



Protecting Native Vegetation in Western Australia

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What is this fact sheet about?

This Fact Sheet outlines the legislative framework relating to the clearing of native vegetation in Western Australia, including an explanation of the permit system and the clearing exemptions. References to ‘clearing’ throughout this Fact Sheet can be understood to mean the clearing of native vegetation.

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Key Takeaways

- It is an offence to clear native vegetation in Western Australia unless a clearing permit has been obtained, or the clearing is exempt.
- Clearing permits are not required for:
 - exempt activities under the EP Act or Clearing Regulations;
 - activities referred to the relevant department and determined to be exempt; or

- certain mining and petroleum activities.
- Clearing permit applications are assessed against several principles which measure the potential environmental impact of clearing.
- Clearing permit conditions set out activities which must be undertaken by a permit-holder to prevent, control, abate or mitigate environmental harm.
- The public can participate in the clearing permit framework by:
 - commenting on clearing permit applications, amendments to permits or permit conditions; and/or
 - appealing the grant of clearing permits or the conditions of a granted permit.
- Suspected unauthorised clearing can be reported for investigation.

Background

Clearing in Western Australia is primarily regulated under Part V Division 2 of the *Environmental Protection Act 1986* (WA) (**EP Act**) and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (WA) (**Clearing Regulations**).

The Department of Water and Environmental Regulation (**DWER**) is the primary department which regulates clearing in Western Australia. However, the Department of Energy, Mines, Industry Regulation and Safety (**DEMIRS**) is also authorised to administer clearing applications undertaken for mineral and petroleum activities.

The Commonwealth Government also regulates land clearing in Western Australia under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) where the clearing impacts on matters of national environmental significance.

Clearing Permits

It is an offence under the EP Act to clear native vegetation unless a clearing permit is obtained, or the clearing is for an exempt purpose.¹

Clearing means killing, destroying, removing, or substantially damaging native vegetation in an area or undertaking an activity which causes the killing, destruction, removal, or severing of trunks or stems of, or any other substantial damage to, native vegetation.² Activities such as the severing or ringbarking of trunks or stems, the draining or flooding of land, the burning of vegetation and the grazing of stock, are included in the definition of clearing.³

¹ EP Act, s 51C.

² EP Act s 51A.

³ EP Act s 51A.

Native vegetation means indigenous aquatic or terrestrial vegetation, including dead vegetation.⁴ Native vegetation does not usually include indigenous vegetation⁵ or *intentionally* planted (such as a plantation).⁶

Types of clearing permits

An application for a clearing permit must state the type of permit sought.⁷ An application can be made for clearing:

- in a particular area (an **area permit**);⁸ or
- in different areas for a particular purpose (a **purpose permit**).⁹

An area permit enables a permit holder to clear a defined area on one occasion only.¹⁰ An area permit is valid for 2 years from the date it was granted,¹¹ and is typically used for activities such as clearing for a paddock or for a gravel pit on land which you own.¹²

A purpose permit enables a permit holder to clear different areas of land from time to time for a specific purpose.¹³ A purpose permit is valid for 5 years from the date it was granted (unless otherwise specified),¹⁴ and is typically used for purposes such as drainage works on Crown land or to install utility services on private property.¹⁵

A purpose permit is different from an area permit as it allows a permit holder to undertake clearing over time *without* having to apply for a separate area permit on each occasion.

Clearing for mining and petroleum activities

⁴ EP Act s 3(1), s 51A.

⁵ A government database of indigenous vegetation species can be found here: [Florabase—the Western Australian flora](#).

⁶ Unless the planting was funded for the purposes of biodiversity or land conservation by a non-owner of the land or, is protected under a conservation covenant or other binding conservation agreement to conserve native vegetation, see EP Act s 51A; Clearing Regs, r 4(1).

⁷ EP Act, s 51E(1)(b).

⁸ EP Act, s 51E(1) (b)(i).

⁹ EP Act, s 51E(1) (b)(ii).

¹⁰ EP Act, s 51E(1) (b)(i).

¹¹ EP Act, s 51G(a).

¹² See [How-to-apply-for-a-permit-to-clear.pdf](#), page 2.

¹³ EP Act, s 51E(1)(b)(ii); s 51E(8).

¹⁴ EP Act, s 51G(b).

¹⁵ See [Procedure: Native vegetation clearing permits](#), page 5.

Clearing permit applications for clearing relating to mineral or petroleum activities are assessed by DEMIRS.¹⁶ Some mining and petroleum activities are exempt from the requirement of obtaining a permit for clearing.¹⁷

How are clearing permits granted?

Applications for clearing permits under the EP Act are received, assessed and granted by either DWER (for area and purpose permits) or by DEMIRS (for clearing related to mineral or petroleum activities).

Once a clearing permit has been granted, the permit-holder is authorised to clear native vegetation subject to any conditions attached to the permit.¹⁸

The assessment process for clearing permit applications is outlined in the following document: [Procedure: Native vegetation clearing permit \(Clearing Procedure\)](#).

Clearing principles

In considering a clearing permit application, the relevant department must consider the clearing principles listed in Schedule 5 of the EP Act (**Clearing Principles**).¹⁹ During the assessment process, the department will primarily consider the extent to which the proposed clearing activities align with or diverge from the Clearing Principles.²⁰

The Clearing Principles assert that native vegetation should *not* be cleared if:²¹

- (a) it comprises a high level of biodiversity;²²
- (b) it comprises the whole or part of, or is necessary for the maintenance of, a significant habitat for threatened fauna;²³
- (c) it includes, or is necessary for the continued existence of, threatened flora.²⁴

¹⁶ DEMIRS has delegated authority to administer the native vegetation clearing provisions for mining and petroleum activities regulated under the *Mining Act 1978* (WA); *Petroleum and Geothermal Energy Resources Act 1967* (WA); *Petroleum Pipelines Act 1969* (WA); *Petroleum (Submerged Lands) Act 1982* (WA); or activities under State Agreements: EP Act, s 20.

¹⁷ Clearing Regulations, r 5, sched 1.

¹⁸ EP Act, s 51C(a), s 51H, s 51I.

¹⁹ EP Act, s 51P.

²⁰ [Procedure: Native vegetation clearing permits](#), page 18 [3.2].

²¹ EP Act, sched 5 cl 1.

²² EP Act, sched 5 cl 2; '**Biodiversity**' is defined as 'the variability and diversity among living organisms and the ecosystems of which those organisms are a part of': *Biodiversity Conservation Act 2016*, s 5(1) ('**BC Act**')

²³ EP Act, sched 5 cl 2; '**Threatened fauna**' is defined as a native species of fauna which is listed as a threatened species under s 19(1) of the BC Act or is to be regarded as threatened species under s 26(2) the BC Act: BC Act, s 5(1).

²⁴ EP Act, sched 5 cl 2; BC Act, s 5(1): '**Threatened flora**' is defined as a native species of fauna which is listed as a threatened species under s 19(1) of the BC Act or is to be regarded as threatened species under s 26(2) the BC Act.

- (d) it comprises the whole or part of, or is necessary for the maintenance of, a threatened ecological community;²⁵
- (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;²⁶
- (g) the clearing of the vegetation is likely to cause appreciable land degradation;
- (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;²⁷
- (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.

The department assessing the clearing permit application is authorised to grant a clearing permit which is ‘seriously at variance’ with the Clearing Principles *if*, in the department’s opinion, there is a ‘good reason to do so’.²⁸ The department is required to document and publish that reason in its decision report.²⁹

The criteria for determining whether there is a ‘good reason’ to grant a clearing permit which is incompatible with the Clearing Principles is not outlined in the EP Act or Clearing Regulations.

What else does the decision-maker consider?

When assessing a clearing permit application, the department will also consider:

- any submission received from stakeholders or the general public about the application;³⁰
- other relevant Part V approvals and/or pending applications;

²⁵ EP Act, sched 5 cl 2; BC Act, s 5(1): ‘**Threatened ecological community**’ means an ecological community which is listed as a threatened ecological community under s 27(1) of the BC Act or s 528 of the EPBC Act, is regarded as a threatened ecological community under s 33 of the BC Act, or is listed, designated or declared as threatened, endangered or vulnerable under or for the purposes of a written law.

²⁶ EP Act, sched 5 cl 2: ‘**wetland**’ is defined as ‘an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, dampland, tidal flat or estuary’. *Rights in Water and Irrigation Act 1914*, ss 2(1), 3: ‘**watercourse**’ is defined as ‘any river, creek, stream or brook in which water flows, any collection of water (including a reservoir) into, through or out of which any river, creek, stream or brook flows, and any place where water flows that is prescribed by local by-laws to be a watercourse, and including the beds and banks of any thing previously described’.

²⁷ EP Act, s 3(1): An ‘**environmental value**’ means a beneficial use or an ecosystem health condition.

²⁸ EP Act, s 51P(3).

²⁹ EP Act, s 51Q.

³⁰ EP Act, s 51E(5A).

- any planning instruments or other matters that the department considers to be relevant;³¹
- relevant approved policies under Part III of the EP Act;³² and
- relevant policy documents outlined in the Clearing Procedure.³³

Once the department has completed its assessment, it will prepare a proposed decision to grant or refuse the clearing permit application which will include the reasons for its decision in a draft decision report.³⁴ The department is not under any obligation to publish the draft decision report.

Your right to comment

In determining whether to grant or refuse a clearing permit application and the conditions attached to a clearing permit, the relevant department must consider any submissions received from people with a direct interest in the application and the general public.³⁵

N.B. **Opportunity for participation: public comment**

All permit applications which are open for public comment can be found here: [Applications for public comment - Department of Water and Environmental Regulation \(der.wa.gov.au\)](https://www.der.wa.gov.au/public-comment)

When preparing a public comment about clearing you might wish to raise issues such as whether:³⁶

- you consider the clearing aligns with the Clearing Principles;
- there is a 'good reason' to grant a permit which is seriously at variance with the Clearing Principles;
- the conditions with which the permit holder should comply are sufficient; or
- there are any relevant planning documents, Part V decisions, Part III approved policies or other policy document, which have not (or have not *adequately*) been considered by the Department.

When can a department not grant a clearing permit?

³¹ EP Act, s 51O(4).

³² EP Act, s 51P.

³³ See page 19, Clearing Procedure: [A guide to the assessment of applications to clear native vegetation](#); [A guide to native vegetation clearing processes under the assessment bilateral agreement](#) (for bilateral assessments); [WA Environmental Offsets Policy](#); [WA Environmental Offsets Guidelines](#).

³⁴ EP Act, s 51E(10A); Clearing Procedure, page 19 [3.3].

³⁵ EP Act, s 51E(5A).

³⁶ **Note:** Content requirements for public submissions are not outlined in the EP Act or Clearing Regulations.

EP Act

A decision to grant or refuse an application to clear native vegetation cannot be made whilst a 'proposal'³⁷ is the subject of environmental impact assessment by the Environmental Protection Authority (**EPA**), under Part IV of the EP Act.³⁸

Following assessment of the proposal by the EPA, if the Minister for Environment (**Minister**) decides that the proposal can be implemented, the Minister must publish a 'Ministerial Statement' setting out any conditions on the implementation of the proposal.³⁹ Any later decision made about clearing (e.g. the grant of a clearing permit) must be in accordance with the Minister's approval.⁴⁰

If a person does anything to implement a proposal (e.g. begin clearing land) *before* the Minister has made a decision on the proposal under Part IV, they commit an offence under the EP Act.⁴¹

Read: EDO's [fact sheet](#) on Environmental Impact Assessment under the EP Act for more information.

EPBC Act

Clearing of native vegetation *cannot* occur if the activity is likely to have a significant impact on matters of national environmental significance, or on Commonwealth land, and the activity is undertaken without approval or during assessment under the EPBC Act.⁴² Before such an activity can commence, it must be referred to, and approved by, the Federal Minister for the Environment or their delegate.⁴³

If assessment is required under the EPBC Act, then it is likely that an EPA assessment and Ministerial approval of the activity under Part IV of the EP Act will also be required.

³⁷ Being a development, project, plan, programme, policy, operation, undertaking, change in land use, or an amendment of any of these things: EP Act, s 3.

³⁸ EP Act, s 41(3).

³⁹ EP Act, s 45(8)(b).

⁴⁰ EP Act, s 51F.

⁴¹ EP Act, s 41A(1).

⁴² [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#) (**EPBC Act**) Chapter 2, Part 3, Division 1, ss 12-24C

⁴³ **Note:** It is an offence to carry out a controlled action without approval. See EPBC Act, ss 12(1), 15A for World Heritage); ss 15B, 15C for National Heritage; ss 16, 17B for Ramsar Wetlands; ss 18, 18A for Threatened species; ss 20, 20A for Migratory species; ss 21, 22A for Nuclear actions; ss 23, 24A for Marine environment; ss 24B, 24C for Great Barrier Reef Marine Park, and; ss 24D, 24E for Protection of water resources from coal seam gas development and large coal mining development.

What happens once a clearing permit is granted?

Approved clearing permits

Once the department has completed its assessment, it is required to publish notice of its decision to either grant or refuse the clearing permit.⁴⁴ The department will also notify any third parties who made submissions during the public consultation process and publish its decision online.

The Clearing Permit System (**CPS**) is a public register of all clearing applications and decisions under Part V of the EP Act. The CPS can be accessed here: [Clearing Permit System and map viewer | Western Australian Government \(www.wa.gov.au\)](http://www.wa.gov.au). New applications and previous decisions can be searched on the CPS via the search function. A map of clearing permit applications can also be located using the CPS map function.

Conditions on a clearing permit

The department can attach conditions to the permit which it considers ‘necessary or convenient for the purposes of the prevention, control, abatement, or mitigation of environmental harm, or for directly or indirectly offsetting the loss of cleared native vegetation’.⁴⁵

A condition attached to a clearing permit may specify activities which are or are not authorised by the permit.⁴⁶ Several example conditions are set out in s 51I of the EP Act and include:

- conducting environmental risk assessment studies;⁴⁷
- establishing and maintaining vegetation on other land to directly or indirectly offset the loss of the cleared vegetation;⁴⁸ or
- contributing moneys to be used for the purpose of establishing or maintaining vegetation on other land.⁴⁹

However, the department is not limited to the examples set out in the EP Act and can include other conditions which it considers necessary.⁵⁰ Conditions attached to a clearing permit are outlined in the approved permit document which is published on the CPS.

Contravening a permit condition is an offence under the EP Act.⁵¹

⁴⁴ EP Act, s 51E(10A).

⁴⁵ EP Act, s 51H.

⁴⁶ EP Act, s 51I(1)

⁴⁷ EP Act, s 51I(2)(f).

⁴⁸ EP Act, s 51I(2)(b).

⁴⁹ EP Act, s 51I(2)(c).

⁵⁰ EP Act, s 51H(2).

⁵¹ EP Act, s51J(1).

Your right to challenge

Any person who is not satisfied with a decision to grant a clearing permit, the conditions of a granted permit or an amendment to a clearing permit, can lodge an appeal in writing with the Minister via the Office of the Appeals Convenor.⁵²

N.B. **Opportunity for participation: lodging an appeal**

- For permits granted by DWER: [Available for public appeal - Department of Water and Environmental Regulation](#)
- For permits granted by DEMIRS: [View notifications of Clearing Permit Applications and Decisions](#)

When lodging an appeal, you must set out the grounds of your appeal in writing.⁵³ The grounds of your appeal may relate to whether:

- you consider the clearing decision aligns with the Clearing Principles;
- the conditions on a clearing permit sufficiently prevent, control, abate, or mitigate environmental harm;
- there are any relevant conditions which have *not* been attached to the permit which are necessary to prevent, control, abate, or mitigate environmental harm; or
- there are any relevant planning documents, Part V decisions, Part III approved policies or other policy documents, which have not (or have not *adequately*) been considered by the Department.

The appeal must be lodged within 21 days of the grant or decision on the permit.⁵⁴ There is no fee for lodging an appeal against a clearing decision.

Once an appeal is lodged with the Minister, the Appeals Convenor will request DEMIRS or DWER to report on the appeal.⁵⁵ The Appeals Convenor will consult the relevant department, the appellant and any other person considered necessary to determine whether the appeal can be resolved.⁵⁶ The Appeals Convenor then prepares a report for the Minister who will make a final decision about the appeal.⁵⁷

Until the end of the appeals period or while the outcome of an appeal is still pending, a decision to grant a clearing permit is deemed *not* to have effect and clearing cannot be undertaken. If the appeal is against a condition of a clearing permit, or relates to an amendment, then the clearing permit *continues* to have effect.

⁵² EP Act, s 101A(3)-(4).

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ EP Act, s 106(1)(b).

⁵⁶ EP Act, s 106(1)(d).

⁵⁷ EP Act, s 107(2). See the Office of the Appeals Convenor's website for more information on lodging an appeal: [Office of the Appeals Convenor](#)

Amendment of clearing permits

A clearing permit can be amended at any time, directly by the department or upon application by the permit holder.⁵⁸ The department broadly follows the same processes of assessment as described above.⁵⁹ A clearing permit can be amended for a number of reasons such as removing or varying a permit condition,⁶⁰ adding a new permit condition,⁶¹ or extending the duration of the permit.⁶²

Although there is no statutory requirement to do so, the department invites public comments on amendment applications and will consider any comments received.⁶³

How do I report unauthorised clearing?

Unauthorised clearing

Clearing is unauthorised if:

- it is done without a clearing permit (unless as decided under a referred clearing proposal);⁶⁴
- no relevant exemption applies to the requirement to obtaining a clearing permit;⁶⁵
- an exemption under the Clearing Regulations applies but clearing is done within an environmentally sensitive area or other non-permitted area;⁶⁶ or
- clearing is not completed in accordance with the conditions of a clearing permit.⁶⁷

Reporting unauthorised clearing

Suspected unauthorised clearing can be reported to DWER by completing the [Report unlawful clearing](#) online form or contacting DWER's 24-hour Pollution Watch hotline on 1300 784 782.

DWER will review and investigate alleged unauthorised clearing of native vegetation by using detailed satellite imagery to determine what has been cleared and the environmental impact of the clearing.⁶⁸

⁵⁸ EP Act, s 51K(2).

⁵⁹ [Procedure: Native vegetation clearing permits](#), page 27 [5.4].

⁶⁰ EP Act, s 51K(1)(a).

⁶¹ EP Act, s 51K(1)(b).

⁶² EP Act, s 51K(1)(i).

⁶³ [Procedure: Native vegetation clearing permits](#), page 28 [5.4].

⁶⁴ EP Act, s 51C(a),(d).

⁶⁵ EP Act, s 51C(b)-(c).

⁶⁶ EP Act, s 51C(c).

⁶⁷ EP Act, s 51J(1).

⁶⁸ [Unauthorised clearing of native vegetation | Western Australian Government](#)

What can the department do about unauthorised clearing?

If unauthorised clearing is deemed to have occurred, DWER may do the following:

Action	Description
Education and warning	Issue a letter of education or warning regarding the unauthorised clearing.
Vegetation Conservation Notices	<p>A vegetation conservation notice (VCN) can be issued by DWER if it suspects that unauthorised native vegetation clearing has taken place or is likely to take place.⁶⁹</p> <p>VCNs are issued to ensure that no clearing, or no further clearing, takes place and can include conditions to repair any damage, re-establish and maintain native vegetation, prevent erosion or movement of sand, soil, dust or water, or ensure no further damage is caused by the clearing.⁷⁰</p>
Revocation or suspension	<p>Both DEMIRS and DWER are empowered to revoke or suspend a clearing permit.⁷¹ DWER and DMIRS have the power to revoke or suspend a clearing permit in certain circumstances,⁷² including where a permit condition has been breached,⁷³ or where false or misleading information was provided in the clearing permit application.⁷⁴</p> <p>Clearing permits which have been revoked or suspended can be found on the CPS.</p>
Penalties and prosecutions	<p>DWER can undertake compliance and enforcement actions for breaches of the EP Act. Under the EP Act, the maximum penalty for unauthorised clearing of native vegetation is \$500,000 with daily penalties of \$100,000.</p> <p>DWER's approach to prosecutions for offences under the EP Act is outlined in the Prosecutions Guideline.</p>
Clearing injunction	A 'clearing injunction' is an order of the Supreme Court which prevents a person from unauthorised clearing or from contravening

⁶⁹ EP Act, s 70(2).

⁷⁰ EP Act s 70(4A).

⁷¹ EP Act, s 51L(1).

⁷² EP Act, s 51L(1).

⁷³ EP Act, s 51L(2)(a).

⁷⁴ EP Act, s 51L(2)(c).

Action	Description
	a clearing permit condition. ⁷⁵ DWER may apply for a 'clearing injunction' from the Court. ⁷⁶ A clearing injunction may be granted by the Court if it is satisfied that it is appropriate to grant the injunction, irrespective of whether it is proven that a person has intended or will intend to do unauthorised clearing. ⁷⁷

Read: EDO's [fact sheet](#) for more information on prosecutions and the enforcement of environmental offences in WA.

When is a clearing permit not required?

Exemptions for clearing

All clearing requires a permit unless the clearing is exempt. Therefore, a clearing activity can be undertaken without a permit *if* an exemption applies. Clearing activities may be exempt:

- under [Schedule 6 of the EP Act](#) (**Schedule 6 Exemptions**);
- as set out in the [Clearing Regulations](#) (**Regulation Exemptions**);
- as determined by the department in accordance with s 51DA of the EP Act (**Clearing Referrals**); or
- for certain mining and petroleum activities as specified Regulation 5 of the Clearing Regulations.

Regulation Exemptions

Clearing undertaken under a Regulation Exemption must be done in such a way as to avoid or limit damage to neighboring native vegetation,⁷⁸ and cannot occur in an 'environmentally sensitive area'.⁷⁹ A number of the Regulation Exemptions also limit the extent of clearing to a maximum of five hectares per financial year.⁸⁰

Exempt mining and petroleum activities

⁷⁵ EP Act, s 51S(2).

⁷⁶ EP Act, s 51S(3).

⁷⁷ EP Act, s 51S(4).

⁷⁸ Clearing Regulations, r 5(1)(c).

⁷⁹ EP Act, s 51C(c). Clearing Regs, r 5.

Note: Environmentally sensitive areas (ESA's) are generally areas which contain threatened ecological communities, rare flora and fauna, have close proximity to wetlands or are otherwise of high conservation and biodiversity value. For the current list of ESA's see: [Environmental Protection \(Environmentally Sensitive Areas\) Notice 2005](#)

⁸⁰ Clearing Regulations, r 5.

Under the Regulation Exemptions, certain mining and petroleum related activities are exempt from the requirements of a clearing permit.⁸¹ For example, clearing which is the result of carrying out a **low impact mineral or petroleum activity**,⁸² or **prospecting or exploration** under the *Mining Act 1978*.⁸³

An activity is a ‘**low impact mineral or petroleum activity**’ if it involves:

- no ground disturbance and little or no vegetation damage;
- driving vehicles or other mechanised equipment through vegetation that is not along existing tracks;
- raised-blade clearing for a temporary access track (of no more than 4 m in width) if there is at least 100 m between that access track and any other access track;
- a scrape and detect operation if the total area cleared for the purposes of the operation is less than 2 ha at any one time;
- clearing for camp sites and storage areas, and similar incidental purposes;
- anchoring vessels to the seabed, removing marine growth from offshore pipelines, platforms and other structures and carrying out seabed surveys; or
- anchoring drill rigs to the seabed, positioning drill rigs and drilling if the activity is not carried out within a sanctuary, recreation or special purpose area of a marine park.⁸⁴

Low impact mineral or petroleum activities must be carried out in such a way so as to limit or avoid damage to riparian vegetation, soil erosion and the quality of surface and subterranean water.⁸⁵ Low impact mineral or petroleum activities *will* require a clearing permit if they are carried out in ‘**non-permitted areas**’.⁸⁶

Read: EDO’s [fact sheet](#) for more information on mining law in WA.

Clearing Referrals

A permit is *not* required to clear native vegetation if the proposed clearing has been referred to DWER or DEMIRS and the relevant department has determined that a permit is not required.⁸⁷

⁸¹ Ibid.

⁸² Clearing Regulations, r 5 (item 20).

⁸³ Clearing Regulations, r 5 (item 25).

⁸⁴ Clearing Regulations, sched 1 cl 2(1). **Note:** any low impact mineral or petroleum activity must be carried out under an authority granted under the *Mining Act 1978*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum Pipelines Act 1969*, the *Petroleum (Submerged Lands) Act 1982* or the *Rights in Water and Irrigation Act 1914*.

⁸⁵ Clearing Regulations, sched 1 cl 3.

⁸⁶ Clearing Regulations, r 5, sched 1 cl 4(1). ‘**Non-permitted areas**’ are outlined at cl 4 of Schedule 1 of the Clearing Regulations and include environmentally sensitive areas, water supply areas and the Jarrah Forest, Mallee and Swan Coastal Plain bioregions (amongst various other prescribed areas).

⁸⁷ EP Act, s 51C(d).

The clearing referral process is set out in section 51DA of the EP Act and can be used by a person who proposes to do clearing to determine whether a clearing permit is required for clearing activities with a very low environmental impact. The criteria by which DWER or DEMIRS determine the environmental impact of clearing referrals is outlined in [Guideline - Native vegetation clearing referrals](#).

The department is required to publish clearing referrals and referral decisions on its website.⁸⁸ The department is not required to provide an opportunity for the public to comment on clearing referrals, and clearing referral decisions cannot be appealed under the EP Act.⁸⁹

How else can I protect native vegetation?

Land degradation

You can report activities such as clearing to the Commissioner of Soil and Land Conservation (**Commissioner**) if you suspect they are causing or exacerbating land degradation.⁹⁰ The definition of '**land degradation**' includes soil erosion, salinity, eutrophication and flooding, and the removal or deterioration of natural or introduced vegetation.⁹¹

The Commissioner will investigate the complaint and may:⁹²

- request remedial works to be undertaken by the owner/occupier of the land;
- issue a warning letter where the matter is minor;
- prosecute where clearing may lead to land degradation; or
- issue a **soil conservation notice**.

A **soil conservation notice** can direct a person to undertake specific activities such as refraining from clearing or from destroying, cutting down or injuring vegetation.⁹³ The notice binds each person to whom it is served and remains registered on the land ownership record.⁹⁴

You can contact the Commissioner by contacting [any office of the Department of Primary Industries and Regional Development](#) or the Office of the Commissioner on +61 (08) 9368 3282.

⁸⁸ EP Act, s 51DA(7).

⁸⁹ EP Act, s101A.

⁹⁰ [Land management complaints in Western Australia | Agriculture and Food](#)

⁹¹ *Soil and Land Conservation Act 1945 (SLC Act)*, s 4.

⁹² SLC Act, s 14.

⁹³ SLC Act, s 32(2)(a).

⁹⁴ SLC Act, s 32(3).

Biodiversity Protection & Conservation

Under the *Biodiversity Conservation Act 2016* (WA), there are a number of opportunities for the public to help to protect native vegetation including:

- providing comments on draft **recovery plans** being prepared to conserve, protect and manage threatened flora species or threatened ecological communities;⁹⁵
- nominating the **threat status** of flora species and ecological communities for listing;⁹⁶ and
- **commenting on nominations** to amend (i.e. listing, delisting or changing of categories) the status of current threatened flora species and ecological communities.⁹⁷

Judicial review proceedings

A clearing permit decision may be the subject of judicial review proceedings if a decision-maker under the EP Act has made a legal error.

Judicial review proceedings are undertaken in the Supreme Court and are usually complex, time-consuming and costly. Before commencing judicial review proceedings, an applicant should obtain legal advice.

Read: EDO's [fact sheet](#) for more information on Judicial Review of decisions made under the EP Act.

Where can I get more information?

Department of Water and Environmental Regulation (Western Australia)

- Tel: 61 8 6364 7000
- <https://www.wa.gov.au/organisation/departments/departments-of-water-and-environmental-regulation>

Department of Mines, Industry Regulation and Safety (Western Australia)

⁹⁵ *BC Act*, s 86: Any member of the public can make submissions on a draft recovery which must be published on the government's website and in the Gazette. See [Recovery plans | Department of Biodiversity, Conservation and Attractions](#) for more information on Recovery Plans.

⁹⁶ The listing process for threatened species or ecological communities is outlined at Division 4 of the *BC Act*. See [Nominations for listing | Department of Biodiversity, Conservation and Attractions](#) for more information on nominating species or ecological communities.

⁹⁷ Although the *BC Act* does not require nominations to be made available for public consultation, the WA Government is a signatory to the *Intergovernmental Memorandum of Understanding - Agreement on a Common Assessment Method for Listing of Threatened Species and Threatened Ecological Communities (MOU)*. The MOU includes a requirement to undertake public consultation on nominations and the public therefore have the opportunity to review and comment on nomination which are advertised on the Department's website: [Have your say | Department of Biodiversity, Conservation and Attractions](#)

- Tel: 61 8 9222 3333
- <https://www.dmirs.wa.gov.au/>

Office of the Commissioner of Soil and Land Conservation (Western Australia)

- Tel: (08) 9368 3282
- Email: commsoil@agric.wa.gov.au
- [Department of Primary Industries and Regional Development](#)

Department of Climate Change, Energy, the Environment and Water (Commonwealth)

- <https://www.dcceew.gov.au/about/contact>

For copies of legislation, visit <http://www.legislation.wa.gov.au> (State legislation) or the Federal Register of Legislation (Commonwealth legislation), <https://www.legislation.gov.au>

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