

**DEPARTMENT OF CONSERVATION AND LAND
MANAGEMENT**

ADMINISTRATIVE INSTRUCTION NO. 63

GUIDELINES

for

**MANAGING TEMPORARY CONTROL AREAS
FOR PURPOSES OF PUBLIC SAFETY**

ON

**STATE FORESTS, TIMBER RESERVES AND OTHER LANDS
VESTED IN THE LANDS AND FOREST COMMISSION**

1 January 1997

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1. SCOPE OF GUIDELINES - CALM's duty of care

CALM has a duty of care to its employees, contractors and members of the public regarding safety hazards associated with forest operations. From time to time, Temporary Control Areas (TCA) may be gazetted where forest management activities pose a particular risk to public safety. Members of the public and CALM staff need authority to enter TCAs. These guidelines outline how CALM will manage TCAs and provide safe access for members of the public to State forests, timber reserves and lands and waters vested in the Lands and Forest Commission.

2. CALM ACT REQUIREMENTS AND RELEVANT FOREST MANAGEMENT REGULATIONS

The following Sections of the CALM Act 1984 and the Forest Management Regulations govern the establishment and management of TCAs by CALM. CALM staff involved in managing TCAs should be familiar with the exact wording of all relevant Sections of the CALM Act and the Forest Management Regulations.

2.1 Section 62 (i)

Subject to this section, the Minister may, on the recommendations of a controlling body and, where applicable, any associated body, by notice published in the *Gazette*, classify the whole or any part of land or waters that is vested in that controlling body as -

- (a) a wilderness;
- (b) a prohibited area;
- (c) a limited access area;
- (d) a temporary control area;
- (e) a recreation area for a purposes or purpose specified in the notice; or
- (f) such other class of area as the Minister, on the recommendation of the controlling body, thinks necessary to give effect to the objects of this Act,

and may in like manner amend or cancel a notice previously so published.

2.2 Section 62 (2)

A classification of land or waters as a temporary control area under subsection (1)(d) shall only be made for the purposes of public safety or the protection of flora or fauna, or both flora and fauna, and the notice of classification -

- (a) shall not have effect for a period exceeding 90 days; but
- (b) **may be made more than once for the same purpose and for the same area.**

2.3 Section 62 (3)

A classification, or amendment of classification, of any land or waters shall not be made under this section -

- (a) unless it is in conformity with the provisions of section 56 which is relevant to, or any management plans for, that land or those waters; and
- (b) in the case of land to which section 16 applies, unless the owner and any person occupying the land with the consent of the owner, has given approval in writing to the classification or the amended classification.

2.4 Regulation 86 Prohibition of entry to prohibited areas and temporary control areas

A person shall not, without the authorisation of the Executive Director or a forest officer, enter any area of-

- (a) State forest;
- (b) timber reserve; or
- (c) land reserved under the **Land Act 1993** and vested by order under that Act in the Commission,

that is classified under section 62 of the Act as -

- (d) a prohibited area; or
- (e) a temporary control area.

2.5 Section 124 Powers of rangers and conservation and land management officers

(1) A ranger or conservation and land management officer who finds a person committing a relevant offence on or in any land or waters or who on reasonable grounds suspects that such an offence has been committed or is about to be committed, may without a warrant -

- (a) stop, detain and search any vehicle, vessel or conveyance;
- (b) remove any vehicle, vessel, animal or other thing from the land or waters;
- (c) require the person to give him the person's name and address;
- (d) require the person to leave the land or waters,

and, in addition, a ranger may enter and search any hut, tent, caravan or other erection which is not a permanent residence.

- (2) A ranger may detain a person until he can be delivered to a police officer if, and when required to do so, he does not give to the ranger his name and address, or gives to him a false name and address.
- (3) Instead of so detaining the person the ranger may take him into custody himself, to be dealt with according to law, pursuant to section 50 of the *Police Act*, as if he had not given his name and address or had given a false name and address to a police officer.
- (4) A person shall not remain on or in any land or waters after being required to leave the same by a ranger or conservation and land management officer under subsection (1)(d).
- (5) A ranger or conservation and land management officer shall not exercise any power specified in subsection (1)(a) or (b) and a ranger shall not exercise the power to enter and search conferred by that subsection unless he has first taken reasonable steps to communicate to the person who owns the vehicle, animal, vessel, conveyance, hut, tent, caravan or other thing concerned (if the identity of that person can be reasonably ascertained) his intention to exercise the power and his reasons for believing that he is authorised to exercise the power.
- (6) Nothing in this section derogates from the powers of a ranger who is a police officer.
- (7) In this section “**relevant offence**” means -
 - (a) in relation to a ranger, any offence against this Act or regulations made under section 130 relating to National Parks;
 - (b) in relation to a conservation and land management officer, any offence against this Act or any regulations made under this Act.

Note that under ~124, there are specific differences between the powers of rangers and conservation and land management officers. Wildlife officers also have specific powers under the CALM and Wildlife Conservation Acts. Managers should ensure that only authorised officers are used in TCA management and that authority cards are carried at all times.

3. IDENTIFICATION AND GAZETTAL OF TEMPORARY CONTROL AREAS

3.1 Application procedure

Where a the District or Regional Manager believes that a **forest** operation will pose a risk to public safety a recommendation may be made in writing, via the Executive Director, to the Lands and Forest Commission for a TCA to be created. See Appendix 7.4 - CALM Procedure for Applying for the Gazettal of a TCA.

If the Lands and Forests Commission agrees with CALM's recommendation their recommendation is forwarded to the Minister. If the Minister agrees with the proposal the TCA is created by the promulgation of a Notice in the Western Australian Government Gazette. Under Section 62(2)(a) of the CALM Act the notice of classification of an area as a TCA shall not have effect for a period exceeding 90 days; but may be made more than once for the same purpose and for the same area.

3.2 Registered plan

The application by a district Manager or Regional Manager for the gazetting of a TCA must be accompanied by a proposed Plan, which must clearly delineate the boundary of the TCA, and this boundary should be readily identifiable on the ground. The area of land over which a TCA is to apply should not exceed that which is required for the purposes of public safety or protection of flora and fauna. The Plan is then to be properly prepared and registered (a Registered Plan) and held in the custody of the Executive Director.

3.3 Expiry

At least 30 days before the period nominated in the Gazette expires (normally a 90 day period) the District or regional Manager who made the original application to the Lands and Forest Commission for the creation of a TCA should reassess the safety hazard to the general public, and then either :-

- a) provide advice via the Executive Director recommending the re-gazetting of all or part of the TCA.
- b) confirm that a re-gazettal is **NOT** required.

The period for which a proposed TCA is to exist should not exceed that which is required for the purposes of public safety or the protection of flora and fauna.

3.4 Gazettal

- (1) Under Section 62 (1)(d) the Minister may, on the recommendation of a controlling body and, where applicable, any associated body, by notice published in the *Gazette*, classify the whole or any part of land or waters that is vested in that controlling body as a temporary control area, and,

may in like manner amend or cancel a notice previously so published.

- (2) A classification of land or waters as a temporary control area under subsection (1)(d) shall only be made for the purposes of public safety or the protection of flora or fauna, or both flora and fauna, and a notice of classification -

- (a) shall not have effect for a period exceeding 90 days; but
- (b) may be made more than once for the same purpose and for the same area.

- (3) A classification, or amendment of classification, of any land or waters shall not be made under this section -

- (a) unless it is in conformity with the provision of section 56 which is relevant to, or any management plan for, that land or those waters; and
- (b) in the case of land to which section 16 applies, unless the owner, and any person occupying the land with the consent of the owner, has given approval in writing to the classification or the amended classification.

4 PUBLIC NOTIFICATIONS OF TCA STATUS

4.1 Advertising

Members of the public will be made aware of the creation of a TCA, the safety reasons why the TCA has created, and, of the requirement for any persons wishing to enter the TCA to apply in writing for approval to do so from the District Manager, by the publication of a Notice in the Gazette.

District staff shall further advise members of the public by :-

- (a) Publication of information advertisements in the 'West Australian', and/or local newspapers.
- (b) The erection of signs in the field.
- (c) Direct mailing of information sheets to neighbours.
- (d) Signs displayed on public notice boards.

4.2 Expiry

Whenever a decision is made **not** to extend the life of an existing TCA 4.1(b) to (d) should be used to advise members of the public that the TCA has expired and that they no longer require the District Managers approval to enter the area.

4.3 Accountability

The District and Regional Managers are responsible for all aspects of TCA management.

5. REQUESTS FOR ENTRY INTO A TCA

CALM's policy is to facilitate all possible lawful entry by members of the public onto CALM lands.

5.1 Requests for entry into a TCA by members of the public

Applications to enter into a TCA must be made in writing. The application must specify the names of all persons making application for entry. Provided that entry is considered safe an application for entry into a TCA may be approved in writing by the District Manager, subject to the applicant agreeing to conform with all other requirements of the CALM Act, and the Forest Management Regulations and any specific and reasonable condition deemed appropriate by the District Manager. Such conditions should relate to public safety or protection of flora and fauna e.g. specified entry period, CALM Officer to accompany etc.

Note that the District Manager must hold an appointment as a forest officer or a delegation from the Executive Director under section 133(2) of the CALM Act.

If it is unsafe authority to enter a TCA approval will not be granted. Written advice will be provided to state why it is deemed unsafe to enter the area. e.g. heavy equipment operating, falling in progress, unsafe hanging branches etc.

Members of the public must carry their written authority to enter a TCA with them at all times whilst in the TCA.

5.2 Entry into a TCA by CALM staff and CALM contractors.

Entry into a TCA must be for *bonafide* CALM business and requires the approval of the District Manager. Approval may be verbal, but should be recorded in the District register as required in 5.3 below.

5.3 Register

The District Manager responsible for the TCA will maintain a register of all approvals granted, including all verbal approvals given to CALM staff and contractors.

6. UNLAWFUL ENTRY INTO A TCA

CALM is required to enforce the Forest Management Regulations and in certain circumstances may call on the assistance of the police to enforce the regulations and ensure that people are able to go about their lawful business.

6.1 Offences

- (a) A person who enters onto a TCA without authorisation of the Executive Director (or his delegate) or a forest officer commits an offence under Reg 86.
- (b) When a CALM officer finds a person on a TCA without authorisation, or reasonably suspects that to be the case, the CALM officer may require the person to leave the land. If the person does not do so, they will commit a further offence under s124(4) of the CALM Act.
- (c) If a person is directed to leave a TCA, does so, but later returns, they do not commit an offence under s124(4) but may commit a further offence under Reg 86.

6.2 Breach Reports

All alleged breaches of the Forest Management Regulations will be documented in the format shown in Appendix 7.1. The list of questions on this form is not exclusive, and further questions may be asked according to the requirements of the particular case.

All breach reports will be forwarded in a timely fashion to the Chief Wildlife Officer for review. After review the reports are forwarded to the Crown Solicitors' Office for advice on whether to proceed with prosecution.

NB: Officers should also refer to CALM's "Guidelines for managing protests on CALM lands" where appropriate.



Syd Shea
EXECUTIVE DIRECTOR

18 March 1997

Att.

TCA Breach Report Proforma

<p>Conservation and Land Management</p> <p>TCA BREACH REPORT</p> <p>Temporary Control Area CALM Act 1984 sec. 62</p> <p>Forest Regulation pt. 12 sec. 86</p>	
<p>TCA - Forest Block</p>	<p>(Attach photo here or the photo number)</p>
<p>Boundaries (map attached)</p>	
<p>Authority to take particulars: CALM Act sec. 124</p>	
<p>Date of Breach Time s..... (24 hr clock)</p>	
<p>Name (surname) (first name)</p>	
<p>Address</p>	
<p>D.O.B.</p>	
<p>(CALM officer to read out)</p> <p>“I’m going to ask you some questions, however you are not obliged to say anything unless you wish to, but anything you do say will be taken down in writing and may be used in evidence - Do you understand this caution? Answer</p> <p>Questions: Why are you here?</p> <p>.....</p> <p>How did you get here?.....</p> <p>Did you know you are not allowed to enter this area?.....</p> <p>Do you have authority to enter this area?.....</p> <p>Did you see or read in the media that this is a Temporary Control Area?.....</p> <p>Did you see any signs in this area indicating that it is a Temporary Control Area?</p> <p>Advise the offender to leave the TCA immediately and advise that failure to do so is a separate offence.</p> <p>(CALM Act set 124)</p> <p>* Note offender’s behaviour, actions or intention not to leave area</p> <p>CALM Officer.....DistrictDate</p> <p>Witness if applicableName:..... (signature) (block letters)</p>	

Standard TCA sign

TEMPORARY CONTROL AREA

For the purpose of public safety this area has been declared a Temporary Control Area in accordance with section 62 of the CALM Act.

Entry without the authorisation of the Executive Director of CALM or a forest officer is prohibited.

**Further information may be obtained from the local CALM office.
Phone**

Max. penalty \$2000

**Syd Shea
Executive Director CALM**



PROCEDURE FOR RECORDING INTERVIEWS AND TAKING STATEMENTS

1. All statements from alleged offenders should be written in ink, taken in duplicate, and triplicate if the offender requests a copy.

The statement must be in the actual words of the offender. Each copy should be signed in ink by the offender (if he or she is willing to give a signed statement) or the interviewing officer, and any corroborating witness, the original copy to be held by the officer taking the statement for court evidence, if required.

2. A person present as a corroborating witness should be present the whole of the time the statement is being taken.
3. When taking a statement, the obligation resting upon the Forest Officer is to put all questions fairly and to refrain from anything in the nature of an inducement, threat, or any attempt to extort a statement ie, no threats, violence, bribes or promises are to be used to obtain a statement.
4. Points to be included in the statement are:
 - i) Exact location (6 Fig ref.) and time of apprehension.
 - ii) Registration, make, type and colour of vehicle.
 - iii) Name and address of offender.
 - iv) What section, or sections, of CALM Act, Wildlife Conservation Act, Bush Fires Act infringed.
 - v) Did offender know he had infringed any of the above? Was there any evidence to tell offender that he had illegally entered Quarantine Area - i.e. were there any 'No Entry' signs on the roads upon which he travelled?
 - vi) Particulars of how and why infringement occurred.
 - vii) Names and addresses of all persons present (including Forest Officers).

5. The written statement should commence as follows:

“I have been warned by (Officer’s name and rank) that I am not obliged to make a statement (or say anything) unless I wish to do so, and whatever I do say will be taken down in writing and may be given in evidence.”

The statement should end as follows: (in the offenders own handwriting if possible).

“I have read this statement through, and it is true and correct and given at my own free will without any threat, promise or inducement, and I do not desire to make any corrections.”

6. The person making the statement should read it aloud prior to signing the statement.
7. Mistakes should be crossed out, and should be initialled by the person making the statement.

GUIDELINES FOR INTERVIEWING OFFENDERS AGAINST CALM ACT AND REGULATIONS.

1. When English is First Language:
 - 1.1 Over 18 years of age:
 - 1.1.1 Can read - offender to read interview notes and sign.
 - 1.1.2 Cannot read - get independent third party to be present during interview and to read interview note to the offender.
 - 1.2 Under 18 years of age:

Parent or guardian to be present at interview.
2. When English is not First Language:
 - 2.1 Over 18 years of age:
 - 2.1.1. Does not understand English - obtain an independent interpreter to assist with the interview, and to read the interview notes to the offender.
 - 2.1.2 Does understand English, but cannot read - get independent third party to be present during interview and to read interview notes to the offender.
 - 2.1.3 Can read English - offender to read interview notes and sign.
 - 2.2 Under 18 years of age:

As above, but parent or guardian to be present at interview as well.

- NOTE:**
- [a] For tribal aboriginals, have a JP or friend at the interview.
 - [b] There must be no threat or inducement offered. This includes a perception of threat or inducement.
 - [c] During a lengthy interview, offer a drink (non alcoholic), cigarette or rest break.
 - [d] Don't interview a person who is sick, very tired or affected by alcohol.

APPENDIX 7.4

PROCEDURE FOR APPLYING FOR THE GAZETTAL OF A TEMPORARY CONTROL AREA

From time to time a District or Regional Manager will be aware of CALM operations which may be a threat to the safety of the general public.

One option for ensuring the safety of the public is to gazette and signpost a Temporary Control Area (TCA).

All applications for the creation of a TCA will :-

1. Be in writing from the District Manager to the Executive Director via Director of Forests.
2. State clearly the reason why the gazettal of a TCA is necessary.
3. Include a map which clearly identifies the boundary of the proposed TCA.
4. Be forwarded to the Executive Director a minimum of 21 days prior to the commencement of operations.

Once the Gazette notice has been received advise the public and record the creation of the TCA in a bring up system that ensure timely renewal or advice to the public of the expiring of the TCA.