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ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL PROTECTION
(SOUTH WEST AGRICULTURAL
ZONE WETLANDS) POLICY
APPROVAL ORDER 1998**

ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL PROTECTION
(SOUTH WEST AGRICULTURAL ZONE
WETLANDS) POLICY APPROVAL
ORDER 1998*****Background to the approval of this environmental protection policy***

The Government of Western Australia —

- (a) is conscious of the intrinsic value of biological diversity and of the ecological, genetic, social, economic, scientific, educational, cultural, recreational, aesthetic and natural values of biological diversity and its components;*
- (b) is concerned that the biological diversity of wetlands is being significantly reduced by certain human activities;*
- (c) notes that it is vital to anticipate, prevent and address the causes of significant reduction or loss of biological diversity;*
- (d) notes that the lack of complete scientific certainty in relation to a threat of significant reduction in or loss of biological diversity is not a reason for postponing measures to avoid or minimize the threatened reduction or loss;*
- (e) stresses the importance of, and the need to promote, local, regional and State cooperation between owners of land, groups that represent owners of land and government agencies and industry organizations;*
- (f) recognizes the historical nature of land use patterns and the economic needs of owners of land, industry and the State in general;*
- (g) recognizes that the production of agricultural goods needs to be achieved in a manner that sustains the capacity of land to continue to produce such goods and maintains and enhances the integrity of natural processes and biological diversity; and*
- (h) is determined to conserve the biological diversity of wetlands.*

Made by the Minister under section 31(d).

Citation

1. This order may be cited as the *Environmental Protection (South West Agricultural Zone Wetlands) Policy Approval Order 1998*.

Approval of environmental protection policy

2. The environmental protection policy set out in Schedule 1 is approved.

SCHEDULE 1

[Clause 2]

ENVIRONMENTAL PROTECTION ACT 1986

**ENVIRONMENTAL PROTECTION (SOUTH WEST AGRICULTURAL
ZONE WETLANDS) POLICY 1998**

Approved by the Minister under section 31(d).

PART 1 — PRELIMINARY**Citation**

1. This policy may be cited as the *Environmental Protection (South West Agricultural Zone Wetlands) Policy 1998*.

Purpose of policy

2. The purpose of this policy is to prevent the further degradation of valuable wetlands and to promote the rehabilitation of wetlands in the South West Agricultural Zone of the State.

Interpretation

3. (1) In this policy, unless the contrary intention appears —

“**authorized**” means —

- (a) authorized by an authorized body;
- (b) authorized under a written law before the commencement of this policy;
- (c) authorized under the Act in accordance with —
 - (i) a works approval;
 - (ii) a licence;
 - (iii) a requirement contained in a pollution abatement notice;
 - (iv) section 40(1)(a) of the Act (by a person being informed by the Authority under that provision that a proposal does not need to be assessed under Part IV of the Act);
 - (v) agreement reached or a decision made under section 45 of the Act;
 - (vi) a direction given under section 73 of the Act; or
 - (vii) an exemption granted under section 75 of the Act;

or

- (d) authorized in accordance with a prescribed procedure;

“**authorized body**” means —

- (a) in relation to a wetland vested in —
 - (i) the Lands and Forest Commission established by section 18 of the *Conservation and Land Management Act 1984*; or

(ii) the National Parks and Nature Conservation Authority established by section 21 of the *Conservation and Land Management Act 1984*,

the Executive Director, as defined in section 3 of the *Conservation and Land Management Act 1984*;

(b) in relation to the authorization of the construction or alteration of a water drainage system for the purposes of clause 34, the Commissioner of Soil and Land Conservation appointed under the *Soil and Land Conservation Act 1945*;

or

(c) a prescribed decision-making body;

“beneficial uses” means the beneficial uses declared under clause 19;

“biogeographic region” means an area of land in the policy area that is identified as a natural resource zone in Allison, H.E. *et al*, *Natural Resource Zones of the South West Land Division, Western Australia*, published in October 1993 by the Environmental Protection Authority, Perth, in Technical Series Bulletin 55;

“catchment management area” means the portion of the policy area to which a catchment management strategy applies;

“catchment management strategy” means a catchment management strategy developed under clause 25;

“clearing” includes cutting down, removing or destroying;

“district committee” means a land conservation district committee established under section 23 of the *Soil and Land Conservation Act 1945*;

“effluent” means any waste material discharged from industrial premises;

“freehold”, in relation to land, means the fee simple, whether absolute, conditional or otherwise, of that land;

“ground water” means water below the surface of the ground that is at a pressure equal to or greater than atmospheric pressure and that is present throughout the year;

“mining operations” has the same meaning as it has in section 8(1) of the *Mining Act 1978*;

“native vegetation”, in relation to a wetland, means any plant species normally associated with the wetland;

“owner”, in relation to a wetland or any other land, includes the person, body, agency or organization with whom or which the care, control and management of the land is placed;

“policy area” means the area referred to in clause 4;

“prescribed” means prescribed by regulations made under section 123 of the Act;

“protected wetland” means a wetland recorded in the Register;

“Table” means a Table of the Register;

“the Register” means the register of wetlands in the policy area referred to in clause 6;

“this policy” means this environmental protection policy;

“wetland” means land in the policy area that is subject to permanent or seasonal inundation or waterlogging, whether by water that is fresh, brackish or saline, or flowing or static, but does not include estuaries, rivers or their tributaries.

(2) Words and expressions used in this policy that are given a meaning in the Act have the meaning so given.

Policy area

4. (1) The policy area is the area of land known as the South West Agricultural Zone that is shown bordered in red on Environmental Protection Plan No. 1, that plan being certified by the Minister as the plan prepared for the purpose of defining the policy area.

(2) The Department is to make Environmental Protection Plan No. 1 available for public inspection during normal office hours at the head office of the Department in Perth and copies of the plan available for public inspection during normal office hours at the other offices of the Department.

(3) For information purposes, a representation of Environmental Protection Plan No. 1 is set out in Schedule A.

Note: The policy area does not include the area defined as the Swan Coastal Plain in Schedule 1 to the Environmental Protection (Swan Coastal Plain Lakes) Policy 1992.

Application

5. This policy applies to land in the policy area.

PART 2 — THE REGISTER OF PROTECTED WETLANDS

The Register

6. (1) The Authority is to establish and maintain in accordance with this Part a register of wetlands protected under this policy.

(2) The Authority is to include as part of the information provided in the Register in respect of a protected wetland details of —

- (a) the Australian Map Grid co-ordinates that identify the location of the wetland; and
- (b) the name of the wetland (if applicable) and any other information that indicates the extent of the wetland.

(3) The Authority is to record wetlands in the Register in a manner that enables a person who consults the Register to determine whether any wetland so recorded is in Table 1 or Table 2.

Nominating wetlands to be recorded in the Register

7. (1) A person, body, agency or organization (“**the proposer**”) may make a written submission to the Authority to propose that a wetland be recorded in the Register.

(2) A submission made under subclause (1) is to include details of —

- (a) the Australian Map Grid co-ordinates that identify the location of the wetland;
- (b) the name of the wetland (if applicable) and any other information that indicates the extent of the wetland; and
- (c) the condition of the wetland and any other information the proposer considers appropriate in support of recording the wetland in the Register.

(3) The Authority may require additional written information to be submitted by the proposer in support of recording a wetland in the Register.

Recording wetlands on freehold land

8. (1) If —
- (a) a submission is made under clause 7(1) in respect of a wetland on land held in freehold;
 - (b) the Authority is satisfied that the wetland should be recorded in the Register;
 - (c) the Authority obtains the agreement of the owner of the wetland —
 - (i) for the wetland to be recorded in the Register; and
 - (ii) as to the appropriate Table in which to record the wetland;
 - and
 - (d) after consulting the owner of the wetland, the Authority confirms or corrects, as the case requires, the details referred to in clause 7(2) that apply to the wetland,

the Authority is to record the wetland in the Register.

(2) If the Authority cannot obtain the agreement of the owner of a wetland under subclause (1)(c)(i) or (ii), the Authority is not to record the wetland in the Register.

Recording wetlands on Crown land

9. (1) If —
- (a) a submission is made under clause 7(1) in respect of a wetland on Crown land (other than Crown land to which clause 10 applies);
 - (b) the Authority is satisfied that the wetland should be recorded in the Register;
 - (c) the Authority obtains the agreement of any person, body, agency or organization with which the care, control and management of the wetland is placed (“**the relevant agency**”) —
 - (i) for the wetland to be recorded in the Register; and
 - (ii) as to the appropriate Table in which to record the wetland;
 - (d) after consulting the relevant agency, the Authority confirms or corrects, as the case requires, the details referred to in clause 7(2) that apply to the wetland; and
 - (e) the Authority obtains the written approval of the Minister for the wetland to be recorded in the Register,

the Authority is to record the wetland in the Register.

(2) If, within 120 days after receiving a submission referred to in subclause (1)(a), the Authority cannot obtain the agreement of the relevant agency under subclause (1)(c) in respect of a wetland that the Authority considers should be recorded in the Register, the Authority is to refer the matter to the Minister for determination.

- (3) For the purposes of determining —
- (a) whether or not a wetland is to be recorded in the Register; and
 - (b) if a wetland is to be so recorded, in which Table it is to be recorded,

the Minister is to consult the Minister responsible for the relevant agency and may consult any person, body, agency or organization the Minister considers it appropriate to consult.

(4) When a determination has been made, the Minister is to give written notification of it to the Authority, and the Authority is to give effect to the determination.

Wetlands on unallocated Crown land

- 10.** (1) If —
- (a) a submission is made under clause 7(1) in respect of a wetland on Crown land the care, control and management of which is not placed with any person, body, agency or organization; and
 - (b) the Authority is satisfied that the wetland should be recorded in the Register,

the Authority is to record the wetland in the Register.

(2) The Authority may determine whether a wetland recorded in the Register under subclause (1) is to be recorded in Table 1 or Table 2.

Nominating wetlands to be corrected or to be deleted from the Register

11. (1) Any person, body, agency or organization (“**the proposer**”) may make a written submission to the Authority to propose that —

- (a) the entry in the Register in respect of any wetland be corrected; or
- (b) a wetland recorded in the Register be deleted from the Register.

(2) A submission made under subclause (1) is to include details of —

- (a) the name of the wetland (if applicable) and any other information that identifies the entry in the Register in respect of the wetland; and
- (b) if the submission is made under paragraph (b) of that subclause, the condition of the wetland and any other information the proposer considers appropriate in support of deleting the wetland from the Register.

(3) The Authority may require additional written information to be submitted by the proposer in support of correcting an entry in the Register or deleting a wetland from the Register.

Correcting errors in the Register

12. If —

- (a) a submission is made under clause 11(1)(a); and
- (b) the Authority is satisfied that the entry in the Register in respect of the wetland is incorrect,

the Authority is to correct the entry in the Register.

Deleting wetlands from the Register

13. (1) If —

- (a) a submission is made under clause 11(1)(b) in respect of a wetland on land held in freehold;
- (b) the Authority is satisfied that the wetland should be deleted from the Register; and
- (c) the Authority obtains the agreement of the owner of the wetland for the wetland to be deleted from the Register,

the Authority is to delete the wetland from the Register.

(2) If —

- (a) a submission is made under clause 11(1)(b) in respect of a wetland on Crown land (other than Crown land to which clause 14 applies);
- (b) the Authority is satisfied that the wetland should be deleted from the Register; and
- (c) the Authority obtains the agreement of any person, body, agency or organization with which the care, control and management of the wetland is placed for the wetland to be deleted from the Register,

the Authority is to delete the wetland from the Register.

Wetlands on unallocated Crown land

14. If —

- (a) a submission is made under clause 11(1)(b) in respect of a wetland on Crown land the care, control and management of which is not placed with any person, body, agency or organization; and
- (b) the Authority is satisfied that the wetland should be deleted from the Register,

the Authority is to delete the wetland from the Register.

Register to be available to public

15. The Department is to make the Register available for public inspection during normal office hours at the head office of the Department in Perth and copies of the Register available for public inspection during normal office hours at the other offices of the Department.

Wetlands recorded in Table 1 of the Register

16. (1) A wetland is appropriately recorded in the Register in Table 1 if it is a wetland to which this clause applies.

(2) This clause applies to a wetland —

- (a) that the Authority is required under this Part to record in the Register; and
- (b) that has a high degree of value for nature conservation or provides a habitat for fauna declared likely to become extinct, rare or otherwise in need of special protection, or for flora declared rare flora, under the *Wildlife Conservation Act 1950*.

(3) A typical wetland to which this clause applies —

- (a) may be a healthy functioning wetland with a high degree of naturalness;
- (b) may have a substantial amount of fringing or emergent native vegetation;
- (c) may have significant cultural or human use values; or
- (d) may be one of the most natural wetlands in the biogeographic region.

Wetlands recorded in Table 2 of the Register

17. (1) A wetland is appropriately recorded in the Register in Table 2 if it is a wetland to which this clause applies.

(2) This clause applies to a wetland that the Authority is required under this Part to record in the Register and to which clause 16(2)(b) does not apply.

(3) A wetland to which this clause applies may have significant natural or human use attributes and functions without having a high degree of naturalness.

Wetlands may be moved from one Table to the other Table

18. (1) If —

- (a) the Authority is satisfied that, because of changes that have taken place in respect of the wetland, a wetland recorded in one Table should be deleted from that Table and recorded in the other Table; and
- (b) the Authority obtains the agreement to do so of —
 - (i) if the wetland is on land held in freehold, the owner of the wetland; or
 - (ii) if the wetland is on Crown land (other than Crown land to which subclause (2) applies), any person, body, agency or organization with which the care, control and management of the wetland is placed,

the Authority is to delete the wetland from that Table and record it in the other Table.

(2) If the Authority is satisfied of the matters mentioned in subclause (1)(a) in respect of a wetland on Crown land the care, control and management of which is not placed with any person, body, agency or organization, the Authority is to delete the wetland from the Table in which it is recorded and record it in the other Table.

Beneficial uses of protected wetlands

19. The uses of protected wetlands that are declared to be beneficial uses to be protected under this policy are —

- (a) their use as a habitat for flora or fauna, including migratory or threatened species;
- (b) their use as a focus of cultural and heritage values for local communities;
- (c) their use as an intrinsic part of the natural surface and ground water drainage system of the policy area;
- (d) their use as an important aesthetic element of the natural landscape of the policy area;
- (e) their use as an important resource in studying the natural environment;
- (f) their use as a water resource for stock or irrigation; and
- (g) their use as an important recreational element of the natural landscape of the policy area.

Environmental quality objective for protected wetlands

20. The environmental quality objective for protected wetlands is to maintain their beneficial uses and to maintain and, to the extent practicable, enhance their conservation values and natural attributes and functions.

PART 3 — PROGRAMME FOR PROTECTION OF WETLANDS

Basis on which wetlands are to be protected

21. (1) Many wetlands have been severely degraded or destroyed and many other wetlands are under considerable threat of being severely degraded or destroyed.

(2) Industrial, residential and agricultural activities in the policy area continue to degrade wetlands by causing the loss of their native vegetation and the filling in, drainage, flooding, nutrient enrichment or increased salinity of wetlands.

(3) The protection of wetlands requires —

- (a) the planning and management of land use to prevent the degradation of wetlands;
- (b) the implementation of land use practices, such as extensive tree planting, to increase water use in the ground and surface water catchment areas of wetlands;
- (c) cooperation between the owners of land, the community and relevant government agencies; and
- (d) the prevention or control of activities that degrade or destroy wetlands.

Activities that may degrade or destroy wetlands

22. The activities that may degrade or destroy wetlands include —

- (a) filling in wetlands with materials;
- (b) discharging water into wetlands or excessive pumping or drainage of water from wetlands;
- (c) carrying out excavation or mining operations in wetlands;
- (d) damaging or clearing emergent or fringing native vegetation of wetlands;
- (e) disposing of or discharging effluent into wetlands;
- (f) engaging in active recreation in wetlands, such as water skiing, horse riding and off-road driving;
- (g) permitting stock to enter wetlands for watering and grazing;
- (h) introducing exotic flora or exotic or feral fauna into wetlands;
- (i) inappropriate burning-off in wetlands; and
- (j) harvesting aquatic flora or fauna in wetlands.

Programme for protecting wetlands and their beneficial uses

23. The protection of wetlands and their beneficial uses is to be effected by —

- (a) land and water management plans being developed and implemented, on a regional, catchment area and farm basis, that promote the conservation of wetlands;
- (b) the owners of wetlands on land held in freehold being encouraged and assisted to maintain, enhance and rehabilitate their wetlands on a voluntary basis;

- (c) an understanding of this policy being promoted and its acceptance by all those affected by its implementation being encouraged;
- (d) the cooperation of government agencies and industry organizations being sought in the implementation of this policy;
- (e) activities that may degrade or destroy protected wetlands being prevented or controlled under Part 4;
- (f) the Register being established;
- (g) priority being given to the conservation of wetlands listed in Table 1 of the Register and to the implementation of catchment management strategies;
- (h) the condition of protected wetlands being monitored, as appropriate;
- (i) economic incentives and measures being developed that promote and support the conservation, protection and rehabilitation of wetlands; and
- (j) research being undertaken and education being provided to facilitate the conservation of wetlands and the appropriate management of land in their catchment areas.

Best management practices

24. For the purposes of clause 23(a) and (j), the Authority, in association with —

- (a) the Water and Rivers Commission established under the *Water and Rivers Commission Act 1995*;
- (b) the Department of Conservation and Land Management; and
- (c) Agriculture Western Australia,

is to develop best management practices for agriculture in the policy area and is to encourage the voluntary adoption of those practices by the owners of wetlands or other land in the policy area.

Development of catchment management strategies

25. (1) For the purposes of clause 23(a) and (g) in relation to wetlands recorded in Table 1 of the Register, the Authority, in association with the Department, may develop catchment management strategies.

(2) In developing a catchment management strategy, the Authority —

- (a) is to consult with —
 - (i) district committees and owners of wetlands or other land in the catchment management area to which the catchment management strategy is to apply; and
 - (ii) any other persons, bodies, agencies or organizations with whom or which the Authority considers it appropriate to consult;

and

- (b) is to have regard to any submissions made to the Authority as a result of that consultation.

(3) A catchment management strategy is to specify —

- (a) the catchment management area;

- (b) the best management practices (which may be or include best management practices other than those developed under clause 24) appropriate to wetlands or other land in the catchment management area;
- (c) the persons, bodies, agencies or organizations responsible for implementing the best management practices appropriate to wetlands or other land in the catchment management area and the period or periods within which those practices are to be implemented;
- (d) the means of evaluating the effectiveness of the catchment management strategy in achieving the environmental quality objective for protected wetlands within the catchment management area; and
- (e) any other matters approved by the Minister.

(4) When the development of a catchment management strategy has been completed, the Authority is to publish it in a manner approved by the Minister.

Compliance with published catchment management strategies to be voluntary, and relationship with management plans

26. (1) Compliance with a published catchment management strategy is on a voluntary basis, and, if there is any inconsistency between a published catchment management strategy and a management plan approved and in operation under section 60 of the *Conservation and Land Management Act 1984*, the management plan prevails to the extent of the inconsistency.

(2) The Department is to make copies of published catchment management strategies available for public inspection during normal office hours at the offices of the Department.

Catchment management strategies to be reviewed by Department

27. (1) The Department is to conduct a review of the effectiveness of a published catchment management strategy in achieving the objective referred to in clause 25(3)(d) as soon as practicable after the expiry of the period specified for the purposes of this subclause in the catchment management strategy or, if no period is so specified, after the expiry of 10 years from the date of its publication.

(2) When conducting a review under subclause (1), the Department is to consult with the owners of wetlands in the relevant catchment management area and is to have regard to any submissions made to the Department as a result of that consultation.

(3) Before conducting a review under subclause (1), the Department is to inform the Authority that the review is to take place, and the Authority is to provide the Department with any assistance reasonably required by the Department to conduct the review.

Partnership Agreement for Wetland Conservation

28. For the purposes of clause 23(c) and (d), the Department, in association with relevant government agencies and industry organizations, is to develop and publish, in a manner approved by the Minister, a document to be named the Partnership Agreement for Wetland Conservation —

- (a) that assists in the promotion, understanding, acceptance and implementation of this policy and in the achievement of its objectives; and
- (b) that informs those who may be affected by this policy, and the general public, of the principles of this policy and the procedures for its implementation.

PART 4 — CONTROL OF CERTAIN ACTIVITIES IN RELATION TO PROTECTED WETLANDS

Filling in protected wetlands prohibited

29. A person shall not cause or permit any material to be placed in such a position that the whole or any part of a protected wetland is filled in unless the person is authorized to do so and is acting in accordance with that authorization.

Excavation and mining in protected wetlands prohibited

30. A person shall not cause or permit the carrying out of any excavation or mining operations in, on or under a protected wetland unless the person is authorized to do so and is acting in accordance with that authorization.

Discharge or disposal of effluent into protected wetlands prohibited

31. A person shall not cause or permit the discharge or disposal of effluent into a protected wetland unless the person is authorized to do so and is acting in accordance with that authorization.

Removal of water from protected wetlands on Crown land prohibited

32. (1) Subject to subclause (2), a person shall not cause or permit the removal of water from a protected wetland on Crown land unless the person is authorized to do so and is acting in accordance with that authorization.

(2) Subclause (1) does not apply to prohibit the removal of water —

- (a) that is carried out to the extent necessary to avoid imminent risk of injury to a person or damage to property; or
- (b) that is carried out in accordance with a management plan approved and in operation under section 60 of the *Conservation and Land Management Act 1984*.

Damaging or clearing of native vegetation at or from protected wetland prohibited

33. (1) Subject to subclause (2), a person shall not cause or permit the damaging or clearing of emergent or fringing native vegetation at or from a protected wetland unless the person is authorized to do so and is acting in accordance with that authorization.

(2) Subclause (1) does not apply to prohibit the clearing of native vegetation —

- (a) that is carried out to the extent necessary to avoid imminent risk of injury to a person or damage to property;
- (b) that is carried out in accordance with the *Bush Fires Act 1954*;
- (c) that is carried out in accordance with a management plan approved and in operation under section 60 of the *Conservation and Land Management Act 1984*; or
- (d) that is carried out to the extent authorized by a licence issued under the *Wildlife Conservation Act 1950*.

Construction or alteration of prescribed drainage systems prohibited

34. A person shall not cause or permit the construction or alteration of a water drainage system of a prescribed class in the policy area unless the person is authorized to do so and is acting in accordance with that authorization.

Offences and penalties

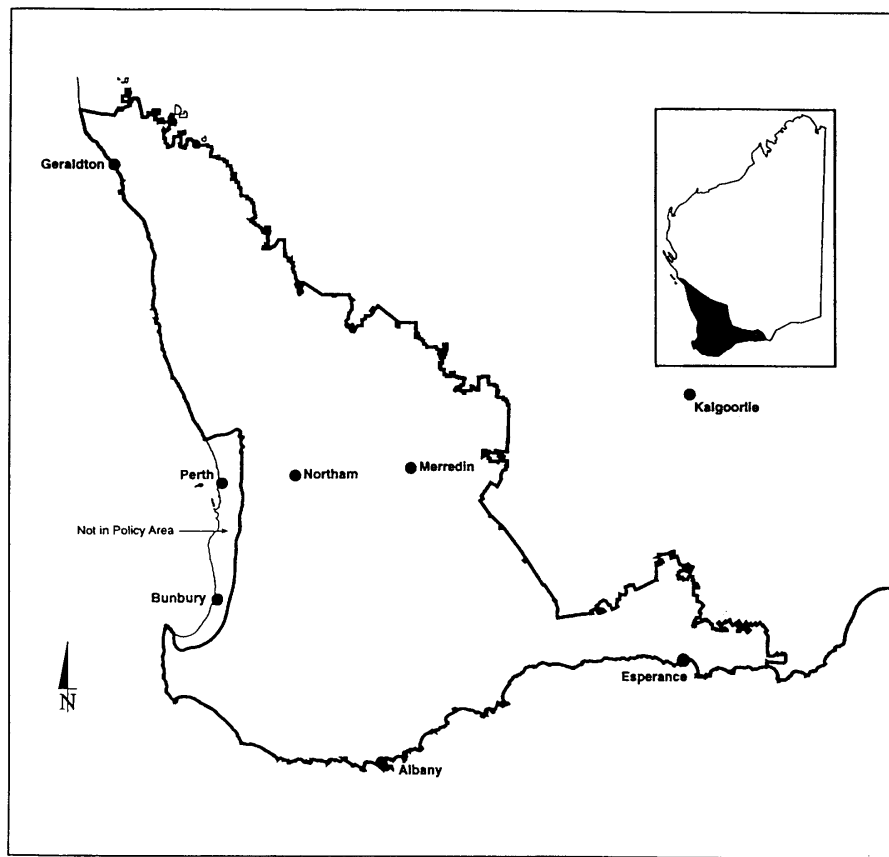
35. A person who contravenes clause 29, 30, 31, 32(1), 33(1) or 34 commits an offence.

Penalty: For an individual — \$5 000 and a daily penalty of \$1 000.
For a body corporate — \$10 000 and a daily penalty of \$2 000.

SCHEDULE A

[Clause 4(3)]

**REPRESENTATION OF ENVIRONMENTAL PROTECTION
PLAN No. 1**



C. L. EDWARDES, Minister for the Environment.



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