Ramsar wetlands of international importance
 - the Commonwealth marine environment
 - World Heritage properties
 - National Heritage places
 - Nuclear actions.
- Is the proposed action likely to have a significant impact on the environment in general (for actions by Commonwealth agencies or actions on Commonwealth land) or the environment on Commonwealth land (for actions outside Commonwealth land)?
- If you are not certain about whether your proposed action requires approval under the EPBC Act you may refer the proposal for a decision by the Australian Government Minister for the Environment and Water Resources.

NO

Approval is not required from the Australian Government Minister for the Environment and Water Resources.

YES

Person proposing to take the action makes a referral to the Australian Government Minister for the Environment and Water Resources via the Department of the Environment and Water Resources.

Action is clearly unacceptable
Minister makes a decision within 20 business days.

Minister makes a decision within 20 business days on whether approval is required under the EPBC Act and on process of assessment.

Person informed of decision

Controlled Action

Not Controlled Action
'Particular Manner'

Not Controlled Action

Person may withdraw referral and take no action

Person may withdraw and submit a modified proposal as a new referral

Person may request the Minister to reconsider the decision

Action is subject to the assessment and approval process under the EPBC Act. (Refer to the Assessment/ Decision Whether to Approve flowchart)

Approval is not required if the action is taken in accordance with the manner specified.

Approval is not required if the action is taken in accordance with the referral.

10 business day public comment period.

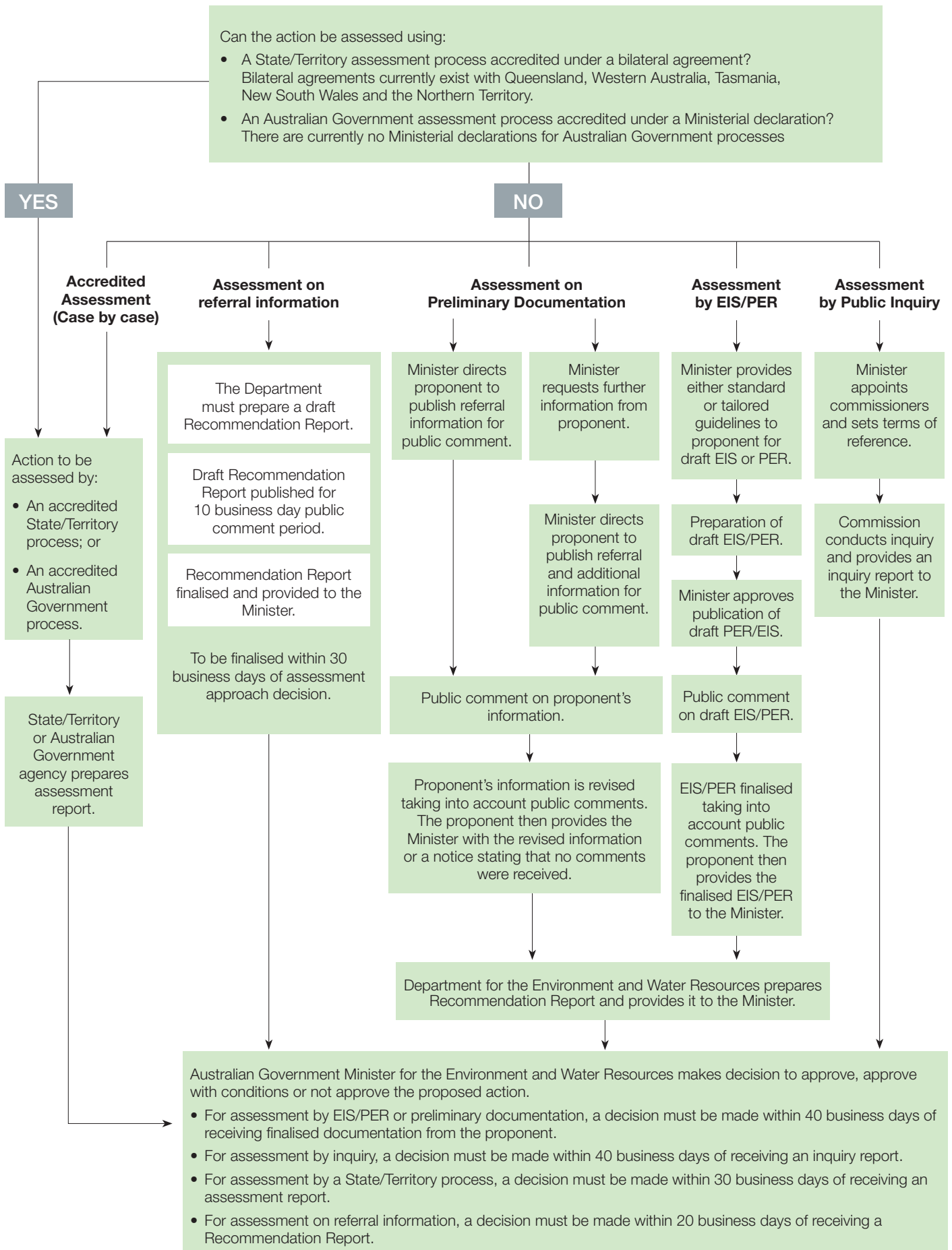
Department of the Environment and Water Resources prepares report on relevant impacts and comments.

Minister makes a reconsideration decision within 20 business days.

Action is clearly unacceptable

Controlled Action

EPBC Act Environment Assessment Process – Assessment / Decision Whether to Approve





Bilateral agreements

What are bilateral agreements and how do they work?

A key function of bilateral agreements is to reduce duplication of environmental assessment and regulation between the Commonwealth and states/territories. Bilateral agreements allow the Commonwealth to ‘accredit’ particular state/territory assessment processes and, in some cases, state/territory approval decisions.

In effect, bilateral agreements allow the Commonwealth to delegate to the states/territories the responsibility for conducting environmental assessments under the EPBC Act and, in certain circumstances, the responsibility for granting environmental approvals under the EPBC Act. Bilateral agreements may also deal with various other matters, such as management plans for World Heritage properties and cooperation on monitoring and enforcement.

To be accredited, a state/territory process will need to meet ‘best practice’ criteria.

If a proposed action is covered by an assessment bilateral, then that action is assessed under the accredited state/territory process. After assessment, the proposed action still requires approval from the Minister under the EPBC Act.

If a proposed action is covered by an approval bilateral, then it will be assessed and approved by the state/territory in accordance with an agreed management plan. No further approval is required from the Minister under the EPBC Act.



Ministerial declarations

What are Ministerial declarations and how do they work?

A Ministerial declaration may:

- accredit an assessment process by a Commonwealth agency other than the Department of the Environment and Water Resources, or
- in limited circumstances, accredit an assessment and an approval process by a Commonwealth agency, other than the Department, carried out in accordance with an agreed management plan.

The effect of a Ministerial declaration is similar to a bilateral agreement.

Strategic approaches

The EPBC Act contains a number of mechanisms that provide for a strategic approach to protecting matters of national environmental significance. These mechanisms include strategic assessments, bioregional plans, and conservation agreements.

To encourage strategic approaches to environmental protection, the EPBC Act enables strategic assessment of broader policies and plans, such as regional plans. If a plan is endorsed under the EPBC Act following such an assessment, then actions taken in accordance with the plan do not require separate or individual approval.

Public consultation and a rigorous assessment of impacts on matters protected by the EPBC Act are a requisite element of strategic assessment processes and the development of bioregional plans. Conservation agreements specifically provide for the protection and conservation of matters protected by the EPBC Act.

■ Biodiversity conservation

The EPBC Act contains an extensive regime for the conservation of biodiversity including provisions dealing with:

- identifying and monitoring biodiversity, and preparing bioregional plans
- listing of nationally threatened species and ecological communities, migratory species and marine species
- preparing conservation advice and/or national recovery plans and wildlife conservation plans for listed species and additional protection for listed species in Commonwealth areas
- identifying and listing key threatening processes and preparing threat abatement plans for such processes (if required)
- establishment of the Australian Whale Sanctuary in Australia's exclusive economic zone
- access to biological resources in Commonwealth areas
- invasive species
- international movement of wildlife and wildlife products
- voluntary conservation agreements which may cover environmentally significant private land, including Indigenous land, and
- protection and management of World Heritage properties, National and Commonwealth Heritage places, Ramsar wetlands and Commonwealth reserves.

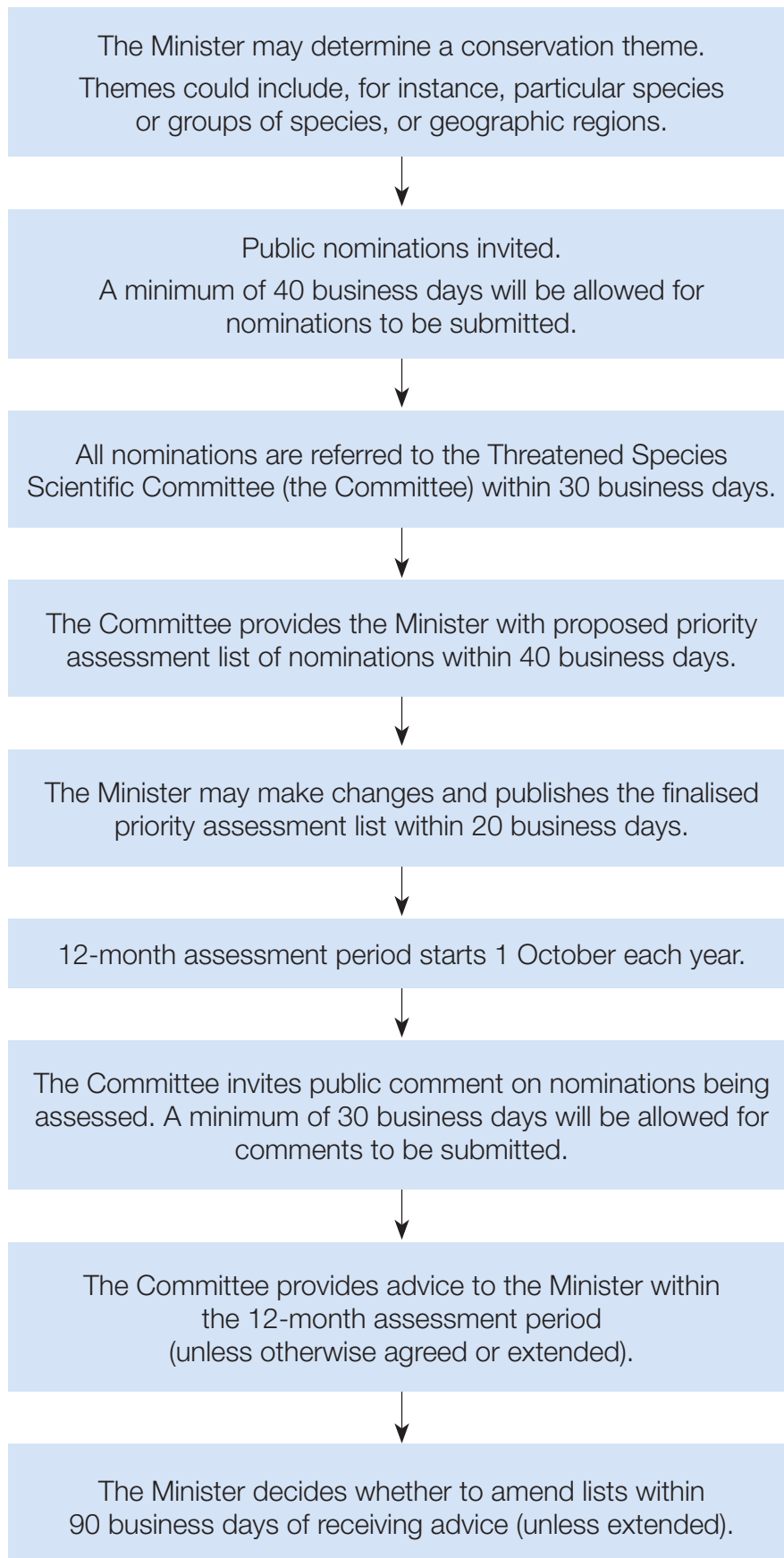
Threatened species and ecological communities

The EPBC Act provides for the listing of nationally threatened native species and ecological communities, native migratory species and marine species.

Processes which pose a particular threat to Australia's native species, such as predation by foxes and feral cats, may also be listed as key threatening processes.

See page 12 for a flowchart of the listing process for threatened species and ecological communities and key threatening processes nominations.

Flowchart of the listing process for threatened species, ecological communities and key threatening processes nominations





Protected species in Commonwealth areas

Under the EPBC Act, activities in Commonwealth areas that may result in killing, injuring, taking, trading, keeping or moving a member of a listed threatened species or ecological community, a member of a listed migratory species or a member of a listed marine species or a cetacean are illegal without a permit.

Whales and other cetaceans

Under the EPBC Act, all cetaceans (whales, dolphins and porpoises) are protected in Australian waters. The Australian Whale Sanctuary includes all Commonwealth waters from the 3 nautical mile state waters limit out to the boundary of the Exclusive Economic Zone (i.e. out to 200 nautical miles and further in some places). It is an offence to injure, take, trade, keep, move, harass, chase, herd, tag, mark or brand a cetacean in the Australian Whale Sanctuary without a permit.

Wildlife trade

Regulation of wildlife trade (imports and exports) is important for protecting Australia's biodiversity, including wildlife, and for protecting exotic wildlife potentially threatened by international trade. The import and export of wildlife and wildlife products is controlled under the EPBC Act and applies to transactions undertaken for commercial and non-commercial purposes.

The EPBC Act regulates trade in species listed under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (CITES), an international agreement between over 170 countries which aims to ensure that trade does not threaten the survival of any species of flora or fauna. It also regulates trade in native species or their products.



Specifically, the EPBC Act regulates the:

- export of Australian native wildlife and wildlife products other than those identified as exempt
- export and import of all species that are recognised internationally under CITES as endangered or likely to become so if trade is not strictly regulated
- import of species identified by other CITES member countries as requiring international cooperation to regulate their trade, and
- import of live plants and animals that, if they became established in Australia, could adversely affect native species or their habitats.

International trade in flora and fauna

International trade in flora and fauna is assessed against a range of relevant criteria to ensure that it is sustainable, humane and not detrimental to survival of species in the wild.

The major programmes that regulate this trade are:

- wildlife trade management plans
- wildlife trade operations
- captive breeding programmes
- artificial propagation programmes
- aquaculture programmes
- commercial import programmes.

There are also more specific arrangements for some international animal transfers to zoos and aquaria and for the exchange of scientific specimens.

Further information is available on the Department's website at:
www.environment.gov.au/biodiversity/trade-use.

Permits

You will generally need a permit under the EPBC Act to:

- import or export CITES listed specimens
- export specimens derived from native species not included in the exempt list, or
- import live plants or animals included in part 2 of the list of plants and animals suitable for live import (see below).

To apply for a permit you need to complete an application form.

Further information about the permits process and the application form are available on the Department's website at: www.environment.gov.au/biodiversity/trade-use/permits/forms or by telephoning 02 6274 1900 or emailing wildlifetrade@environment.gov.au.

Live imports

Under the EPBC Act, the import of live animals and plants is strictly regulated. The only species that can be imported live into Australia are those included on the list of specimens suitable for live import. Species not identified on this list cannot be legally imported into Australia (this includes whole organisms as well as reproductive material).

There are two parts to the list. Part 1 contains species that can be imported without a permit under the EPBC Act, while Part 2 species require a permit and may be subject to import conditions. Applications to include a new species in the list are subject to an assessment of the potential impacts of the species on the environment.

The list of specimens suitable for live import can be found at: www.environment.gov.au/biodiversity/trade-use/lists/import

The process for application to amend the list and the assessment process can be found at: www.environment.gov.au/biodiversity/trade-use/lists/import/amend.



Ramsar wetlands

The EPBC Act enhances the management and protection of Australia's Ramsar wetlands. A 'declared Ramsar wetland' is an area that has been designated under Article 2 of the Ramsar Convention or declared by the Minister to be a declared Ramsar wetland under the EPBC Act.

The EPBC Act also establishes a process for identifying Ramsar wetlands and encourages best practice management through nationally consistent management principles.

■ Heritage protection and Commonwealth reserves

Managing World Heritage properties and heritage places

The EPBC Act enhances the management and protection of Australia's heritage places, including World Heritage properties. It provides for the listing of natural, historic or Indigenous places that are of outstanding national heritage value to the Australian nation as well as heritage places on Commonwealth lands and waters or under Australian Government control.

A declared World Heritage property is an area that has been included in the World Heritage List or declared by the Minister to be a World Heritage property. World Heritage properties are places with natural or cultural values which are recognised to have outstanding and universal value. Properties in Australia include:

- the Sydney Opera House, New South Wales
- the Great Barrier Reef, Queensland
- the Royal Exhibition Building and Carlton Gardens, Victoria.



The National Heritage List includes natural, historic and Indigenous places of outstanding heritage value to the nation such as:

- the Dinosaur Stampede National Monument, Queensland
- Brewarrina Aboriginal Fish Traps (Baiaime's Ngunnhu), New South Wales
- Melbourne Cricket Ground, Victoria

The Commonwealth Heritage List comprises natural, historic and Indigenous heritage places on Commonwealth lands and waters or under Australian Government control such as:

- Shoalwater Bay Military Training Area, Byfield, Queensland
- Cape Byron Lighthouse, Byron Bay, New South Wales

Once a heritage place is listed under the EPBC Act, special requirements come into force to ensure that the values of the place will be protected and conserved for future generations. The EPBC Act provides for the preparation of management plans which set out the significant heritage aspects of the place and how the values of the site will be managed.

The EPBC Act also establishes a List of Overseas Places of Historic Significance to Australia. This list provides for the symbolic recognition of sites of outstanding historic significance to Australia which are located outside of the Australian jurisdiction.

What is the process for listing a place on the National or Commonwealth Heritage Lists?

Each year the Minister makes a general call for nominations to the National and Commonwealth Heritage Lists. Anyone may nominate a place in response to this call.

For the National Heritage List, particular heritage themes may be established and given priority in a year.



Members of the public can request a nomination kit from the Department by telephoning 02 6274 1217, visiting the website at www.environment.gov.au/heritage or by writing to:

The Nominations Manager
Heritage Division
Department of the Environment and Water Resources
GPO Box 787
Canberra ACT 2601

Commonwealth reserves

A Commonwealth reserve can be proclaimed over areas of the land or sea owned or leased by the Australian Government or in a Commonwealth marine area. Kakadu and Booderee National Parks are examples of existing Commonwealth reserves.

All Commonwealth reserves are assigned to an IUCN protected area category and must have management plans that are consistent with Australian IUCN reserve management principles. Management plans are subject to public consultation and may be disallowed by either Commonwealth House of Parliament.

If a Commonwealth reserve is wholly or partly on Indigenous people's land, the reserve must have a Board of Management with a majority of members being Indigenous people nominated by the traditional owners. The Board prepares management plans for the reserve in conjunction with the Director of National Parks and makes decisions about management of the reserve in accordance with plans.

■ Compliance and enforcement

The EPBC Act includes a compliance and enforcement framework which provides a broad range of enforcement options.

The range of enforcement mechanisms included in the EPBC Act includes:

- The Minister may direct that an environmental audit be carried out if he or she has reasonable grounds to believe that a person has contravened or is likely to contravene an environmental approval or permit issued under the EPBC Act.
- In certain circumstances, civil or criminal penalties can apply to executive officers of a corporation that contravenes the requirements for environmental approvals under the Act, including the provision of false or misleading information to obtain approval.
- Remediation orders and determinations to repair or mitigate environmental damage resulting from a contravention of the EPBC Act.
- Enforceable undertakings to negotiate civil penalties and provide for future compliance.

The Department takes compliance with the EPBC Act seriously and investigates alleged breaches. If you would like to discuss a compliance issue with the Department or have reason to believe that the EPBC Act has been, or is likely to be breached, then please contact the Compliance and Enforcement Branch on **1800 110 395** or **02 6274 1372** or email **compliance@environment.gov.au** or **audit@environment.gov.au**

■ For more information about the EPBC Act

- Visit the Department's website at **www.environment.gov.au/epbc**
- Contact the Department's Community Information Unit on **1800 803 772**
- Email **ciu@environment.gov.au**



www.environment.gov.au/epbc