



Clearing of Native Vegetation

An introduction to Clearing of Native Vegetation

Clearing of native vegetation is one of the major causes of biodiversity loss in Western Australia. It also contributes to other environmental problems, such as salinity, erosion and invasive species.

Clearing of native vegetation in WA is primarily regulated under the Environmental Protection Act 1986 ("the EP Act"). The Department of Environment and Conservation ("DEC") is the main government agency involved in regulating clearing, although the Department of Mines and Petroleum ("DMP") deals with most clearing for mineral and petroleum activities.

This fact sheet explains the laws relating to clearing of native vegetation under the EP Act, including the permit system, clearing exemptions, and what to do if you suspect that unlawful clearing is occurring.

Other laws also regulate aspects of native vegetation clearing. For information on the environmental impact assessment processes for developments which may involve clearing, see [Fact Sheet 5: Environmental Impact Assessment in WA](#) and [Fact Sheet 6: Commonwealth Environmental Impact Assessment](#). For information on WA and Commonwealth biodiversity laws, see [Fact Sheet 8: Biodiversity Conservation WA](#) and [Fact Sheet 9: Biodiversity Conservation under Commonwealth Law](#).

What is clearing?

"Clearing" is defined under the EP Act as any act which substantially damages native vegetation in an area. It includes any general act that kills, destroys, removes or substantially damages vegetation, and specifically includes severing or ringbarking trunks or stems, draining or flooding land, burning, and grazing of stock.

There is no minimum area which must be affected before there is "clearing", so in some cases even damage to a single tree is considered to be clearing. Whether vegetation is "substantially damaged" or not depends on the type of vegetation and its ability to recover, so where there is sensitive vegetation, even minor activities constitute clearing.

What is native vegetation?

The EP Act applies only to "native vegetation" in WA. This is defined to mean any living or dead indigenous aquatic or terrestrial vegetation. The EP Act applies in WA coastal waters, so native vegetation also includes tidal and marine vegetation such as mangroves and seagrasses.

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Native vegetation does not usually include vegetation that has been intentionally planted unless the planting was required by law, or the vegetation is protected under a conservation covenant or other binding agreement.

Restrictions on clearing native vegetation

It is unlawful for any person to cause or allow native vegetation to be cleared unless:

1. the clearing is in accordance with a clearing permit; or
2. the activity causing the clearing is exempt from the clearing laws.

Exempt clearing

A clearing activity may not require a permit if it falls within one of the clearing exemptions.

There are two main sources of exemptions:

- (a) the exemptions set out in Schedule 6 of the EP Act, which apply across the State; and
- (b) the exemptions set out in the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* ("the Clearing Regulations"), which apply across the State except in environmentally sensitive areas.

Schedule 6 exemptions

Schedule 6 of the EP Act sets out some circumstances in which clearing permits are not needed. These exemptions generally relate to activities that are already authorized under other laws. Examples include:

- clearing that is done as part of implementing a proposal that has been assessed by the Environmental Protection Authority ("EPA") and approved by the Minister for Environment under the *Environmental Protection Act 1986* ("the EP Act") (see [Fact Sheet 5: Environmental Impact Assessment in WA](#)), and complies with the conditions of the Ministerial approval;
- clearing that is in accordance with some other approvals, such as works approvals and licences issued under the EP Act, and some approvals under the *Wildlife Conservation Act 1950* and the *Fish Resource Management Act 1994*;
- clearing done by DEC for the purpose of managing conservation lands under the *Conservation and Land Management Act 1994*;
- clearing for fire control purposes, but only where specific prior permission to do the clearing has been granted, or the clearing is done by authorised officers;
- grazing of stock in accordance with a pastoral lease;
- clearing for a building envelope approved in a subdivision approval; and
- clearing which is specifically required under another law. (Note – this exemption only applies where there is a specific requirement or direction to clear, not just a permission or a responsibility to clear).

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Clearing Regulation exemptions

The Clearing Regulations provide a further set of exemptions, but this set of exemptions do not apply in “environmentally sensitive areas”. Environmentally sensitive areas are listed in the Clearing Regulations and a map of them is on the DEC website. They generally include areas within 50 metres of protected wetlands, within 50 metres of declared rare flora, Bush Forever sites, and those areas containing a threatened ecological community.

Clearing under the Clearing Regulation exemptions must limit damage to neighbouring vegetation, or it will not be within the exemption. Clearing Regulation exemptions can only be used by persons listed in Regulations (or with the prior authority of the listed person).

There are many types of exemptions in the Clearing Regulations, so you may need specific legal advice about which exemptions apply. The following is a summary of some commonly used exemptions. It is an exemption if clearing is:

- for buildings on a property, at a rate of up to one hectare a year (taken with the other clearing on the property)
- to prevent imminent danger or fire;
- to construct and maintain fences and tracks (several restrictions apply to the width and extent of clearing, and is limited to one hectare a year, taken with the other clearing on the property);
- maintaining some existing cleared areas which were lawfully cleared within the previous 10 years for infrastructure, pasture or forestry (several restrictions apply);
- in existing transport (road and rail) corridors; and
- for some mining/petroleum activities, as long as the activity is permitted under the relevant mining or petroleum legislation and is:
 - for exploration;
 - for low impact activities, such as driving vehicles, or where there is no ground disturbance);
 - for particular activities (up to 2ha), including clearing for a campsite; or
 - up to 10ha per year altogether in a single tenement area, as long as this is not in a “non permitted area”. A “non permitted area” includes conservation land, water supply area, some land districts, and within 2km from the high water mark.

Clearing permits

If a person does not have an exemption from the clearing laws under either the EP Act or the Clearing Regulations, then they must obtain a clearing permit before they conduct clearing. For mineral and petroleum related activities, the application should be made to DMP, but for all other activities, the application should be made to DEC. All current clearing permits must be listed on the Department's website.

There are two types of clearing permits: area permits and purpose permits.

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Area permits

Area permits are “one-off” permits issued for clearing of a particular area. They can only be issued to the owner of the land or someone acting on the owner's behalf, or by a person who is likely to become the owner of the land on which the clearing is proposed to be done. Area permits are valid for a maximum of two years.

Purpose permits

Purpose permits are issued for clearing for a particular purpose and can only be issued to the person by, or on whose behalf, the clearing will be done. Purpose permits are valid for a maximum period of five years. A purpose permit allows a permit holder to undertake a program of works over a certain period of time without having to apply for a separate area permit on each occasion native vegetation is proposed to be removed.

Examples of the types of activities that are often subject to purpose permits include works undertaken by State and local government and authorities for constructing and maintaining roads and railways, and power and water infrastructure. Mining companies also often obtain purpose permits for their own railways and roads (although if they are being constructed as a component of a bigger project, their grant should be part of the approval for the entire project, as it is unlawful to split a project up into separate components for approval purposes).

Example: Water Corporation infrastructure clearing permit

The Water Corporation Statewide Clearing Purpose Permit (Clearing Permit 186/3) permits the Water Corporation (and its contractors) to do clearing for the maintenance of existing water services infrastructure across the State without the need to apply for individual clearing permits on an area by area or project by project basis.

Under the permit, the Water Corporation has the responsibility of assessing the impact of any proposed native vegetation clearing related to its existing infrastructure. All proposals to clear native vegetation, including activities that may otherwise be exempt from requiring a permit, must be assessed by the Environment Branch of the Water Corporation to determine environmental impacts and whether any conditional requirements should apply to that clearing proposal. When assessing the clearing proposal, the Environment Branch must first consider whether the avoidance of clearing is possible, then minimisation, then mitigation. Clearing is not permitted under the permit if it will be seriously at variance with the clearing principles (see insert below).

Example: Main Roads new project clearing permit

Main Roads has been granted a State-wide purpose clearing permit (CPS 818/5) which allows it (and its contractors) to undertake clearing of native vegetation for project activities such as new roads, lateral clearance areas, firebreaks, searching for and extracting road building materials, and road realignment and widening. The permit is subject to similar conditions to the Water Corporation permit, but also sets a maximum amount of clearing which can be undertaken in any region (for example, 100 ha in the Metropolitan area and 500 ha in the Kimberley).

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Who can comment on clearing permit applications?

All applications for clearing permits must be made to the DEC, or the DEP where the clearing is for mineral and petroleum activities. All applications must be in a specific form and contain relevant supporting information. Once an application is received, the relevant Department must advertise the application on its website and in a daily State newspaper. It must also invite comments from any public authority or person who has a "direct interest" in the subject matter of the application. Contact the Department immediately if you think you have a direct interest and would like to comment, as the comment time can sometimes be quite short. Most permit applications are advertised for 21 days, although sometimes for shorter periods.

Matters to be taken into account before granting a permit

In deciding whether to issue a clearing permit, the relevant Department must:

- take into account any comments received from those invited to comment on the application;
- have regard to the "clearing principles" (see insert below);
- have regard to any relevant town planning scheme, or any strategy, policy or plan made or adopted under a scheme;
- have regard to any Statement of Planning Policy (for example, the Leeuwin-Naturaliste Ridge Policy);
- have regard to any local planning strategy; and
- ensure that the permit is consistent with any Environmental Protection Policy issued by the Environmental Protection Authority.

Clearing Principles

Native vegetation should not be cleared if:

- (a) it comprises a high level of diversity of plant species;
- (b) it comprises the whole or part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;
- (c) it includes, or is necessary for the continued existence of, flora declared to be rare under the *Wildlife Conservation Act 1950*;
- (d) it comprises the whole or part of, or is necessary for the maintenance of, an ecological community declared under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) as threatened, endangered or vulnerable;
- (e) it is significant as a remnant of native vegetation in an area that has been extensively cleared;
- (f) it is growing in, or in association with, an environment associated with a watercourse or wetland;
- (g) the clearing of the vegetation is likely to cause appreciable land degradation;

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- (h) the clearing of the vegetation is likely to have an impact on the environmental values of any conservation park, national park, nature reserve, marine nature reserve, marine park or marine management area;
- (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.

After considering the above, the Department can grant the permit, refuse to grant the permit, or grant the permit on conditions. However, DEC can make a decision which is seriously at variance with the "clearing principles" if, in DEC's opinion, there is a good reason for making that decision. DEC must publish reasons for any decision which is seriously at variance with the clearing principles. In addition, they must not issue a clearing permit if the associated effect on the environment would be inconsistent with any Environmental Protection Policy. Any application that is submitted to the DMP and is seriously at variance with the "clearing principles" must be referred to DEC for a decision.

What conditions can be placed on a permit?

Permits may be granted subject to any conditions which the Department considers are necessary or convenient for controlling environmental harm or offsetting the loss of vegetation. For example, a condition can be imposed requiring the permit holder to plant in other areas, to monitor operations, to conduct environmental risk assessments, to enter into a conservation covenant or agreement to reserve, or to implement an environmental management system.

It is an offence to contravene a condition of a permit (or a condition of a conservation covenant or agreement to reserve referred to in a permit).

Can a permit be amended, revoked or suspended?

Each Department has the power to amend the conditions of a clearing permit. For example, any conditions of a permit may be removed or varied, the boundaries of an area permit may be redescribed, or the expiry date extended. In exercising their power to amend conditions, each Department is bound to take into account the same issues as on the initial grant of the permit. However, they do not have to seek comments from the general public.

DEC has the power to revoke or suspend a clearing permit if a condition of a permit has been breached, or if false or misleading information was provided in the clearing application.

If the Department intends to amend, revoke or suspend a permit the permit holder must be notified beforehand and given at least 28 days to make representations against the proposed action.

Appeals about clearing permits

Any person who is not satisfied with a decision to grant or refuse a clearing permit, or the conditions of a permit may appeal to the Minister for the Environment in writing. The appeal must be lodged within 21 days.

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Once an appeal is lodged with the Minister, the "Appeals Convenor" will request the relevant Department to prepare a report on the matter and consult with the Department and the person who lodged the appeal. The Appeals Convenor can also consult with any other person they think necessary. The Appeals Convenor then makes a report to the Minister, and the Minister makes a decision about the appeal. The holder of a permit that is subject to an appeal cannot undertake any clearing until the appeal has been resolved.

Record of clearing permits

DEC must keep a record of all clearing permits, applications for clearing permits and transfers of clearing permits. This record includes applications made to DMP and is to be made available on DEC's website.

Clearing permits and environmental impact assessment under the EP Act

If a proposal is the subject of environmental impact assessment under the EP Act, the Departments cannot grant or refuse an application for a clearing permit until the Minister for the Environment has made a decision on the proposal. This does not apply to investigatory or assessment works, or minor and preliminary works being done with the consent of the EPA.

Once the Minister for the Environment has made a decision on the proposal, any decision which is made about the clearing permit must then be in accordance with the Minister's approval. However, as Ministerial approval is an exemption listed under schedule 6, there will usually not be a need for clearing permits to be granted once the Ministerial approval is issued. For more information on the environmental impact assessment process in WA, see [Fact Sheet 5: Environmental impact assessment in WA](#).

Vegetation conservation notices

DEC can issue a vegetation conservation notice requiring a person to protect existing native vegetation or to re-establish vegetation on an area that has been cleared. A vegetation conservation notice can be issued to any person if it is suspected, on reasonable grounds, that that person has, or is likely to, clear native vegetation without a clearing permit and without lawful authority. Before the CEO can issue a notice, the person must be given a chance to make submissions as to why a notice should not be issued.

A vegetation conservation notice can be registered on the title to any land, in which case it binds successive landowners. It is an offence not to comply with a vegetation conservation notice.

Clearing injunctions

A "clearing injunction" is an order of the Supreme Court which prevents a person from clearing illegally. The CEO of DEC may apply for a "clearing injunction" from the Court if they suspects that a person is involved in, or will be involved in, clearing native vegetation without a clearing permit and without lawful authority. It is unlikely that any other person, including any member of the community, can apply for a clearing injunction.

Failing to comply with an injunction could lead to a person being found guilty of contempt of court.

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Environmental harm

It is an offence to cause serious or material environmental harm. Penalties of up to \$1 million dollars apply. This offence could apply to clearing that is undertaken without a permit or exemption. For more information, see [Fact Sheet 27: Pollution and environmental harm](#).

Biodiversity protection

Approval is required to remove vegetation on Crown land and to remove rare and endangered flora. For more information on the operation of these laws, see [Fact Sheet 8: Biodiversity Conservation WA](#).

Planning approval

Proposals to clear native vegetation may also be subject to specific controls and approvals under local or regional planning schemes. For more information, see [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#).

Land degradation

The Commissioner of Soil and Land Conservation can issue a soil conservation notice where clearing may lead to land degradation. This is not limited to native vegetation, but may apply to other vegetation, the removal of which may cause erosion, salinity or flooding. For more information, see [Fact Sheet 32: Land degradation](#).

Pastoral land management

Proposals to clear native vegetation from a pastoral lease require approval from the Pastoral Lands Board, as do proposals to change the use of a lease to a non-pastoral activity. For more information, see [Fact Sheet: 34 Pastoral land management](#).

Opportunities for public involvement

There are a number of opportunities for public involvement in the regulation of clearing in Western Australia. If you want to become involved you can:

- Monitor the newspapers and the DEC website for clearing permit applications and make comments to DEC.
- Appeal a grant or conditions of a clearing permit to the Minister for Environment, if you think that there are reasons why it should not have been granted or why the conditions are insufficient.
- Alert DEC to any clearing that you have reason to think is being undertaken illegally, without a permit, or outside the conditions of a permit, and encourage them to take action in response to that clearing.

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Contacts and further information

Department of Mines and Petroleum, Tel: 9222 3333 or visit www.dmp.wa.gov.au

Environmental Protection Authority, Tel: 6467 5600 or visit www.epa.wa.gov.au

Main Roads, Tel: 138 138, or visit www.mainroads.wa.gov.au

Water Corporation, Tel: 131385, or visit www.watercorporation.com.au

Department of Environment and Conservation, Tel: 6467 5000 or visit www.dec.wa.gov.au

Department of Planning/ Western Australian Planning Commission, Tel: 6551 9000 or visit www.planning.wa.gov.au

Office of the Appeals Convenor under Environmental Protection Act 1986, Perth, Tel: (08) 6467 5190 or visit www.appealsconvenor.wa.gov.au

For copies of legislation, contact the State Law Publisher (Western Australian legislation), Tel: (08) 9426 0000, www.slp.wa.gov.au

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The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- to provide community groups and individuals with legal advice and representation to help protect the environment;
- to promote law reform that improves environmental protection; and
- to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal and State Attorney-General's Departments.

However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)

Suite 4, 544 Hay Street, Perth WA 6000

Tel: (08) 9221 3030

Fax: (08) 9221 3070

Freecall: 1800 175 542 (for WA callers outside the Perth metropolitan region)

Email: edowa@edowa.org.au

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