

# What gets assessed:

Are assessment restrictions  
undermining the EPBC Act?



NATIONAL  
ENVIRONMENTAL  
LAW  
ASSOCIATION

# Recommendations

- ▶ **Additional MNES triggers (+ reinstate requirement for regular review)**
  - ▶ Climate trigger
  - ▶ Land clearing
  - ▶ Extension of water trigger
- ▶ **Remove RFA exemption**
- ▶ **Clarify scope of governmental authorisations**
- ▶ **Limit operation of particular manner decisions**
  - ▶ Avoid adaptive management conditions
  - ▶ Do not defer to less rigorous State-based assessments
  - ▶ Where comprehensive suite of particular manner conditions required, should be assessed as a controlled action

# Matters of national environmental significance

- ▶ **Listed species / ecological communities**

- ▶ Delays in listing can avoid assessment
- ▶ E.g Prosser Plains Raw Water Scheme - *E.ovata* woodland

- ▶ **Ecosystems of national significance**

- ▶ Recommended by Hawke Review to better manage threats to biodiversity
- ▶ National parks - ALP commitment in 2016

- ▶ **Land clearing**

- ▶ **Climate trigger**

- ▶ Coalition Govt commitment in 1999 - proposed new developments likely to result in >0.5Mt CO<sub>2</sub>e / year
- ▶ Recommended by Hawke Review as interim measure while CPRS finalised

- ▶ **Water trigger - CSG and large scale mines**

- ▶ Extend to include shale and tight gas - recommended by Senate Inquiry into Water Use by Extractive Industries

- ▶ **Dioxins & particulate emissions**



# Exclusions

- ▶ **RFA forestry operations**
  - ▶ Hawke Review
  - ▶ “In accordance with”:  
*Weilangta, Friends of Leadbeater’s Possum*
  
- ▶ **Governmental authorisations**
  - ▶ Cumulative impacts
  - ▶ *Tasmanian Aboriginal Centre v Director, National Parks and Wildlife*

# Controlled actions

- ▶ **Not a controlled action**
  - ▶ Thresholds for assessment
    - ▶ Significant impact
    - ▶ Mitigation measures + enforcement
  - ▶ *The Wilderness Society Inc v Minister for the Environment*
- ▶ **Particular manner**
  - ▶ Reliance on State-based assessments
  - ▶ Certainty and enforceability
    - ▶ *Huon Aquaculture Pty Ltd v Minister for the Environment*
    - ▶ *Triabunna Investments Pty Ltd v Minister for the Environment and Energy*
- ▶ **One-stop shop by stealth**