



Government of Western Australia
Department of Water and Environmental Regulation

Environmental Protection Act 1986

Meeting regulatory requirements for native vegetation clearing

WA Bushfire Conference – July 2024





Outline

- Legislation
- Exemptions
- Clearing referrals
- Clearing permits



Legislation

The clearing of native vegetation in Western Australia is regulated under the *Environmental Protection Act 1986* (EP Act) and the following regulations and notice:

- *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (Clearing Regulations)
- *Environmental Protection (Environmentally Sensitive Areas) Notice 2005* (ESA Notice)





What is native vegetation?

Native vegetation includes:

- aquatic and terrestrial vegetation indigenous to Western Australia;
- dead vegetation (unless declared by regulation to be excluded);
- intentionally sown, planted or propagated vegetation which is required by the EP Act or another written law;
- planted vegetation which was partly or wholly funded by a third party for the purpose of biodiversity conservation or land conservation





What is clearing?

‘Clearing’ means causing substantial damage to native vegetation, including through:

- the killing or removing of native vegetation;
- the severing or ringbarking of trunks or stems;
- the draining or flooding of land;
- the burning of vegetation;
- the grazing of stock; or
- any other activity that kills or damages native vegetation.

Pruning is ***not*** considered ‘clearing’ under the EP Act, provided the pruning does not kill or cause significant damage to the vegetation, and the main trunk or stem of the vegetation is not severed.





Authorisation to clear

Clearing of native vegetation must be authorised by a clearing permit unless:

- the clearing is exempt as prescribed in the Clearing Regulations;
- the clearing is exempt as described in Schedule 6 of the EP Act;
or
- the clearing satisfies all the referral criteria under section 51DA of the EP Act and does not require a permit.



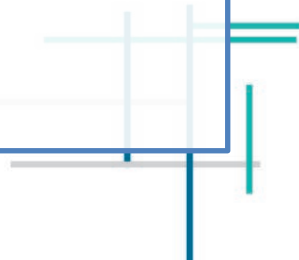


Are you clearing native vegetation?

Option 1: Exemption

Option 2: Referral

Option 3: Permit





Option 1: Exemptions

There are two classes of exemptions

- **Schedule 6** of the Environmental Protection Act
- **Regulation 5** of the Environmental Protection (Clearing of Native Vegetation) Regulations

Exemptions under Clearing Regulations do not apply in Environmentally Sensitive Areas (ESAs) declared under section 51B of the EP Act.

Please note that while clearing **might** be exempt from the requirement for a clearing permit under the EP Act, requirements contained in other legislation could apply.



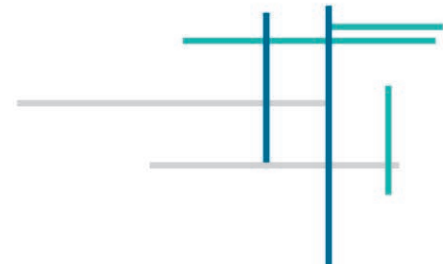


Exemptions relating to bushfire risk mitigation

Schedule 6, Clause 10

'Clearing under the *Bush Fires Act 1954*'

- For example, a local government may give notice in writing under section 33 of the BF Act or publish a notice in the Government Gazette (commonly referred to as a fire-break notice) requiring an owner or occupier of land in its boundaries to plough, cultivate, scarify, burn, clear, or maintain firebreaks, and/or undertake other specified fire prevention measures determined necessary by that local government to prevent the outbreak or spread of a bush fire.
- Section 33(1) and section 33(4) of the BF Act included in the EP Act amendment
 - 33(1): requiring a land owner to comply with a notice
 - 33(4): LGA to conduct clearing if land owner does not comply with a notice





Exemptions relating to bushfire risk mitigation

Schedule 6, Clause 10 cont...

Other exemptions under the *Bush Fires Act 1954*

- burning of bush during declared prohibited burning times, if regulated, permitted or defined by a person authorised by DFES;
- burning of bush during declared restricted burning times, if a permit is obtained from a bush fire control officer, or chief executive officer of the local government if a bush fire control officer is not available;
- burning of bush for the purpose of protecting a dwelling house or other building, or a stack of hay, wheat or other produce, from damage by fire during declared prohibited burning times in accordance with section 23 of the BF Act (if a permit is obtained from a bush fire control officer, or chief executive officer of the local government if a bush fire control officer is not available);



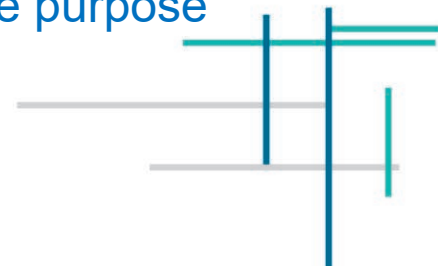


Exemptions relating to bushfire risk mitigation

Schedule 6, Clause 10 cont...

Other exemptions under the *Bush Fires Act 1954*

- burning of bush between the common boundary and the fire-break by the occupier of adjacent land to reduce fire hazard during prohibited burning times, if authorised by DFES.
- a bush fire control officer taking appropriate necessary measures to protect life and property for the purpose of controlling or extinguishing a bushfire or preventing the spread or extension of the fire, at any time of the year.
- Section 36(b) of the of the BF Act included in the EP Act Amendments
 - empowers LGAs to clear a street, road or reserve for the purpose of fire prevention or fire control.





Exemptions relating to bushfire risk mitigation

Regulation 5, Item 2

‘Clearing resulting from accidents or to reduce danger’

- Accident may be result of fire
- Danger must be present, immediate or imminent

Regulation 5, Item 3

‘Clearing for fire hazard reduction’

- Fire hazard reduction burning outside of prohibited or restricted periods
- Done in such a way as to minimize long term damage to the environmental values of the vegetation.

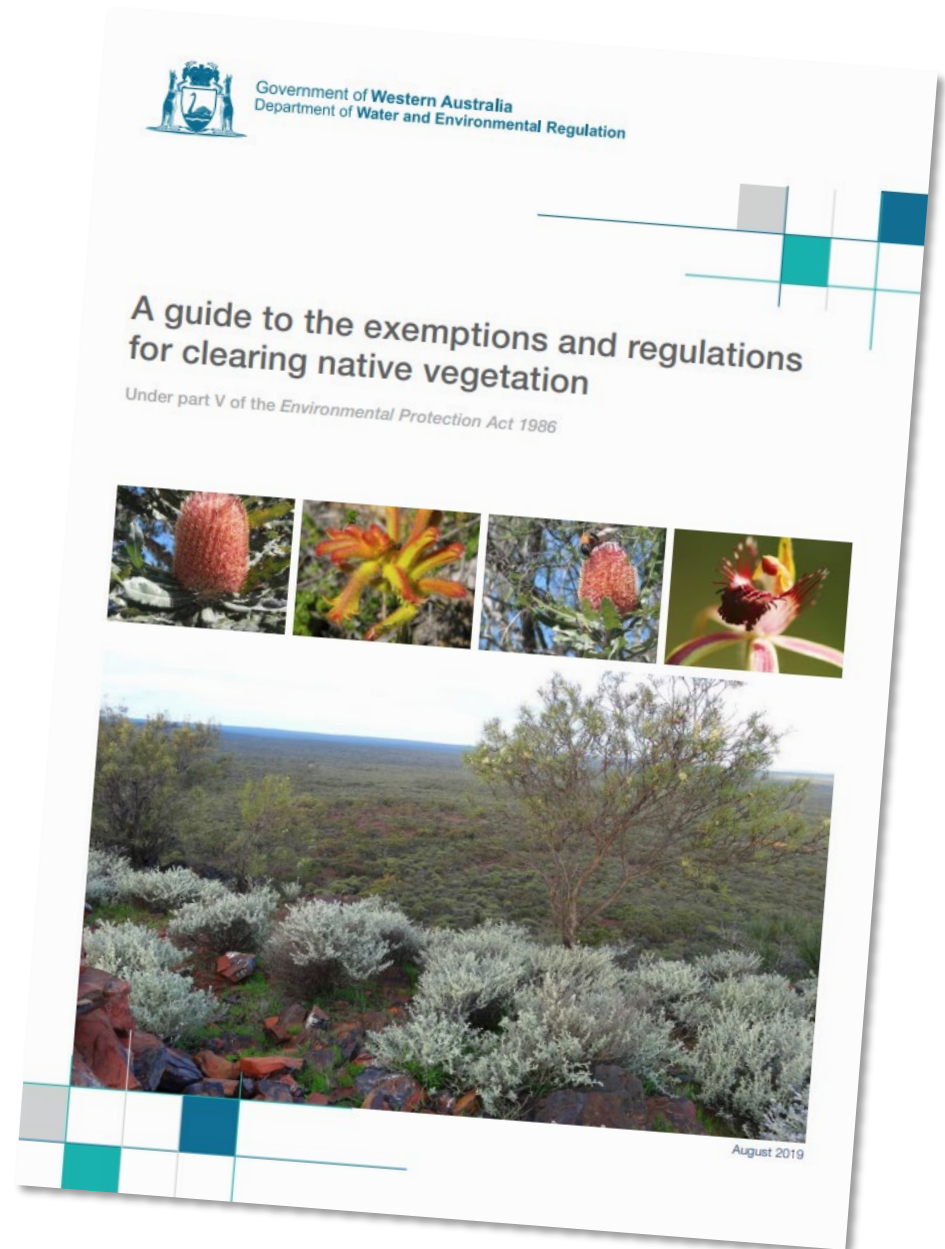
These exemptions do not apply in an environmentally sensitive areas.





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Download
[Guideline: A guide to the exemptions and regulations for clearing native vegetation](#)





Option 2: Referrals

Referral of proposed very low impact clearing to DWER for a determination as to whether the clearing may proceed without a clearing permit

A clearing referral **is not**:

- analogous to a Part IV (EPA) referral
- a mechanism for approving clearing for small projects incrementally or small changes to existing projects

Must satisfy all four criteria specified under 51DA of the EP Act





Referral criteria

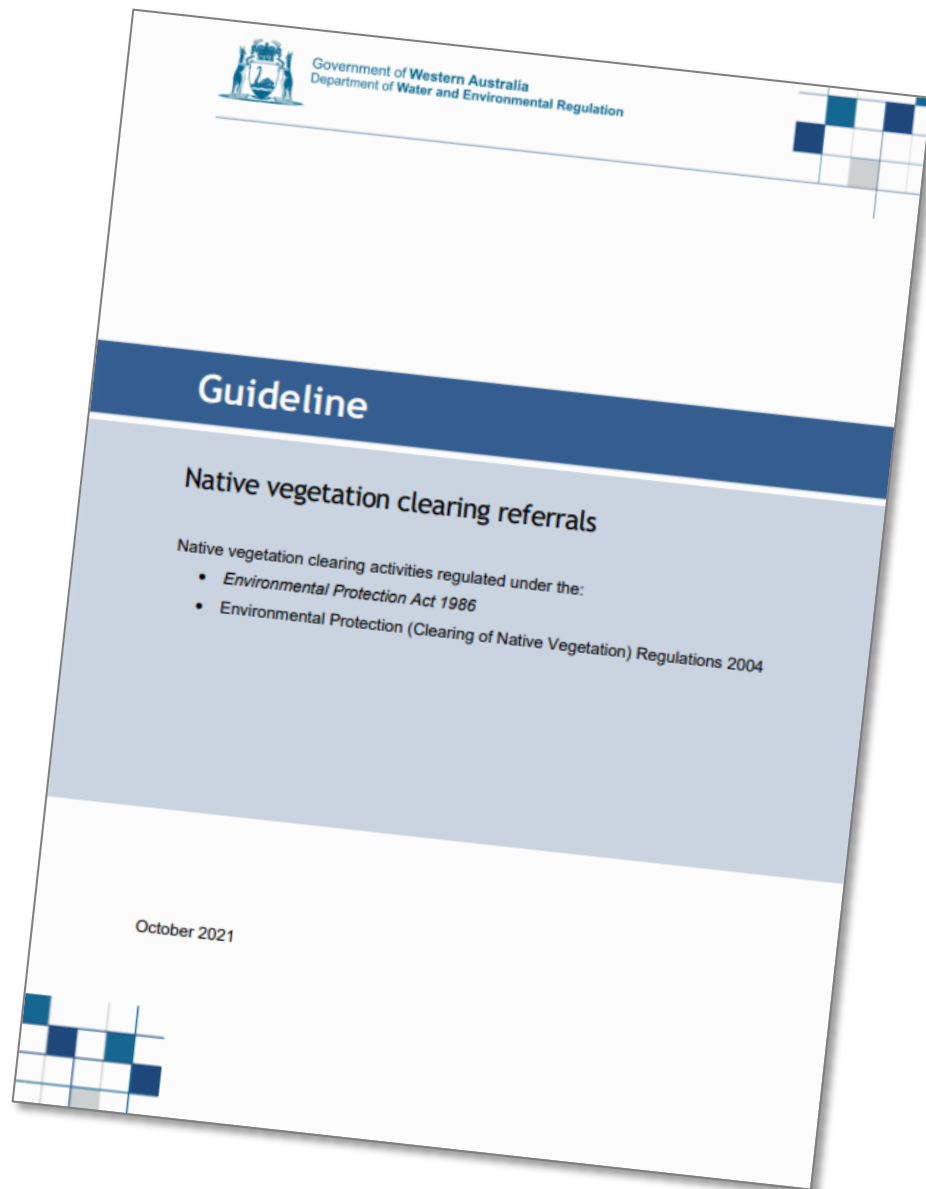
- (a) Whether the area proposed to be cleared (the **area**) is small relative to the total remaining vegetation —
 - (i) within the region in which the area is situated; or
 - (ii) of the ecological community of which the vegetation proposed to be cleared forms part; and
- (b) Whether there are any known or likely significant environmental values within the area; and
- (c) Whether the state of scientific knowledge about vegetation within the region in which the area is situated is adequate; and
- (d) Whether the issues that would arise as a result of the proposed clearing are likely to require conditions to manage or mitigate effects on the environment.





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Download:
[Guideline: Native vegetation clearing referrals](#)





Referral outcomes

Permit not required

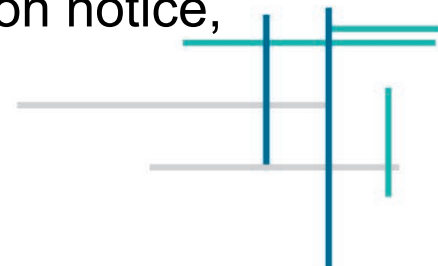
- satisfies all of the criteria specified; or,
- clearing exemption applies and neither a permit or referral is required

Permit required

- does not satisfy all criteria specified
- referrer will then have the option to notify DWER that the referral should now be dealt with as if it was an application

Notice that clearing cannot proceed

- If the proposed clearing contravenes a soil conservation notice, clearing cannot proceed





Clearing Permits

Area permit

- applicant is the land owner; is acting on the land owner's behalf; or, is likely to become the land owner
- clearing for a specified area
- typical duration of two years

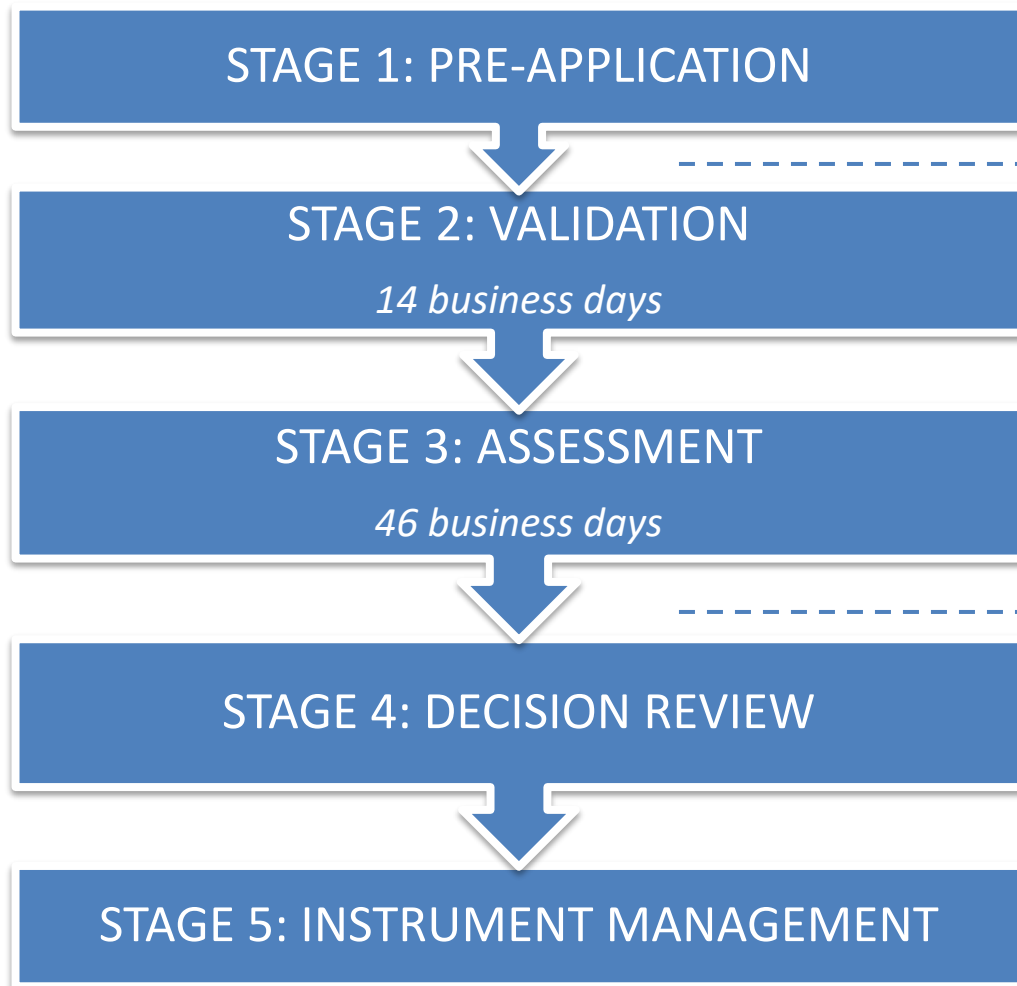
Purpose permit

- applicant is the person / organisation by or on whose behalf the clearing is to be done
- clearing of different areas from time to time for a purpose specified in the application
- typical duration of five years





Clearing permit process



Opportunity to discuss application with DWER

Application submitted

The department aims to make a determination on 80% of applications within 60 business days and the remainder within 90 business days

Decision issued and advertised

Appeals process



Assessment

In determining clearing permit applications, the Chief Executive Officer (CEO) or Delegated Officer:

- has regard to the clearing principles in Schedule 5 of the EP Act, which consider environmental values of native vegetation, including biodiversity, water quality and land degradation issues;
- available databases;
- has regard to planning instruments or other matters that the CEO considers relevant;
- information provided by the applicant;
- benefit/necessity of the clearing (black spot funding/social/public);
- findings from site inspection (where undertaken); and
- takes into account public submissions received within the advertised comment period.

The CEO or Delegated Officer also takes into consideration advice received from other agencies, nearby decisions and other relevant matters.





Decisions on applications

Following assessment of an application, the CEO or Delegated Officer shall either:

- **Grant** a clearing permit for all or a part of the clearing applied for (which may be subject to conditions); or
- **Refuse** to grant a clearing permit; or
- Refer to EPA.

The CEO or Delegated Officer may make a decision that is significantly at variance to the clearing provisions if there is good reason for doing so and that reason is recorded and published.





Types of conditions

In deciding to Grant/Part Grant a Clearing Permit, the Clearing Permit may be subject to conditions.

Typical types of conditions used to manage impacts from clearing:

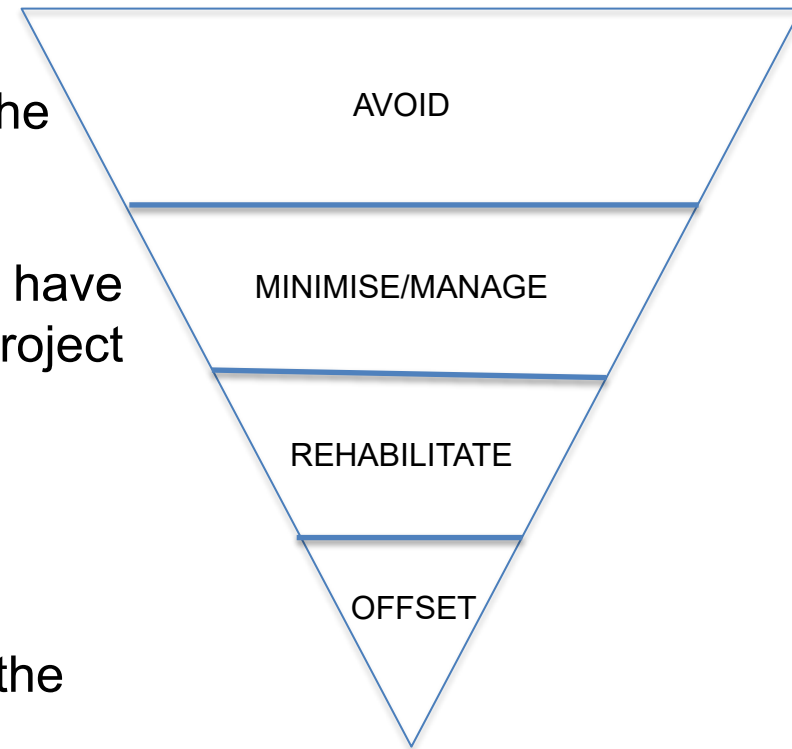
- Weed and dieback management
- Revegetation after temporary use activity (best practice)
- Directional clearing
- Fauna/Flora management actions:
 - Demarcation of threatened flora
 - Check suitable nesting trees with hollows for fauna activity
 - Clearing outside breeding season
- Offset requirements





Mitigation Hierarchy

- Mitigation hierarchy is to be applied to the greatest extent practicable
- Applicant should demonstrate how they have applied the mitigation hierarchy to the project
 - design changes
 - reducing the footprint
 - changing the location
- Rehabilitation can substantially reduce the permanent impact of a project
- An offset is required when significant residual impacts remain after the mitigation hierarchy has been applied





Reporting unlawful clearing

Unlawful clearing can be reported online to DWER via the Pollution Watch Hotline 1377 784 782 or online

- <https://www.der.wa.gov.au/your-environment/reporting-pollution>

All reports are taken seriously and investigated to determine what response is required.

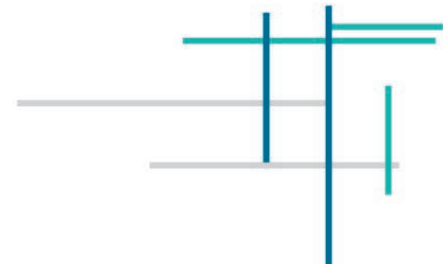
- DWER uses imagery captured by satellites to monitor vegetation clearing.
- Where clearing is identified, a further assessment and investigation is conducted which may involve a site inspection and inquiries with the land holder.





Guidance materials

- [A guide to the exemptions and regulations for clearing native vegetation](#)
- [Native vegetation clearing referrals guideline](#)
- [A guide to the assessment of applications to clear native vegetation](#)
- [Native vegetation clearing permits procedure](#)





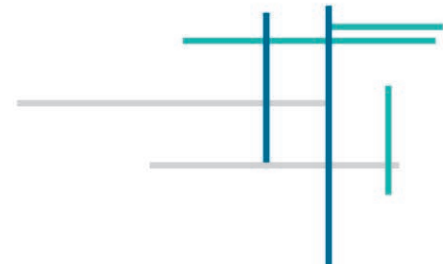
Guidance materials - Factsheets

Fact Sheet 1: Native vegetation clearing legislation in Western Australia

Fact Sheet 9: Clearing limited to five hectares a year (limited clearing exemptions)

Fact Sheet 24: Environmentally sensitive areas

<https://www.der.wa.gov.au/your-environment/native-vegetation/49-factsheets>





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Thank you for your attention

**If you have any questions, you can
contact Native Vegetation Regulation**

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