
Western Australia's new clearing laws

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Some results of clearing in Western Australia ...

- Up to 450 species of flora face extinction from salinity
 - 30% of the Wheatbelt to become salt affected within 50 years
 - 30% of rivers in the South West unsuitable for human use, agriculture or industry
 - 13 species of animal and 25 species of vascular plants presumed extinct
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Existing clearing regime

- Notice of intent to clear (Dept of Agriculture)
 - Limited penalties
 - Not an approval process
 - “Change in use” qualifier
 - 1 hectare rule
 - Country water catchments (Water & Rivers)
 - Limited areas
 - Protection of native flora (CALM)
 - Limited application to private land
 - Planning controls (local government)
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Drivers for change

- Increase in “illegal clearing” in 2001
 - State Government election commitments
 - Obligations under national agreements
 - National Action Plan for Salinity and Water Quality
 - National Biodiversity Conservation agreement
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The new clearing laws – key features

- Approval process for “clearing”
 - Moves from Department of Agriculture to Department of Environmental Protection
 - Applies to the Crown
 - Increased penalties
 - Somewhat broader application
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What is “clearing”?

- “Clearing” means killing, removing, severing or ringbarking, or doing substantial damage to some or all of the **native vegetation** in an area
 - It includes (for example) draining or flooding land, burning and grazing of stock
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What is “native vegetation”?

- “Native vegetation” means indigenous aquatic or terrestrial vegetation,
 - the definition includes dead vegetation (although a specific type of dead vegetation may still be excluded by regulation)
 - but excludes vegetation in a plantation (note that this ‘intentionally sown planted or propagated’ vegetation may still be included by regulation)
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What land does the law apply to?

- The laws will basically apply to all land in the State
 - Exceptions will include:
 - Commonwealth land
 - Land subject to a pre-1972 State Agreement Act
 - Land the Minister orders not to be covered
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What controls apply?

- It is an offence under the new laws for a person to clear *unless*:
 - The person has a **clearing permit**
 - The clearing is exempt under **Schedule 6**
 - The clearing is exempt under the **Regulations**
 - A “person” includes a public authority (that is, a Minister, department, local government or other statutory authority).
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Schedule 6 exemptions

- Broad range of exemptions, including clearing:
 - ❑ Required under a law
 - ❑ Approved under the *Environmental Protection Act*
 - ❑ On CALM managed land
 - ❑ Approved by a licence under *Wildlife Conservation Act*
 - ❑ In accordance with subdivision approval
 - ❑ For specified fire prevention, control and management purposes
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Regulation exemptions

- The regulations may list additional exemptions
 - Exemptions available for specified amounts of clearing in relation to
 - Firewood
 - Fence posts
 - Firebreaks and tracks
 - Exemptions under the regulations can be limited in “environmentally sensitive areas”
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Clearing permits

- Area permits:
 - One off permits for clearing particular land
 - Maximum 2 year period
 - Purpose permits:
 - For clearing in different areas for a set purpose (e.g. road building)
 - Maximum 5 year period
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How is a permit obtained?

- Lodge with CEO of DEP in approved form
 - CEO seeks comments from government bodies and persons with a “direct interest”
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Matters CEO must take into account

- Comments from :
 - Persons with direct interest
 - Public Authorities
 - Persons responding to the advertisement of the application
 - Must be consistent with the “clearing principles”
 - Must take into account:
 - town planning scheme
 - Statements of Planning Policy
 - Environmental Protection Policies
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What are the “clearing principles”?

- Native vegetation should **not** be cleared if:
 - ❑ Comprises high diversity
 - ❑ Important habitat
 - ❑ Contains rare flora
 - ❑ Supports a threatened community
 - ❑ Significant remnant
 - ❑ Fringing vegetation for wetland or watercourse
 - ❑ Land degradation likely
 - ❑ Impacts on adjacent or nearby conservation area
 - ❑ Impacts on water quality
 - ❑ Impacts on incidence or intensity of flooding
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What happens then?

- The CEO can then:
 - Refuse to grant the permit
 - Grant the permit on conditions
 - Simply grant the permit
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Conditions on a permit

- The CEO has wide powers to place conditions on a clearing permit, including:
 - Off-sets
 - Requiring adoption of a conservation covenant
 - Requiring implementation of an environmental management system
 - Permits can be revoked, amended or suspended
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Appeals

- Any person may appeal against the refusal, grant or conditions of a clearing permit
 - The lodgment of an appeal prevents clearing being carried out pending a decision
 - Exception:
 - Third party lodges an appeal against an amendment to a permit
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Penalties

- Penalties for clearing without approval:
 - \$250,000 fine for individual
 - \$500,000 fine for companies
 - Penalties for breaching conditions:
 - \$62,500 fine for individual
 - \$125,000 fine for companies
 - Directors of convicted companies liable
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Other enforcement tools

- Non-monetary penalties
 - Restore damage
 - Pay costs incurred by the DEP or third person
 - Publicise the offence
 - Injunctions
 - Vegetation conservation notices
 - Environmental harm offences
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Interim arrangements

- To avoid “panic clearing”, anyone unlawfully clearing land after 26 June 2002 may be ordered to revegetate the land
 - “Unlawful clearing” means clearing:
 - in breach of Soil Conservation Notice
 - undertaken without notifying the Commissioner Soil and Land Conservation
 - in breach of *Land Administration Act*
 - in a controlled catchment
 - which forms part of an EIA assessment by the EPA
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Significant changes

- Higher penalties
 - Binds the Crown
 - Applies to aquatic vegetation
 - Injunctions available
 - Third party right of appeal
 - Exemptions under regulations may be limited in “environmentally sensitive areas”
 - Environmental harm offences
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