



# **Environment Protection and Biodiversity Conservation Amendment Act 2013**

**No. 60, 2013**

**An Act to amend the *Environment Protection and  
Biodiversity Conservation Act 1999*, and for related  
purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Environment Protection and Biodiversity Conservation Amendment Act 2013

No. 60, 2013

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**An Act to amend the *Environment Protection and  
Biodiversity Conservation Act 1999*, and for related  
purposes**

[Assented to 21 June 2013]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Environment Protection and  
Biodiversity Conservation Amendment Act 2013*.

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*Environment Protection and Biodiversity Conservation Amendment Act 2013* No. 60, 2013

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 June 2013
2. Schedule 1	The day after this Act receives the Royal Assent.	22 June 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Protection of water resources from coal seam gas development and large coal mining development**

### **Part 1—Amendments**

#### *Environment Protection and Biodiversity Conservation Act 1999*

#### **1 After Subdivision FA of Division 1 of Part 3**

Insert:

#### **Subdivision FB—Protection of water resources from coal seam gas development and large coal mining development**

#### **24D Requirement for approval of developments with a significant impact on water resources**

- (1) A constitutional corporation, the Commonwealth or a Commonwealth agency must not take an action if:
  - (a) the action involves:
    - (i) coal seam gas development; or
    - (ii) large coal mining development; and
  - (b) the action:
    - (i) has or will have a significant impact on a water resource; or
    - (ii) is likely to have a significant impact on a water resource.

Civil penalty:

- (a) for an individual—5,000 penalty units;
  - (b) for a body corporate—50,000 penalty units.
- (2) A person must not take an action if:
    - (a) the action involves:
      - (i) coal seam gas development; or
      - (ii) large coal mining development; and

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**Part 1** Amendments

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- (b) the action is taken for the purposes of trade or commerce:
  - (i) between Australia and another country; or
  - (ii) between 2 States; or
  - (iii) between a State and Territory; or
  - (iv) between 2 Territories; and
- (c) the action:
  - (i) has or will have a significant impact on a water resource; or
  - (ii) is likely to have a significant impact on a water resource.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

(3) A person must not take an action if:

- (a) the action involves:
  - (i) coal seam gas development; or
  - (ii) large coal mining development; and
- (b) the action is taken in:
  - (i) a Commonwealth area; or
  - (ii) a Territory; and
- (c) the action:
  - (i) has or will have a significant impact on a water resource; or
  - (ii) is likely to have a significant impact on a water resource.

Civil penalty:

- (a) for an individual—5,000 penalty units;
- (b) for a body corporate—50,000 penalty units.

(4) Subsections (1) to (3) do not apply to an action if:

- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or



- (b) Part 4 lets the constitutional corporation, Commonwealth, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or
  - (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
  - (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).
- (5) A person who wishes to rely on subsection (4) in proceedings for a contravention of a civil penalty provision bears an evidential burden in relation to the matters in that subsection.

#### **24E Offences relating to water resources**

- (1) A constitutional corporation, or a Commonwealth agency that does not enjoy the immunities of the Commonwealth, commits an offence if:
- (a) the corporation or agency takes an action involving:
    - (i) coal seam gas development; or
    - (ii) large coal mining development; and
  - (b) the action:
    - (i) results or will result in a significant impact on a water resource; or
    - (ii) is likely to have a significant impact on a water resource.
- Penalty: Imprisonment for 7 years or 420 penalty units, or both.
- Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.
- Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.
- (2) A person commits an offence if:
- (a) the person takes an action involving:
    - (i) coal seam gas development; or

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**Part 1** Amendments

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- (ii) large coal mining development; and
- (b) the action is taken for the purposes of trade or commerce:
  - (i) between Australia and another country; or
  - (ii) between 2 States; or
  - (iii) between a State and Territory; or
  - (iv) between 2 Territories; and
- (c) the action:
  - (i) has or will have a significant impact on a water resource; or
  - (ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

- (3) A person commits an offence if:
  - (a) the person takes an action involving:
    - (i) coal seam gas development; or
    - (ii) large coal mining development; and
  - (b) the action is taken in:
    - (i) a Commonwealth area; or
    - (ii) a Territory; and
  - (c) the action:
    - (i) has or will have a significant impact on a water resource; or
    - (ii) is likely to have a significant impact on a water resource.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.

Note 1: An executive officer of a body corporate convicted of an offence against this subsection may also commit an offence against section 495.

Note 2: If a person takes an action on land that contravenes this subsection, a landholder may commit an offence against section 496C.

- (4) Subsections (1) to (3) do not apply to an action if:
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- (a) an approval of the taking of the action by the constitutional corporation, Commonwealth agency or person is in operation under Part 9 for the purposes of this section; or
- (b) Part 4 lets the constitutional corporation, Commonwealth agency or person take the action without an approval under Part 9 for the purposes of this section; or
- (c) there is in force a decision of the Minister under Division 2 of Part 7 that this section is not a controlling provision for the action and, if the decision was made because the Minister believed the action would be taken in a manner specified in the notice of the decision under section 77, the action is taken in that manner; or
- (d) the action is an action described in subsection 160(2) (which describes actions whose authorisation is subject to a special environmental assessment process).

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

## **2 At the end of subsection 25AA(2)**

Add:

; (i) subsections 24E(1) to (3).

## **3 After paragraph 25AA(3)(ga)**

Insert:

(gb) subsections 24D(1) to (3);

## **3A Subsection 29(1)**

After “Part 3”, insert “, other than section 24D or 24E,”.

## **4 Section 34 (after table item 13G)**

Insert:

13H	section 24D	a water resource
13J	section 24E	a water resource

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## **4A At the end of subsection 46(1)**

Add “, other than section 24D or 24E”.

## **4B Subsections 46(2) and (2A)**

After “Part 3”, insert “, other than section 24D or 24E,”.

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**5 Subsection 75(2A)**

After “24A(1),”, insert “24D(3), 24E(3),”.

**6 Subsection 82(4)**

After “24A(1),”, insert “24D(3), 24E(3),”.

**7 After subparagraph 304(1)(a)(vii)**

Insert:

- (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;

**8 After paragraph 305(1)(g)**

Insert:

- (ga) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development in the Australian jurisdiction;

**9 After subparagraph 305(1A)(b)(vi)**

Insert:

- (via) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or

**10 After subparagraph 305(1A)(c)(vii)**

Insert:

- (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or

**11 After paragraph 305(2)(e)**

Insert:

- (ea) in the case of a proposed agreement wholly or partly for the protection and conservation of a water resource, in respect of the impacts of actions involving coal seam gas development or large coal mining development—the agreement will result in a net benefit to the conservation of the water resource; and

**12 After subparagraph 306(1)(a)(vii)**

Insert:

- (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;

**13 After subparagraph 306(1)(b)(vii)**

Insert:

- (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or

**14 After subparagraph 306(2)(a)(vii)**

Insert:

- (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development;

**15 After subparagraph 306(2)(b)(vii)**

Insert:

- (viiia) a water resource, in respect of the impact of an action involving coal seam gas development or large coal mining development; or

**16 After subparagraph 495(2)(a)(vi)**

Insert:

- (via) section 24E (Offences relating to water resources); or

**17 After subparagraph 496C(1)(a)(vii)**

Insert:

- (viiia) section 24E (Offences relating to water resources); or

**18 Section 528**

Insert:

*evidential burden*, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## **Part 2—Application and transitional provisions**

### **19 Definitions**

In this Part:

**approval process decision** means any decision under Part 7, 8 or 9 of the old law relating to an action.

**environmental authorisation** means an authorisation under a law of the Commonwealth, a State or a self-governing Territory that has either or both of the following objects (whether express or implied):

- (a) to protect the environment;
- (b) to promote the conservation and ecologically sustainable use of natural resources.

**new law** means the *Environment Protection and Biodiversity Conservation Act 1999*, as in force on the day this item commences.

**old law** means the *Environment Protection and Biodiversity Conservation Act 1999*, as in force immediately before the day this item commences.

**specific environmental authorisation** means an environmental authorisation that:

- (a) identifies the particular action by reference to acts and matters uniquely associated with that action; or
- (b) was issued or granted following a consideration of the particular action by reference to acts and matters uniquely associated with that action.

**transitional period** means the period of 60 business days (measured in Canberra), beginning on the day this item commences.

### **20 Application**

The amendments made by this Schedule apply in relation to an action involving coal seam gas development or large coal mining development that is taken on or after the day this item commences, even if the action began before that time, unless:

- (a) item 22 of this Schedule applies in relation to the taking of the action; or
  - (b) the Minister decides, under item 23 of this Schedule, that sections 24D and 24E of the new law are not controlling provisions for the action.
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## **22 Application—decision relating to action approved or undertaken before commencement**

- (1) The amendments made by this Schedule do not apply in relation to the taking of an action by a person involving coal seam gas development or large coal mining development if:
- (a) immediately before the day this item commences, any of the circumstances set out in subitem (2) were satisfied in relation to the action and the person; or
  - (b) immediately before 13 March 2013, the circumstance set out in subitem (2A) was satisfied in relation to the action and the person.
- (2) For the purposes of paragraph (1)(a), the circumstances are:
- (a) the Minister has, under Part 9 of the old law, approved the taking of the action by the person for the purposes of a provision of Part 3 of the old law; or
  - (b) the Minister has, under Division 2 of Part 7 of the old law, decided that the action is not a controlled action; or
  - (c) the Minister has, under Division 2 of Part 7 of the old law, decided that the action is not a controlled action because the Minister believed the action would be taken in the manner specified in a notice given under section 77 of the old law; or
  - (d) both:
    - (i) the Minister has informed the persons mentioned in paragraph 131AA(1)(a) of the old law of the decision the Minister proposes to make in relation to the action; and
    - (ii) the Minister has, as required by section 131AB of the old law, obtained advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in relation to the action;
  - (f) the action has a prior authorisation, as described in subitem (3).
- (2A) For the purposes of paragraph (1)(b), the circumstance is that none of the provisions of Part 3 of the old law were controlling provisions for the action and an appropriate Minister of a declared State or Territory has, under paragraph 505D(1)(b) of the old law, obtained advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in relation to the action for the
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**Part 2** Application and transitional provisions

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purposes of giving a specific environment authorisation for the action under a State or Territory law.

- (3) A person may take an action described in section 24D or 24E of the new law without an approval under Part 9 of the new law for the purposes of that section if:
- (a) the action involves:
    - (i) coal seam gas development; or
    - (ii) large coal mining development; and
  - (b) before the day this item commences, the action was authorised by a specific environmental authorisation; and
  - (c) immediately before the day this item commences, no further specific environmental authorisation was necessary to allow the action to be taken lawfully; and
  - (d) at the time the action is taken, the specific environmental authorisation continues to be in force.
- (4) For the purposes of paragraphs (3)(c) and (d), a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation unless:
- (a) the action that is authorised by the authorisation following the renewal or extension is the same as the action that was authorised by the authorisation before the day this item commences; and
  - (b) the renewal or extension could properly be made or given without any further consideration of the environmental impacts of the action.

Note: If a renewal or extension of a specific environmental authorisation is taken to be a new specific environmental authorisation, the condition in paragraph (3)(c) or (d) would not be met.

**23 Transitional provision—Minister to decide whether provisions of new law are controlling provisions for certain controlled actions**

*Application*

- (1) This item applies if:
- (a) immediately before the day this item commences, there was in force a decision of the Minister, under Division 2 of Part 7 of the old law, that an action involving coal seam gas
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development or large coal mining development is a controlled action; and

- (b) on the day this item commences, either:
- (i) the taking of the action has not been approved by the Minister under Part 9 of the old law for the purposes of a provision of Part 3 of the old law; or
  - (ii) the Minister had not informed the persons mentioned in paragraph 131AA(1)(a) of the old law of the decision the Minister proposes to make in relation to the action or advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development in relation to the action has not been obtained by the Minister under section 131AB of the old law.

*Are the provisions of the new law controlling provisions?*

- (2) The Minister must, in accordance with this item and within the transitional period, decide whether sections 24D and 24E of the new law are controlling provisions for the controlled action.

*Considerations in decision*

- (3) Before deciding whether sections 24D and 24E of the new law are controlling provisions for a controlled action, the Minister must:
- (a) notify the person proposing to take the action that:
    - (i) the Minister considers that sections 24D and 24E of the new law are controlling provisions for the action; or
    - (ii) the Minister considers that sections 24D and 24E of the new law are not controlling provisions for the action; and
  - (b) invite the person to give the Minister written comments on the proposed decision, within 10 business days (measured in Canberra).
- (4) Before deciding whether sections 24D and 24E of the new law are controlling provisions for a controlled action, the Minister (the **Environment Minister**) may:
- (a) notify any other Minister whom the Environment Minister considers has administrative responsibilities relating to the proposed decision; and

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- (b) invite the relevant Minister to give the Environment Minister written comments on the proposed decision, within 10 business days (measured in Canberra).
- (5) If the Minister believes on reasonable grounds that he or she does not have enough information to decide whether sections 24D and 24E of the new law are controlling provisions for the controlled action, the Minister may request the person proposing to take the action to provide specified information relevant to making the decision.
- (6) If the Minister has requested more information under subitem (5), a day is not to be counted as a business day for the purposes of the transitional period if it is:
- (a) on or after the day the Minister requested the information; and
  - (b) on or before the day on which the Minister receives the last of the information requested.
- (7) In making a decision under this item, the Minister must:
- (a) consider any comments received within the period specified in an invitation given under paragraph (3)(b) or (4)(b); and
  - (b) consider any further information provided in response to a request made under subitem (5).

*Notification of decision*

- (8) Within 10 business days after making a decision in accordance with this item, the Minister must:
- (a) give written notice of the decision to the person proposing to take the action; and
  - (b) publish notice of the decision in accordance with regulations made for the purposes of paragraph 77(1)(b) of the old law, as if the decision were one about whether an action is a controlled action.
- (9) The Minister must give reasons for the decision to a person who:
- (a) has been given notice of the decision; and
  - (b) makes a written request, within 28 days of being given the notice, that the Minister do so.

The Minister must do so as soon as practicable, and in any case, within 28 days of receiving the request.

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*Non-compliance with time limits*

- (10) Anything done by the Minister under this item is not invalid merely because it was not done within the period required by this item. However, this does not reduce or remove an obligation under this item to do a thing within a particular period.

**24 Transitional provision—effect of Minister deciding that provisions of new law are controlling provisions for certain controlled actions**

*Application*

- (1) This item applies if:
- (a) immediately before the day this item commences, there was in force a decision of the Minister, under Division 2 of Part 7 of the old law, that an action involving coal seam gas development or large coal mining development is a controlled action (the *primary decision*); and
  - (b) the Minister decides, under item 23 of this Schedule, that sections 24D and 24E of the new law are controlling provisions for the controlled action (the *new decision*).

*Primary decision taken to be varied*

- (2) Subject to this item, the *Environment Protection and Biodiversity Conservation Act 1999* as in force from time to time has effect, on and after the day the new decision is made, as if the primary decision were varied to include sections 24D and 24E of the new law as controlling provisions for the controlled action.
- (3) The validity of the primary decision, or any other approval process decision made in relation to the controlled action before the new decision is made:
- (a) is not affected by the making of the new decision; and
  - (b) cannot be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to:
    - (i) the making of the new decision; or
    - (ii) the variation of the primary decision as described in subitem (2).

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- (4) To avoid doubt, any approval process decision made in relation to the controlled action before the new decision is made continues to have effect as if the primary decision were not varied by the new decision.

*Actions covered by bilateral agreement*

- (5) If, immediately before a new decision is made in relation to a controlled action, section 83 of the old law applied in relation to the action, then the making of the new decision does not affect the operation of that section.
- (6) The validity of any thing done in relation to a controlled action for the purposes of a bilateral agreement before a new decision relating to the action is made:
- (a) is not affected by the making of the new decision; and
  - (b) cannot be revoked, varied, suspended, challenged, reviewed, set aside or called in question because of, or for reasons relating to, the making of the new decision.
- (7) To avoid doubt, any thing done in relation to a controlled action for the purposes of a bilateral agreement, before a new decision relating to the action is made, continues to have effect as if the primary decision were not varied by the new decision.

*Assessment of relevant impacts of a controlled action*

- (8) If, on the day this item commences, a decision under section 87 of the old law is in force in relation to the assessment of the relevant impacts of a controlled action, then, for the purposes of the assessment, section 82 of the old law applies as if the relevant impacts of the action did not include the impacts that the action:
- (a) has or will have; or
  - (b) is likely to have;
- on the matter protected by sections 24D and 24E of the new law.
- (9) If, on the day this item commences, the relevant impacts of a controlled action are being assessed in accordance with a bilateral agreement, then, for the purposes of that assessment, the bilateral agreement has effect as if the relevant impacts of the action did not include the impacts that the action:
- (a) has or will have; or
  - (b) is likely to have;
-

on the matter protected by sections 24D and 24E of the new law.

## **25 Review of operation of Act**

- (1) The Minister must cause an independent review to be undertaken by a person or body of the operation of this Act.
- (2) The person or body undertaking a review must give a report of the review to the Minister.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

## **26 Transitional regulations**

The Governor-General may make regulations prescribing matters of a transitional nature (including any saving or application provisions) relating to the amendments made by Part 1 of this Schedule.

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*[Minister's second reading speech made in—  
House of Representatives on 13 March 2013  
Senate on 14 May 2013]*

(55/13)

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