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ENVIRONMENTAL

Environmental Protection Act 1986 and Native Vegetation Clearing

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Overview

- Biodiversity and native vegetation in WA
- Genesis of the clearing provisions in the EP Act
- Principles and workings of the native vegetation legislation
- Role of practitioners - guidance and references





Biodiversity

Protection of Biodiversity in WA

- Biologically diverse
- Unique on a world scale
- High species richness
- Threats and impacts
- Policies and guidelines
- Protection vs. rapid rate/scale of impact
 - Gap in protection of biodiversity in WA
 - Lack of comprehension of cumulative impacts





Clearing

Land Clearing and controls

- Incentives to clear
 - Tax concessions,
 - Drought relief
 - Rural adjustment
 - Land degradation
 - Incentives to conserve
 - Legislative controls
 - Social and economic impacts
- ➔ Biodiversity hotspot - some of the richest and most threatened reservoirs of plant and animal life on earth.



Salinity caused by clearing 1898

Incentives to clear & developments in agricultural science

Million acres a year

1945 Soldier Settlement Scheme

1960

Clearing controls water catchments

1970

Minerals boom

Industrial scale clearing

Degradation – soil, biodiversity

Landcare - Decade 1990's

1980

1985

1986

EP Act 1986

1988

SoE

Rio/CBD

1992

1995

State Salinity Council

NHT

1997

MOU & SLC Act

1999

EPA Guidance No. 2 Clearing of Native Vegetation

EP Act Amendments

2004

EP Act Clearing Controls enacted

Auditor Generals Report

Inquiries/Commissions

2013

Clearing Regs amended

2018

Incentives to conserve - \$\$\$ and changes to tax



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Legislative Framework

Legislative framework

- Based on South Australian legislation
- Inserted under Part V of the *Environmental Protection Act 1986*
- Replaced NOI system – all existing transferred at time of commencement
- Regulations tabled in Parliament 1 July 2004
- Proclaimed 8 July 2004
- Bilateral assessment with EPBC Act

Legislative framework

Elements

- Exemptions
- Permits, Assessment and Offsets
- Transparency
- Appeals
- Conservation Notices
- Penalties
- Delegations → DMIRS

EP Act - Part IV and Part V interactions

- If a proposal is the subject of environmental impact assessment under the EP Act – need Minister for the Environment to make a decision on the proposal before can grant or refuse an application for a clearing permit
- 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.
- No need for clearing permits to be granted once the Ministerial approval is issued (usually), as Ministerial approval is an exemption listed under Schedule 6.

Legislative framework - Definition

Clearing

- means the killing or destruction of, the removal of, the severing or ringbarking of trunks or stems of, or the doing of any other substantial damage to some or all of the vegetation
- includes draining, flooding, burning, grazing or any other activity that causes substantial damage to some or all of the native vegetation

Legislative framework - Definition

Native Vegetation

- any living or dead indigenous aquatic or terrestrial vegetation
- applies in WA coastal waters, so also includes tidal and marine vegetation such as mangroves and seagrasses

Except.....

- vegetation that has been intentionally planted unless the planting was required by law, or
- Vegetation protected under a conservation covenant or other binding agreement

Legislative framework

- Prohibitive Act
- Clearing native vegetation is allowed where:
 - Clearing is subject to an exemption; or
 - A permit has been granted



Exemptions

Exemptions

There are 2 classes of exemptions:

- Clearing approved/required under other laws (Schedule 6)
- Clearing for prescribed (Regulations)

Except.....

if the clearing is within an environmentally sensitive area (ESA)

Exemptions – Schedule 6

14 Clauses, include:

- Clause 1 - Clearing that is done in order to give effect to a requirement to clear under a written law.
 - Vegetation that is a danger to electricity supply systems must be removed by the occupier of the land (*Energy Operators (Powers) Act*).
- Clause 2 - clearing that is done under powers of the EP Act
- Clause 9 - clearing in accordance with a subdivision approval
- Clause 13 – grazing of stock under a pastoral lease
- Clauses 10,11 & 12 - Clearing for fire prevention under other Acts.

Exemptions – Regulations

- EP Act defines what can be prescribed in regulations.
- This includes:
 - intentionally planted vegetation that is native vegetation for purposes of Act
 - Prescribed clearing that is exempt under s.51C
 - Records to be kept and published
 - Fees for applications
 - Environmentally sensitive areas
- Does NOT include time frames
- Readily amended

Environmentally Sensitive Areas

- An area can only be an environmentally sensitive area if:
 - the declaration, registration, listing, mapping, etc has been made public; or
 - the owner, occupier or person responsible for the maintenance of the land has been informed.
- “Made public” includes publication in a book, report, on a website or in a government gazette.
- GIS viewer on DWER website to look up ESAs based on cadastral boundaries.

Clearing Permits

Two types of permits

- Area Permit
 - Made by owner of the land for specified area
 - Valid for 2 years (unless otherwise specified in permit)
- Purpose Permits
 - made by person on whose behalf the clearing will be done
 - Valid for default of 5 years (unless otherwise specified in permit)
 - Commonly used by Local Government, Utilities, mining companies



Assessment & Tools

Assessment – Clearing Principles

Native vegetation should not be cleared if

- (a) it comprises a high level of biological diversity;
- (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;
- (c) it includes, or is necessary for the continued existence of, rare flora;
- (d) it comprises the whole or a part of, or is necessary for the maintenance part of a threatened ecological community;
- (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, a watercourse or wetland;
- (g) the clearing of the vegetation is likely to cause land degradation;
- (h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area;
- (i) the clearing of the vegetation is likely to cause deterioration in surface or groundwater quality; or
- (j) the clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding.

Resources for practitioners

- Guidance
 - Assessment
 - Exemptions
 - Offsets
 - Bilateral
- Collect relevant data
- Understand the exemptions – Schedule 6 and Regulations
- Offsets - guidance
- Permit Conditions and reporting requirements
- Check changes to Regulations



Keeping up - Changes to the legislation





Protection

Vegetation protection or loss?

- Effectiveness – Auditor Generals report 2008
- Recent Departmental changes
- Weaknesses - numerous Regulations
- Controversy or compromise
- Illegal clearing
- Enforcement and Compliance
- Presently...will clearing for mining, oil and gas be better managed under Mining Act?



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Thank you

