

Environment Protection and Biodiversity Conservation Amendment (Reconsiderations) Bill 2025

The Environment Protection and Biodiversity Conservation Amendment (Reconsiderations) Bill seeks to amend the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) to prevent the Environment Minister from applying the EPBC Act to actions in some circumstances. EDO does not support the passage of the Bill, as it would **restrict the Minister from remaking decisions in certain circumstances – even where doing so would prevent environmental pollution, destruction, or the likely extinction of a species.**

1. Reconsideration of decisions a crucial mechanism for protecting nature

The EPBC Act assessments and approval regime only deals with actions which will have a significant impact on a matter of national environmental significance (**MNES**), and which therefore require national oversight by the Federal Environment Minister. The decision whether or not an action will have a significant impact on MNES, and therefore if it should be subject to national oversight, is called a **controlled action decision**.

In some cases, the Minister will decide that an action is not a controlled action and the EPBC Act won't apply, but only if the action is carried out by the proponent in a certain way, called a controlled action - **particular manner decision**. The relevant state or territory law will apply to the action.

If substantial new information about the impacts the action might have on an MNES comes to light, or if there is a substantial change of circumstances that was not foreseen at the time of the first decision, then any person can request the Minister reconsider their decision. The Minister then has the power to revoke a controlled action decision and require the action to be assessed under national nature laws. This means the action will have to stop, while the proponent goes through the federal assessment and approval process.

2. The Bill will prevent federal oversight of certain actions

The Bill, if passed, would prevent the Environment Minister from overturning a controlled action decision in certain circumstances. This means the action which was the subject of the reconsideration request will be able to continue, **with no federal oversight or assessment – even if it will send a threatened species extinct.**

The new provision will apply if the action:

- was determined not to be a controlled action, because the Minister was satisfied it would be carried out in a particular manner;
- that particular manner included that the action would be taken in accordance with a management arrangement under state or territory laws;
- is being taken, and has been ongoing or recurring for at least five years; and
- is the subject of a reconsideration request that was made later than five years after the action started being taken.

If it meets the criteria, the action will be able to continue under the relevant state or territory law, even if it is having a destructive impact on a matter of national environmental significance. Feasibly, this could mean a nationally listed threatened species is sent extinct, or internationally recognised ecosystem polluted, without ever needing the Federal Minister's sign off. **This runs directly counter to the Federal Government's commitment to no new extinctions.**

3. The implications of the Bill are uncertain

The reconsideration of controlled action decisions operates as an important check and balance on state and territory environmental regimes. Many controlled action decisions where the Minister has determined no federal approval is necessary rely heavily on state or local regulators adequately managing impacts of the action, including impacts on nationally protected matters like World Heritage places or threatened species. Removing the ability of the Environment Minister to properly assess an action and mitigate detrimental impacts runs counter to the purpose of the EPBC Act.

In addition, while it appears the Bill is targeted towards one action in particular (salmon farming in Macquarie Harbour, Tasmania), there is uncertainty about other actions which might meet the criteria. **It's possible that other actions might be subject to these provisions – and subsequently excluded from federal oversight.**

4. Wholesale environmental law reform needed – not piecemeal carve-outs

In 2022 the Environment Minister committed to nature law reform to protect our environment, strengthen trust in the Act, and ensure better environmental decision-making. For most of 2024, legislation was before the Parliament which addressed well-known problems in relation to our nature laws – in relation to better information gathering, protecting against imminent environmental harm, and the lack of a federal environmental protection authority (**EPA**). These bills have now been withdrawn.

By contrast, **the Bill would only serve to entrench identified and well-known problems with the EPBC Act, including the broad failure of the legal regime to halt nature destruction and decline, protect threatened species, and uphold community trust.** It represents a carve-out for a particular polluting industry and a piecemeal amendment that does not address any problems identified in the 2020 Independent Review of the EPBC Act.

Moreover, EDO is concerned the Bill was introduced on the same day as the Federal Budget, in the final sitting week of the 47th Parliament. No Committee scrutiny process has been proposed or undertaken and there appears to be little time allotted for Parliamentary debate. This sets a dangerous precedent for amending environmental laws with little consultation, scrutiny, or accountability.

EDO recommends the Environment Protection and Biodiversity Conservation Amendment (Reconsiderations) Bill 2025 should not be passed.

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