



Native vegetation clearing processes under the assessment bilateral agreement

Purpose

This fact sheet provides information on the Department of Environment Regulation (DER)'s approach, and that of the Department of Mines and Petroleum (DMP) under delegation, to assessing and making decisions on native vegetation clearing applications under a bilateral agreement.

Introduction

The *Environmental Protection Act 1986* (EP Act) makes it an offence to clear native vegetation unless the clearing is done in accordance with a clearing permit, or an exemption applies. These laws apply to private and public lands throughout Western Australia (WA).

If a clearing permit is required and the clearing will have or is likely to have an impact on a matter of national environmental significance (matter of NES) identified under the Commonwealth of Australia's *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), the clearing application may be assessed under the assessment bilateral agreement.

What is a bilateral agreement?

Under section 45 of the EPBC Act, the Commonwealth can enter into a bilateral agreement with a state and accredit their practices, procedures, processes, systems, management plans and other approaches to environmental protection. A bilateral agreement is a written agreement between the Commonwealth and a state on the accredited process.

WA and the Commonwealth have entered into a bilateral agreement for the clearing permit assessment processes under Part V Division 2 of the EP Act.

Why was a bilateral agreement established?

Under a memorandum of understanding, the Commonwealth and WA committed to the establishment of a 'one-stop shop' for environmental approval under the EPBC Act.

Implementation of the assessment bilateral agreement will streamline and provide a coordinated approach, minimising duplication of existing WA and Commonwealth processes. It will ensure an efficient, timely and effective process for environmental assessment of clearing actions while maintaining high environmental standards.

Assessment bilateral agreement

The assessment bilateral agreement, starting 1 January 2015, allows WA to assess the impacts of clearing on relevant matters of NES while undertaking an EP Act clearing permit assessment. The agreement applies only to clearing applications initially referred to the Commonwealth and which the Commonwealth has determined to be a 'controlled action'.

An action is a 'controlled action' if it will have a significant impact on a matter of NES and require the approval of the Commonwealth Minister for the Environment.

DER uses the methodology outlined in *A guide to the assessment of applications to clear native vegetation* (DER 2014), to assess clearing permit applications. The CEO will make a decision under the EP Act and may attach conditions relating to matters of NES to a granted clearing permit.

The CEO's decision report and supporting documentation is then provided to the Commonwealth Minister for the Environment for an approval decision under the EPBC Act.

The Commonwealth and the State will cooperate in monitoring compliance of any conditions attached to clearing permits granted under the assessment bilateral agreement.

What is a matter of national environmental significance?

Matters of NES are identified under Part 3 Division 1 of the EPBC Act and include:

- world heritage properties;
- national heritage properties;
- wetlands of international importance (Ramsar);
- nationally listed threatened species and communities;
- listed migratory species;
- Commonwealth marine areas;
- the environment in the case of nuclear actions; and
- a water resource, in relation to coal seam gas development and large coal mining development.

A significant impact is one which is important, notable or of consequence, having regard to its context or intensity. The significance also depends on the sensitivity, value and quality of the environment being impacted and the intensity, duration, magnitude and geographic extent of the impacts. More information is available in [Significant Impact Guidelines 1.1](#) (Commonwealth of Australia, 2013).

When does the bilateral agreement apply?

A clearing application can only be assessed under a bilateral agreement if the timing of the referral under the EPBC Act and clearing permit application under the EP Act is appropriately aligned. The clearing application submitted to DER should also be supported by all the documentation required in the application forms.

The bilateral agreement does not apply to actions in Commonwealth areas (land or marine) or actions taken by the Commonwealth. It also does not apply to clearing applications which have previously been referred to the Commonwealth and were approved, refused or determined to be clearly unacceptable under the EPBC Act.

WA can also choose not to assess an application and may also implement an escalation process for dispute resolution. This means the Commonwealth will assess the impacts of the action on matters of NES.

More information

For further information on native vegetation clearing assessments contact DER on (08) 6467 5000.

For applications related to mines and petroleum activities, under delegation, contact the WA Department of Mines and Petroleum on (08) 9222 3333.

This document is available in alternative formats and other languages on request.

Related documents

More information on native vegetation clearing processes under the assessment bilateral agreement is available from DER at www.der.wa.gov.au/nvp.

- *Guide 6 – A guide to native vegetation clearing processes under the assessment bilateral agreement*

Legislation

Please refer to the State Law Publisher (SLP) and Australian Government's ComLaw websites for copies of the relevant legislation. Copies are available electronically from SLP www.slp.wa.gov.au and ComLaw www.comlaw.gov.au.

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Flowchart of native vegetation clearing processes under the assessment bilateral agreement

