



Update on EPBC Act reforms: Changes to the regulation of land clearing under federal environmental laws

Disclaimer: This is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).

While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this document or use of this work.

This document was last updated on 25 March 2026

What is this explainer about?

This explainer outlines a recent change to the federal environmental law, the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**).

This change narrows an exemption from the operation of the EPBC Act relating to clearing of vegetation that is likely to have a significant impact on a matter of national environmental significance. This means that for certain clearing of vegetation the exemption no longer applies, and assessment and approval under the EPBC Act may be required.

Outline

What is this explainer about?	1
Overview	2
Background	2
What is the 'continuation of use' exemption?	3
What has changed?	3
What has not changed?	4
Opportunities to ensure the laws are complied with	5
Alert the regulator of clearing that may have a significant impact on MNES	5
Community members can apply to the Federal Court for enforcement action	5
Evaluate this resource	6

Overview

Amendments to the federal environmental law, the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**), tightened provisions that have been relied on (legitimately or not) to exempt certain clearing of vegetation from the usual assessment and approval requirements. This exemption applies under EPBC Act s43B to remove the need for EPBC Act assessment or approval where an activity had been legally undertaken prior to the EPBC Act commencing ('continuation of use exemption').

As of **2 December 2025**, the EPBC Act now specifies that the 'continuation of use' exemption at s 43B cannot apply for certain clearing of vegetation, being if:

- the vegetation is within 50m of a Great Barrier Reef catchment watercourse, wetland or drainage line; or
- the vegetation is anywhere across Australia and has not been cleared for 15 years or more, where it is not a forestry operation.

If this clearing will or is likely to have a significant impact on a matter of national environmental significance (**MNES**), the person proposing to undertake the clearing must seek approval from the federal Environment Minister and cannot rely on the 'continuation of use' exemption.

Background

Australia is a global deforestation hot spot. Most of that deforestation has been undertaken with no effective federal oversight under federal environmental law - 93% of the 7.7 million hectares of habitat cleared between 2000 and 2017 was not referred to the Commonwealth Government for assessment under the EPBC Act.¹

In the past decade, much of this deforestation has occurred in NSW and Qld, including in the catchment of the Great Barrier Reef, which has led to sedimentation and other pollution impacts on the World Heritage-listed site.

The amendments to the EPBC Act passed in November 2025 have gone some way to closing a loophole relied on by proponents to do this clearing - by making it clear that the "continuation of use" exemption in the Act does not apply to certain land clearing.

That is, vegetation clearing that may have been exempt due to it being a continuing use of clearing occurring prior to the EPBC Act commencing is now subject to the EPBC Act assessment where it will or may have a significant impact on a matter of national environmental significance and:

¹ 2021 State of the Environment Report, Habitat and Natural Capital Fact Sheet, https://www.dcceew.gov.au/sites/default/files/documents/6.%20DCCEEW-SOE_factsheet_Habitat%20and%20Natural%20Capital.pdf

- the vegetation is within 50m of a Great Barrier Reef catchment watercourse, wetland or drainage line; or
- the vegetation is anywhere across Australia and has not been cleared for 15 years or more, and is not a forestry operation.

What is the 'continuation of use' exemption?

Any activity that will or is likely to have a significant impact on a matter of national environmental significance (**MNES**) requires assessment and approval under the EPBC Act to occur.

When the EPBC Act was passed in 1999, some exemptions to this were included to 'grandfather' certain existing activities to allow them to take place without assessment and approval under the EPBC Act.

Section 43B of the EPBC Act is one of those exemptions. It provides that a person may take an action if it is a lawful continuation of a use that was occurring immediately before the commencement of the EPBC Act.

This means that, for the exemption to genuinely apply to an action, the action must be a lawful continuation of a use that was taking place before **16 July 2000**, when the EPBC Act commenced. The exemption does not apply where the action:

- is an enlargement, expansion, or intensification of the use; or
- involves a change in the location of the use or a change in the nature of the activities comprising the use that results in a substantial impact of the use.

There have been significant concerns that this exemption has been misapplied by rural and agricultural landholders to clear land without referring the matter for approval under the EPBC Act, and about the failure of the relevant regulator (the federal Department of the Environment) to enforce the law and ensure that the exemption was only relied on legitimately.

Recent amendments to the EPBC Act provide clearer and more explicit limits on the application of the exemption.

What has changed?

Changes to regulation of land clearing under the EPBC Act that apply **from 2 December 2025** now specify that the continuation of use exemption **does not** apply to vegetation clearing where:

- the vegetation is within 50m of a Great Barrier Reef catchment watercourse, wetland or drainage line; or
- the vegetation is anywhere across Australia and has not been cleared for 15 years or more, where it is not a forestry operation.

That means that if there is vegetation clearing that:

- might have a significant impact on a MNES; and
- falls within either of the two categories above,

the landholder cannot rely on the continuation of use exemption, and the clearing is likely to need to be referred to the Federal Department for assessment and approval under the EPBC Act.

What has not changed?

Other clearing likely to have a significant impact on MNES may still require referral

It is important to note that clearing of vegetation that is likely to have a significant impact on a MNES but does not fall within the two categories set out above (that is, clearing of vegetation of less than 15 years regrowth and that is outside the GBR catchment or outside 50m of a watercourse in the GBR catchment) is not necessarily covered by the continuation of use exemption.

As set out above, the scope of the exemption in the EPBC Act even before the recent amendments was narrow, requiring the vegetation clearing to:

- be a continuation of a use of land that was lawfully occurring immediately before 1 July 2000;
- **not** be an enlargement, expansion, or intensification of the use;
- **not** be a change in the location of where the use is occurring that results in a substantial increase in the impact of the use on the land; and
- **not** be a change in the nature of the activities comprising the use that results in a substantial increase in the impact of the use on the land.

Vegetation clearing that is likely to have a significant impact on a MNES and does not meet the criteria above cannot rely on the exemption and is likely to require referral under the EPBC Act (unless another exemption applies). This includes vegetation that is regrowth under 15 years, and vegetation that is outside the GBR catchment or in the GBR catchment but not within 50m of a waterbody.

Clearing that is not likely to have a significant impact on MNES does not need to be referred

There is no requirement for assessment and approval under the EPBC Act if the action is **not** likely to have a significant impact on a MNES. The Department has issued [Significant Impact Guidelines](#) to provide guidance to proponents on what it considers to be a significant impact on MNES.

That is, if clearing of vegetation **will not** have a significant impact on a MNES it does not need to be referred for assessment and approval under the EPBC Act. This remains the case, even for vegetation clearing of vegetation that has not been cleared for 15 years or is within 50m of a watercourse in the GBR catchment.

The Department regulating the EPBC Act has provided a webpage explaining the amendments to the public, available [here](#).

Opportunities to ensure the laws are complied with

The effectiveness of the recent changes to the continuation of use exemption to curb harmful deforestation will depend on how rigorously it is enforced. In general, regulatory oversight of vegetation clearing has been extremely lax, including in relation to illegitimate reliance on the exemption and failure to refer clearing activities, which has contributed to widespread deforestation without EPBC Act assessment or other federal oversight.

Environmental and community groups will have a significant role to play in holding the Government and new National EPA to account to ensure the law is enforced.

Alert the regulator of clearing that may have a significant impact on MNES

When the recent amendments were passed, the Minister, Murray Watt, said that “the new provisions regarding agricultural land clearing and the enforcement of those provisions will certainly be a priority for the new National Environmental Protection Agency”.²

The new National EPA will be established on 1 July 2026. In the interim, the Department will continue to be the regulator responsible for ensuring that these protections are complied with.

Given the remoteness of many parts of Australia, the local community can play a role in providing information to the Department about any vegetation clearing that may meet the requirements above and require assessment under the EPBC Act.

If you have concerns about vegetation clearing in your community, you can contact the regulating Department and ask them to investigate on [the contacts listed on their website](#). You can also get in touch with EDO’s inquiries line [here](#).

You should also contact the relevant state or territory regulator of any clearing you are concerned about.

Community members can apply to the Federal Court for enforcement action

If the Department fails to take action with respect to clearing that would be an offence (such as clearing that is likely to have a significant impact on a MNES of vegetation over 15 years regrowth or within 50m of a watercourse in the GBR catchment) or other contravention of the EPBC Act, it may be possible for certain community members or groups to seek an injunction in the Federal Court to enforce the new provisions of the Act, if they are:

² Senate Hansard, Thursday 27 November 2025, p 2706, available at <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansards%2F28891%2F0212;query=Id%3A%22chamber%2Fhansards%2F28891%2F0000%22>

- an individual whose interests are affected, or who has been engaged in activities to protect the environment during the previous two years (called an “interested person”); or
- an organisation (incorporated in Australia) whose interests are affected, or which, during the previous 2 years, has had the protection of the environment as one of its objects and purposes and which has been engaged in environmental protection.

However, this is not a course to be taken lightly as litigation can be costly and time consuming and the evidentiary burden is quite high.

We strongly encourage seeking independent legal advice before any court action is taken.

It is always preferable for a regulator to perform its role and enforce the law than for the community to have to do so.

Evaluate this resource

EDO welcomes feedback on this legal resource. Your feedback will help us ensure we are providing useful legal information.

If you have any concerns or suggestions regarding this legal resource, please fill out the Legal Resources evaluation form by clicking [here](#) or scanning the QR code below:

