

28 January 2020

EP Act Discussion Paper
Department of Water and Environmental Regulation
Locked Bag 10,
Joondalup DC, WA 6919

Modernising the Environmental Protection Act; Discussion Paper

I am writing to with concern that there is a major failure to prevent clearing in areas that are the subject of and at variance to one of the 10 clearing Principles. All clearing which is at variance to one or more Clearing Principles should not be granted Clearing Permits. The legislation needs to be strengthened so that this is mandatory and is enforced.

The ~40 **exemptions** are unacceptable. There are too many and they require review. There should not be any exemptions for the Wheatbelt and the south west biodiversity hotspot, especially on the Swan Coastal Plain. This can be applied by declaring these areas as *environmentally sensitive areas (ESA's)* under the EP Act.

All areas of threatened ecological communities (listed by both by State and Commonwealth) should be declared *environmentally sensitive areas* under the EP Act. Similarly **all areas of natural habitat of rare species of flora and fauna should also be declared *environmentally sensitive areas* under the EP Act.**

As stated, **exemptions do not apply in '*environmentally sensitive areas*'**. But the past and current administration of clearing permits for '*environmentally sensitive areas*' is not preventing clearing in these areas and there are many cases of unauthorised (ie illegal) clearing which are not being prosecuted. For example, this is the case for roadside clearing in the Wheatbelt, an area seriously over-cleared and in which no further clearing should be permitted on any lands.

The wording of the Clearing Principles in Schedule 5 could be changed so that under the Clearing Regulations, no clearing is permitted if it is at variance to one or more of the Clearing Principles.

I also support and endorsing the views submitted by the Beeliar Group of Professors for Environmental Responsibility as follows:

We are writing to you on behalf of the Beeliar Group of Professors for Environmental Responsibility. Our group of 35 Professors was formed in January 2017 out of concern over the process used to plan and implement the Perth Freight Link and Roe Highway stage 8.

We are pleased to see that the State Government has decided to modernise the Environmental Protection Act as it has many deficiencies that have been noted by various commentators since its enactment in 1986, with few of these being addressed.

The Discussion Paper and Draft Bill contain several useful minor amendments and we agree with most of them, except where noted below.

1. Bilateral agreements with the Commonwealth

We have concerns about the delegation of Commonwealth powers to carry out assessments under the EPBC Act to the States as history shows that the States sometimes overlook key factors of national importance. The State EPA also is not expert in the application of the EPBC Act. The effect of the proposed amendments is unclear, and we would prefer to ensure the retention of the current arrangements where the Commonwealth has the power to separately assess projects.

2. Certification of Environmental Practitioners

The environmental consulting industry does not have a good reputation for scientific objectivity in the environmental reviews it carries out. This is understandable because the consultants are hired and paid for by the proponents. We would prefer to see documents certified by independent auditors or peer reviewed by independent scientists to ensure they are accurate.

3. Referral of proposals

We have serious concerns about not assessing proposals where other government agencies have the power to regulate them. Fundamentally these other agencies do not operate under legislation with environmental protection as an object. The records of the Mines Department, the Planning Department and Main Roads in particular are not impressive in this regard. We believe that the EPA should retain its right to assess all proposals that have the potential to affect the environment. In particular we would like to see Environmental Reviews carried out under section 48A subjected to public review and the DWER have a role in overseeing the implementation of environmental conditions applied to planning proposals.

Yours sincerely,

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