



Western Australia

Environmental Protection (Clearing of Native Vegetation) Regulations 2004

Compare between:

[04 Dec 2013, 02-c0-04] and [03 May 2019, 02-d0-00]

Environmental Protection (Clearing of Native Vegetation) Regulations 2004

1. Citation

These regulations may be cited as the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*¹.

2. Commencement

These regulations come into operation on the day on which Part 9 of the *Environmental Protection Amendment Act 2003* comes into operation¹.

3. Terms used

In these regulations, unless the contrary intention appears —

Aboriginal person means a person who is a descendant of one or more of the Aboriginal peoples of Australia, who claims to be an Aboriginal person and who is accepted as such in the community in which he or she lives;

alienated land has the meaning given to that term in section 3(1) of the *Land Administration Act 1997*;

bioregion means a bioregion of Western Australia as defined in “Revision of the Interim Biogeographic Regionalisation of Australia (IBRA) and the Development of Version 5.1 — Summary Report” (2000) published by the Commonwealth Department of the Environment and Heritage, Canberra;

building means a roofed building or other roofed structure that is permanently fixed to the ground, and includes a transportable building that is —

- (a) connected to a sewerage system or septic tank; or
- (b) intended to be used as a permanent building;

Crown land has the meaning given to that term in section 3(1) of the *Land Administration Act 1997*;

environmentally sensitive area means an area declared in regulation 6 to be an environmentally sensitive area;

fence means a structure, that is permanently fixed to the ground, for controlling movement of persons or animals;

fire hazard reduction burning means burning or partial burning of vegetation to reduce the risk of injury or damage to persons and property from an uncontrolled fire in the vegetation;

fire risk reduction area, in relation to a building, means a low fuel area designed to minimise the likelihood of flames contacting the building;

intensive land-use zone, for a bioregion or local government district, means the intensive land-use zone as defined in Shepherd, D.P., Beeston, G.R. and Hopkins, A.J.M. “Native Vegetation in Western Australia. Resource Management Technical Report 249” (2001) published by the Department of Agriculture, Perth;

limited clearing means clearing described in regulation 5(1) item 1, 5, 6, 7, 10, 12, 13 or 19;

property means an area of land that is managed as a single property whether or not it is made up of a number of properties held under separate titles;

riparian vegetation means the distinctive vegetation associated with a wetland or watercourse;

sight line area means an area between the edge of a stretch of road or railway and a line of sight necessary for the safe use of the stretch of road or railway;

utility means —

- (a) AlintaGas Networks Pty. Ltd., ACN 089 531 975;
 - (b) the Commissioner of Main Roads appointed under the *Main Roads Act 1930*;
 - (c) Telstra Corporation Limited, ACN 051 775 556;
 - (d) the Water Corporation established by section 4 of the *Water Corporation Act 1995*;
 - (e) the Electricity Networks Corporation established by section 4(1)(b) of the *Electricity Corporations Act 2005*;
 - (ea) the Regional Power Corporation established by section 4(1)(d) of the *Electricity Corporations Act 2005*;
- or
- (f) the Public Transport Authority established by section 5 of the *Public Transport Authority Act 2003*;

watercourse has the meaning given to that term in Schedule 5 to the Act;

wetland has the meaning given to that term in Schedule 5 to the Act.

[Regulation 3 amended: Gazette 31 Mar 2006 p. 1349;
7 Jul 2006 p. 2499.]

**4. Intentionally sown, planted or propagated vegetation —
section 51A**

- (1) The definition of **native vegetation** in section 51A of the Act includes indigenous aquatic or terrestrial vegetation that was intentionally planted if —
 - (a) the planting was funded (wholly or partly) —
 - (i) by a person who was not the owner of the land;
and
 - (ii) for the purpose of biodiversity conservation or
land conservation;
- or

- (b) one of the following is in effect in relation to the vegetation —
 - (i) a conservation covenant or agreement to reserve under section 30B of the *Soil and Land Conservation Act 1945*;
 - (ii) a covenant to conserve under section 21A of the *National Trust of Australia (W.A.) Act 1964*;
 - (iii) a restrictive covenant to conserve under section 129BA of the *Transfer of Land Act 1893*;
 - (iv) some other form of binding undertaking to establish and maintain, or maintain, the vegetation.

- (2) In this regulation —
 - biodiversity conservation*** includes conservation of species diversity, genetic diversity or ecosystem diversity;
 - land conservation*** includes management of salinity, erosion, soil acidity or waterlogging;
 - plant*** includes to sow and to propagate.

5. Prescribed clearing — section 51C

- (1) Clearing is of a kind prescribed for the purposes of section 51C(c) if —
 - (a) it is described in an item in the Table to this subregulation;
 - (b) it is by, or with the prior authority of, a person listed in the item in which the clearing is described; and
 - (c) it is done in such a way as to limit damage to neighbouring native vegetation.

Table

| Item | Description of clearing | Person |
|-------------|---|---|
| 1 | <p>Clearing to construct a building</p> <p>Clearing of a site for the lawful construction of a building or other structure on a property, being clearing which does not, together with all other limited clearing on the property in the financial year in which the clearing takes place, exceed 5 ha, if —</p> <p>(a) the clearing is to the extent necessary; and</p> <p>(b) the vegetation is not riparian vegetation.</p> | <p>The owner of the property on which the clearing is to take place.</p> |
| 2 | <p>Clearing resulting from accidents or to reduce danger</p> <p>Clearing —</p> <p>(a) for the purposes of preventing imminent danger to human life or health or irreversible damage to a significant portion of the environment; or</p> <p>(b) as a result of an accident caused otherwise than by the negligence of the person clearing or the person who authorised the clearing.</p> | <p>The owner of the land on which the clearing is to take place.</p> <p>A person responsible for the safety or welfare of the persons who are likely to be in danger or for the portion of the environment.</p> |
| 3 | <p>Clearing for fire hazard reduction</p> <p>Clearing that is fire hazard reduction burning if the clearing is —</p> <p>(a) to occur outside the prohibited or restricted burning times declared under the <i>Bush Fires Act 1954</i> for the zone in which the clearing is to take place; and</p> | <p>The owner of the land on which the clearing is to take place.</p> |

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| Item | Description of clearing | Person |
|-------------|---|------------------------------------|
| | (b) done in such a way as to minimise long term damage to the environmental values of the vegetation. | |
| 4 | Clearing in accordance with a code of practice Clearing in accordance with a code of practice issued by the CEO under section 122A of the Act. | A person to whom the code applies. |
| 5 | Clearing for firewood Clearing to provide firewood for use by the owner or occupier of the property on which the vegetation is located for domestic heating or cooking, being clearing which — (a) does not kill any live vegetation and does not prevent regrowth of the vegetation; (b) is carried out to provide firewood to the extent to which firewood could not be obtained from vegetation already cleared for another purpose; and (c) does not, together with all other limited clearing on the property in the financial year in which the clearing takes place, exceed 5 ha. | The owner or occupier. |
| 6 | Clearing to provide fencing and farm materials Clearing to provide material for use by the owner or occupier of the property on which the vegetation is located for constructing and maintaining fences, buildings and other structures on land in the possession of the owner or occupier, | The owner or occupier. |

| Item | Description of clearing | Person |
|-------------|--|------------------------|
| | being clearing which — (a) does not kill any live vegetation and does not prevent regrowth of the vegetation; (b) is carried out to provide material to the extent to which the material could not be obtained from vegetation already cleared for another purpose; and (c) does not, together with all other limited clearing on the property in the financial year in which the clearing takes place, exceed 5 ha. | |
| 7 | Clearing for woodwork Clearing to provide timber for use by the owner or occupier of the property on which the vegetation is located for non-commercial woodwork (in the nature of furniture making, wood turning or carving), being clearing which — (a) does not kill any live vegetation and does not prevent regrowth of the vegetation; (b) is carried out to provide timber to the extent to which the timber could not be obtained from vegetation already cleared for another purpose; and (c) does not, together with all other limited clearing on the property in the financial year in which the clearing takes place, exceed 5 ha. | The owner or occupier. |

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| Item | Description of clearing | Person |
|-------------|--|---|
| 8 | <p>Clearing for cultural purposes of Aboriginal persons</p> <p>Clearing for the cultural or spiritual, but not commercial, purposes of an Aboriginal person on land to which the person has a cultural or spiritual connection and a right of access.</p> | The Aboriginal person. |
| 9 | <p>Clearing by licensed surveyors</p> <p>Clearing by —</p> <p>(a) an authorised land officer or surveyor (as defined in the <i>Standard Survey Marks Act 1924</i>) in the exercise of powers under that Act; or</p> <p>(b) a licensed surveyor (as defined in the <i>Licensed Surveyors Act 1909</i>) in the course of making an authorised survey.</p> | The authorised land officer or licensed surveyor. |
| 10 | <p>Clearing along a fence line – alienated land</p> <p>Clearing of alienated land along a fence line of, or within, a property to the width necessary to provide access to construct or maintain a fence, being clearing which does not, together with all other limited clearing carried out on the property in the financial year in which the clearing takes place, exceed 5 ha.</p> | The owner of the property on which the clearing is to take place. |

| Item | Description of clearing | Person |
|-------------|---|--|
| 11 | <p>Clearing along a fence line — Crown land</p> <p>Clearing of Crown land along a fence line to provide access to construct or maintain a fence —</p> <p>(a) between alienated land and Crown land — if the clearing is no more than 1.5 m from the fence line; or</p> <p>(b) between Crown land and Crown land — if the clearing is no more than 5 m from the fence line on one side and no more than 1.5 m from the fence line on the other side.</p> | <p>The owner of the land on which the clearing is to take place.</p> |
| 12 | <p>Clearing for vehicular tracks</p> <p>Clearing to construct a vehicular track on a property, being clearing which does not, together with all other limited clearing carried out on the property in the financial year in which the clearing takes place, exceed 5 ha, if —</p> <p>(a) the clearing for the track is no wider than necessary;</p> <p>(b) there is at least 100 m between that track and any other cleared land that could be used for the purpose for which the particular track is intended;</p> <p>(c) the vegetation is not in a road reserve; and</p> <p>(d) the vegetation is not riparian vegetation (unless there is no reasonable alternative route and the track is necessary for the commercial activities carried out on the property).</p> | <p>The owner of the property on which the clearing is to take place.</p> |

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| Item | Description of clearing | Person |
|-------------|--|--|
| 13 | <p>Clearing for walking tracks</p> <p>Clearing to construct a walking track on a property, being clearing which does not, together with all other limited clearing carried out on the property in the financial year in which the clearing takes place, exceed 5 ha, if —</p> <p>(a) the clearing for the track is no wider than necessary; and</p> <p>(b) the track is used by pedestrians or there is a reasonable expectation that it will be used by pedestrians.</p> | <p>The owner of the property on which the clearing is to take place.</p> |
| 14 | <p>Clearing to maintain existing cleared areas for pasture, cultivation or forestry</p> <p>Clearing of land that was lawfully cleared within the 20 years prior to the clearing if —</p> <p>(a) the land has been used as pasture or for cultivation or forestry within those 20 years; and</p> <p>(b) the clearing is only to the extent necessary to enable the land to be used to the maximum extent to which it was used in those 20 years.</p> | <p>The owner or occupier of the land on which the clearing is to take place.</p> |
| 15 | <p>Clearing to maintain existing cleared areas around infrastructure etc.</p> <p>Clearing of land that was lawfully cleared within the 10 years prior to the clearing for one of the following purposes —</p> <p>(a) around a building or structure for the use of the building or structure;</p> <p>(b) for a fire risk reduction area for a</p> | <p>The owner or occupier of the land on which the clearing is to take place.</p> |

| Item | Description of clearing | Person |
|------|---|--|
| | building; (c) to maintain an area along a fence line to provide access to construct or maintain the fence; (d) to maintain a vehicular or walking track, to the extent of the prior clearing. Clearing of land that was previously lawfully cleared for one of the following purposes if the clearing does not exceed the extent specified for the purpose — (a) around a building or structure for the use of the building or structure — 20 m from the building or structure; (b) for a fire risk reduction area for a building — 20 m from the building; (c) to maintain an area along a fence line to provide access to construct or maintain the fence — 5 m from the fence line; (d) to maintain a vehicular or walking track — 5 m wide. | |
| 16 | Clearing under the <i>Rights in Water and Irrigation Act 1914</i> Clearing that is the result of carrying out works under a permit or other approval under, or referred to in, section 11, 16, 17 or 21A of the <i>Rights in Water and Irrigation Act 1914</i> . | The person to whom the permit is granted or other approval is given. |

| Item | Description of clearing | Person |
|-------------|--|--|
| 17 | <p>Clearing under the <i>Country Areas Water Supply Act 1947</i></p> <p>Clearing in accordance with a clearing licence granted under section 12C of the <i>Country Areas Water Supply Act 1947</i> if —</p> <p>(a) the licence is granted before Part 9 of the <i>Environmental Protection Amendment Act 2003</i> comes into operation; and</p> <p>(b) the clearing takes place within 2 years after Part 9 of the <i>Environmental Protection Amendment Act 2003</i> comes into operation.</p> | <p>The person to whom the licence is granted.</p> |
| 18 | <p>Clearing under the <i>Swan River Trust Act 1988</i>²</p> <p>Clearing —</p> <p>(a) in accordance with an approval under Part 5 of the <i>Swan River Trust Act 1988</i>²; or</p> <p>(b) as described in regulation 6(2) of the <i>Swan River Trust Regulations 1989</i>².</p> | <p>In the case of paragraph (a), the person to whom the approval is granted, in the case of paragraph (b), a person.</p> |
| 19 | <p>Clearing isolated trees</p> <p>Clearing of a tree on a property that is in an otherwise cleared area on the property and that is more than 50 m from any other native vegetation, being clearing which does not, together with all other limited clearing carried out on the property in the financial year in which the clearing takes place, exceed 5 ha.</p> | <p>The owner of the property on which the tree is located.</p> |

| Item | Description of clearing | Person |
|-------------|--|---|
| 20 | Clearing: low impact or other mineral or petroleum activities Clearing that is, or is the result of carrying out, a low impact or other mineral or petroleum activity described in Schedule 1 if the activity is carried out — (a) in accordance with Schedule 1; and (b) in an area of the State other than a non-permitted area specified in Schedule 1. | The person granted the authority to carry out the activity. |
| 21 | Clearing for a temporary bypass road Clearing that is the result of the construction of a temporary vehicular track that is necessary to bypass a stretch of road (whether public or private) that is impassable due to unforeseen damage to part of that stretch of road. | The Commissioner of Main Roads, the Public Transport Authority, the local government, the person or the entity responsible for the stretch of road. |
| 21A | Clearing for a crossover Clearing that is the result of constructing a crossover from a road to a property adjacent to the road, and any associated sight line areas, if the construction is within the scope of the authority to construct the crossover. | The person with the authority to construct the crossover. |

| Item | Description of clearing | Person |
|-------------|--|---|
| 22 | <p>Clearing for maintenance in existing transport corridors</p> <p>Clearing in relation to a stretch of road (whether public or private) or railway if the clearing is carried out —</p> <p>(a) in an area or for a purpose specified in Schedule 2; and</p> <p>(b) to the extent specified for that area or purpose in Schedule 2; and</p> <p>(c) in accordance with Schedule 2.</p> | <p>The Commissioner of Main Roads, the Public Transport Authority, the local government, the person or the entity responsible for the stretch of road or railway.</p> |
| 23 | <p>Clearing resulting from infrastructure maintenance activities</p> <p>Clearing that is the result of carrying out an infrastructure maintenance activity described in Schedule 3 if the activity is carried out in accordance with Schedule 3 and within —</p> <p>(a) in the case of an activity referred to in Schedule 3 clause 1(a), (b) or (c) — 12 months after Part 9 of the <i>Environmental Protection Amendment Act 2003</i> comes into operation; or</p> <p>(b) in the case of an activity referred to in Schedule 3 clause 1(d) — 18 months after Part 9 of the <i>Environmental Protection Amendment Act 2003</i> comes into operation.</p> | <p>The utility or local government responsible for the infrastructure.</p> |
| 24 | <p>Clearing under a Petroleum Act</p> <p>Clearing that is the result of carrying out exploration under an authority under the <i>Petroleum and Geothermal Energy Resources Act 1967</i>³, the <i>Petroleum Pipelines Act 1969</i> or the <i>Petroleum (Submerged Lands) Act 1982</i>.</p> | <p>A person covered by the authority to carry out the exploration.</p> |

| Item | Description of clearing | Person |
|-------------|---|---|
| 25 | Clearing under the <i>Mining Act 1978</i> Clearing that is the result of carrying out prospecting or exploration under an authority granted under the <i>Mining Act 1978</i> . | The person granted the authority to carry out the prospecting or exploration. |
| 26 | Clearing in accordance with a notice of intention under the <i>Soil and Land Conservation Regulations 1992</i> Clearing that is the result of carrying out an activity — (a) in respect of which notice of intention was given under regulation 5 or 6 of the <i>Soil and Land Conservation Regulations 1992</i> before Part 9 of the <i>Environmental Protection Amendment Act 2003</i> comes into operation and at least 90 days before the activity was commenced; (b) which is commenced not more than 2 years after the giving of the notice of intention and is completed not more than 2 years after Part 9 of the <i>Environmental Protection Amendment Act 2003</i> comes into operation; (c) which was not referred to the Authority as a proposal under Part IV of the Act, or was so referred and not accepted by the Authority; and | The person who gave the notice of intention. |

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| Item | Description of clearing | Person |
|-------------|---|---------------|
| | (d) in respect of which a soil conservation notice, within the meaning of Part V of the <i>Soil and Land Conservation Act 1945</i> , has not been served. | |

(2) For the purposes of subclause (1) item 8, the cultural or spiritual purposes of an Aboriginal person and the person's cultural or spiritual connection to particular land is to be determined in accordance with the body of traditions, observances and customs of the particular community or communities to which the Aboriginal person belongs or with which the person identifies.

(3) For the purposes of subclause (1) item 19, the area of a tree is the area covered by the drip line of the tree.

[Regulation 5 amended: Gazette 21 Jan 2005 p. 259; 24 Jun 2005 p. 2755-7; 23 Dec 2005 p. 6268; 6 Jan 2006 p. 31; 31 Mar 2006 p. 1165; 7 Jul 2006 p. 2500; 30 Mar 2007 p. 1457; 22 Jun 2007 p. 2845; 10 Jun 2008 p. 2486; 3 Dec 2013 p. 5623-4.]

[6. *Expired at the end of 8 Apr 2005 by operation of the Environmental Protection Amendment Act 2003 s. 110(4)(b).]*

7. Fees

(1) For the purposes of section 51E(1)(c) of the Act the fee for an application for a clearing permit is determined as set out in the Table to this subregulation.

Table

| Item | Type of application | Fee |
|-------------|---|------------|
| 1. | An application for an area permit for an area of less than 1 ha | \$50.00 |
| 2. | An application for an area permit for an area of | |

| Item | Type of application | Fee |
|-------------|--|------------|
| | between 1 and 10 ha | \$100.00 |
| 3. | An application for an area permit for an area of more than 10 ha | \$200.00 |
| 4. | An application for a purpose permit | \$200.00 |

- (2) For the purposes of section 51M(1)(b) of the Act the fee for an application to amend a clearing permit or an application to surrender a clearing permit is determined as set out in the Table to this subregulation.

Table

| Item | Type of application | Fee |
|-------------|---|------------|
| 1. | An application to amend an area permit other than to increase the area covered by the permit | \$50.00 |
| 2. | An application to amend an area permit to increase the area covered by the permit by less than 1 ha | \$50.00 |
| 3. | An application to amend an area permit to increase the area covered by the permit by between 1 ha and 10 ha | \$100.00 |
| 4. | An application to amend an area permit to increase the area covered by the permit by more than 10 ha | \$200.00 |
| 5. | An application to amend a purpose permit | \$200.00 |
| 6. | An application to surrender a clearing permit | \$5.00 |

- (3) For the purposes of section 119(5) of the *Environmental Protection Amendment Act 2003* the fee is \$5.00.
- (4) The CEO may reduce, waive or refund a fee required to be paid under these regulations if the CEO is satisfied that the person otherwise liable to pay the fee is suffering extreme financial hardship.

8. Records to be kept by the CEO — section 51Q

- (1) A record of the following particulars is to be kept by the CEO for the purposes of section 51Q(1) —
- (a) for applications for clearing permits —
 - (i) the name and address of the applicant;
 - (ii) whether the application is for an area permit or a purpose permit;
 - (iii) a description of the land to which the application relates;
 - (iv) the purpose of the proposed clearing;
 - (v) in the case of an application for an area permit — the size of the area to be cleared or the number of trees to be cleared;
 - (vi) the period for which the permit is sought;
 - (b) for clearing permits —
 - (i) the name and address of the permit holder;
 - (ii) whether the permit is an area permit or a purpose permit;
 - (iii) a description of the land to which the permit relates;
 - (iv) the purpose of the clearing;
 - (v) in the case of an area permit — the size of the area to be cleared or the number of trees to be cleared;
 - (vi) the conditions to which the permit is subject;
 - (vii) the period during which the permit is in force;
 - (c) for undertakings given by the CEO under section 51E(9) —
 - (i) the name and address of the person to whom the undertaking was given;

- (ii) whether the undertaking is in relation to an area permit or a purpose permit;
 - (iii) a description of the land to which the permit that will be granted in accordance with the undertaking relates;
 - (iv) the purpose of the proposed clearing;
 - (v) in the case of an undertaking in relation to an area permit — the size of the area to be cleared or the number of trees to be cleared;
 - (vi) the conditions to which the permit that will be granted in accordance with the undertaking is to be subject;
 - (vii) the period for which the permit that will be granted in accordance with the undertaking is to be in force;
- (d) for notifications received under section 51N(1) of the transfer or passing of the owner's interest in the land —
- (i) the name and address of the person giving the notification;
 - (ii) when the interest was transferred or passed, or will transfer or pass, to the person giving the notification;
 - (iii) when the notice was received by the CEO.
- (2) The CEO is to publish the following particulars of the record —
- (a) for applications for a clearing permit — all of the particulars referred to in subregulation (1)(a), other than the address of the applicant and the period for which the permit is sought; and
 - (b) for clearing permits that are in force or undertakings given under section 51E(9) — all of the particulars referred to in subregulation (1)(b) or (1)(c), other than the address of the permit holder or the person to whom the undertaking is given.

- (3) The CEO is to publish the particulars —
- (a) referred to in subregulation (2)(a) — in a newspaper circulating daily in the State or on the Department's internet website;
 - (b) referred to in subregulation (2)(b) — in a newspaper circulating daily in the State or on the Department's internet website.

[Regulation 8 amended: Gazette 24 Jun 2005 p. 2757.]

9. Expiry of certain provisions

Regulation 6 and the definition of *environmentally sensitive area* in regulation 3 cease to have effect, by force of this regulation, on the day on which the first notice published by the Minister under section 51B of the Act comes into operation.

Schedule 1 — Low impact or other mineral or petroleum activities

[r. 5(1) item 20]

[*Heading amended: Gazette 24 Jun 2005 p. 2757; 23 Dec 2005 p. 6268.*]

1. Terms used

In this Schedule —

scrape and detect operation means an operation to scrape material from the earth's surface, to stockpile it and to screen it (for example, by using screens or a metal detector) for minerals;

water supply area means —

[(a) *deleted*]

(b) a catchment area or water reserve constituted under section 9 of the *Country Areas Water Supply Act 1947*;

(c) a catchment area or water reserve constituted under section 13 of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*; or

(d) an Underground Water Pollution Control Area constituted under section 57A of the *Metropolitan Water Supply, Sewerage, and Drainage Act 1909*.

[*Clause 1 amended: Gazette 23 Dec 2005 p. 6269; 30 Mar 2007 p. 1458; 14 Nov 2013 p. 5037.*]

2. Low impact mineral and petroleum activities

(1) The following activities are low impact mineral or petroleum activities for the purposes of item 20, to the extent to which they are carried out under an authority granted under the *Mining Act 1978*, the *Petroleum and Geothermal Energy Resources Act 1967*³, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982* —

(a) activities involving no ground disturbance and little or no vegetation damage;

(b) driving vehicles or other mechanised equipment through vegetation, that is, not along existing tracks;

[(c)-(e) *deleted*]

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- (f) raised-blade clearing for a temporary access track (of no more than 4 m in width) if there is at least 100 m between that access track and any other access track;
 - (g) a scrape and detect operation if the total area cleared for the purposes of the operation is less than 2 ha at any one time (excluding any area that has been rehabilitated in accordance with the requirements imposed by or under the relevant Act);
 - [(h) *deleted*]
 - (i) clearing for camp sites and storage areas, and similar incidental purposes, necessary for the activities referred to in any of the other paragraphs of this subclause if the total area cleared for those purposes is less than 2 ha at any one time (excluding any area that has been rehabilitated in accordance with the requirements imposed by or under the relevant Act);
 - (j) anchoring vessels to the seabed, removing marine growth from offshore pipelines, platforms and other structures and carrying out seabed surveys;
 - (k) anchoring drill rigs to the seabed, positioning drill rigs and drilling if the activity is not carried out within a sanctuary, recreation or special purpose area of a marine park referred to in section 13B(9) of the *Conservation and Land Management Act 1984*.
- (1a) An activity authorised by a licence granted, after this subclause comes into operation, under section 5C or 26D of the *Rights in Water and Irrigation Act 1914* is a low impact mineral or petroleum activity for the purposes of item 20, to the extent to which it is carried out for the purposes of an activity carried out under an authority granted under the *Mining Act 1978*, the *Petroleum and Geothermal Energy Resources Act 1967*³, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982*.
- (2) The following activity is a mineral or petroleum activity for the purposes of item 20, to the extent to which it is carried out under an authority granted under the *Mining Act 1978*, the *Petroleum and Geothermal Energy Resources Act 1967*³, the *Petroleum Pipelines Act 1969* or the *Petroleum (Submerged Lands) Act 1982* — clearing in an authority area for any purpose, being clearing which does not, together with all other clearing carried out under this subclause in the

area in the financial year in which the clearing takes place, exceed 10 ha.

(3) In subclause (2) —

authority area means the area in which the holder of one of the following authorities may carry out the activity or activities authorised by that authority —

- (a) a mining tenement as defined in the *Mining Act 1978*;
- (b) a permit, drilling reservation, lease, licence, special prospecting authority or access authority, as defined in the *Petroleum and Geothermal Energy Resources Act 1967*³;
- (c) a licence as defined in the *Petroleum Pipelines Act 1969*;
- (d) a permit, lease, licence, pipeline licence, special prospecting licence or access authority, as defined in the *Petroleum (Submerged Lands) Act 1982*, or a consent of the Minister under section 60 of that Act.

[Clause 2 amended: Gazette 24 Jun 2005 p. 2757-8; 23 Dec 2005 p. 6269-70; 30 Mar 2007 p. 1458.]

3. How the activity is to be carried out

An activity referred to in clause 2 is to be carried out —

- (a) so that it does not result in clearing of riparian vegetation and limits or avoids indirect harm to riparian vegetation;
- (b) so that soil erosion and other similar land degradation is limited or avoided; and
- (c) so that, to the extent practicable, the quality of surface and subterranean water is not affected.

4. Non-permitted areas

(1) An area of the State is a non-permitted area if it is within, or described by, one of the following —

- (a) one of the following bioregions or part bioregions —
 - (i) Avon Wheatbelt;
 - (ii) Esperance;
 - (iii) Geraldton Sandplains;

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- (iv) Jarrah Forest;
- (v) Mallee;
- (vi) Swan Coastal Plain;
- (vii) Warren;
- (viii) Yalgoo (to the extent of the intensive land-use zone);
- (b) alienated land as defined in section 3(1) of the *Land Administration Act 1997*;
- (c) a townsite as defined in section 3(1) of the *Land Administration Act 1997* that is occupied;
- (d) a conservation area as defined in Schedule 5 clause 2 to the Act;
- (e) Crown land reserved under the *Land Administration Act 1997* the care and control of which is placed with the Water and Rivers Commission under that Act or section 32 of the *Waterways Conservation Act 1976*;
- (f) a water supply area;
- (g) an area covered by the riparian vegetation of a wetland or watercourse;
- (h) the area extending 2 km inland from the high water mark of the coastline of Western Australia;
- (i) an environmentally sensitive area;
- (j) an area known as a “priority one area” as described in “Wild Rivers of Western Australia” (1999) published by the Water and Rivers Commission, Perth;
- (k) an area known as a “Red Book area” as described in —
 - (i) “Conservation Reserves for Western Australia. Systems 4, 8, 9, 10, 11, 12.” (1975);
 - (ii) “Conservation Reserves for Western Australia. Systems 1, 2, 3, 5.” (1976);
 - (iii) “Conservation Reserves for Western Australia. System 7.” (1980); or
 - (iv) “Conservation Reserves for Western Australia. The Darling System — System 6. Part I: General Principles and Recommendations and Part II:

Recommendations for Specific Localities.
Report 13.” (1983),

published by the Department of Conservation and Environment, Perth and the “Red Book Status Report. On the implementation of Conservation Reserves for WA as recommended by the Environmental Protection Authority. Report 15” (1993) published by the Environmental Protection Authority, Perth.

- (2) For the purposes of subclause (1)(h) —
- (a) the coastline follows the shores of bays, inlets and other similar bodies of water that are connected to the sea (disregarding any temporary closure from the sea);
 - (b) the high water mark is that at ordinary spring tides; and
 - (c) the high water mark of the coastline extends across the mouth of a river or riverine estuary from the last point on the high water mark of one of the banks of the mouth of the river or estuary at which a line extended at 90° to the bank will reach the opposite bank to the other such point on the opposite bank.

[Clause 4 amended: Gazette 23 Dec 2005 p. 6270.]

cl. 1

Schedule 2 — Clearing for maintenance in existing transport corridors

[r. 5(1) item 22]

[Heading amended: Gazette 7 Jul 2006 p. 2500.]

1. Terms used

In this Schedule —

crossover area means the area occupied by a crossover from a road to a property adjacent to the road and any associated sight line areas;

lateral clearance area, in relation to a stretch of road or railway, means the area (if any) parallel to and immediately adjacent to the stretch of road or railway that is ordinarily cleared;

previously cleared has a meaning that is affected by clause 2(2);

public roadside facility includes a camping area, rest area, information bay, road train assembly area or parking area or a footpath or cycle track in the road reserve;

transport corridor infrastructure, in relation to a stretch of road or railway, includes barriers, signs, guideposts, drains, levies, embankments, gutters, bridges, overpasses and other similar structures or works.

[Clause 1 amended: Gazette 7 Jul 2006 p. 2500-1.]

2. Extent of clearing for an area or purpose in relation to a road or railway

- (1) For a stretch of road or railway, the area or purpose and the extent of clearing referred to in item 22 are, subject to subclause (2), specified in the Table to this subclause.

Table

| area or purpose | extent of clearing |
|------------------------|---|
| crossover area | clearing to the extent previously cleared for the area. |
| lateral clearance area | complete clearing to the width and height previously cleared for that stretch of road or railway. |

| area or purpose | extent of clearing |
|---|--|
| crossover area | clearing to the extent previously cleared for the area. |
| maintenance and protection of transport corridor infrastructure | clearing to the extent necessary to — (a) maintain the efficacy and safety of the infrastructure; (b) protect the infrastructure (for example, from fire); and (c) provide access to the infrastructure to maintain it. |
| an area that is a public roadside facility | clearing to the extent necessary to maintain (but not extend) the intended use of the area. |
| sight line area | clearing to the extent previously cleared for that area. |

- (2) An extent of clearing that is specified in the Table to subclause (1) by reference to previous clearing is so specified if and only if —
- (a) the previous clearing took place within the 10 years immediately prior to the proposed clearing; and
 - (b) either —
 - (i) the previous clearing was lawful; or
 - (ii) the person clearing does not know, and cannot reasonably be expected to know, whether the previous clearing was lawful.

[Clause 2 amended: Gazette 7 Jul 2006 p. 2501.]

3. How the clearing is to be carried out

Clearing is to be carried out so that any cleared vegetation or debris —

- [(a) deleted]*
- (b) to the extent to which it is not used on the site, is removed from the site within 90 days of the clearing; and
- (c) if it is to be removed from the site —

cl. 3

- (i) is not placed in a heap or windrow on uncleared vegetation; and
- (ii) is left in a heap or windrow (that is secured so that it will not spread) until it is removed.

[Clause 3 amended: Gazette 24 Jun 2005 p. 2758; 7 Jul 2006 p. 2501.]

Schedule 3 — Infrastructure maintenance activities

[r. 5(1) item 23]

1. Infrastructure maintenance activities

- (1) The following activities are infrastructure maintenance activities —
- (a) maintenance of existing infrastructure;
 - (b) construction of infrastructure, if the construction commenced before Part 9 of the *Environmental Protection Amendment Act 2003* came into operation;
 - (c) the use of a site used to extract road or railway building materials if that site was used within the 2 years immediately before the day on which Part 9 of the *Environmental Protection Amendment Act 2003* came into operation;
 - (d) road widening or realignment, or construction of a crossover from a road to private property, and the construction or maintenance of sight line areas associated with any of these, if the road existed before Part 9 of the *Environmental Protection Amendment Act 2003* came into operation.
- (2) In this clause —
- sight line area** means an area between the edge of a stretch of road and a line of sight necessary for the safe use of the stretch of road.

2. How the activity is to be carried out

An activity referred to in clause 1 is to be carried out so that any cleared vegetation or debris —

- [(a) *deleted*]
- (b) to the extent to which it is not used on the site, is removed from the site within 21 days of the clearing; and
- (c) if it is to be removed from the site —
 - (i) is not placed in a heap or windrow on uncleared vegetation; and
 - (ii) is left in a heap or windrow (that is secured so that it will not spread) until it is removed.

[Clause 2 amended: Gazette 24 Jun 2005 p. 2758.]

Notes

- ¹ This is a compilation of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* and includes the amendments made by the other written laws referred to in the following table^{1a}. The table also contains information about any reprint.

Compilation table

| Citation | Gazettal | Commencement |
|--|----------------------------|---|
| <i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i> | 30 Jun 2004 p. 2587-623 | 8 Jul 2004 (see r. 2 and <i>Gazette</i> 30 Jun 2004 p. 2581) |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations 2005</i> | 21 Jan 2005 p. 259 | 21 Jan 2005 |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations (No. 2) 2005</i> | 24 Jun 2005 p. 2755-8 | 24 Jun 2005 |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations (No. 3) 2005</i> | 23 Dec 2005 p. 6268-70 | 23 Dec 2005 |
| <i>Environmental Protection (Clearing of Native Vegetation) Regulations 2006</i> | 6 Jan 2006 p. 29-31 | 6 Jan 2006 |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations (No. 2) 2006</i> | 31 Mar 2006 p. 1164-5 | 31 Mar 2006 |
| <i>Electricity Corporations (Consequential Amendments) Regulations 2006</i> r. 79 | 31 Mar 2006 p. 1299-357 | 1 Apr 2006 (see r. 2) |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations (No. 4) 2006</i> | 7 Jul 2006 p. 2499-501 | 7 Jul 2006 |
| Reprint 1: The Environmental Protection (Clearing of Native Vegetation) Regulations 2004 as at 15 Sep 2006 (includes amendments listed above) | | |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations 2007</i> | 30 Mar 2007 p. 1457-8 | 30 Mar 2007 |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations (No. 2) 2007</i> | 22 Jun 2007 p. 2845 | 22 Jun 2007 |

| Citation | Gazettal | Commencement |
|--|--------------------------|--|
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations 2008</i> | 10 Jun 2008 p. 2485-6 | r. 1 and 2: 10 Jun 2008 (see r. 2(a)); Regulations other than r. 1 and 2: 11 Jun 2008 (see r. 2(b)) |
| Reprint 2: The Environmental Protection (Clearing of Native Vegetation) Regulations 2004 as at 17 Apr 2009 (includes amendments listed above) | | |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations 2013</i> | 14 Nov 2013 p. 5037 | r. 1 and 2: 14 Nov 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 18 Nov 2013 (see r. 2(b) and <i>Gazette</i> 14 Nov 2013 p. 5027) |
| <i>Environmental Protection (Clearing of Native Vegetation) Amendment Regulations (No. 2) 2013</i> | 3 Dec 2013 p. 5623-4 | r. 1 and 2: 3 Dec 2013 (see r. 2(a)); Regulations other than r. 1 and 2: 4 Dec 2013 (see r. 2(b)) |

^{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

| <u>Citation</u> | <u>Gazettal</u> | <u>Commencement</u> |
|--|---|--|
| Environmental Protection (Clearing of Native Vegetation) Amendment Regulations 2019 r. 3-5⁵ | 3 May 2019 p. 1307-9 | 1 Jul 2019 (see r. 2(b)) |

² Repealed by the *Swan and Canning Rivers (Consequential and Transitional Provisions) Act 2006* s. 4. See s. 8 of that Act in relation to the repeal of the *Swan River Trust Act 1988*.

³ Formerly referred to the *Petroleum Act 1967*, the short title of which was changed to the *Petroleum and Geothermal Energy Resources Act 1967* by the *Petroleum Amendment Act 2007* s. 5. The reference was changed under the *Reprints Act 1984* s. 7(3)(gb).

⁴ The *Water Resources Legislation Amendment Act 2007* s. 223 reads as follows:

“

223. Agreements and instruments generally

(1) Any agreement or instrument (including subsidiary legislation) in force immediately before the transfer time —

(a) to which a former body was a party; or

(b) which contains a reference to a former body,

has effect after the transfer time, to the extent to which the agreement or instrument relates to the functions of a relevant successor to the former body, as if —

(c) the relevant successor were substituted for the former body as a party to the agreement or instrument; and

(d) any reference in the agreement or instrument to the former body were (unless the context otherwise requires) amended to be or include a reference to the relevant successor.

(2) This section does not apply to any agreement or instrument covered by another provision of this Part.

”.

⁵ [On the date as at which this compilation was prepared, the *Environmental Protection \(Clearing of Native Vegetation\) Amendment Regulations 2019* r. 3-5 had not come into operation. They read as follows:](#)

3. Regulations amended

[These regulations amend the *Environmental Protection \(Clearing of Native Vegetation\) Regulations 2004*.](#)

4. Regulation 3 amended

[In regulation 3 delete the definition of *intensive land-use zone* and insert:](#)

[*intensive land-use zone* means the intensive land-use zone as defined in Shepherd, D.P., Beeston, G.R. and Hopkins, A.J.M. “Native Vegetation in Western Australia. Resource Management Technical Report 249” \(2001\) published by the Department of Agriculture, Perth;](#)

5. Regulation 7 amended

[\(1\) Delete regulation 7\(1\) and insert:](#)

- (1) In this regulation —
application area, in relation to an application for an area permit or a purpose permit, means the area that is proposed to be cleared in the application.
- (1A) For the purposes of section 51E(1)(c) of the Act, the fee for an application for an area permit is determined as set out in the Table, with —
- (a) column A showing the fee for an application where any part of the application area falls within the intensive land-use zone; and
- (b) column B showing the fee for any other application.

Table

| <u>Item</u> | <u>Application area</u> | <u>Column A</u> <u>Fee</u> | <u>Column B</u> <u>Fee</u> |
|-------------|---|-------------------------------|-------------------------------|
| <u>1.</u> | <u>Not more than 1 ha</u> | <u>\$400</u> | <u>\$400</u> |
| <u>2.</u> | <u>More than 1 ha but not more than 5 ha</u> | <u>\$600</u> | <u>\$600</u> |
| <u>3.</u> | <u>More than 5 ha but not more than 10 ha</u> | <u>\$1 500</u> | <u>\$750</u> |
| <u>4.</u> | <u>More than 10 ha but not more than 50 ha</u> | <u>\$2 000</u> | <u>\$1 000</u> |
| <u>5.</u> | <u>More than 50 ha but not more than 100 ha</u> | <u>\$3 000</u> | <u>\$1 500</u> |
| <u>6.</u> | <u>More than 100 ha but not more than 500 ha</u> | <u>\$4 000</u> | <u>\$2 000</u> |
| <u>7.</u> | <u>More than 500 ha but not more than 1000 ha</u> | <u>\$5 000</u> | <u>\$2 500</u> |
| <u>8.</u> | <u>More than 1000 ha</u> | <u>\$10 000</u> | <u>\$5 000</u> |

- (1B) For the purposes of section 51E(1)(c) of the Act, the fee for an application for a purpose permit is the sum of —
- (a) \$2 000; and
- (b) the variable component, determined as set out in the Table, with —

- (i) column A showing the variable component for an application where any part of the application area falls within the intensive land-use zone; and
- (ii) column B showing the variable component for any other application.

Table

| <u>Item</u> | <u>Application area</u> | <u>Column A</u> <u>Variable component</u> | <u>Column B</u> <u>Variable component</u> |
|--------------------|---|--|--|
| <u>1.</u> | <u>Not more than 1 ha</u> | <u>\$400</u> | <u>\$400</u> |
| <u>2.</u> | <u>More than 1 ha but not more than 5 ha</u> | <u>\$600</u> | <u>\$600</u> |
| <u>3.</u> | <u>More than 5 ha but not more than 10 ha</u> | <u>\$1 500</u> | <u>\$750</u> |
| <u>4.</u> | <u>More than 10 ha but not more than 50 ha</u> | <u>\$2 000</u> | <u>\$1 000</u> |
| <u>5.</u> | <u>More than 50 ha but not more than 100 ha</u> | <u>\$3 000</u> | <u>\$1 500</u> |
| <u>6.</u> | <u>More than 100 ha but not more than 500 ha</u> | <u>\$4 000</u> | <u>\$2 000</u> |
| <u>7.</u> | <u>More than 500 ha but not more than 1000 ha</u> | <u>\$5 000</u> | <u>\$2 500</u> |
| <u>8.</u> | <u>More than 1000 ha</u> | <u>\$10 000</u> | <u>\$5 000</u> |

(2) Delete regulation 7(4) and insert:

(4) The CEO may reduce, waive or refund, in whole or part, a fee referred to in these regulations.