



Environmental Defenders Office

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MEMORANDUM

Explainer: How did Alcoa turn years of law-breaking into a national interest exemption and a pathway to approvals out to 2045?

On 17 February, 2026, the federal government [announced](#) significant developments in how Alcoa's bauxite mining operations in Western Australia's jarrah forests are regulated by federal environmental law, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**).

Our media release about the announcement is [here](#).

We've received multiple enquiries from the community seeking to understand the announcement and what the next steps are in relation to Alcoa's operations in the Northern Jarrah Forest.

In this explainer we'll provide an overview of:

1. The **background** to Alcoa's operations in WA's Northern Jarrah Forest;
2. The **\$55 million penalty** that Alcoa will pay for clearing threatened species habitat between 2019 and 2025;
3. The newly commenced **strategic assessment** of Alcoa's operations; and
4. The special "**national interest**" **exemption** from federal environmental laws granted to Alcoa to operate while the assessment is underway.

1. BACKGROUND

Alcoa has been mining bauxite in WA's Northern Jarrah Forest since around 1963.

The map below indicates the location of the Northern Jarrah Forest, overlaid with the boundaries of Alcoa's mining lease.

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Location of the Northern Jarrah Forest and Alcoa's mining lease: Grant & Koch 2007 (Available from: https://www.researchgate.net/figure/Location-of-Alcoas-mines-located-in-the-northern-jarrah-forest-in-the-southwest-of-fig1_280860546)

In recent years, there has been a push from the community for these operations to be properly assessed and regulated under modern environmental laws. Many people and groups are concerned about impacts from these operations on black cockatoos, numbats, quokkas and other protected species, as well as the precious jarrah and marri forest ecosystems.

While Alcoa has self-reported restoration scores of 90%, [independent scientific review](#) has found rehabilitation of the Northern Jarrah Forests has fallen short. An investigation by Ad Services Australia, sparked by a complaint that EDO lodged on a client's behalf, also found Alcoa's rehabilitation claims were [likely to mislead or deceive](#).

Alcoa is seeking to expand its bauxite mining operations in the Northern Jarrah Forest and extend approvals to 2045.

2. WHAT IS THE \$55 MILLION PENALTY?

The federal government has announced that Alcoa will pay \$55 million in respect of clearing habitat for nationally protected species between 2019-2025. As discussed below, the federal government formed the view that Alcoa had been illegally clearing since 2011; however, the law limits liability to a six-year period, so the government can only take enforcement action in respect of the past six years of breaches.

This is not technically a "fine" but rather takes the legal form of an agreed "**enforceable undertaking**" under the EPBC Act.

The law gives the federal Minister for the Environment the power to enter into an agreement with a proponent to address non-compliance where the minister considers the proponent's action contravened the EPBC Act. That means Minister Watt formed a view that Alcoa breached one or more provisions of the EPBC Act.

The terms of the enforceable undertakings (which were made in two parts – [2019-2023](#); [2024-2025](#)) show Minister Watt considered Alcoa breached the provisions of the EPBC Act that protect endangered and vulnerable species, by clearing over 2,000 hectares of native vegetation in the Northern Jarrah Forest.

Alcoa did not concede its actions breached the EPBC Act, but in the undertakings acknowledged its action resulted in loss of habitat for protected species.

There is no specified method in the law for calculating payment amounts for an enforceable undertaking. Rather, the amounts and where the money goes are the subject of agreement between Alcoa and Minister Watt. We have provided some details and analysis below.

Where is the money going?

Payments under enforceable undertakings are not made directly to the federal government, in the way that people might expect fines are ordinarily administered.

Alcoa's payments under these enforceable undertakings will be made to:

- The Australian Wildlife Conservancy (\$5 million for conservation programs);
- The WA Department of Biodiversity, Conservation and Attractions (\$6 million for invasive flora and fauna control program);
- The University of Western Australia (\$4 million for research into controlling invasive fauna); and
- At least \$40 million to a landowner (or landowners) from whom Alcoa will purchase land as an ecological offset.

As discussed further below, none of the payments will go to directly remediating damage from the contraventions, including the significant impacts of the clearing on protected species.

Is this a significant penalty?

The federal government referred to Alcoa's \$55 million penalty as an "unprecedented amount". Indeed, a review of the federal environmental [compliance records](#) shows that most penalties are in the tens of thousands of dollars, with a handful of instances up to just over \$2 million.

However, looking at comparable undertakings for clearing activities can provide a general benchmark for significance of penalties. By way of examples:

- [Hunter Valley Operations South Coal Mine](#): In 2017, a mining company paid around \$2.1 million in respect of 31.5ha of clearing a critically endangered ecological community – that's around \$67,000 per hectare of habitat destroyed.
- [Powercor and Vemco](#): In 2015, two Victorian companies paid more than \$200,000 following 0.54ha of clearing of a critically endangered ecological community – almost \$400,000 per hectare.

By comparison, Alcoa's enforceable undertaking, which relates to over 2,000ha of clearing, equates to only \$27,500 per hectare. Compared with the above examples, it does not seem a significant penalty.

If previous rates of close to \$400,000 per hectare of clearing were applied, this would have seen Alcoa paying up to \$800 million.

A further point to note is that, under recent reforms to federal environmental laws, the maximum penalty for a corporation breaching the EPBC Act will rise to \$825 million. (Those reforms will come into force likely later in 2026).

What more could the government have done?

There are various enforcement powers under the EPBC Act. These include powers to prosecute for contraventions, seek injunctions to prevent environmental harm, or initiate criminal proceedings. The government can also issue infringement notices or remediation determinations.

Given the scale of clearing and the federal government's view that Alcoa unlawfully destroyed protected species habitat for multiple years, it is particularly notable that a remediation determination was not made in respect of Alcoa's clearing between 2019-2025.

While the \$55 million payment is described as delivering offsets, conservation programs and invasive species management, the federal government has not used its powers to directly require Alcoa to remediate the impacts of clearing on the plants and animals of the Northern Jarrah Forest.

This raises the question of whether the government and/or Alcoa are conceding that it is not possible to rehabilitate this ecosystem from the impacts of Alcoa's past operations.

3. WHAT IS THE STRATEGIC ASSESSMENT?

Minister Watt and Alcoa have agreed to undertake a strategic assessment of bauxite mining activities at Alcoa's Huntly and Willowdale mines (details [here](#), dated 18 February 2026).

Ordinarily, proponents refer their projects under the EPBC Act for individual assessment. However, the EPBC Act also provides for "strategic assessment". This is a broader level of landscape-scale assessment covering activities over many years that can avoid the need for future individual assessments.

A specific website for Alcoa's strategic assessment is [here](#), and details of the process are stipulated in the assessment agreement linked above. By way of overview, the strategic assessment process will involve the following steps:

1. The federal Department of Climate Change, Energy, the Environment and Water will prepare a "terms of reference" setting out what the assessment will cover;
2. Alcoa will prepare a document setting out how it proposes to undertake and manage its operations at a landscape level (the proposed "plan"), and a report on the environmental, social and economic impacts of those operations, with both documents being made available for public comment;
3. Following public comments, and any modifications made to the plan, Minister Watt may endorse the plan if satisfied that environmental impacts are adequately addressed; and

4. Following an endorsement of the plan, Minister Watt may approve individual projects (e.g., particular areas/periods of Alcoa's clearing and mining) to be undertaken in accordance with the plan.

Ultimately, once the strategic assessment is concluded, Minister Watt will have to decide whether Alcoa should be allowed to continue and expand its bauxite mining operations out to 2045.

Minister Watt's announcement described the strategic assessment as a way to "regularise environmental approvals" for Alcoa. This could be seen as characterising the process as simply providing a legal mechanism by which Alcoa can continue operations, rather than providing for a meaningful environmental assessment and deliberation as to whether the activity should be allowed. What is required under our federal environment laws, and has been demanded by the community, is that the strategic assessment process thoroughly scrutinises whether the impacts of mining the Northern Jarrah Forest should be approved at all.

How can I participate in the assessment?

There are several points in the assessment process at which public comments can be made. The key point to look out for is the period for public comments on Alcoa's proposed plan and report on environmental impacts. This is when you can have your say about whether Alcoa has presented adequate assessment information and whether the impacts are acceptable and provide personalised input (such as your local knowledge or specific expertise) to the assessment.

There is no clear mechanism on the assessment website to sign up for automatic notifications of the progress and updates to this strategic assessment. We recommend regularly checking the website if you want to keep up to date on the opportunities for public comment.

4. WHAT IS THE NATIONAL INTEREST EXEMPTION?

Alongside the penalty and strategic assessment outlined above, Minister Watt announced that he has granted Alcoa a special exemption from federal environmental laws, based on the "national interest".

Was the exemption needed?

The announcement described the exemption as necessary for Alcoa to continue its current operations. This is only true because Alcoa had until recently refused to refer its action under the EPBC Act for assessment and approval as most proponents do as a matter of course, despite warnings from the federal government as far back as 2011. This refusal led to:

- Minister Watt finding that Alcoa has been clearing illegally. The penalty agreed upon covers clearing up to 2025, but the clearing now in 2026 is equally being undertaken without approval under the EPBC Act. Ordinarily, in those circumstances a proponent would need to cease operating immediately to avoid further penalties for ongoing breaches; and
- Alcoa finally referring its operations for assessment. Ordinarily, proponents cannot undertake projects until an assessment is concluded. This reflects the usual position where approvals are sought prior to a project commencing, rather than part-way through. Given the assessment will take several months, Alcoa would have to cease operating immediately and not re-commence unless and until it receives an approval at the end of that process.

That is, due to Alcoa's choices in not referring its operations earlier, the company faced the prospect of needing to cease operations immediately and for some months unless it could persuade Minister Watt that it should be given special treatment.

When can a national interest exemption be granted?

Under s 158 of the EPBC Act,¹ the Minister for Environment is given a special power to exempt a proponent from the offence provisions of the Act. This power can be exercised only where the minister is "satisfied that it is in the national interest".

While the legal provision refers to considerations of Australia's defence or security or a national emergency, the minister has a broad discretion beyond those matters.

The national interest exemption power is used in exceptional circumstances. The power has only been used eight times over the past five years, exclusively for emergency works in the interests of safety (examples [here](#), [here](#)) or to rescue a species bound for extinction (example [here](#)). The power was only used [once in 2025](#), for emergency works on Bribie Island in Queensland during the 2025-26 summer storm season. Notably (on information publicly available), commercial reasons have never formed the basis for use of the power, until this decision.

Why was Alcoa granted the exemption?

On 30 January 2026, Alcoa made an application for a national interest exemption. On 18 February 2026, Minister Watt granted the exemption ([notice](#), [reasons](#)).

In summary, Minister Watt determined that Alcoa's bauxite mining was in the national interest for reasons of national security, bilateral relations with the United States and Japan, and Alcoa's contribution to the domestic economy, including employing about 6,000 people.

In large part, the reasons relied on the potential for bauxite to be used to produce gallium. Gallium can be extracted as a byproduct of bauxite processing. Gallium, which is used in defence technologies, has been the subject of Australian Government bilateral agreements with the United States and Japan.

Alcoa does not currently produce gallium from its bauxite and alumina operations in WA but it is proposing to develop a facility, funded by the US and Australian Governments, at the Wagerup Refinery in WA's south.

To be clear, Minister Watt's reasons that Alcoa's current operations are in the national interest were not based on those operations including domestic production of any gallium *now*. Rather, Alcoa says that in order to undertake a domestic gallium production project in the future, it needs to be "financially sustainable", which in turn depends on its bauxite mining operations continuing.

A note on reforms to the national interest exemption

As mentioned above, parts of the federal environment law reforms came into force on 20 February 2026. This included reforms to the national interest exemption. However, this decision was made under the national interest exemption that existed in the EPBC Act prior to reform.

¹ As at the time of the decision, noting that reforms to the EPBC Act have since come into force and modified the exemption.

The reforms don't change Alcoa's existing exemption – it stays in force in the form it was made under the previous laws. For completeness, we have set out some brief comparisons below between the previous and amended provisions.

Under the newly amended provisions, the tests for whether the minister can grant a complete exemption remain the same (i.e., broad discretion as to what the “national interest” means) and so does the effect of the exemption (i.e., not having to comply with the usual legal prohibitions). Changes in the amendments include an express provision for conditions to be placed on the exemption in order to protect or repair the environment.

There are also new provisions in the EPBC Act giving the minister powers to declare something a “national interest proposal”. A project given this designation still goes through assessment but the power will allow approvals to be granted even where the project does not meet all of the new approval criteria under reformed federal environmental laws (i.e., consistency with the National Environmental Standards, not having an unacceptable impact, and delivering a net gain for nature).

It's possible in theory for this power to be used in relation to particular parts of Alcoa's operations in the future, following the strategic assessment.

A note on Alcoa's exemption from WA environmental laws

Alcoa's operations have also been subject to a special “exemption order” under the *Environmental Protection Act 1986* (WA) since 2023.

This occurred after EDO's client, the WA Forest Alliance, made a public [referral](#) of Alcoa's operations and triggered a [full environmental impact assessment](#).

Ordinarily, as is the case under the EPBC Act, proponents cannot undertake work on projects until assessment is concluded, but the special exemption has allowed Alcoa to operate for several years without penalty.

In recent months, [the state regulator has been investigating a reported breach](#) of the conditions on the order which could mean Alcoa is once again faced with the prospect of needing to cease operations. Investigation of [two additional breaches](#) was confirmed this week.

The WA environmental impact assessment is ongoing. After [almost 60,000 public submissions](#) were made on the assessment documentation, we are awaiting the assessment report by the Environmental Protection Authority with a recommendation on whether the project should be approved.

For further information, please contact:

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