

Fact Sheet:

The EPBC Act: Is your farm business exempt?

Is your farm business exempt from assessment and approval under the national environment law – the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)?

The EPBC Act came into effect on 16 July 2000, and provides protection to nationally significant aspects of the environment. The EPBC Act applies nationally and is applicable to the agricultural sector. This fact sheet provides information on exemptions to the Act, including prior authorisation and continuing use exemptions.

What is the purpose of the prior authorisation and continuing use exemptions?

Sections 43A and 43B of the EPBC Act (see page two of this fact sheet) provide an exemption from the need for assessment and approval under the EPBC Act for actions which are lawful continuations of a use of land which commenced before 16 July 2000 or which were authorised prior to 16 July 2000, the date of commencement of the EPBC Act.

These provisions are particularly relevant to farmers, as they entitle farmers to continue their normal activities that were fully approved by State and Local Governments before the EPBC Act came into force, or otherwise lawful activities that commenced before the EPBC Act came into force.

Do the prior authorisation and continuing use exemptions apply to you?

Actions with prior authorisation.

An action, which consists of a use of land, does not require assessment and approval under the EPBC Act if:

- > the action was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before 16 July 2000; and
- > as at 15 July 2000, no further environmental authorisation was necessary to allow the action to be taken lawfully; and
- > the action has remained within the scope of the authorisation.

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:

- > to protect the environment; or
- > to promote the conservation and ecologically sustainable use of resources.

Examples of prior authorisation activities that could satisfy the above criteria, include:

- > cattle grazing in accordance with a crown land licence issued under the Victorian Land Act 1958;
- > diversion of water from an inland water source in accordance with a license granted under the NSW Water Management Act 2000.

Actions which are lawful continuations of use of land.

An action, which is a use of land, does not require assessment and approval under the EPBC Act if:

- > the action commenced before 16 July 2000; and
- > the land-use is lawful; and
- > immediately before the commencement of the EPBC Act on 16 July 2000, the action did not have specific authorisation under a law of the Commonwealth, a State or a self-governing Territory, and did not require such an authorisation (see prior authorisations); and
- > the action has continued in the same location without enlargement, expansion or intensification.

An enlargement, expansion, or intensification of a use is not a continuation of a use. If you propose to enlarge, expand or intensify your action it is not covered by this exemption and you may need to refer the action to the Commonwealth Environment Minister (see details on referrals on the following page).

The EPBC Act: relevant sections

43A Actions with prior authorisation

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if:

- (a) the action consists of a use of land, sea or seabed; and
- (b) the action was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act; and
- (c) immediately before the commencement of this Act, no further environmental authorisation was necessary to allow the action to be taken lawfully.

(2) In this section: 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.

43B Actions which are lawful continuations of use of land etc

(1) A person may take an action described in a provision of Part 3 without an approval under Part 9 for the purposes of the provision if the action is a lawful continuation of a use of land, sea or seabed that was occurring immediately before the commencement of this Act. For this purpose, an enlargement, expansion or intensification of use is not a continuation of a use.

(2) However, subsection (1) does not apply to an action that was specifically authorised under a law of the Commonwealth, a State or a self-governing Territory before the commencement of this Act.

Note: Section 43A applies to actions that were specifically authorised under a law before the commencement of this Act.

Examples of ongoing farm activities which could satisfy the above criteria, include:

- > routine grazing activities, including cyclical activities such as periodic grazing;
- > continuing cropping and crop rotation;
- > slashing to maintain existing firebreaks;
- > maintenance of existing dams, roads, fences etc; and
- > continuing an existing weed control program (hand and ground machinery).

What if a new threatened species is listed?

If a new species of animal or plant were to be listed under the EPBC Act this would not affect the application of the exemptions to activities, which, prior to the listing, were covered by the exemptions outlined above.

What if my action is not exempt under these provisions?

If your action is not covered by one of the exemptions outlined above and you think that your action is likely to have a significant impact on a matter of national environmental significance or the environment on Commonwealth land, you should refer your action to the Commonwealth Environment Minister.

Matters of national environmental significance, which may be most relevant to farmers, are:

- > World Heritage properties;
- > Ramsar wetlands;
- > nationally threatened species and ecological communities; and
- > migratory species.

An online mapping tool that identifies matters of NES in a given area can be found at:

www.environment.gov.au/epbc/pmst/index.html.

The process for making a referral under the EPBC Act is easy and without charge. All you have to do is complete and submit the relevant forms, which can be obtained from the Department of Sustainability, Environment, Water, Population and Communities by contacting the Environment Liaison Officer or visiting:

www.environment.gov.au/epbc/assessments/refer.html.

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Current: October 2011