



Our Ref: D12467; 20/013303
Your Ref:

Strategy Policy - *Environmental Protection Act 1986* amendments
Department of Water Environmental Regulation
Locked Bag 10
JOONDALUP DC WA 6919

Department of Water and Environmental Regulation	
File Ref	DWEROT4519
24 FEB 2020	
Doc Ref	DWEROT257207
Div/Officer	
Scanned?	Y N

MODERNISING THE *ENVIRONMENTAL PROTECTION ACT*

Thank you for the opportunity to provide a submission on the proposal to modernise the *Environmental Protection Act*. In Western Australia the Department of Fire and Emergency Services (DFES) performs a critical role coordinating emergency services for a range of natural disasters and emergency incidents threatening life and property.

By their very nature, natural disasters have a large impact on the environment. DFES recognises the need to balance reducing the impacts of bushfire, with the impact bushfire mitigation strategies can have on native vegetation. This is demonstrated by the consultation currently occurring between the Department of Water and Environmental Regulation and DFES to ensure local governments can undertake appropriate bush fire mitigation works on land under their care and control in an expedient manner, and environmental issues are appropriately considered.

With this balance in mind DFES offers the following comments on the proposed modernisation of the *Environmental Protection Act*:

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

Clause 1

- The discussion paper states there is uncertainty regarding the extent to which Clause 1 applies to local laws. Whilst it is a matter for the State Solicitor's Office to clarify, in the *Interpretation Act 1984* 'written law' is defined to include 'subsidiary legislation'. Subsidiary legislation is defined to include 'local laws'.
- If Clause 1 is amended as suggested and a person is required to clear native vegetation pursuant to an enactment that has not been prescribed, the person will be placed in the position of requiring a clearing permit in order to comply with a legislative requirement to clear native vegetation. Depending upon the timeframe in which the person is required to clear the vegetation and the time taken to obtain a clearing permit, a person could be prosecuted for either not clearing in the time required, or for clearing without a permit. I believe such a result would be unsatisfactory from a policy perspective.

- It is recommended Clause 1 remain as it currently is. If the intent is to provide clarity to the public a new clause should be drafted exempting clearing done under a prescribed enactment.

Clause 10

- This clause references provisions of the *Bush Fires Act 1954* (the BF Act). Under s.28(1) of the BF Act a person is required to take all possible measures to extinguish a fire on their land during the restricted and prohibited burning times, if the fire is not burning in accordance with the BF Act. It is recommended consideration be given to including this provision under Clause 10.
- It is proposed to include clearing that is done as the result of a firebreak notice issued by a local government under s.33(1) of the BF Act, within Clause 10. It is recommended consideration be given to include clearing required by notices issued by the CALM Act CEO or the FES Commissioner under ss.34(2) & 35(1) of the BF Act respectively.

Any queries regarding the above matters should be directed to Mr Paul Simpson, Principal Policy Officer at the Rural Fire Division, via paul.simpson@dfes.wa.gov.au or on 0409 686 891.

Yours sincerely

A handwritten signature in dark ink, appearing to be 'DK', with a long horizontal line extending to the right.

**DARREN KLEMM AFSM
COMMISSIONER**

31 January 2020