

# edo news

Newsletter of the Environmental Defender's Office WA  
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## New laws for National Parks and State Forests

**On 3 May 2002 new laws began to apply to peoples' activities in National Parks, State forests and all land managed by the Department of Conservation and Land Management.**

The new laws are known as the *Conservation and Land Management Regulations 2002*. The EDO's publication the "Forest Activism Handbook" has been updated to reflect the changes made to the law by these Regulations. The Handbook is available on the EDO website. Following are examples of some of the changes which the Regulations have made to the law relating to peoples' activities on land managed by CALM.

### ***Closed areas***

The Executive Director of CALM may now direct that any CALM land be closed "for the protection, management and control" of that CALM land. The Executive Director may make such a direction orally and without public notice. Land subject to such a direction is a "closed area". It is then an offence to remain in or enter a "closed area" without the permission of a CALM officer. The maximum penalty for this offence is \$1,000.

### ***Camping on any CALM land***

It is now an offence to camp on any CALM land except in a designated camping area unless you have the prior approval of the Executive Director of CALM. It is also an offence to fail to comply with the conditions of a designated camping area or to fail to confine a camp to part of a camping area as directed by a CALM officer. The maximum penalty for such offences is \$500.

It is now an offence to construct a camping unit which:

- Is likely to be offensive or dangerous to other people;
- Is permanent or semi permanent; or
- Is unsightly

The maximum penalty for this offence is \$1,000.

### ***Organised events and meetings***

It is now an offence to organise, advertise, or hold a meeting, function or event on CALM land which is likely to involve more than 100 people without the prior approval of the Executive Director of CALM. The maximum penalty for this offence is \$2,000.

### ***Distributing material and promoting events***

It is now an offence to sell, distribute, carry or expose (for sale or distribution) any printed or written matter while on CALM land unless you have the prior approval of the Executive Director of CALM. It is also an offence to advertise or promote any event on CALM land. The maximum penalty for these offences is \$500.

### ***Photography and filming***

It is now an offence to take still or motion pictures on CALM land by photographic or electronic means if the photographs/motion pictures are to be used for promotional, advertising or commercial purposes, unless you have the prior approval of the Executive Director of CALM. The maximum penalty for this offence is \$500.



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## Abolition of environmental objections to mining leases?

The EDO's March 2002 newsletter expressed concern that the *Interim Report of the Review of the Project Development Approvals System* (also known as the "Keating Report") recommended the abolition of the Mining Warden's jurisdiction to hear environmental objections.

The EDO made a submission to the Interim Report outlining its concerns. Its principal concern was that the recommendation would affect public participation in the environmental impact assessment of mining proposals, by limiting people's ability to raise environmental objections to mining leases. Unfortunately, notwithstanding the EDO's submission, the Final Report includes the same recommendation.

The recommendation to abolish the Mining Warden's jurisdiction to hear environmental objections was made partly on the basis that there is currently opportunity for an overlap of assessment of mining proposals by the Mining Warden and the EPA. However the opportunity for overlap is only slight due to the fact that, of all the mining projects which are referred to the EPA, relatively few are actually assessed by the EPA. For example, of the 249 mining proposals approved in 2000-2001, only three were formally assessed by the EPA.

The EDO is concerned about the recommendation because it would limit public participation in the environmental impact assessment of mining proposals to those few proposals assessed by the EPA. Further, if the EPA does not assess the environmental impacts of proposals, the environmental assessment of most proposals will simply be carried out by the State Mining Engineer or District Mining Engineer on the basis of

information provided in a Notice of Intent prepared by a miner before commencement of mining. There is no opportunity for members of the public to be notified about, or comment on, a Notice of Intent. Therefore, if the recommendation goes ahead, there would be no real opportunity for the public to be involved in the environmental assessment of most mining proposals in WA.

The EDO believes that in order to minimise duplication of assessment without having a deleterious impact on public involvement in the assessment process, the following process should be followed:

- All Notices of Intent should be referred to the EPA before any Warden's Court hearing;
- If the EPA assesses the environmental impacts of the proposal based on the Notice of Intent, the Warden should decline to assess those impacts;
- If the EPA does not assess the environmental impacts of the proposal, then the Warden should (subject to the normal factors governing a Warden's discretion) hear objections raising environmental issues.

However, if the Warden's jurisdiction to hear public interest objections is to be removed then the *Mining Act 1978* (WA) should be amended to require that the Notice of Intent be advertised, and that any person may make a submission on the Notice of Intent. Further, it should be made clear that if significant environmental issues are raised, the Notice of Intent must be referred to the EPA for a decision on whether it should be formally assessed.

## EDO website

New additions to the EDO's website include:

1. **Forest Activism Handbook, 3rd Edition**
2. **Issues paper on aspects of the EP Amendment Bill 2002, which deals with the following**
  - Regulating clearing throughout WA
  - Creating an offence of 'environmental harm' and amending the offence of 'pollution'
  - Making directors and managers liable for the actions of their corporations
  - Providing protection for whistleblowers
  - Environmental Protection Policies
  - Objects and principles of the Act, and
  - Prosecutions
3. **Issues paper on aspects of the EP Amendment Bill 2002, which deals with the following:**
  - Environmental impact assessment
  - Licences and works approvals
  - Enforcement
  - Financial assurances
  - Codes of practice
  - Appeals convenor, and
  - Bilateral agreements
4. **GE-free zones in WA**
5. **Factsheets**



## Amendments to the Environmental Protection Act

On 27 June 2002 the *Environmental Protection Amendment Bill 2002* ("the Bill") was introduced into State Parliament. The Bill seeks to amend the *Environmental Protection Act 1986* ("the Act") by:

- Regulating clearing throughout WA;
- Creating an offence of "environmental harm";
- Amending the law relating to environmental impact assessment;
- Altering the regime applicable to licences and works approvals;
- Creating new enforcement powers;
- Allowing the Minister or CEO of the DEP to require people to give "financial assurances" (bonds);
- Allowing the development of "Codes of Practice" to control certain activities;
- Establishing the office of the Appeals Convenor;
- Allowing WA to enter into bilateral agreements with the Commonwealth in respect of environmental impact assessment;
- Making directors liable for the actions of their corporations;
- Providing protection for whistleblowers; and
- Amending the provisions relating to environmental protection policies.

On 15 August 2002, the EDO held a "Brown Bag Briefing" on the Bill in conjunction with the Conservation Council of Western Australia to explain how the Bill will affect the operation of the Act and raise some issues about that operation. Approximately 50 people attended the briefing. The material presented at the briefing is available on the EDO's internet site: [www.edo.org.au/edowa](http://www.edo.org.au/edowa)

Here is a brief outline of some of the provisions of the Bill:

### **Clearing**

The Bill proposes that the *Environmental Protection Act 1986* will govern whether and in what circumstances clearing can be carried out in WA. "Clearing" will be any act which causes the death, destruction, or removal of, or substantial damage to, some or all of the native vegetation in an area. "Native vegetation" means indigenous aquatic or terrestrial vegetation, but does not include vegetation in a plantation. Neither does it include any vegetation that was intentionally sown, planted or propagated. (It is therefore arguable that "native vegetation" does not include any vegetation which has been planted as part of a landcare or restoration activity, and therefore that such vegetation will not be covered by the new clearing laws.)

Clearing laws will apply to most land and water in the State. It will be illegal for any person to clear native vegetation unless that person:

- 1) Has a "clearing permit" issued by the Chief Executive Officer of the Department of Environmental Protection;
- 2) Has "lawful authority", such as a subdivision approval, approval for a building, or approval granted by the Minister for the Environment after an environmental impact assessment is carried out by the EPA; or
- 3) Is exempted under the Regulations (which are yet to be finalised).

### **Creating an offence of "environmental harm"**

The Bill proposes to make it an offence to cause "environmental harm". Environmental harm will include removal, destruction of, or damage to, native vegetation or habitat of native vegetation or terrestrial animals. It will also include the alteration of the environment to its detriment or degradation. There will be two types of environmental harm – material

environmental harm and significant environmental harm. Material environmental harm is caused when it would cost more than \$20,000 to restore the environmental harm. Significant environmental harm is caused when it would cost more than \$100,000 to restore the environmental harm.

The maximum penalty for causing environmental harm with intent or criminal negligence is \$1,000,000 for a corporation and \$500,000 for an individual.

### **Environmental impact assessment**

The Bill proposes that:

- The EPA will have specific power to refuse referrals or proposals;
- Proponents will be able to refer future projects to the EPA for "strategic assessment" before they prepare a specific development proposal;
- The EPA will retain its power to issue informal advice or recommendations on proposals which it decides not to formally assess, but that any such advice or recommendations will remain non-binding and need not be taken into account by anyone; and,
- It will be an offence to implement a proposal before the Minister has made a decision about a proposal which is subject to formal environmental impact assessment.

### **Enforcement**

The Department of Environmental Protection (DEP) will have new enforcement powers. Pollution

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Abatement Notices will be replaced by 4 new types of enforcement notices:

*Vegetation Conservation Notices:* can require a person to repair damage, re-establish vegetation or prevent erosion. A vegetation conservation notice can be issued to any person by the CEO of the DEP, if the CEO suspects on reasonable grounds that that person has, or is likely to, clear native vegetation without a clearing permit or without a lawful authority.

*Environmental Protection Notices:* may require a person to take measures to prevent, control, abate or investigate an emission or environmental harm. Notices may be issued by the CEO of the DEP if he/she suspects on reasonable grounds that a person has committed or is likely to commit an offence under the Act.

*Closure Notices:* may require a person to take specified investigation/monitoring actions, prepare a management plan, take management action, or report or arrange for an audit. May be issued by the CEO of the DEP if he/she considers on reasonable grounds that ongoing investigation, monitoring or management will be required on approved premises after the approval expires or is revoked.

*Prevention Notices:* may require a person to take action to prevent any environmental harm, pollution or discharge occurring. May be issued by a DEP officer who reasonably suspects that an offence has been or is likely to be committed.

### **Financial Assurances**

The Bill introduces new provisions authorising the Minister or the CEO of the DEP, to require that a person provides a “financial assurance” as part of any approval or enforcement notice. A financial assurance can be given, for example, by way of bank guarantee, bond, or insurance policy.

### **Directors’ Liability**

The Bill provides that if a corporation commits an offence, each director of the corporation plus all people who are concerned in the management of the corporation will also be taken to have committed the offence unless they can prove that they could not have influenced the corporation or that they used all due diligence to prevent the offence.

### **Whistleblowers**

The Bill provides that it will be an offence to prejudice the safety or career of, or intimidate or harass, any person because they have or will furnish information for the purpose of an investigation under the Act or which tends to show that another person is involved in an offence under the Act.

## Public comment on draft Forest Management Plan

A draft 10-year plan for the overall management of forests in the south west has been released for public comment. It was prepared by the Conservation Commission through the agency of the Department of CALM acting jointly with the Forest Products Commission, Water and Rivers Commission and the Water Corporation.

The draft plan proposes alternative management scenarios which lead to a range of proposed sustained yields for jarrah and karri over the next 10 years. The proposed sustained yield for jarrah (first and second grade sawlogs) ranges from 106,000 cubic metres a year to 164,000 cubic metres a year. The comparable figures for karri are 31,000 and 62,000.

Public submissions must be made by 15 October. Copies of the plan are available at the Conservation Commission’s website – [www.conservation.wa.gov.au](http://www.conservation.wa.gov.au), or from the Commission’s head office in Hackett Drive, Crawley and Department of Conservation and Land Management offices throughout the south-west. Submissions should be made to the Conservation Commission of WA, PO Box 3105, Broadway, Nedlands, WA 6009.

## Law Reform Submissions

The EDO has recently made law reform submissions on:

- The *Gene Technology Bill 2002* (WA);
- The Ministerial Taskforce Report “Review of the Structural Arrangements for Coastal Planning and Management in Western Australia”;
- Limitations Law Reform;
- Western Australian Planning Commission; ex parte Leeuwin Conservation Group Inc and Anor (WASCA 2002 150);
- Reform of various planning laws including the *Western Australian Planning Commission Act 1985*, *Town Planning and Development Act 1928*, Model Scheme Text;
- Forest Management Plans - whether they should be binding and whether the public should be involved in enforcing them.

Copies of the EDO’s submissions are available from the EDO. (Please note that we cannot provide a copy of the submission to the *Gene Technology Bill 2002* (WA) until the Legislative Council Standing Committee on Environment and Public Affairs has considered it).