

Notes

¹ This is a compilation of the *Environmental Protection Act 1986* and includes the amendments made by the other written laws referred to in the following table. For amendments that had not come into operation on the date on which this compilation was prepared see endnote ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Environmental Protection Act 1986</i>	87 of 1986	10 Dec 1986	20 Feb 1987 (see s. 2 and <i>Gazette</i> 20 Feb 1987 p. 440)
<i>Acts Amendment (Public Service) Act 1987 s. 32</i>	113 of 1987	31 Dec 1987	16 Mar 1988 (see s. 2 and <i>Gazette</i> 16 Mar 1988 p. 813)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	Deemed operative 1 Jul 1993 (see s. 2)
<i>Environmental Protection Amendment Act 1993</i> ⁵	34 of 1993	16 Dec 1993	14 Jan 1994 (see s. 2 and <i>Gazette</i> 14 Jan 1994 p. 69)
<i>Acts Amendment (Public Sector Management) Act 1994 s. 19</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Statutes (Repeals and Minor Amendments) Act 1994 s. 4</i>	73 of 1994	9 Dec 1994	9 Dec 1994 (see s. 2)
<i>Planning Legislation Amendment Act (No. 2) 1994 s. 46(1) and (6)</i>	84 of 1994	13 Jan 1995	1 Mar 1995 (see s. 2 and <i>Gazette</i> 21 Feb 1995 p. 567)
<i>Water Agencies Restructure (Transitional and Consequential Provisions) Act 1995 s. 188</i>	73 of 1995	27 Dec 1995	1 Jan 1996 (see s. 2 and <i>Gazette</i> 29 Dec 1995 p. 6291)
Reprint of the <i>Environmental Protection Act 1986</i> as at 7 Mar 1996 (includes amendments listed above)			
<i>Local Government (Consequential Amendments) Act 1996 s. 4</i>	14 of 1996	28 Jun 1996	1 Jul 1996 (see s. 2)
<i>Planning Legislation Amendment Act 1996 Pt. 3</i>	23 of 1996	11 Jul 1996	4 Aug 1996 (see s. 2 and <i>Gazette</i> 2 Aug 1996 p. 3615)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Assemblies and Noise) Act 1996 Pt. 3</i>	50 of 1996	31 Oct 1996	4 Dec 1996 (see s. 2 and <i>Gazette</i> 3 Dec 1996 p. 6695)

Short title	Number and year	Assent	Commencement
<i>Transfer of Land Amendment Act 1996</i> s. 153(1)	81 of 1996	14 Nov 1996	14 Nov 1996 (see s. 2(1))
<i>Acts Amendment (Land Administration) Act 1997</i> Pt. 25	31 of 1997	3 Oct 1997	30 Mar 1998 (see s. 2 and <i>Gazette</i> 27 Mar 1998 p. 1765)
<i>Statutes (Repeals and Minor Amendments) Act 1997</i> s. 54	57 of 1997	15 Dec 1997	15 Dec 1997 (see s. 2(1))
<i>Environmental Protection Amendment Act 1998</i> ⁶	14 of 1998	21 May 1998	s. 1-3, 21, 26, 27, 29, 32-34, 36, 37: 21 May 1998 (see s. 2(1)); s. 20: 1 Jul 1998 (see s. 2(2) and <i>Gazette</i> 26 Jun 1998 p. 3369); s. 4, 6-9, 11, 12 and 14 (to the extent that it inserts Pt. VIA heading, Div. 3 and 4 headings and s. 99Q-99X and 99Z-99ZB), 15-19, 22-25, 28, 30, 31 and 35: 1 Jul 1998 (see s. 2(3) and <i>Gazette</i> 26 Jun 1998 p. 3369); s. 10, 13 and 14 (to the extent that it inserts Div. 1 and 2 headings and s. 99A-99P and 99Y): 8 Jan 1999 (see s. 2 and <i>Gazette</i> 8 Jan 1999 p. 35); s. 5 to be proclaimed ^{1a}
Reprint of the <i>Environmental Protection Act 1986</i> as at 16 Apr 1999 (includes amendments listed above except those in the <i>Environmental Protection Amendment Act 1998</i> s. 5)			
<i>Midland Redevelopment Act 1999</i> s. 71	38 of 1999	11 Nov 1999	1 Jan 2000 (see s. 2 and <i>Gazette</i> 31 Dec 1999 p. 7059)
Reprint of the <i>Environmental Protection Act 1986</i> as at 7 Jul 2000 (includes amendments listed above except those in the <i>Environmental Protection Amendment Act 1998</i> s. 5)			
<i>Rights in Water and Irrigation Amendment Act 2000</i> s. 84	49 of 2000	28 Nov 2000	10 Jan 2001 (see s. 2 and <i>Gazette</i> 10 Jan 2001 p. 163)
<i>Criminal Property Confiscation (Consequential Provisions) Act 2000</i> s. 13 ⁷	69 of 2000	6 Dec 2000	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7903)
<i>Hope Valley-Wattleup Redevelopment Act 2000</i> s. 37	77 of 2000	7 Dec 2000	1 Jan 2001 (see s. 2 and <i>Gazette</i> 29 Dec 2000 p. 7904)
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 23	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and Cwlth <i>Gazette</i> 13 Jul 2001 No. S285)

Short title	Number and year	Assent	Commencement
Reprint of the <i>Environmental Protection Act 1986</i> as at 11 Jan 2002 (includes amendments listed above)			
<i>Armada Redevelopment Act 2001</i> s.69	25 of 2001	26 Nov 2001	23 Mar 2002 (see s. 2 and <i>Gazette</i> 22 Mar 2002 p. 1651)
<i>Environmental Protection Amendment Act 2003</i> ¹¹ , 12, 13	54 of 2003	20 Oct 2003	Act, other than s. 37, 54(2), 55, 72(2) and (4), 75(3) and (4) and Part 9: 19 Nov 2003 (see s. 2 and <i>Gazette</i> 18 Nov 2003 p. 4723); s. 37, 54(2), 55, 72(2) and (4), 75(3) and (4) and Part 9: to be proclaimed

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Environmental Protection Amendment Act 1998</i> s. 5 ⁸	14 of 1998	21 May 1998	To be proclaimed (see s. 2(3))
<i>Environmental Protection Amendment Act 2003</i> s. 37, 54(2), 55, 72(2) and (4), 75(3) and (4) and Part 9 ⁹	54 of 2003	20 Oct 2003	To be proclaimed (see s. 2)
<i>Contaminated Sites Act 2003</i> s. 100 ¹⁰	60 of 2003	7 Nov 2003	To be proclaimed (see s. 2)

² Repealed by the *Acts Amendment and Repeal (Environmental Protection) Act 1986*.

³ Act No. 77 of 1986.

⁴ Repealed by the *Acts Amendment (Occupational Health, Safety and Welfare) Act 1987*.

⁵ The *Environmental Protection Amendment Act 1993* s. 5(2), (3) and (4) read as follows:

“

- (2) If the appointment of a person as an Authority member under the provisions of section 7 of the principal Act as enacted before the commencement is still in effect immediately before that commencement, that appointment is terminated on and by virtue of that commencement.

- (3) Subsection (2) does not affect the eligibility of the person to be appointed as an Authority member under section 7 as amended by this Act.
- (4) In subsections (2) and (3) “**Authority member**” has the same meaning as in the principal Act.

”.

6 The *Environmental Protection Amendment Act 1998* Pt. 3 Div. 3 reads as follows:

“

Division 3 — Recovery of certain costs

26. Interpretation

In this Division —

“**agreement**” means an agreement —

- (a) made between the State and another party in respect of disposal of waste at the Mt Walton East waste facility before the coming into operation of this section; and
- (b) declared by the Minister, by notice published in the *Gazette*, to be an agreement to which this Division applies,

and includes —

- (c) that agreement as varied from time to time in accordance with its provisions; and
- (d) any annexure to that agreement;

“**Mt Walton East waste facility**” means the intractable waste disposal facility at Mt Walton East, Shire of Coolgardie in Western Australia situated on reserve number 42001 (Jaurdi Location 73).

27. Recovery of costs from other party

- (1) The State may recover directly from the other party to an agreement costs (within the meaning of the agreement) incurred by the State in conducting the Works (within the meaning of the agreement).
- (2) The power of the State under subsection (1) is to be exercised subject to, and in accordance with, the terms of the relevant agreement.

”.

7 The *Criminal Property Confiscation (Consequential Provisions) Act 2000* s. 13(2) reads as follows:

“

- (2) Despite the amendment effected by subsection (1), section 99U(4) of the *Environmental Protection Act 1986* as in force before the commencement of this Act continues to apply to any exercise under this Act of the court’s powers under the *Crimes (Confiscation of Profits) Act 1988*.

”.

On the date as at which this compilation was prepared, the *Environmental Protection Amendment Act 1998* s. 5 had not come into operation. It reads:

“

5. Section 35 amended

- (1) Section 35(1) of the principal Act is amended —
- (a) by inserting “and” after paragraph (a);
 - (b) by deleting “; and” after paragraph (b) and substituting a full stop; and
 - (c) by deleting paragraph (c).
- (2) After section 35(1) of the principal Act the following subsections are inserted —

“

- (1a) An approved policy may create offences and provide penalties for them as follows —
- (a) for a Tier 1 offence —
 - (i) if the offender is an individual, a penalty not exceeding \$250 000 and, in the case of a continuing offence, a daily penalty not exceeding \$50 000; and
 - (ii) if the offender is a body corporate, a penalty not exceeding \$500 000 and, in the case of a continuing offence, a daily penalty not exceeding \$100 000;
 - (b) for a Tier 2 offence —
 - (i) if the offender is an individual, a penalty not exceeding \$62 500 and, in the case of a continuing offence, a daily penalty not exceeding \$12 500; and
 - (ii) if the offender is a body corporate, a penalty not exceeding \$125 000 and, in the case of a continuing offence, a daily penalty not exceeding \$25 000;
- and
- (c) for a Tier 3 offence, a penalty not exceeding \$5 000 and, in the case of a continuing offence, a daily penalty not exceeding \$1 000.
- (1b) For the purposes of subsection (1a), an offence is a Tier 1, Tier 2 or Tier 3 offence if the approved policy declares that such an offence is an offence of that category.

”
”

On the date as at which this compilation was prepared, the *Environmental Protection Amendment Act 2003* s. 37, 54(2), 55, 72(2) and (4), 75(3) and (4) and Part 9 had not come into operation. They read as follows:

“

37. Sections 50A, 50B, 50C and 50D inserted

After section 50 the following sections are inserted —

“

50A. Causing serious environmental harm

- (1) A person who, intentionally or with criminal negligence —
 - (a) causes serious environmental harm; or
 - (b) allows serious environmental harm to be caused,
 commits an offence.
- (2) A person who —
 - (a) causes serious environmental harm; or
 - (b) allows serious environmental harm to be caused,
 commits an offence.
- (3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.

50B. Causing material environmental harm

- (1) A person who intentionally or with criminal negligence —
 - (a) causes material environmental harm; or
 - (b) allows material environmental harm to be caused,
 commits an offence.
- (2) A person who —
 - (a) causes material environmental harm; or
 - (b) allows material environmental harm to be caused,
 commits an offence.
- (3) A person charged with committing an offence against subsection (1) may be convicted of an offence against subsection (2) which is established by the evidence.

50C. Court may find defendant guilty of alternative offences if charged with causing serious environmental harm

A person charged with committing an offence against section 50A may be convicted of an offence against section 50B(1) or (2) or 51C which is established by the evidence.

50D. Regulations may require authorisation for conduct that might cause pollution or environmental harm

- (1) In this section —

“**authorisation**” means a licence, permit, approval or exemption granted, issued or given under the regulations;

“**conduct affecting the environment**” means —

 - (a) causing or allowing anything to be discharged, emitted or transmitted;

- (b) causing or allowing the nature or volume of anything discharged, emitted or transmitted to be changed;
 - (c) conduct, or an operation or activity, that is a potential cause of pollution or environmental harm; or
 - (d) causing or allowing conduct, or an operation or activity, that is a potential cause of pollution or environmental harm.
- (2) If the regulations require an authorisation to be held for conduct affecting the environment, a person who contravenes the regulations by —
- (a) engaging in that conduct without there being an authorisation in force in relation to it; or
 - (b) engaging in that conduct in contravention of a condition to which an authorisation is subject,
- commits an offence.
- (3) Subsection (2) does not apply if a penalty for that contravention of the regulations is provided in the regulations.

”.

54. Section 74 amended

- (2) Section 74(3) is repealed.

55. Sections 74A and 74B inserted

After section 74 the following sections are inserted —

“

74A. Defences to proceedings for pollution or environmental harm: authority of this Act

It is a defence to proceedings under this Part for causing pollution, in respect of an emission, or for causing serious environmental harm or material environmental harm, if the person charged with that offence proves that the pollution, emission or environmental harm occurred —

- (a) in the implementation of a proposal in accordance with an implementation agreement or decision;
- (b) in accordance with —
 - (i) a prescribed standard;
 - (ii) a clearing permit;
 - (iii) a works approval;
 - (iv) a licence;
 - (v) a requirement contained in a closure notice, an environmental protection notice, a vegetation conservation notice or a prevention notice;
 - (vi) an approved policy;
 - (vii) a declaration under section 6;
 - (viii) an exemption under section 75; or
 - (ix) a licence, permit, approval or exemption granted, issued or given under the regulations;

or

- (c) in the exercise of any power conferred under this Act.

74B. Other defences to environmental harm offences

- (1) It is a defence to proceedings under this Part for causing serious environmental harm or material environmental harm if the person charged with that offence proves that the environmental harm was, or resulted from, an authorised act which did not contravene any other written law.
- (2) For the purposes of subsection (1) an act was authorised if it was —
 - (a) done in accordance with an authorisation, approval, requirement or exemption given in the exercise of a power under another written law;
 - (b) done in the exercise by a public authority, or a member, officer or employee of a public authority, of a function conferred under another written law;
 - (c) done as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995* in respect of which an order has been made under section 12 of that Act and —
 - (i) in accordance with the order as to the carrying out or management of that agricultural practice; or
 - (ii) in the carrying out or management of a normal farm practice, as specified in the order;
 - (d) done —
 - (i) as an agricultural practice within the meaning of the *Agricultural Practices (Disputes) Act 1995*; or
 - (ii) in the management or harvesting of a plantation, and in compliance with a code of practice relating to an act of that kind issued under section 122A or made or approved under any other written law;
 - (e) without limiting section 74A and paragraphs (a) to (d) of this subsection, clearing of a kind set out in Schedule 6; or
 - (f) an act of a kind prescribed for the purposes of section 51C that was not done in an environmentally sensitive area within the meaning of section 51A.

”.

72. Section 54 amended

- (2) After section 54(2) the following subsection is inserted —

“

- (2a) As well as seeking comments under subsection (2)(b) the CEO is to advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within such period as is specified in the advertisement.

”.

- (4) Section 54(3) is amended by inserting after “(2)(b)” —
“ or (2a) ”.

75. Section 57 amended

(3) After section 57(2) the following subsection is inserted —

“

(2a) As well as seeking comments under subsection (2)(b) the CEO is to advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within such period as is specified in the advertisement.

”.

(4) Section 57(3) is amended by inserting after “(2)(b)” —

“ or (2a) ”.

Part 9 — Clearing permits

Division 1 — Amendments to *Environmental Protection Act 1986*

109. Section 3 amended

(1) Section 3(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“clearing” has the meaning given by section 51A;

“clearing permit” means a clearing permit granted and in force under Part V Division 2;

“vegetation conservation notice” means a vegetation conservation notice given under section 70;

”.

(2) Section 3(4) is amended as follows:

(a) by deleting “a works” and inserting instead —

“ a clearing permit, works ”;

(b) by deleting “the works” in both places where it occurs and inserting instead —

“ the clearing permit, works ”.

110. Part V Division 2 inserted and transitional provisions

(1) Before section 52 the following Division is inserted —

“

Division 2 — Clearing of native vegetation

51A. Definitions

In this Division —

“area permit” has the meaning given by section 51E(7);

“clearing” means —

(a) the killing or destruction of;

(b) the removal of;

(c) the severing or ringbarking of trunks or stems of; or

(d) the doing of any other substantial damage to,

some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock, or any other act or activity, that causes —

- (e) the killing or destruction of;
- (f) the severing of trunks or stems of; or
- (g) any other substantial damage to,
some or all of the native vegetation in an area;

“**clearing principles**” means the principles for clearing native vegetation set out in Schedule 5;

“**environmentally sensitive area**” means an area that is the subject of a declaration that is in force under section 51B;

“**purpose permit**” has the meaning given by section 51E(8);

“**native vegetation**” has the meaning given by section 3(1) but does not include vegetation that was intentionally sown, planted or propagated unless —

- (a) that vegetation was sown, planted or propagated as required under this Act or another written law; or
- (b) that vegetation is of a class declared by regulation to be included in this definition;

“**occupier**” of land means a person who is in occupation or control of the land, or who is entitled to be in occupation or control of the land;

“**owner**” of land means —

- (a) in relation to land alienated from the Crown, the holder (at law or in equity) of an estate in fee simple in the land;
- (b) in relation to land that the Crown has lawfully agreed to alienate, the person who is entitled to the benefit of the agreement;
- (c) in relation to land held under a lease lawfully granted by the Crown, the lessee; and
- (d) in relation to any other land, the public authority that has the care, control or management of the land or, if there is no such public authority, the Crown.

51B. Declaration of environmentally sensitive areas

- (1) The Minister may, by notice, declare —
 - (a) an area of the State specified in the notice; or
 - (b) an area of the State of a class specified in the notice,to be an environmentally sensitive area for the purposes of this Division.
- (2) A notice under this section is subsidiary legislation for the purposes of the *Interpretation Act 1984*.
- (3) Subsections (1), (2), (3), (5), (6) and (8)(a) of section 42 of the *Interpretation Act 1984* apply to a notice under this section as if it were regulations within the meaning of that section.
- (4) Before a notice is published under this section the Minister shall —
 - (a) seek comments on it from the Authority and from any public authority or person which or who has, in the opinion of the Minister, an interest in its subject matter; and

- (b) take into account any comments received from the Authority or such a public authority or person.

51C. Unauthorised clearing of native vegetation

A person who causes or allows clearing commits an offence unless the clearing —

- (a) is done in accordance with a clearing permit;
- (b) is of a kind set out in Schedule 6; or
- (c) is of a kind prescribed for the purposes of this section and is not done in an environmentally sensitive area.

51D. Particular provisions in relation to soil and land conservation

- (1) In this section —

“**agreement to reserve**” means an agreement to reserve as referred to in section 30B(2) of the SLC Act;

“**Commissioner**” means the person for the time being holding or acting in the office of the Commissioner of Soil and Land Conservation under the SLC Act;

“**conservation covenant**” means a conservation covenant as referred to in section 30B(2) of the SLC Act;

“**SLC Act**” means the *Soil and Land Conservation Act 1945*;

“**soil conservation notice**” has the same meaning as it has in Part V of the SLC Act.

- (2) Section 51C(a) does not apply to the clearing of vegetation on land the subject of an agreement to reserve unless —
 - (a) the clearing permit was granted; or
 - (b) the clearing is done,

with the written approval of the Commissioner.

- (3) Section 51C(a) does not apply to the clearing of vegetation —
 - (a) on land the subject of a conservation covenant; or
 - (b) in contravention of a soil conservation notice.

51E. Applications for clearing permits

- (1) An application for a clearing permit shall —

- (a) be made in the form and in the manner approved by the CEO;
- (b) indicate whether it relates to —
 - (i) the clearing of a particular area specified in the application; or
 - (ii) the clearing of different areas from time to time for a purpose specified in the application;
- (c) be accompanied by the fee prescribed by or determined under the regulations; and
- (d) be supported by any management plans, maps, and other documents and information required by the CEO and include a summary of that supporting documentation and information.

- (2) An application for a clearing permit can only be made —

- (a) if it relates to clearing referred to in subsection (1)(b)(i) —

- (i) by the owner of the land on which the clearing is proposed to be done or a person acting on the owner's behalf; or
 - (ii) by a person who satisfies the CEO that the person is likely to become the owner of the land on which the clearing is proposed to be done;
 - or
 - (b) if it relates to clearing referred to in subsection (1)(b)(ii), by the person by or on whose behalf the clearing is to be done.
- (3) If an application made under subsection (1) does not comply with subsections (1) and (2), the CEO shall decline to deal with the application and advise the applicant accordingly.
- (4) If the application complies with subsections (1) and (2), the CEO shall —
- (a) advise the applicant that the application has been received;
 - (b) invite any public authority or person which or who has, in the opinion of the CEO, a direct interest in the subject matter of the application, to comment on it within such period as the CEO specifies; and
 - (c) advertise the application in the prescribed manner, inviting any person who wishes to comment on it to do so within such period as is specified in the advertisement.
- (5) The CEO shall, after having taken into account any comments received within the specified period from any public authority or person from which or whom comments were invited under subsection (4)(b) or (c) and subject to sections 51O and 51P —
- (a) grant a clearing permit subject to such of the conditions referred to in section 51H as the CEO specifies in the permit; or
 - (b) refuse to grant a clearing permit.
- (6) The CEO is to give the applicant written notice of the refusal to grant a clearing permit.
- (7) If a clearing permit relates to clearing referred to in subsection (1)(b)(i), it —
- (a) may be granted under subsection (5) for all or some of the clearing applied for;
 - (b) is to describe the boundaries of the area that may be cleared; and
 - (c) is referred to for the purposes of this Division as an **“area permit”**.
- (8) If a clearing permit relates to clearing referred to in subsection (1)(b)(ii), it —
- (a) is to describe the purpose for which the clearing may be done;
 - (b) is to describe the principles and criteria that are to be applied, and the strategies and procedures that are to be followed, in relation to the clearing; and

- (c) is referred to for the purposes of this Division as a **“purpose permit”**.
- (9) In the case of an application made under subsection (2)(a)(ii), the CEO may, under subsection (5)(a), give the applicant a written undertaking that if the person becomes the owner of the land on which the clearing is proposed to be done, the CEO will, subject to subsection (10), grant a clearing permit to the applicant subject to such of the conditions referred to in section 51H as the CEO specifies in the undertaking.
- (10) A clearing permit cannot be granted pursuant to an undertaking mentioned in subsection (9) unless —
- (a) the applicant becomes the owner of the land on or before such day as is specified in the undertaking; and
 - (b) the CEO has been notified in writing that the applicant has become the owner of the land.
- (11) A reference in subsection (5)(b), (6) or (7)(a) or in section 51P(2) or 101A to granting or refusing to grant a clearing permit includes a reference to giving or refusing to give an undertaking mentioned in subsection (9).
- (12) A reference in section 101A to the specification of a condition in a clearing permit includes a reference to the specification of a condition in an undertaking mentioned in subsection (9).

51F. Other decisions to take precedence

- (1) If an application for a clearing permit made under section 51E(1) is related to a proposal which has been referred to the Authority under section 38, the CEO shall not perform any duty imposed on the CEO by section 51E(5) —
- (a) while any decision-making authority is precluded by section 41 from making any decision which could have the effect of causing or allowing that proposal to be implemented; or
 - (b) contrary to, or otherwise than in accordance with, an implementation agreement or decision.
- (2) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which an application for a clearing permit made under section 51E(1) is related, the CEO does not have to perform any duty imposed under section 51E(5) while that decision has effect.

51G. Duration of clearing permits

Subject to this Act, a clearing permit continues in force —

- (a) if it is an area permit, for 2 years; or
- (b) if it is a purpose permit, for 5 years,

from the date on which it is granted unless another period is specified in the permit.

51H. Clearing permit conditions

- (1) A clearing permit may be granted subject to such conditions as the CEO considers to be necessary or convenient for the purposes of preventing, controlling, abating or mitigating environmental harm or offsetting the loss of the cleared vegetation.

- (2) Section 51I sets out some kinds of conditions that may be attached to a clearing permit and further kinds of conditions may be prescribed, but nothing in that section or the regulations prevents other conditions from being attached.
- (3) The CEO is not to attach —
 - (a) a condition that would, in the CEO's opinion, be seriously at variance with the clearing principles except to the extent necessary to give effect to a decision made under section 51O(3); or
 - (b) subject to section 51P, a condition that would be inconsistent with an approved policy.

51I. Some kinds of conditions

- (1) A condition may specify activities that are authorised, or not authorised, by the clearing permit.
- (2) The following list sets out things that the holder of a clearing permit can be required to do (at the expense of the holder) under conditions attached to the clearing permit —
 - (a) take specified measures for the purpose of —
 - (i) preventing, or minimising the likelihood of, environmental harm; or
 - (ii) controlling or abating environmental harm either generally or in accordance with specified criteria;
 - (b) establish and maintain vegetation on land other than land cleared under the permit in order to offset the loss of the cleared vegetation, or make monetary contributions to a fund maintained for the purpose of establishing or maintaining vegetation;
 - (c) give a conservation covenant or agreement to reserve under section 30B of the *Soil and Land Conservation Act 1945*, or some other form of binding undertaking to establish and maintain vegetation, in relation to land other than land cleared under the permit;
 - (d) monitor operations (including abatement operations) and environmental harm, conduct analysis of monitoring data, and provide reports on monitoring data, and analysis of it, to the CEO;
 - (e) investigate options for measures for preventing, controlling or abating environmental harm;
 - (f) conduct environmental risk assessment studies;
 - (g) provide reports on audits and studies, including audit compliance reports, to the CEO;
 - (h) prepare, implement and adhere to environmental management systems, environmental management plans and environmental improvement plans;
 - (i) have something required to be done under a condition done by a person of a class approved by the CEO;
 - (j) do something required to be done under a condition —
 - (i) within a specified period or before a specified date; or
 - (ii) in a specified form or manner.

- (3) Without limiting subsection (2) paragraph (d), a condition referred to in that paragraph can require the holder of a clearing permit to carry out a specified monitoring programme for the purpose of supplying the CEO with information relating to the nature and extent of any impacts or potential impacts the activities under the permit may have on the environment or any environmental value.
- (4) In this section —
“**establish**” includes conserve;
“**specified**” means specified by the CEO in the clearing permit concerned.

51J. Contravention of clearing permit conditions

- (1) The holder of a clearing permit who contravenes a condition to which the permit is subject commits an offence.
- (2) If a clearing permit is subject to a condition referred to in section 51I(2)(c), a reference in this Division to a contravention of a condition includes a reference to a contravention of the covenant, agreement or undertaking given by the permit holder.

51K. Amendment of a clearing permit

- (1) The CEO may amend a clearing permit by —
 - (a) removing or varying any condition to which the clearing permit is subject;
 - (b) subjecting the clearing permit to a new condition;
 - (c) in the case of an area permit, redescribing the boundaries of the area that may be cleared under the permit or of land to which a condition referred to in section 51I(2)(b) or (c) applies;
 - (d) in the case of a purpose permit, redescribing any of the principles or criteria that are to be applied, or the strategies or procedures that are to be followed, in relation to the clearing;
 - (e) correcting in the clearing permit —
 - (i) a clerical mistake or unintentional error or omission;
 - (ii) a figure which has been miscalculated; or
 - (iii) the misdescription of any person, thing, area, property or activity;
 - (f) making an administrative change to the format of the clearing permit which does not alter the obligations of the permit holder;
 - (g) amending the clearing permit in conformity with an approved policy or with an exemption conferred under this Act;
 - (h) amending the clearing permit to give effect to a decision of the Minister under this Act (whether on an appeal or otherwise); or
 - (i) extending the duration of the clearing permit.
- (2) A clearing permit may be amended on application by the holder of the permit or on the initiative of the CEO.

51L. Revocation or suspension of clearing permit

- (1) The CEO may revoke or suspend a clearing permit.
- (2) The grounds for revocation or suspension of a clearing permit are that —
 - (a) the CEO is satisfied that there has been a breach of any of the conditions to which the clearing permit is subject;
 - (b) where a person has become the holder of the clearing permit by operation of section 51N, the CEO is satisfied that the person is unwilling or unable to comply with the conditions to which the permit is subject;
 - (c) information contained in or supporting the application was false or misleading in a material respect; or
 - (d) the holder of the clearing permit has applied to the CEO to surrender the permit.

51M. Manner of amendment, revocation or suspension

- (1) An application for an amendment to a clearing permit or to surrender a clearing permit is to —
 - (a) be made in the manner and form approved by the CEO;
 - (b) be accompanied by the fee prescribed by or determined under the regulations; and
 - (c) be supported by any management plans, maps, and other documents and information required by the CEO and include a summary of that supporting documentation and information.
- (2) Before amending, revoking or suspending a clearing permit the CEO is to give the holder of the permit a written notice under this section.
- (3) The notice is to —
 - (a) state details of the proposed action;
 - (b) invite the holder to make representations to the CEO to show why the action should not be taken; and
 - (c) state the period (at least 28 days after the notice is given to the holder) within which representations may be made.
- (4) The representations must be made in writing.
- (5) Subject to subsection (8), the CEO may take the proposed action —
 - (a) at any time after the holder of the clearing permit gives the CEO written notice that the holder does not intend to make any representations or any further representations; or
 - (b) if such notice is not given, after the end of the period stated in the notice within which representations may be made.
- (6) The CEO is to consider any representations properly made by the holder of the clearing permit.
- (7) If the proposed action is —
 - (a) the revocation or suspension of the clearing permit; or

- (b) an amendment of the clearing permit reducing or restricting the extent or method of clearing that may be done,

the permit, by force of this subsection, ceases to have effect until —

- (c) notice of any amendment, revocation or suspension of the permit is given under subsection (10); or
 - (d) after considering any representations properly made by the holder of the permit, the CEO gives the holder written notice that the action will not be taken.
- (8) If the proposed action is related to a proposal which has been referred to the Authority under section 38, the CEO is not to so amend, revoke or suspend —
- (a) while any decision-making authority is precluded by section 41 from making any decision which could have the effect of causing or allowing that proposal to be implemented; or
 - (b) contrary to, or otherwise than in accordance with, an implementation agreement or decision.
- (9) If a decision-making authority makes a decision that has the effect of preventing the implementation of a proposal to which an amendment proposed under this section is related, the CEO does not have to make a decision on the amendment while the decision-making authority's decision has effect.
- (10) The CEO is to give the holder of the clearing permit written notice of any amendment, revocation or suspension of the permit.
- (11) Without limiting subsection (10), notice of an amendment can be given in the form of a revised clearing permit.

51N. Continuation of area permit on change of ownership

- (1) If an area permit is held by the owner of the land to which the permit relates and the interest by reason of which that person is the owner (the “interest”) is or is to be transferred, or passes or is to pass, to another person (the “**new owner**”), the new owner may, in the form and in the manner approved by the CEO, notify the CEO —
- (a) that the transfer or passing of the interest has occurred or is to occur; and
 - (b) that the new owner wishes to become the holder of the permit.
- (2) If notification is given to the CEO under subsection (1) then —
- (a) on the transfer or passing of the interest; or
 - (b) on the receipt of the notification by the CEO,
- whichever is later, the new owner becomes the holder of the area permit by operation of this section on the conditions to which the permit is subject.
- (3) If when the interest is transferred or passes the CEO has not received notification under subsection (1), the area permit has no further effect unless and until such notification is received.

51O. Principles and instruments to be considered when making decisions as to clearing permits

- (1) In this section —
“clearing matter” means —
 - (a) an application for a clearing permit; or
 - (b) an amendment of a clearing permit;“decision” means a decision about a clearing matter;
“planning instrument” means —
 - (a) a scheme or a strategy, policy or plan made or adopted under a scheme;
 - (b) a statement of planning policy approved under section 5AA of the *Town Planning and Development Act 1928*; or
 - (c) a local planning strategy made under the *Town Planning and Development Act 1928*.
- (2) In considering a clearing matter the CEO shall have regard to the clearing principles so far as they are relevant to the matter under consideration.
- (3) The CEO may make a decision that is seriously at variance with the clearing principles if, and only if, in the CEO’s opinion there is a good reason for doing so. That reason must be recorded and published under section 51Q.
- (4) In considering a clearing matter the CEO shall have regard to any planning instrument, or other matter, that the CEO considers relevant.

51P. Relationship between clearing permits and approved policies

- (1) In considering —
 - (a) an application for a clearing permit; or
 - (b) an amendment of a clearing permit,the CEO shall ensure that the clearing permit, or its amendment, is consistent with any approved policy.
- (2) The CEO shall not amend or shall refuse to grant a clearing permit if the CEO considers that the associated effect on the environment would be inconsistent with any approved policy.
- (3) Despite anything in this section —
 - (a) if the CEO is satisfied that, as a result of environmental circumstances having changed, the environment or an environmental value of the area concerned requires a higher level of protection than would be provided by the standards required by or under any approved policy, the CEO may grant or amend a clearing permit so as to make the permit subject to conditions which specify standards that are more stringent than those required by or under the approved policy;
 - (b) if the CEO is satisfied that, as a result of the approval under section 31(d) of a new approved policy or as a result of an approved policy as amended being confirmed under section 37, any condition to which an existing clearing permit is subject is inconsistent with that

approved policy, the CEO may amend that permit to make it consistent with that approved policy.

51Q. Particulars of clearing permits to be recorded

- (1) The CEO is to keep a record of such particulars of —
 - (a) applications for clearing permits;
 - (b) clearing permits and undertakings mentioned in section 51E(9); and
 - (c) notifications received under section 51N(1),as are prescribed.
- (2) The CEO is to publish from time to time in a prescribed manner prescribed particulars of the record.

51R. Evidentiary matters

- (1) In proceedings under this Division a document purporting to be —
 - (a) a true copy of an aerial photograph marked so as to identify, and show the boundaries of, land according to official survey; and
 - (b) signed and certified by the Surveyor General as being a true copy of a photograph taken under the authority of the Surveyor General on the date specified in the certificate and as correctly identifying, and showing the boundaries of, the land according to official survey,is, without proof of the signature of the Surveyor General, admissible as evidence of the matters so certified and of the condition, on the date so specified, of the vegetation on the land so identified.
- (2) A document shall not be admitted pursuant to subsection (1) as evidence that the land has been cleared contrary to this Division unless the court is satisfied that the Minister, the CEO or a person acting with the authority of the Minister or of the CEO has entered upon and inspected the land for the purposes of ascertaining whether the land has been so cleared.
- (3) Where, in a prosecution for an offence under this Division involving clearing, it is proved that clearing has taken place on land —
 - (a) the person who was the occupier of the land at the time of the clearing is to be regarded as having caused the clearing in the absence of evidence to the contrary; and
 - (b) the person who was the owner of the land at the time of the clearing is to be regarded as having allowed the clearing in the absence of proof to the contrary.
- (4) Subsection (3) does not affect the liability of any other person for the offence concerned.
- (5) In a prosecution for an offence under this Division, an averment in the complaint to the effect that vegetation is or was native vegetation is to be regarded as having been proved in the absence of proof to the contrary.
- (6) For the purposes of this Division, if —
 - (a) land is shared by a corporation and a subsidiary or subsidiaries of the corporation;

- (b) the corporation or a subsidiary referred to in paragraph (a) is the holder of a clearing permit in respect of an area situated on the land; and
- (c) a condition to which the clearing permit is subject is contravened,

the permit holder is to be regarded as having caused the contravention unless the contrary is proved.

- (7) In subsection (6) —

“corporation” has the meaning given by the *Corporations Act 2001* of the Commonwealth;

“subsidiary” has the meaning given by the *Corporations Act 2001* of the Commonwealth.

51S. Clearing injunctions

- (1) In this section —

“contravention” includes the continuation of a contravention;

“court” means the Supreme Court;

“improper conduct” means an act or omission constituting a contravention of, or involvement in a contravention of, section 51C or 51J;

“involvement in a contravention” means —

- (a) aiding, abetting, counselling, or procuring the contravention;
- (b) inducing the contravention, whether by threats or promises or otherwise;
- (c) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention;
- (d) conspiring with others to effect the contravention; or
- (e) attempting to do anything constituting involvement in a contravention under paragraph (a), (b), (c) or (d).

- (2) Without limiting any other power the court may have to grant injunctive relief, it is declared that the court may grant an injunction to prevent a person from engaging in improper conduct (a **“clearing injunction”**).

- (3) The CEO may apply for a clearing injunction.

- (4) A clearing injunction may be granted if the court is satisfied that it would be appropriate to grant the injunction —

- (a) whether or not it is proved that the person intends to engage, or to engage again, or to continue to engage, in improper conduct of the kind sought to be prevented by the injunction; and
- (b) whether or not the person has previously engaged in improper conduct of that kind.

- (5) An interim clearing injunction may be granted before final determination of an application for a clearing injunction.

- (6) The court is not to require, as a condition of granting an interim clearing injunction, that an undertaking be given as to damages or costs.

- (7) The taking of proceedings against any person for an offence under this Act is not affected by —

- (a) the making of an application for a clearing injunction;
- (b) the grant or refusal of a clearing injunction or an interim clearing injunction; or
- (c) the rescission, variation, or expiry of a clearing injunction or an interim clearing injunction.

51T. Other requirements not affected

Despite section 5, the operation of any other enactment under which a permit, permission, licence, approval or other authorisation is required in relation to the clearing of vegetation is not affected by —

- (a) this Division; or
- (b) the grant of a clearing permit under this Division,

and this Division has effect in addition to that enactment.

- (2) In subsections (3) and (4) —
 - “**commencement day**” means the day on which section 110 comes into operation;
 - “**EP Act**” means the *Environmental Protection Act 1986* as amended by this Act.
- (3) Despite section 51B of the EP Act, the Governor may make regulations declaring —
 - (a) an area of the State specified in the notice; or
 - (b) an area of the State of a class specified in the notice,
 to be an environmentally sensitive area for the purposes of Part V Division 2 of the EP Act.
- (4) Regulations under subsection (3) —
 - (a) cannot be made after the expiration of the period of 3 months after the commencement day; and
 - (b) expire on the expiration of the period of 9 months after the commencement day.

111. Section 70 replaced and transitional provisions

- (1) Section 70 is repealed and the following section is inserted instead —

70. Vegetation conservation notices

- (1) In this section —
 - “**specified**” means specified by the CEO in the vegetation conservation notice concerned;
 - “**unlawful clearing**” means anything constituting a contravention of section 51C or 51J.
- (2) If the CEO suspects on reasonable grounds —
 - (a) that unlawful clearing is likely to take place on any land; or
 - (b) that unlawful clearing is taking place or has taken place on any land,

the CEO may cause a notice (a “**vegetation conservation notice**”) to be given requiring a person bound by it to ensure that no

unlawful clearing, or no further unlawful clearing, takes place on the land.

- (3) A vegetation conservation notice may be given to one or more of the following —
 - (a) the owner of the land;
 - (b) the occupier of the land;
 - (c) a person other than the owner or occupier of the land, if the CEO considers that it is practicable for that person to comply with and give effect to the vegetation conservation notice.
- (4) A vegetation conservation notice —
 - (a) is to specify —
 - (i) the name and address of the person to whom it is given; and
 - (ii) the reason for which it is given;and
 - (b) in the case of a vegetation conservation notice given under subsection (2)(b), may require any person bound by it to take such specified measures as the CEO considers necessary for one or more of the following purposes —
 - (i) to repair any damage caused by the clearing;
 - (ii) to re-establish and maintain vegetation on any area affected by the clearing to a condition as near as possible to the condition of the vegetation before the clearing occurred;
 - (iii) to prevent the erosion, drift or movement of sand, soil, dust or water;
 - (iv) to ensure that specified land, or a specified watercourse or wetland (within the meaning of the Rights in Water and Irrigation Act 1914) will not be damaged or detrimentally affected, or further damaged or detrimentally affected, by the clearing,
within or for the duration of a specified period.
- (5) Before a vegetation conservation notice containing a requirement under subsection (4)(b) is given to a person the CEO shall, by written notice given to the person, invite the person to make submissions to the CEO within such period as is specified in that notice on any matter relevant to the determination of whether or not the person should have to take the specified measures.
- (6) The CEO shall consider any such submissions that are received from the person within the specified period.
- (7) A vegetation conservation notice —
 - (a) while it subsists, binds each person to whom it is given; and
 - (b) if it is, and while it remains, registered under section 66 (as applied by subsection (9)), binds each successive owner or occupier of the land to which it relates.

- (8) Subsections (4) to (7) of section 65 apply in relation to vegetation conservation notices as if references in those subsections to an environmental protection notice were references to a vegetation conservation notice.
- (9) If the person, or at least one of the persons, to whom a vegetation conservation notice is given is the owner or occupier of the land, sections 66, 67 and 68 apply in relation to the vegetation conservation notice as if references in those sections to an environmental protection notice were references to a vegetation conservation notice.
- (10) If action required by a vegetation conservation notice to be taken has not been taken, the CEO may —
- (a) cause that action to be taken; and
 - (b) recover the cost of the taking of that action from any person bound by the notice by action in a court of competent jurisdiction as a debt due to the Crown.
- (11) Any cost recovered under subsection (10)(b) is to be paid into the Consolidated Fund.

”.

- (2) In subsections (3) to (5) —
- “CEO”** has the same meaning as it has in the EP Act;
- “EP Act”** means the *Environmental Protection Act 1986* as amended by this Act;
- “transitional period”** means the period beginning on 26 June 2002 and ending on the day before the day on which this section comes into operation;
- “unlawful clearing”** means anything within the meaning of “clearing” in Part V Division 2 of the EP Act that —
- (a) constituted, at the time when the thing was done, a contravention of —
 - (i) section 28 or 35 of the *Soil and Land Conservation Act 1945*;
 - (ii) the *Soil and Land Conservation (Clearing Control) Regulations 1991* or regulation 4 or 5 of the *Soil and Land Conservation Regulations 1992*;
 - (iii) section 109, 110, 111 or 267(2)(c) or (f) of the *Land Administration Act 1997*; or
 - (iv) section 12B of the *Country Areas Water Supply Act 1947*;
 - or
 - (b) would have constituted a contravention of section 41A of the EP Act if that section had been inserted into the EP Act before the thing was done,
- but does not include clearing of a kind set out in Schedule 6 to the EP Act.

- (3) If the CEO suspects on reasonable grounds that unlawful clearing has taken place on any land during the transitional period, the CEO may cause a notice to be given under this subsection in respect of the land.
- (4) Section 70(3) to (11) and 74A of the EP Act apply in relation to a notice given under subsection (3) as if it were a vegetation conservation notice given under section 70(2)(b) of the EP Act and as if the reference to an offence in section 70(6) were a reference to an offence under an enactment mentioned in the definition of “unlawful clearing” in subsection (2).
- (5) Section 74A, Part VA and sections 89 and 103 of the EP Act apply in relation to a notice given under subsection (3) as if it were a vegetation conservation notice given under section 70(2)(b) of the EP Act.

112. Section 101A inserted

After section 101 the following section is inserted —

“

101A. Lodging of appeals in respect of clearing permits

- (1) Subject to section 105, an applicant for —
 - (a) a clearing permit who is aggrieved by the refusal of the CEO —
 - (i) to grant the permit under section 51E(5); or
 - (ii) to grant the permit under section 51E(5) for all of the clearing applied for;
 - or
 - (b) a clearing permit who is aggrieved by the specification by the CEO of any condition in the permit under section 51E(5) or 51N(2),
- (2) Subject to section 105, the holder of a clearing permit who is aggrieved by the amendment of the permit under section 51K(1), or the revocation or suspension of the permit under section 51L(1), may within 28 days of being notified of that amendment, revocation or suspension lodge with the Minister an appeal in writing setting out the grounds of that appeal.
- (3) A person who —
 - (a) not being an applicant referred to in subsection (1), disagrees with a refusal or specification referred to in that subsection; or
 - (b) not being a holder referred to in subsection (2), disagrees with an amendment, revocation or suspension referred to in that subsection,

may within the period within which the applicant or holder can lodge an appeal about that refusal, specification, revocation, suspension or amendment lodge with the Minister an appeal in writing setting out the grounds of that appeal.

- (4) A person who disagrees with a decision of the CEO to grant a clearing permit under section 51E(5) may within 21 days of that grant lodge with the Minister an appeal in writing setting out the grounds of that appeal.
- (5) Subsections (1)(a)(ii) and (b), (3)(a) and (4) do not apply in relation to the grant of a permit pursuant to an undertaking mentioned in section 51E(9).
- (6) Pending the determination of the relevant appeal lodged under subsection (1), (2) or (3) in respect of a refusal, specification, revocation or suspension, the decision against which that appeal is lodged continues to have effect.
- (7) Pending the determination of the relevant appeal lodged under subsection (2) in respect of an amendment, the amendment shall be deemed not to have been made unless it reduces or restricts the extent or method of clearing that may be done, in which case it continues to have effect.
- (8) Pending the determination of the relevant appeal lodged under subsection (3) in respect of an amendment, the amendment continues to have effect.
- (9) Pending the determination of the relevant appeal lodged under subsection (4), the clearing permit shall be deemed not to have been granted.

”.

113. Section 105 amended

Section 105 is amended as follows:

- (a) in paragraph (a) by inserting before “102” —
“ 101A, ”;
- (b) after paragraph (a) by deleting “or” and inserting —

“

- (aa) under section 101A(2) in respect of the amendment of a clearing permit by correcting it under section 51K(1)(e), (f), (g) or (h); or

”.

114. Section 109 amended

After section 109(1) the following subsection is inserted —

“

- (1a) In relation to an appeal lodged under section 101A(2) in respect of the amendment of a clearing permit under section 51K(1)(a) or (b), an appeals committee shall not consider, or make recommendations in respect of, a matter which is not directly related to or consequential to that amendment.

”.

115. Schedule 1 amended

- (1) Before Schedule 1 Part 1 Division 1 item 9 the following item is inserted —

“

8D	51C	\$250 000	\$50 000
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”
(2) Before Schedule 1 Part 1 Division 2 item 9 the following item is inserted —

“

8D	51C	\$500 000	\$100 000
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”

(3) Before Schedule 1 Part 2 Division 1 item 2 the following item is inserted —

“

1E	51J(1)	\$62 500	\$12 500
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”

(4) Before Schedule 1 Part 2 Division 2 item 2 the following item is inserted —

“

1E	51J(1)	\$125 000	\$25 000
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”

116. Schedules 5 and 6 inserted

After Schedule 4 the following Schedules are inserted —

“

Schedule 5 — Principles for clearing native vegetation

[s. 51A]

1. 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 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, an environment associated with a watercourse or wetland;
- (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 adjacent or nearby conservation 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.

2. Definitions

In this Schedule —

“**conservation area**” means a conservation park, national park, nature reserve, marine nature reserve, marine park or marine management area within the meaning of the *Conservation and Land Management Act 1984* or any other land or waters reserved, protected or managed for the purpose of, or purposes including, nature conservation;

“**rare flora**” has the same meaning as it has in section 23F of the *Wildlife Conservation Act 1950*;

“**threatened ecological community**” means an ecological community listed, designated or declared under a written law or a law of the Commonwealth as threatened, endangered or vulnerable;

“**watercourse**” has the same meaning as it has in the *Rights in Water and Irrigation Act 1914*;

“**wetland**” means an area of seasonally, intermittently or permanently waterlogged or inundated land, whether natural or otherwise, and includes a lake, swamp, marsh, spring, damland, tidal flat or estuary.

Schedule 6 — Clearing for which a clearing permit is not required

[s. 51C]

1. Clearing that is done in order to give effect to a requirement to clear under a written law.
2. Clearing that is done —
 - (a) in the implementation of a proposal in accordance with an implementation agreement or decision;
 - (b) in the case of a proposal that —
 - (i) was made under an assessed scheme; and
 - (ii) because of section 48I(2), was not referred to the Authority,in the implementation of the proposal in accordance with a subdivision approval, a development approval or a planning approval given by the responsible authority;
 - (c) in accordance with —
 - (i) a prescribed standard;
 - (ii) a works approval;
 - (iii) a licence;
 - (iv) a requirement contained in a closure notice, an environmental protection notice or a prevention notice;
 - (v) an approved policy;

- (vi) a declaration under section 6;
 - (vii) an exemption under section 75; or
 - (viii) a licence, permit, approval or exemption granted, issued or given under the regulations;
- or
- (d) in the exercise of any power conferred under this Act.
3. Clearing by the Department, within the meaning of the *Conservation and Land Management Act 1984*, in the performance of its function under section 33(1)(a) of that Act of managing land, but, in the case of land referred to in section 33(1)(a)(i), only if the management is carried out in accordance with section 33(3).
 4. Clearing authorised under a licence —
 - (a) referred to in paragraph (a); or
 - (b) granted under paragraph (b),
 of section 3(1) of the *Sandalwood Act 1929*.
 5. Clearing consisting of the taking of flora —
 - (a) as authorised under a licence under section 23C of the *Wildlife Conservation Act 1950*; or
 - (b) as consented to under section 23F of the *Wildlife Conservation Act 1950* by the Minister administering that Act.
 6. Clearing consisting of the taking of flora by a person authorised —
 - (a) by subsection (1)(a); or
 - (b) under subsection (1)(b),
 of section 23D of the *Wildlife Conservation Act 1950* for the purposes of sale under a licence issued under that section.
 7. Clearing under the *Forest Products Act 2000*, of vegetation maintained, or established and maintained, under section 10(1)(g) of that Act.
 8. Clearing under a production contract or road contract entered into and having effect under the *Forest Products Act 2000*.
 9. Clearing in accordance with a subdivision approval given by the responsible authority under the *Town Planning and Development Act 1928*, including —
 - (a) clearing for the purposes of any development that is deemed by section 20D of that Act to have been approved by the responsible authority; and
 - (b) clearing in any building envelope described in the approved plan or diagram.
 10. Clearing that is done —
 - (a) as permitted under section 17(5);
 - (b) in accordance with a permit obtained under section 18;
 - (c) in accordance with permission granted under section 21(2);

- (d) under section 22(2), 23, 26A, 39(1)(d) or 44(1)(c); or
- (e) as authorised by a proclamation under section 26,

of the *Bush Fires Act 1954*.

11. Clearing that is done under section 34(a), (c) or (h) of the *Fire Brigades Act 1942*.
12. Clearing that is done for fire prevention or control purposes or other fire management works on Crown land, within the meaning of the *Land Administration Act 1997*, by the Fire and Emergency Services Authority of Western Australia established under the *Fire and Emergency Services Authority of Western Australia Act 1998*.
13. Clearing caused by the grazing of stock on land under a pastoral lease within the meaning of the *Land Administration Act 1997* as long as that grazing is not in breach of —
 - (a) that Act;
 - (b) the pastoral lease; or
 - (c) any relevant condition set or determination made by the Pastoral Board under Part 7 of that Act.
14. Clearing of aquatic vegetation that occurs under the authority of a licence or permit within the meaning of the *Fish Resources Management Act 1994*.

”.

10 On the date as at which this compilation was prepared, the *Contaminated Sites Act 2003* s. 100, which gives effect to Sch. 3, had not come into operation. It reads as follows:

“

100. Consequential amendments to other Acts

Schedule 3 has effect.

”.

Schedule 3 cl. 1 reads as follows:

“

1. Environmental Protection Act 1986 amended

- (1) The amendments in this clause are to the *Environmental Protection Act 1986*.
- (2) Section 3(1) is amended by inserting in the appropriate alphabetical positions the following definitions —

“

“**contaminated**” has the same meaning as it has in the *Contaminated Sites Act 2003*;

“**contaminated sites auditor**” means a person accredited as a contaminated sites auditor under the *Contaminated Sites Act 2003*;

”.

- (3) Section 40(2) is amended as follows:

- (a) by inserting after paragraph (a) the following paragraph —

“

- (aa) require the proponent to provide to the Authority a contaminated sites auditor’s report on the proposal, which complies with any relevant regulations made under the *Contaminated Sites Act 2003*;

”;

- (b) by deleting “any 2 or all 3” and inserting instead —
“ any or all ”.

- (4) Section 40(4)(a) is amended as follows:

- (a) by inserting after “information” —
“ or report ”;

- (b) by inserting after “(2)(a)” —
“ or (aa) ”.

- (5) Section 48C(1) is amended by inserting after paragraph (a) the following paragraph —

“

- (aa) require the responsible authority, if it wishes that scheme to proceed, to provide to the Authority a contaminated sites auditor’s report on that scheme, which complies with any relevant regulations made under the *Contaminated Sites Act 2003*;

”.

- (6) Section 48C(4)(a) is amended by inserting after “(1)(a)” —
“ or (aa) ”.

- (7) Section 89(2) is amended by deleting “environment.” and inserting instead —

“

environment or believes on reasonable grounds that the dwelling-house or land is contaminated.

”.

- (8) Section 89(3) is amended as follows:

- (a) by deleting “groundwater” and inserting instead —
“ water ”;

- (b) after paragraph (a) by deleting “or”;

- (c) after paragraph (b) by deleting the comma and inserting —

“

; or

- (c) if the inspector believes on reasonable grounds that the land or water is contaminated, to investigate whether contamination is present or to monitor or assess any contamination that is present,

”
(9) Section 90(1)(a)(i) is amended by inserting after
“discharged” —

“ or onto which any waste has been or is being discharged ”.

11 The *Environmental Protection Amendment Act 2003* s. 45(4) reads as follows:

“

(4) A pollution abatement notice served before the coming into operation of this section is taken to be an environmental protection notice within the meaning of the *Environmental Protection Act 1986* as amended by this Act.

12 The *Environmental Protection Amendment Act 2003* s. 51(6) reads as follows:

“

(6) A direction given under section 73 before the coming into operation of this section is taken to be a prevention notice within the meaning of the *Environmental Protection Act 1986* as amended by this Act.

13 The *Environmental Protection Amendment Act 2003* s. 97(4) and (5) read as follows:

“

(4) The amendments to approved policies effected by this section have effect as though the provisions were enacted as part of the *Environmental Protection Act 1986* on and from the day on which this section comes into operation.

(5) Nothing in this section affects the operation of the *Environmental Protection Act 1986* with respect to amendments to the approved policies as amended by this section and revocation of approval of the approved policies as amended by this section.

”.