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Natural & Cultural Heritage Consultants

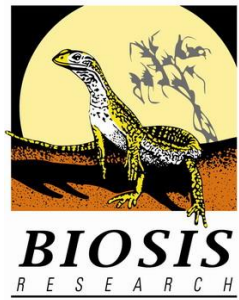
Compliance and Enforcement - the EPBC Act 1999

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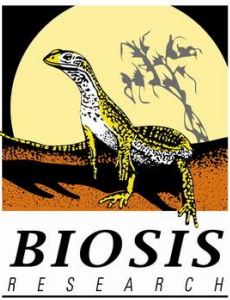




Introduction

- EPBC Act is a powerful piece of legislation which aims to protect Matters of NES.
- Much stronger than Victorian State biodiversity legislation (FFG Act).
- Consequences of breaching the Act can be substantial including civil penalties of up to \$550K for individuals and \$5.5M for companies and 7 years imprisonment.
- A number of Options available to the Minister for penalizing a breach of the Act – most often Enforceable Undertakings, Civil and Criminal penalties and Remediation of Damage.
- Contraventions can be publicised by the Minister – not a good look.

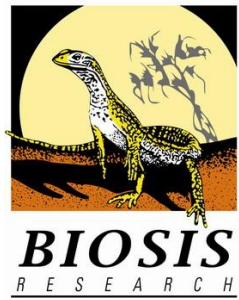




How is a potential breach of the Act determined?

- Potential breaches of the Act can be reported to the Department from the public, NGOs or government agencies.
- When a potential breach of the Act has occurred, independent advice often sought by the Department or the proponent on whether the action has had or is likely to have had a significant impact on a matter of NES.
- Consultant ecologists often engaged to inspect the alleged impacts and make a determination using existing information, significant impact guidelines, Policy Statements and expert opinion.
- Site inspections by Departmental Compliance Officers.
- Compliance audits for approved projects.





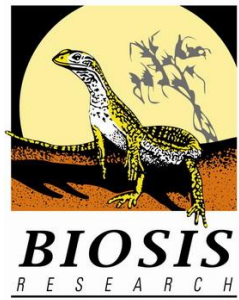
Some examples – Mitiamo Rail Reserve

- Firebreak grading on rail reserve by independent contractor – known population of Spiny Rice-flower (critically endangered).
- Alleged impact on Spiny Rice-flower.
- Engaged to determine nature and extent of impacts.
- Site inspection.
- Review of existing information for the site:
 - Previous reports
 - Population monitoring information (DSE)
 - FIS data
 - Pre-clearing photographs





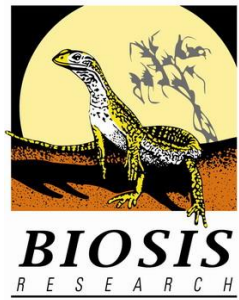




Some examples – Mitiamo Rail Reserve

- Pegs marking boundary of established monitoring quadrats were still evident.
- As the number of plants for the site had been previously documented, we counted the number of plants remaining to estimate how many were lost.
- Significant impact threshold in Policy Statement is loss of more than 5 plants.
- Based on independent advice Department concluded somewhere between 23 and 38 plants lost.
- Consistent with our findings.

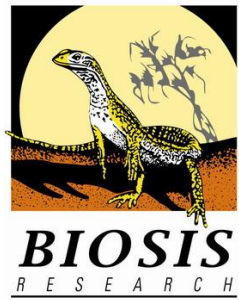




Some examples – Mitiamo Rail Reserve

- Department found that the firebreak is likely to have had a significant impact on the species.
- Relatively straightforward assessment as there was pre-existing population data.
- Significant Impact thresholds available for this species.
- Highlights the importance of having pre-existing information to determine the number of plants killed (i.e. whether the action had a significant impact on Spiny Rice-flower).
- Plants are sedentary and relatively easy to survey for compared to many listed animals for which lengthy and expensive surveys are often required.



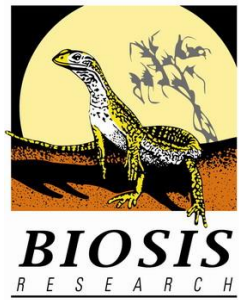


Some examples – Reid Street Ardeer

- Involved the clearing of native vegetation for the stockpiling of industrial materials and machinery.
- Site known to support NTGVVP, Striped Legless Lizard (SLL) and Spiny Rice-flower (SRF).
- Previous reports on the distribution and abundance of these species and communities in relation to the affected area.
- Stockpiling on a tile grid used to monitor SLL and where a population had been recorded previously.
- From this information it was established that there were impacts to NTGVVP as well as individuals of and habitat for SLL and SRF.



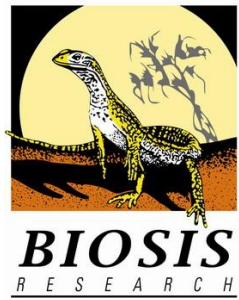




Some cases are more difficult

- More difficult to establish extent or nature of impacts for situations where pre-existing conditions were not known (e.g. hard to determine if the matter of NES was present).
- For most listed species and communities significant impact thresholds not available – have to use the broader significant impact guidelines and expert opinion to determine impact.
- Hard to determine the importance of sites for highly mobile species (Swift Parrot) or ephemeral species that might not be evident during a site inspection (habitat used as a surrogate).
- For vulnerable species, the impact is generally only considered to be significant if it affects an ‘important’ population – differing opinions on what constitutes an important population.

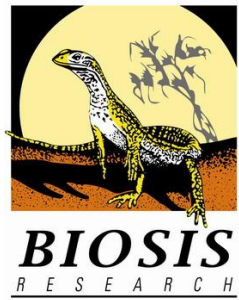




Remember – it doesn't take much to breach the Act

- Seemingly benign actions can be significant.
- In Geelong a company cleared 0.8 ha of NTGVVP– deemed to be a significant impact – Enforceable Undertaking \$131K for rehabilitation and review of works programs.
- A company removed rocks from 0.4 ha of NTGVVP in Altona – deemed a significant impact - Enforceable Undertaking \$62K paid to DSE for grassland research and rehabilitation and commitment to conserving 13 ha of the listed community.
- Ardeer – stockpiled materials on a relatively small area of SLL habitat but deemed an important population – Enforceable undertaking - \$30K to the SLL Recovery Team and \$170K to DSE.



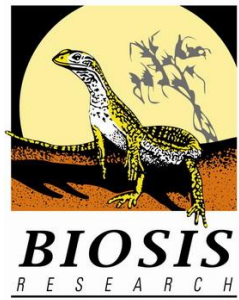


Melbourne – Matters of NES are everywhere!

- Three listed ecological communities are found in Melbourne's north and west, two of which are widespread – NTGVVP and GEVVVP.
- Listed grassland and grassy woodland species (GSM, SLL, GGF, MFL, SRF) all widespread and persist in degraded and isolated sites.
- Ramsar Wetlands (Port Phillip Bay and Westernport, Seaford-Edithvale Wetlands).
- Southern Brown Bandicoot in Melbourne's south-east occurs in roadside remnants and agricultural areas.
- Many actions have the potential to impact on listed species and communities as Melbourne grows.



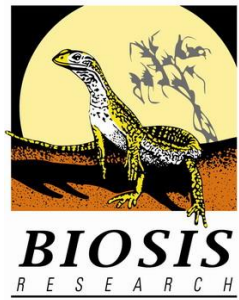




How to avoid contravening the Act

- Do your homework and get expert advice – use the PMST to see if and what Matters of NES could occur on or near the site of your proposed action.
- Be mindful that many species and communities occur in alienated and degraded land where you might not expect a threatened species to occur.
- Read the significant impact guidelines and species policy statements – it does not take much to reach significant thresholds for many species and communities.
- Refer any actions for which a significant impact is likely. If unsure, refer anyway!

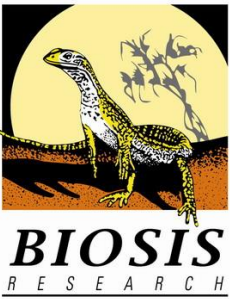




How to avoid contravening the Act

- If an impact to a matter of NES is likely, consider how it can be avoided or minimised – think outside the square and avoid the pain!
- Remember you may be audited so keep records of all activities and remember to comply with EPBC approval conditions if your action is a controlled action or NCA if undertaken in a specified manner.
- The damage happens on the ground so maintain good communication with contractors and make sure they are aware of matters of NES in the area of concern.
- Ask an expert. If in doubt use a consultant to determine if matters of NES may be affected by your action.





If all else fails...

- If you stuff up, fess up. Hiding information or failure to report breaches of the Act are not likely to be viewed favorably by the Department of SEWPaC.

