



Native vegetation clearing legislation in Western Australia

Environmental Protection Act 1986

Purpose

This fact sheet provides information on native vegetation clearing legislation in Western Australia (WA). It provides details on the clearing provisions under the *Environmental Protection Act 1986* (EP Act) and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (Regulations) as well as information on clearing processes under the assessment bilateral agreement under the Commonwealth of Australia's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Introduction

The native vegetation clearing provisions of the EP Act and Regulations commenced on 8 July 2004 and replaced the repealed Notification of Intent to Clear under the *Soil and Land Conservation Regulations 1992*.

Under the EP Act it is an offence to clear native vegetation unless the clearing is done in accordance with a clearing permit, or an exemption applies. Under this legislation, clearing is not generally permitted where the biodiversity values, land conservation and water protection roles of native vegetation would be significantly adversely impacted.

If a clearing permit is required under the EP Act and the proposed clearing will have or is likely to have an impact on a matter of national environmental significance (matter of NES) identified under the EPBC Act, the clearing application may be assessed under the assessment bilateral agreement under the EPBC Act.

The Department of Environment Regulation (DER) is responsible for administering the native vegetation clearing provisions. The Department of Mines and Petroleum (DMP) has delegated authority under s 20 of the EP Act to administer the clearing provisions for mining and petroleum activities regulated under the *Mining Act 1978*, various petroleum laws and activities under state agreements.

'Native vegetation' as defined in ss 3(1) and 51A of the EP Act and Regulations:

indigenous aquatic or terrestrial vegetation, and includes dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded from this definition but does not include vegetation in a plantation.

Native vegetation has the meaning given by s 3(1) but does not include vegetation that was intentionally sown, planted or propagated unless –

- (a) that vegetation was sown, planted or propagated as required under this Act or another written law; or
- (b) that vegetation is of a class declared by regulation to be included in this definition.

'Clearing' as defined in s 51A of the EP Act:

- (a) the killing or destruction of;
- (b) the removal of;
- (c) the severing or ringbarking of trunks or stems of; or
- (d) the doing of any other substantial damage to,

some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity that causes -

- (e) the killing or destruction of;
- (f) the severing of trunks or stems of; or
- (g) any other substantial damage to,

some or all of the native vegetation in an area.

Exemptions from the requirement of a clearing permit

All clearing of native vegetation requires a permit unless it is exempt. There are two types of clearing exemptions:

- exemptions that are a requirement of a written law, or authorised under certain statutory processes under Schedule 6 of the EP Act; and
- exemptions for prescribed routine low impact land management practices under Regulations. These exemptions do not apply in environmentally sensitive areas (ESAs).

Further information on exemptions is available in DER's [Guide 1 — Exemptions and regulations for clearing native vegetation](#).

What are environmentally sensitive areas?

There are a number of ESAs within WA where exemptions under Regulations do not apply.

Refer to DER's [Fact sheet 24 — Environmentally sensitive areas](#) for further information on ESAs and instructions on how to view their locations in WA.

Assessment bilateral agreement under the EPBC Act

Native vegetation clearing processes under Part V Division 2 of the EP Act have been accredited under the Commonwealth's EPBC Act. The proposed clearing of matters of NES can now be assessed by the state on behalf of the Commonwealth. Separate decisions on the proposed clearing by the state under the EP Act and the Commonwealth under the EPBC Act are still required. Further information on the assessment bilateral agreement is available in [Guide 6 — A guide to native vegetation clearing processes under the assessment bilateral agreement](#).

What are the 10 clearing principles?

Under s 51O of the EP Act, the CEO must have regard to the clearing principles, outlined in Schedule 5 of the EP Act, when deciding to grant, or refuse, a permit. The CEO must also have regard to planning instruments (such as town planning schemes) and other relevant matters.

Principles for clearing native vegetation under Schedule 5 of the EP Act:

Native vegetation should not be cleared if –

- (a) it comprises a high level of biological diversity; or
- (b) it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia; or
- (c) it includes, or is necessary for the continued existence of, rare flora; or
- (d) it comprises the whole or a part of, or is necessary for the maintenance of a threatened ecological community; or
- (e) it is significant as a remnant of native vegetation in an area that has been extensively cleared; or
- (f) it is growing in, or in association with, an environment associated with a watercourse or wetland; or
- (g) the clearing of the vegetation is likely to cause appreciable land degradation; or
- (h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area; or
- (i) the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water; or
- (j) the clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding.

More information

For information on native vegetation clearing and related matters, contact DER on +61 8 6467 5000.

For applications related to mines and petroleum activities, under delegation, contact DMP on +61 8 9222 3333.

This document is available in alternative formats and other languages on request.

Related documents

More guidelines and fact sheets on native vegetation clearing processes are available from [DER's website](#).

Legislation

Please refer to the State Law Publisher (SLP) for copies of the relevant legislation, available electronically from the [SLP website](#).

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What if I clear without a permit?

Refer to DER's [Fact sheet 2 — Clearing offences and penalties](#) and [Fact sheet 3 Compliance inspections and clearing laws](#) for information about penalties and inspections.