AUDITOR GENERAL
FOR WESTERN AUSTRALIA

# AUDITOR GENERAL'S REPORT

## Management of Native Vegetation Clearing

*Serving the Public Interest*

**Report 8 – September 2007**

AUDITOR GENERAL
FOR WESTERN AUSTRALIA

THE PRESIDENT
LEGISLATIVE COUNCIL

THE SPEAKER
LEGISLATIVE ASSEMBLY

## MANAGEMENT OF NATIVE VEGETATION CLEARING

I submit to Parliament my report *Management of Native Vegetation Clearing* under the provisions of sections 18(2) and 25 of the *Auditor General Act 2006*.

COLIN MURPHY
AUDITOR GENERAL
5 September 2007

# Contents

# Auditor General's Perspective

This report examines the administration of specific legislation controlling how native vegetation may be cleared in Western Australia. It looks at the actions of the two key agencies administering the legislation: the Department of Environment and Conservation, and the Department of Industry and Resources. The examination focused on the outcomes of applications, the processes of assessment, how compliance is monitored, and how illegal activity is dealt with.

It found that while the system for managing clearing requests is robust, and applications to clear land are generally assessed appropriately, other parts of the system are lacking. In particular there has been no meaningful work done to see if decisions are being complied with. Also, there has been little work done to act on potentially illegal clearing.

The people of Western Australia can take confidence from the way decisions about clearing are made. However, until the agencies properly examine potential illegal clearing, and test that decisions are being followed, we cannot be sure that the aims behind the legislation are being fulfilled.

# Management of Native Vegetation Clearing

## Overview

Western Australia (WA) has a tremendous variety of native vegetation. The State is home to about 12 500 plant species or nearly five per cent of all plant species worldwide. In the South-west of WA there are 6 000 plant species, 79 per cent of which occur nowhere else in the world.

Currently, 378 plant species in WA are Declared Rare Flora under the *Wildlife Conservation Act 1950*. This represents one-third of all threatened species in Australia. Concerns also exist about a further 2 200 WA species which might be threatened or rare, but for which there is insufficient information.

Threatening this great diversity has been massive clearing, especially in the South-west of the State. The Wheatbelt is the main broadacre agricultural region of WA. Only seven per cent of its original vegetation remains.

The State of the Environment Report for WA (2007) describes some of the impacts and implications of native vegetation loss:

> *In some parts of WA (especially the Wheatbelt and parts of the Swan Coastal Plain) native vegetation has been cleared beyond safe ecological limits. Continued clearing will result in loss of biodiversity and extinctions, with fragmented habitats becoming more susceptible to climate change, disease, and weed and introduced animal invasion. Salinisation of land and inland waters, altered water regimes, soil erosion, eutrophication and increased greenhouse gas emissions are all direct consequences of clearing native vegetation.*[1]

The main legislation governing the clearance of native vegetation is the *Environmental Protection Act 1986* (the Act). One section of the Act deals specifically with the 'Clearing of native vegetation'. The legislation is supported by the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (the Regulations).

Under this framework all clearing of native vegetation is prohibited unless a clearing permit is granted, or the purpose is exempted under the Act. People seeking to clear must apply to either the Department of Environment and Conservation or the Department of Industry and Resources. Each application is assessed against criteria outlined in the Act. Prior to 2004, landholders had to give the Commissioner of Soil and Land Conservation 'Notice of Intent to Clear' any area of native vegetation greater than one hectare. Unless the Commissioner issued a Soil Conservation Notice within 90 days, landholders were allowed to clear land.

[1] Environmental Protection Authority (2007), *State of the Environment Report*: *Western Australia 2007*, p139.

Over 800 applications to clear native vegetation have been made since July 2005 of which 550 permits to clear have been granted. During this period, approximately 16 500 hectares were approved for clearing and applications to clear 7 300 hectares were refused.

The Act defines 'Native Vegetation' as:

> *indigenous aquatic or terrestrial vegetation, and includes dead vegetation unless that dead vegetation is of a class declared by regulation to be excluded from this definition but does not include vegetation in a plantation.'*

The Act excludes vegetation that was intentionally sown, planted or propagated unless this was required under the Act or another law. The Act defines 'clearing' as:

> *the killing or destruction of; the removal of; the severing or ringbarking of trunks or stems of; or the doing of any other substantial damage to some or all of the native vegetation in an area, and includes the draining or flooding of land, the burning of vegetation, the grazing of stock.*

The Department of Environment and Conservation (DEC) is responsible for administering the Act and the regulations. In July 2005 the Director General of DEC delegated to the Department of Industry and Resources (DoIR) responsibility for deciding on applications to clear native vegetation for mineral and petroleum activities regulated under the *Mining Act 1978* and various petroleum acts.

## Key Findings

- The process for granting native vegetation clearing permits is supported by a strong and comprehensive system. In particular, there are clear principles for assessing applications, adequate transparency and accountability in the process.
- Our testing indicated that both DEC and DoIR assess applications to clear native vegetation appropriately against the principles enshrined in the Act.
- Since the introduction of the Native Vegetation Clearing Regulations in 2004 there has been no meaningful testing to see if people are complying with application decisions.
- The amount of illegal clearing in WA is unknown. DEC has used satellite and other imagery to identify 'hotspot' areas where there appears to be unauthorised clearing. However, there have been almost no investigations of these areas.

- There is inconsistent and limited follow-up of complaints across the regions related to potential illegal clearing. Where follow-up has been carried out, in general it has involved the least important cases. Cases more likely to involve serious clearing have mostly remained unresolved.

## What Should Be Done?

- DEC in full consultation with DoIR should urgently finalise and implement a plan for testing compliance with clearing decisions. This should be based on the full range of potential assessment decisions, that is, permits granted fully, permits granted conditionally, and applications refused.
- DEC should establish a program for investigating potential illegal clearing identified through satellite imagery and public complaints. DEC should also publicly report the extent of illegal clearing and its response to it.

## Response by the Department of Environment and Conservation

DEC supports the key findings but believes they need to be understood in a wider context. The amendments to the *Environmental Protection Act 1986* which came into force in July 2004 have led to significantly improved and more consistent regulation of native vegetation clearing in WA than applied previously under the *Soil and Land Conservation Act 1945*. Introduction of this far more comprehensive legislation presented a number of challenges in the early years, particularly in dealing with the number of applications. In 2006, the Minister for the Environment requested DEC to work with the Office of Development Approvals Coordination and key stakeholders to review operation of the legislation and associated processes. In response, DEC has established, and is implementing, a program of reforms to improve efficiency and effectiveness of implementation of the legislation. A key priority throughout 2006 and 2007 has been processing applications in accordance with target timeframes and resolving the backlog of applications which had developed. DEC acknowledges that the Department needs to place increased emphasis on compliance monitoring of permit conditions, and investigation and implementation of enforcement action in respect of illegal clearing, and is redirecting staff resources into these areas as the backlog of applications is reduced.

### Response by the Department of Industry and Resources

The importance of the need for compliance auditing is acknowledged and in general the findings as detailed from the audit of the administration and regulation of the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* are accepted.

In relation to compliance auditing the Department of Environment and Conservation will provide training in September 2007 to allow departmental assessors to take on the powers of inspectors under the *Environmental Protection Act 1986*. This action will enable departmental officers to actively follow-up clearing approvals and ensure there is compliance with conditions.

## What Did We Do?

We assessed DEC and DoIR's administration and regulation of native vegetation clearing in WA. We examined management activity and interviewed personnel in Perth, Bunbury, and Geraldton. Key aspects of the examination were:

- the numbers of applications and outcomes
- assessment processes
- the level of monitoring and compliance testing undertaken to support clearing decisions
- the degree of cooperation and coordination between the agencies.

We also met with external stakeholders including the Conservation Council and the Chamber of Minerals and Energy.

## What Did We Find?

### The limitations of Native Vegetation Clearing Regulations

Not all proposals for clearance of native vegetation are subject to review by DEC or DoIR against the Native Vegetation Clearing Regulations. Large land developments, whether for town planning or resource development purposes, are subject to assessment by the Environmental Protection Authority (EPA) using its environmental impact assessment process and taking into consideration the principles enshrined in the Act. If the EPA decides not to assess a proposal, then assessment responsibility reverts to DEC and DoIR. The EPA process is conducted under Part IV of the Act which was not the focus of this examination. As well, the EPA's decisions are not subject to review by this Office.

## Assessment of applications

We found that the native vegetation clearing permit process is supported by a strong and comprehensive system. In particular, there are clear principles for assessing applications, adequate transparency and accountability in the process, and there is good technological support for activities required under the Act.

## There are clear criteria for assessment

The Act identifies 10 principles against which applications should be assessed before arriving at a decision (see Figure 1). The principles list circumstances under which vegetation cannot be cleared. These principles, along with agency guidelines, provide a satisfactory basis for decisions although decisions nevertheless require the exercise of judgement.

While the Act focuses on restrictions to clearing, certain specified activities do not require a permit. These deal with: construction of buildings, tracks and fences; activities required under another law; and defined low impact mineral or petroleum exploration activity. Amendments to the Regulations in early 2007 allow clearing without a permit for all mineral and petroleum exploration work that is not in a declared 'Environmentally Sensitive Area'.

Clearing for non-mineral and petroleum purposes without a permit is limited to a total of one hectare per property per year. This limits the possibility of incremental clearing. However, such clearing does require a permit if the land has established conservation importance, for example declared 'Environmentally Sensitive Areas' or particular categories of wetlands.

Each application is also tested against other planning or policy matters – including local government planning and other policies such as Native Title issues. The Minister or his delegates can also consider any other matter in reaching a decision. This allows permits to be granted which might seriously breach the principles outlined in the Act, but which are considered to be in the greater interest of the State.

DEC has produced guidelines and clear directions for assessing applications that reflect the complex judgements required by the 10 principles and have provided specific training for staff involved in the assessment process. We also found that DEC and DoIR review all assessments before decisions are made. However, DEC does not record this information adequately. DEC has agreed to document all future management reviews.

During the conduct of our examination we noted that under the Administrative Agreement between the agencies, DEC reviewed DoIR's activity, focusing on the quality of their assessments. DEC concluded that the assessments were generally sound.

The *Environmental Protection Act 1986*

**Schedule 5**

**Principles**

Native vegetation should not be cleared if —

(a) it comprises a high level of biological diversity;

(b) it comprises the whole or a part of, or is necessary for the maintenance of, a significant habitat for fauna indigenous to Western Australia;

(c) it includes, or is necessary for the continued existence of, rare flora;

(d) it comprises the whole or a part of, or is necessary for the maintenance of, a threatened ecological community;

(e) it is significant as a remnant of native vegetation in an area that has been extensively cleared;

(f) it is growing in, or in association with, an environment associated with a watercourse or wetland;

(g) the clearing of the vegetation is likely to cause appreciable land degradation;

(h) the clearing of the vegetation is likely to have an impact on the environmental values of any adjacent or nearby conservation area;

(i) the clearing of the vegetation is likely to cause deterioration in the quality of surface or underground water; or

(j) the clearing of the vegetation is likely to cause, or exacerbate, the incidence or intensity of flooding.

**Figure 1: The principles for assessing native vegetation clearing**

Source: *Environmental Protection Act 1986*

## Technical support and cooperation

Adequate technological support is available for the assessment of applications, although aspects could be improved.

The Clearing Permit System (CPS) is a database system maintained by DEC on behalf of both agencies. The CPS records the key data for all applications, and is used to provide information online, meeting the transparency requirements of the Act.

However, aspects of the CPS and its use should be improved:

- It does not accurately measure the time taken to process applications. Much of the time taken to assess applications is often caused by the time applicants take to provide the full information required. At present there is no mechanism to 'stop the clock' in such cases. DoIR has developed an alternate system to measure processing times.
- The system does not accurately record conditions which are placed on permits. This makes it harder to plan compliance activity into the future. We note that DEC and DoIR are working to rectify this.
- Appeals are not routinely recorded in the system. This limits its usefulness as a management tool.

## DoIR has limited access to some technical information

We found that DoIR has restricted access to some of DEC's technical databases which are important to assessing applications for clearing. In particular, aspects of the Declared Rare and Priority Flora, Threatened Fauna, and Threatened Ecological Community databases are not made fully available to DoIR staff. We have recommended that DEC and DoIR reach agreement on the appropriate level of DoIR access to technical data.

## The assessment of applications is generally sound

Our testing showed that both DEC and DOIR were applying the principles enshrined in the Act in assessing applications to clear native vegetation (see Figure 1). We tested the documentary evidence supporting the decisions. Every assessment we tested included an appropriate report, based on the principles outlined in the Act. Decisions in general were supported by adequate documentary evidence. Assessments by line staff were also reviewed by supervisors in both agencies.

## There is a significant backlog of applications

Since July 2005, applications have taken an average of 222 days to be processed. At the time of audit, approximately 200 applications were awaiting assessment, the vast majority of which require assessment by DEC. Lengthy delays in processing applications can have serious consequences for applicants. DEC has recognised this issue, and has appointed short-term staff specifically to clear the backlog.

About 1 400 applications to clear native vegetation have been received since the Regulations came into effect in 2004. Since July 2005 there have been 844 applications. DEC has managed 82 per cent of these applications, and DoIR the other 18 per cent.

As mentioned, the CPS does not provide accurate timeliness figures. Our calculations indicated that since July 2005 DEC and DoIR have taken 222 days on average either to grant or refuse an application after it is submitted. DEC takes 279 days (or 199 working days), and DoIR takes 155 days (110 working days). These figures include the time taken by the agencies to assess the applications as well as referrals to other agencies and the time taken by the applicants to provide any information required by the agencies.

There is no statutory requirement or target for dealing with applications. However, both agencies agreed that 90 days should be the target time from official acceptance of an application. DEC recognises that there is a timeliness issue – and have decided to appoint specific extra staff to clear it. DEC expects that the backlog will be cleared by the end of 2007.

DoIR is required to produce accurate timeliness reports for the Office of Development Approvals Coordination (ODAC), a division of the Department of the Premier and Cabinet. DoIR has met the 90 day target in 92 per cent of applications assessed from February to June 2007. This calculation is based on counting only working days when the assessments were in DoIR's control. Days are not counted when information is being sought from another government agency or from the applicant. DEC is currently liaising with ODAC to finalise its reporting requirements.

We also note that DoIR's Native Vegetation Assessment Branch has obtained ISO 9001 accreditation for its work process.

The different timeliness outcomes between the two agencies might be explained by two main factors. The agencies have different 'clients' with different assessment and information issues, and there are different staffing practices between the agencies. Given these differences in 'clients' and areas assessed, it is very difficult to compare activity between the two agencies.

DoIR deals with resource sector applications. These generally involve remote areas with significant surviving vegetation, which potentially decreases the risk in approving clearing. Further, mining applications are often well supported. We observed that mining applicants often provided full flora surveys and other information to assist assessment. DoIR personnel do not routinely conduct field inspections for applications. DoIR employs 12 staff to deal with the 18 per cent of applications that it manages.

By comparison, DEC deals with applications from all areas of activity not involved in mining, and all parts of the state. These include regions like the Wheatbelt, where the low level of remnant vegetation is likely to require detailed assessment. Also, individual landholders are less likely to present as much supporting evidence as mining concerns. DEC staff routinely conduct field inspections of application sites, which adds to the assessment time. DEC employs about 35 staff to deal with the 82 per cent of applications that it assesses.

## Outcomes of applications to clear

### Sixty-five per cent of all applications are approved

We found that the two agencies approved 65 per cent of all applications to clear. Since it received the delegation to assess resource sector cases in 2005, DoIR has granted 110 permits to clear without refusing an application. This represents 100 per cent of applications where a decision was made; DEC has granted 91 per cent of applications where a decision was made (437 permits from 478 decisions). However, these figures do not include cases which were withdrawn by the applicants, or where applications were declined because the applicant was not entitled to seek a permit. Taking these into account, DoIR approved 73 per cent of all applications and DEC approved 63 per cent of all applications (see Table 1).

Other factors beyond those mentioned above explain why DoIR has not refused an application. We noted that under the *Mining Act 1978* and various petroleum acts, operators are required to rehabilitate land after the cessation of mining and petroleum activities. We also noted that DoIR has chosen to mitigate environmental concerns by imposing conditions on permits.

It is important to note that neither agency can determine not to assess an application. Once lodged, the relevant agency must assess each application according to the principles, even if the activity might be exempt under the Act. As noted above, only one hectare in total of exempt non-exploration clearing can take place in any year. Therefore, for example, if a

landholder wants to conduct numerous activities in one year, they must apply for a permit for any of that activity beyond one hectare. Applicants are informed if their case might be exempt, but they must request to withdraw the application. Proponents also withdraw applications if they cannot or chose not to provide information required for assessment.

| Status | DEC | (%) | DoIR | (%) | Total | (%) |
|---|---|---|---|---|---|---|
| Granted | 437 | (63) | 110 | (73) | 547 | (65) |
| Refused | 41 | (6) | 0 | | 41 | (5) |
| Withdrawn | 174 | (25) | 40 | (27) | 214 | (25) |
| Declined | 42 | (6) | 0 | | 42 | (5) |
| **Total** | **694** | **(82)** | **150** | **(18)** | **844** | |

**Table 1: Outcomes of applications 2005-07[2]**

*The two agencies approved 65 per cent of applications since 2005. DoIR has yet to refuse an application. A decision is made to refuse or grant a permit. Only applicants can withdraw an application. Declined applications are those where the applicant has no legal right to proceed.*

Source: DEC; analysis OAG

## Approved clearing equates to ten football fields per day, but much clearing is refused

DEC and DoIR have approved more than 16 500 hectares (ha) for clearing since July 2005. This equates to about 10 football fields per day being cleared across the State. Mining and petroleum activity accounts for more than half of the land approved for clearing. We note, however, that when resource sector figures are removed, less land was approved for clearing than was refused.

Sixty-six per cent of land approved for clearing in 2005-07 was related to the mining and petroleum industries (see Figure 2). In particular, mining accounted for 54 per cent of all approved clearing. Fifteen per cent of the land approved for clearing was for various agricultural purposes – nine per cent for intensive horticulture, and six per cent for broadacre cropping or pasture. Twelve per cent of land was approved for road, rail and other infrastructure clearing (including water and electricity works).

[2] 2006-07 figures ended in May 2007.

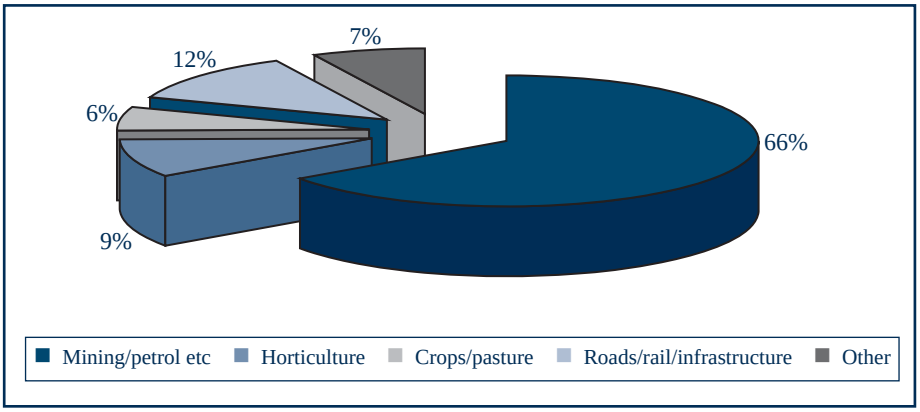


**Figure 2: Approved clearing by activity – 2005-07**

*Mining and allied activity accounted for 66 per cent of all land approved to clear under permit between July 2005 and May 2007. Clearing for roads and other infrastructure was the next biggest single category. Agriculture accounted for 15 per cent of land cleared.*

Source: DEC, analysis OAG

We found that where applications were refused, the decisions supported general policy positions: in particular, the policy that it is unlikely that clearing could be allowed in the Wheatbelt for agricultural purposes. In the two years since 1 July 2005, DEC refused clearing applications for 6 900 ha for grazing, pasture, and cropping. Approval for the same activities amounted to less than 1 000 ha. Refusals for cropping and grazing accounted for 95 per cent of refused applications by land area (see Table 2). Excluding mining and associated purposes, more land was refused for clearing than was granted (7 300 ha refused compared to 5 800 ha approved).

| Activity | 2005-06 (ha) | 2006-07 (ha) | Total (ha) |
|---|---|---|---|
| Cropping | 1 845 | 1 149 | 2 994 |
| Grazing and pasture | 263 | 3 639 | 3 902 |
| Plantation | 0 | 177 | 177 |
| Horticulture | 8 | 91 | 99 |
| Roads | 54 | 0 | 54 |
| Extractive industry | 0 | 43 | 43 |
| Hazard/fire reduction | 8 | 0 | 8 |
| Miscellaneous | 1 | 6 | 7 |
| Fence maintenance | 0 | 6 | 6 |
| **Total** | **2 178** | **5 110** | **7 288** |

**Table 2: Refused clearing applications by area 2005-07**

*Clearing for agricultural purposes – cropping, grazing, and pasture – forms 95 per cent of all land refused for clearing.*

Source: DEC, compilation OAG

## Many appeals against decisions are partly successful

Seventy-six appeals (approximately one in every 11 applications) have been made since July 2005. Although only five per cent have resulted in decisions being fully overturned, 36 per cent were partly successful (Table 3). Seventy-three of the appeals were of decisions by DEC which is consistent with the number of applications dealt with during this period.

Environmental appeals are heard by the Office of the Appeals Convenor, which reports to the Minister for the Environment, who then makes the final decision. This is unlike most other government administrative appeals which are conducted by the State Administrative Tribunal. The Regulations and Act allow any person to appeal against a clearing decision. The appeal can be against a decision to permit clearing, or to permit clearing with conditions, or to refuse clearing. Information on appeals, including final reports and decisions, is available through the Appeal Convenor's website.

Of the 76 appeals, four succeeded in full, 28 were allowed in part, and 45 were dismissed. Appeals allowed in part all resulted in some alteration of the terms of the permit, including changes to the area permitted for clearing, and the conditions placed upon activity. Ninety-three per cent of appeals allowed in part resulted in increased conditions and controls over clearing permits; seven per cent resulted in reduced conditions.

| Appeal result | Total | Appeal against granting of a permit or inadequacy of the conditions | Appeal against refusal to grant a permit or the harshness of the conditions |
|---|---|---|---|
| Allowed in full | 4 | 3 | 1 |
| Allowed in part | 27 | 25 | 2 |
| Dismissed | 45 | 38 | 7 |
| **Total** | **76** | **66** | **10** |

**Table 3: Appeal decisions since July 1 2005**

*There have been 76 clearing appeals decisions since July 2005. Four have overturned the original decision; 27 have allowed the appeal in part; 45 dismissed the appeal.*

Source: Office of the Appeals Convenor; analysis OAG.

## Compliance, complaints, and monitoring

### There has been no testing of compliance with decisions

Since the inception of the Regulations, neither DEC nor DoIR (since 2005) have meaningfully tested if applicants are complying with decisions made on applications. Both agencies acknowledge the importance of compliance testing, and are currently planning for testing in the future.

Without rigorous compliance testing of actions taken by applicants in response to clearing permit decisions, neither agency can give assurance that its decisions are being complied with. In turn this diminishes the worth of the regulatory system. Adequate compliance checking is imperative if the Regulations are to protect native vegetation. Failure to test compliance increases the risk that people will act outside the regulatory framework. We note that both agencies have increasingly placed conditions upon permitted clearing. These include a range of requirements for applicants:

- revegetating after the work has ceased
- recording all clearing activity and reporting this to the agency
- erecting fences to protect specific areas within the clearing zone.

All these requirements add to the future compliance burden which will fall to the agencies.

DEC did plan for compliance activity from the inception of the new program. However, management decided to focus on attempting to clear the assessment load before starting compliance work. DEC advised us that this was consistent with government priorities. Three staff within the DEC Native Vegetation Conservation Branch are nominally compliance and monitoring personnel. However, they have instead been used to deal with either assessing or quality assuring assessments. DoIR began planning for compliance inspections during the conduct of this examination.

We found that no DoIR staff have been appointed inspectors under the Act, and therefore cannot conduct compliance testing. During the conduct of this examination the agencies agreed on the training required to become inspectors, and DoIR staff are scheduled to be trained this year.

## DEC has identified potential illegal clearing but not investigated it

We found that the amount of illegal clearing in WA is unknown. DEC has used satellite and other photographic imagery to identify potential illegal clearing 'hotspots'. In 2007 DEC purchased satellite imagery at a cost of $200 000 for this purpose. NVC Branch staff identified a large number of cases where land appeared to have been cleared without matching applications for permits. Thus far, there has been negligible investigation of these cases.

Adequate monitoring is important in detecting illegal activity. When satellite monitoring was introduced in NSW in 2005, authorities found that 70 per cent of all clearing was conducted illegally.

## There is limited investigation of complaints about illegal clearing

Inconsistent and limited attention is given to managing potential illegal clearing identified through DEC's Incident and Complaints Management System (ICMS). Where follow-up has occurred, in general it has involved investigating the least complex and least important cases. Cases more likely to involve serious clearing have in the main remained unresolved.

In the absence of other compliance and monitoring activity for native vegetation clearing, public complaints are the main source of information about illegal clearing.

We identified three main reasons for the lack of investigation of serious cases:

- DEC has directed its staff to focus on assessing applications rather than dealing with complaints.
- Staffing difficulties in the regions have limited the possibility of inspections.
- DEC is relying on the absence of a statute of limitations on the Regulations to enable them to deal with complex complaints at a later date.

Notwithstanding these reasons, good practice requires that all complaints should be dealt with in a timely manner. The longer complaints remain unresolved, the possibility of achieving an appropriate outcome is diminished. Further, there is an increased risk that the entire regulatory process might be seen as irrelevant if illegal clearing is not dealt with.

Since July 2005, DEC has received more than 550 complaints of potential illegal clearing. Over half of these have not been resolved. There have been two prosecutions for illegal clearing arising from complaints. A further eight cases are being developed as potential prosecutions. Where investigations find there is a case to answer, the main response is through written warnings. The Department, through the Director General has the power to impose Vegetation Conservation Notices (VCNs), which have 'stop work' powers. VCNs can also require people to rehabilitate or revegetate illegally cleared land without recourse to the courts. No VCNs have been issued.

At July 2007 there were 307 complaints still to be resolved (see Figure 3). Of these, 103 (or 34 per cent) were lodged before July 2006.

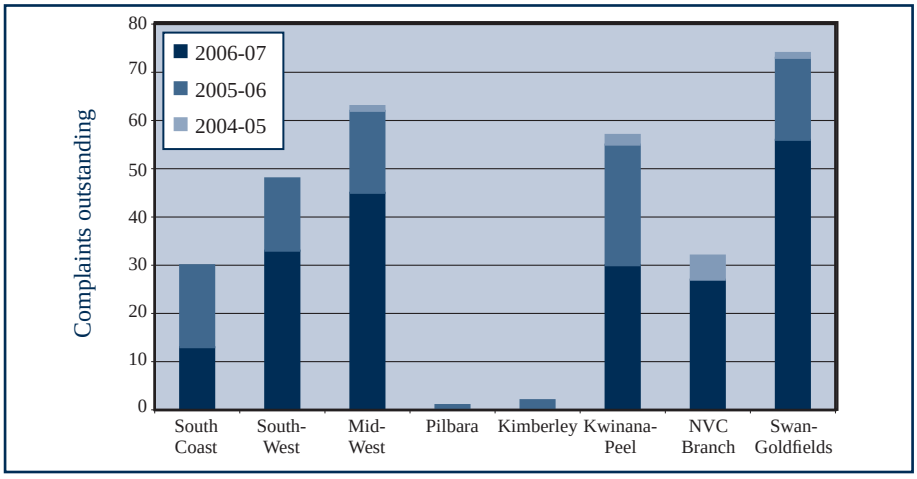


**Figure 3: Unresolved Clearing Complaints at July 2007**

*34 per cent of all complaints unresolved at July 2007 were lodged before June 2006. In the South Coast over half the unresolved cases were more than one year old.*

Source: DEC, analysis and compilation OAG.

When complaints are investigated, we found that there are adequate processes and procedures for conducting investigations. We found that generally ICMS information was recorded accurately, and that decisions were based on appropriate levels of investigation. We also found that DEC has introduced groups to assist in deciding actions taken on complaints. The Local Environmental Enforcement Group (LEEG) involves senior regional staff, investigating officers, and officers from the Environmental Enforcement Unit (EEU). The EEU is a dedicated investigation and enforcement unit within DEC, which takes the lead in investigations which are likely to result in prosecutions. Its officers also provide advice to regional LEEGs on complaints issues.

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