

## Why aren't Australia's environment laws preventing widespread land clearing?

Written by Samantha Hepburn, Director of the Centre for Energy and Natural Resources Law, Deakin Law School, Deakin University

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Australia has national environment laws – the [Environment Protection Biodiversity Conservation Act](#) (EPBC Act). Yet given the staggering rates of land clearing taking place, resulting in the extinction and endangerment of plants and animals in Australia, these laws are clearly not working.

About [395,000 hectares](#) of regrowth and old growth vegetation were cleared during 2015-16 in Queensland. Australia is set to clear up to [3 million hectares](#) of native forest by 2030, and more than 1,800 plant and animal species are currently listed as threatened nationally.

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When the EPBC Act was first implemented in 1999, the idea was for it to provide reinforced federal environmental protection to areas of national environmental significance. But in reality, many projects that come within the ambit of the Act are not rigorously evaluated for their environmental impact.

## Why isn't the EPBC Act working?

Land clearing was listed in the [2001](#) and [2006](#) State of the Environment Reports as one of the greatest threats to biodiversity.

Deforestation and excessive land clearing fundamentally impacts existing biodiversity, damages fragile ecosystems, destroys wildlife habitat, and increases greenhouse gas emissions. In Queensland, where much of the land clearing is taking place, the state law ( [Vegetation Management Act](#) ) is not strong enough to diminish incentives for land clearing. Yet the national environmental laws have not provided greater protection.

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There are several reasons for this. While land clearing is indirectly regulated by the EPBC Act due to the significant impact it can have on the environment, land clearing is not directly addressed by the EPBC Act.

As it stands, land clearing will only attract EPBC Act application where it can be established that it impacts a directly protected entity such as a World Heritage area, Ramsar wetland, threatened species, ecological community, or migratory species. If this connection cannot be established, [no environmental assessment](#) under the EPBC Act will occur.

Even where projects do attract the application of the EPBC Act, its capacity to advance best practice environmental impact assessment is highly questionable. One of the biggest problems is that the process of assessment is insufficiently robust.

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This problem is evident in other environmental issues too. Where a bilateral state and federal assessment is approved, as was the case with the Adani coalmine, the federal department often relies on state counterparts to undertake a thorough environmental assessment. Many of the proposals evaluated by state departments are assessed with reference to the least onerous environmental impact assessment available.

This documentation is generally prepared by the project proponent. Unsurprisingly, as a consequence, many of the projects that are evaluated under the EPBC Act are approved, subject to the imposition of environmental conditions. This means the environmental conditions need to be carefully monitored if environmental protection is to be optimised.

This creates a new set of problems. Where a breach is alleged, it must be proved and appropriate sanctions enforced. In reality, this rarely happens, and the sanctions that are imposed can be woefully inadequate. For example, Adani was [fined A\\$12,000 for breaching an](#)

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[environmental condition](#) relating to the release of coalwater in Abbott Point coal terminal, which flowed into the fragile Caley Valley Wetlands.

The substantive problem with the EPBC Act is that its implementation is subject to departmental discretion and therefore the vagaries of government administration. This is particularly problematic given the political nature of many of these decision-making processes.

### Lack of rigorous scrutiny

In circumstances where, for example, there is a need to challenge the approval of a resource title in light of its environmental consequences, the EPBC Act relies heavily on environmental groups or other third parties to scrutinise the federal decision-making process.

For example, the Australian Conservation Foundation took strong action in [challenging the issuance of the mining licence](#) for Adani's proposed Carmichael coal mine. It argued the endangered species and climate change impacts were insufficiently taken into account by the then Environment Minister Greg Hunt in exercising discretion under the EPBC Act.

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**Read more:** [\*Latest twist in the Adani saga reveals shortcomings in environmental approvals\*](#)

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The case was dismissed because the Federal Court found that this decision was authorised by the discretions included within the EPBC Act. The minister was therefore within his power to decide not to take account of the climate change impacts of such a vast new coalmine. This is concerning given the profound impact that climate change can have upon fragile ecologies in areas of national environmental significance.

These findings indicate a lack of preparedness by the federal minister to accept a causal

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connection between climate change and domestic coal production, and to focus on narrow jurisdictional boundaries and strict domestic obligations. It also strongly highlights the deficiencies of our national environment act because the existing triggers do not address some of the most important environmental concerns of the modern world.

## New environment laws urgently needed

Climate change is almost universally accepted as one the most serious environmental threats. Yet the EPBC Act does not include a climate change trigger (or a land clearing trigger, as discussed above).

This means these key threats to Australia's environment will not be protected by EPBC Act. They may attract the EPBC Act indirectly, but only if it can be established that they raise a different trigger that is listed under the Act. This calls into question the capacity of our national environment laws to truly protect areas of national environmental significance.

In order to reverse unacceptable rates of land clearing, preserve ecosystems and habitats and diminish greenhouse gas emissions, a new framework for our national environment act is urgently needed.

*Samantha Hepburn does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.*

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**Read more** <http://theconversation.com/why-arent-australias-environment-laws-preventing-wide-spread-land-clearing-92924>