Regulation Review:
Clearing of Native Vegetation

Report to the Minister for the Environment by the Expert Committee

April 2009

To the Minister for the Environment,
Honourable Donna Faragher

Minister, I have great pleasure in presenting to you the report from the Expert Committee - Regulation Review: Clearing of Native Vegetation. The Committee has made seventeen key recommendations on improvements that can be made to the regulatory framework controlling any clearing of native vegetation in Western Australia, and the decision making processes of the agencies responsible for the implementation of that framework.

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COVER PICTURE
View from Bluff Knoll showing the uncleared landscape of the Stirling Range National Park in the foreground and the partially clear landscape of rural land adjacent to the National Park, and the Porongurups in the distance. (Source: Garry Middle).

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Summary and Recommendations

In July 2008 the (then) Minister for the Environment established a Committee to review the *Environmental Protection Act 1986* and associated *Environmental Protection (Clearing of Native Vegetation) Regulations 2004*, which together provide the regulatory framework that ensures the protection of native vegetation: one of Western Australia's most vital resources in terms of biodiversity and quality of life.

The Committee, through stakeholder consultation, was to review the following Terms of Reference:

1. the adequacy of the Legislation to provide the outcomes the Government has sought for native vegetation protection;
2. any amendments to the Legislation, regulations and policies which would improve the effectiveness and efficiency of the regulation of clearing;
3. any additional measures that would enhance the effectiveness of the native vegetation clearing provisions, including their interaction with other planning and decision-making processes and biodiversity conservation programs;
4. any improvements to compliance monitoring systems and processes and overall reporting of outcomes.

The Committee was of the opinion that the first of its Terms of Reference was fundamental to its task; noting that, with no official consolidated policy statement on native vegetation from the State Government since 1995, it was difficult determine the adequacy of the Legislation in this context as the intent of and the outcomes sought from the Legislation were unclear.

<u>Recommendation 1</u>: The Committee, after reviewing relevant reports, documents and Parliamentary debates surrounding the introduction of the Legislation, has proposed a policy statement (Section 2, Page 4) that it believes reflects the Governments position at the time when the Legislation was enacted and recommends the adoption of this, or a comparable, policy statement.

<u>Recommendation 2</u>: The Committee recommends that the Department of Environment and Conservation (DEC) reviews and consolidates its current operational policies to better aid its own decision making so that the operational policies:

- **better articulate its interpretation of the clearing principles;**
- **provide guidance to proponents in formulating their proposals;**
- **provide guidance to the community; and**
- **ensure consistency with the overall Legislation, Regulations and the supporting Government policy position.**

In applying this proposed policy statement to its first term of reference, and with appropriate consideration of the responses from the key stakeholder groups that were asked to provide feedback on these terms of reference, the Committee identified a further 9 significant issues with the Legislation and Regulations on which it has made specific recommendations for improvement:

1. Risk-based Assessment of Applications to Clear
    - **Recommendation 3: The Committee recommends that the Government endorses the provided, or a comparable, statement on principles for the native vegetation clearing approvals systems as the basis for implementing a risk-based framework for streaming of applications, which should allow for a streamlined and simplified clearing permit application system (Section 3.2, Page 10).**
    - **Recommendation 4: The Committee recommends that DEC develop reasonable target timeframes for each assessment track against which it should publicly report on a regular basis.**

2. Consideration of socio-economic and other factors and planning instruments, to allow clearing at variance or serious variance with the clearing principles and the giving of reasons for such decisions (Section 51O)
    - **Recommendation 5: The Committee recommends that DEC and the Environmental Protection Authority (EPA) should develop a Memorandum of Understanding identifying the types of proposals involving clearing of native vegetation that are environmentally significant in the context of Part IV of the EP Act and therefore which require referral to EPA.**
    - **Recommendation 6: The Committee supports the retention of sections 51O(3) and (4) of the EP Act, but recommends that DEC, as part of its reporting for proposals at serious variance and variance to the Principles, makes a clear statement as to how it balances the clearing principles against the planning instruments and other matters in arriving at these decisions. This should include giving proper reasons for the grant or refusal of clearing permits, setting out the facts found, the conclusions drawn and the reasoning supporting the conclusions.**
    - **Recommendation 7: The Committee recommends that there should be greater guidance provided by Government to the CEO of DEC as to the relative importance that should be placed on various planning instruments and other matters when considering proposals at serious**

variance with the clearing principles and that this guidance should be made public.

3. Ten Year Restriction for Clearing of Regrowth without Further Permitting
    - **Recommendation 8: The Committee recommends that the 10 year limit remain to allow for clearing of re-growth without further permitting where an approval to clear has been allowed and implemented in accordance with Items 14 and 15 of Section 5 of the Regulations.**
    - **Recommendation 9: The Committee recommends that clarity be brought to the interpretation of the meaning of this part of the Regulations, in that where an approval was originally given to a low intensity land use (grazing, cropping and forestry), and regrowth has occurred, any or all of these land uses should be allowed without the need for a new approval. However change to more intensive land uses such as irrigated horticulture should trigger a new application because of the change to potential environmental impacts.**

4. Support Mechanisms for Disadvantaged Landowners
    - **Recommendation 10: The Committee recommends that in certain circumstances related to personal hardship there is a need for support mechanisms to be provided to some landowners who have been refused an application to clear. Additional resources to establish or fund these programs would likely be needed.**

5. Database for Improved Monitoring and Auditing of Land Clearing
    - **Recommendation 11: The Committee recommends that resources be provided to improve the quality and public accessibility of data on native vegetation, of both its extent and significance, so as to allow for better decision making in DEC and to better inform land owners and the broader community, and that this be implemented as a priority.**

6. Clarification of the Role of Offsets
    - **Recommendation 12: The Committee recommends that offsets should not be required routinely as a condition of approval for clearing permits but should be applied in the specific circumstances as described below consistent with the Committee's recommended risk-based approach:**
        a. the use of offsets should be consistent with the EPA position paper;
        b. offsets are most appropriate for approvals which are at serious variance with the clearing principles;

c. **offsets are normally appropriate for proposals which are at variance with principles but application should be commensurate with the loss of environmental value of the relevant principle;**
d. **offsets are generally not appropriate for minor proposals and those not at variance with principles.**.

- **<u>Recommendation 13</u>: The Committee recommends that the work recommended in Section 3.6, in relation to the database for improved monitoring and auditing of land clearing, should include identification of sites that would form the basis of a strategic approach to the use of offsets. As well the database should clearly identify sites of native vegetation that have been set aside as an offset so that security of tenure, purpose and management is enhanced.**

7. <u>Appeals Process</u>
    - **<u>Recommendation 14</u>: The Committee recommends fees be introduced for appeals associated with clearing proposals at a level consistent with other appeals under Part V of the EP Act.**

8. <u>Bush Forever Areas</u>
    - **<u>Recommendation 15</u>: The Committee recommends that proposals to clear native vegetation in a site subject to a Negotiated Planning Solution (NPS) should be subject to concurrent and harmonised approvals processes between DEC and statutory planning consents. Consequently the current practice of DEC being part of the negotiated outcome should continue, but that the negotiated outcome should lead as far as possible to harmonious sets of conditions for the outcome of the planning process and the Part V approval process.**
    - **<u>Recommendation 16</u>: The Committee recommends that developments involving clearing of land within Bush Forever sites reserved for Parks and Recreation in the Metropolitan Region Scheme (MRS) should be consistent with an approved management plan for the site and not be ad hoc. This relies on appropriate management plans being prepared and approved for these sites by the planning authorities in a timely manner. Further, any Part V approvals process should run concurrent and, as far as legally possible, be consistent with the planning approvals process and should lead, as far as reasonably possible, to harmonious sets of conditions for the outcome of a single set of conditions set through the planning process and the Part V approval process. In the Committee's view, reference can properly and reasonably be made to conditions being set in the planning process in**

considering what conditions if any should be set under Part V. Alternatively, a Purpose Permit should be sought by the WAPC to cover the implementation of management plans.

9. Local Government Resources
    - **Recommendation 17: The Committee recommends that the Government establishes a position within DEC to be the liaison between DEC and Local Government to assist Local Government in working with the Legislation and Regulations and to also assist in identifying relevant information for any proposals to clear native vegetation. The position should be funded for up to 3 years after which time Local Government should take over the responsibility for the position if it is still required.**

The Committee also identified a list of less significant issues from the submissions that it believed merited comment, and in some cases, additional recommendations. These were:

1. Civil Penalties;
2. Equitable Resources between DEC and DMP;
3. State Agreement Acts;
4. Minor Amendments to Legislation;
5. Response to Victorian Bushfires;
6. Clearing Principles to be made Legally Binding.

The Committee provided a full list of its responses to the main issues raised by each submitter in Appendix 2.

1. Introduction

Native vegetation is a vital resource for Western Australia's biodiversity and the quality of life that Western Australians enjoy. To provide greater protection for this resource, amendments were enacted under the *Environmental Protection Act 1986* (EP Act), to regulate the clearing of native vegetation. These amendments came into effect in July 2004 and provide that clearing of native vegetation is an offence unless a clearing permit is obtained or an exemption applies.

The EP Act and associated *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (the Regulations) provide a regulatory framework to prevent inappropriate clearing and to minimize and mitigate the impacts of clearing. The then Minister for the Environment (Hon David Templeman) established a committee in July 2008 to review the Legislation and Regulations, with a view to recommending improvements to ensure that the Government's intent with the clearing control legislation is met. The Committee was chaired by Associate Professor Garry Middle of Curtin University of Technology's Department of Urban and Regional Planning, with the other members being Ms Marion Thompson (an Urban Planner), Dr Hannes Schoombee (a Barrister) and Mr Rob Sippe (Managing Director, PRM Pty Ltd). The Committee was also ably supported by Executive Officers Tim Hall and Isaac Middle.

Under the direction of the then Minister and with confirmation from the current Minister Hon Donna Faragher the Committee's consultation was limited to key stakeholders groups, due to the limited timeframe in which the Committee was initially requested to report. Therefore there was no open call for submissions. The full list of invited submitters can be found in Appendix 1. The Committee's Terms of Reference were to review:

1. the adequacy of the Legislation to provide the outcomes the Government has sought for native vegetation protection;
2. any amendments to the Legislation, Regulations and policies which would improve the effectiveness and efficiency of the regulation of clearing;
3. any additional measures that would enhance the effectiveness of the native vegetation clearing provisions, including their interaction with other planning and decision-making processes and biodiversity conservation programs;
4. any improvements to compliance monitoring systems and processes and overall reporting of outcomes.

The Committee had completed receiving submissions from all the key stakeholders by August 2008 but with the calling of the early State election and the subsequent change of

Government in September 2008, the Committee took the view that it would not proceed to write its report but would seek clarification from the new Minister on several matters. The Chair met with Minister Faragher in late 2008 seeking advice as to whether she would like the Committee to complete its deliberation and provide her with a report. The Minister confirmed in January 2009 that she wished the Committee to continue its work and report to her. The Committee re-convened in late February 2009 to complete its deliberations. The Committee invited FESA to provide supplementary information to its submission in the light of the February Victorian bushfires.

The submissions have been summarised in Appendix 2 and identify the key issues raised by industry groups, government agencies and other consulted stakeholders. Taking into account these submissions, as well as the 2008 Auditor General's report and the 2006 review by the Office of the Development Approvals Coordinator (ODAC), the Committee has concluded that there are ten significant issues that require a considered response as well as some less significant issues that merited comment, and in some cases, additional recommendations. The Committee decided to address in detail its first and what it deemed to be most important Term of Reference in Section 2. The nine further significant issues are covered in Section 3, followed by the less significant issues in Section 4. Appendix 2 also summarises how the Committee has dealt with the issues raised in each submission.

2. Government Objectives for Native Vegetation Protection

The Committee was of the opinion that the first of its Terms of Reference was fundamental to its task, which was to review:

> "The adequacy of the Legislation to provide the outcomes the Government has sought for native vegetation protection"

To advise on whether the outcomes of the vegetation clearing provisions of the *Environmental Protection Act 1986* and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* met the Government's intent, the Committee decided that it needed to ascertain what the key objectives were for both the Legislation and Regulations.

The Committee noted that, since the announcement by then Minister for Agriculture Hon Monty House in 1995, which restricted broadacre clearing in rural areas, there has not been a clear Government policy position published on the significance and value of native vegetation for Western Australia. The Committee also noted that there appears to be some confusion within the community as to the intent of the Legislation. This confusion is illustrated by the

conflicting views of the submitters towards the role and implementation of the Legislation. For example, the joint submission from the Conservation Council of Western Australia (CCWA), the Wildflower Society, the Urban Bushland Council and the Wilderness Society of Western Australia was of the view that the outcome of the Legislation should be to ensure a no net loss of native vegetation in the State. The Western Australian Local Government Association (WALGA), on the other hand, notes that individual and agency interpretation of the purpose of the Legislation varies from 'conservation of vegetation' to 'prevention of clearing' and expressed a view that the Legislation aims to impede clearing of native vegetation with delays and additional costs so that alternative methods must be considered. WALGA compared the WA statute with Queensland's clearing legislation, where in the Queensland *Vegetation Management Act 1999,* the purpose of the Legislation is clearly stated. A summary of native vegetation clearing Legislation in other Australian States can be found in Appendix 4.

Notably, the Department of Environment and Conservation (DEC) in its submission acknowledged the lack of a clear government policy position, while further advising that they currently implement a risk management approach to applications, and have made improvements to the processing of minor applications and subsequent timelines.

The Committee is of the view that a consolidated policy position needs to be articulated to support both the Legislation and associated Regulations. The Committee has reviewed relevant reports, documents and Parliamentary debates surrounding the introduction of the Legislation and has proposed what it believes is a policy statement that reflects the Government's and the Parliament's position at the time that the Legislation was enacted: see next two pages.

Statement of Policy - Clearing of Native Vegetation in Western Australia

1. Native vegetation serves many key environmental protection and conservation functions. In particular these are:
   - conservation of biological diversity
   - protection of surface and groundwater quality (especially against increased salinity)
   - soil conservation (erosion, waterlogging, acidification, flooding, salinisation)
   - biological linkages and corridors between areas of remnant vegetation
   - landscape amenity
   - sequestration of CO_2 as a greenhouse gas
   - protection of waterways and wetlands functions
   - heritage
2. The recognition of these values by governments and the community has changed attitudes and behaviours regarding the clearing of native vegetation.
3. Clearing is direct damage (killing, removing, burning, grazing) and indirect damage (draining, flooding) to vegetation.
4. Clearing of native vegetation is a regulated activity under State laws. Clearing must be either authorised or specifically exempt from authorisation, for it not to be an offence. Unlawful clearing is subject to restitution.
5. The granting of authorisations (permits) is based on the evaluation of proposals to clear against articulated clearing principles[a], and there is a presumption against clearing which compromises the principles. In testing proposals to clear against the clearing principles, judgements regarding the significance of potential impacts are required to be made. These should encompass the nature of predicted change (magnitude, extent, duration, intensity), bio-physical importance, and the amount of

[a] Schedule 5, *Environmental Protection Act 1986* (as amended)

change (including cumulative) perceived to be acceptable in the light of community values.

6. In certain circumstances, where a proposal is found to be at variance or at serious variance with the principles but the proposal has significant social or economic values and/or can be justified through approved planning considerations, the proposal may be approved but, in the case of serious variance, the reasons for that approval must be made public[b].
7. Clearing proposals are advertised for objections. Proponents have appeal rights in respect of the refusal of permits and permit conditions while third parties have appeal rights against the grant of permits.
8. Exemptions apply where clearing is authorised through other identified statutory processes[c].
9. Consent to clear may require the cleared vegetation to be offset to achieve, aspirationally, a net environmental benefit.
10. The viability of vegetation protected from clearing requires active management of threatening processes.

[b] Section 51O(3) *Environmental Protection Act 1986* (as amended)
[c] Schedule 6, *Environmental Protection Act 1986* (as amended)

The Committee considers that agreement on this – or some other - policy position is fundamental to ensuring that the EP Act and Regulations meet the Parliament's, Government's, and the community's expectations for the on-going protection of native vegetation. This would also provide important overall guidance to DEC (and the Department of Mines and Petroleum (DMP) under delegated authority) in the day-to-day application and implementation of the EP Act and Regulations. The Committee notes that the Minister for the Environment has established a review process for both this report and the Environmental Protection Authority's (EPA) recently published recommendations on the review of the environmental impact assessment process. Consideration of this policy position should be a key part of that review process.

<u>Recommendation 1</u>: The Committee, after reviewing relevant reports, documents and Parliamentary debates surrounding the introduction of the Legislation, has proposed a policy statement that it believes reflects the Governments position at the time when the Legislation was enacted and recommends the adoption of this, or a comparable, policy statement.

The Committee has concluded that it is not possible to advise on whether the application of the *Environmental Protection Act 1986* and the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* have met the outcomes that the Government has sought for native vegetation protection because the outcomes sought have not been consolidated into a clear policy statement on desired outcomes against which a judgement may reasonably be made, and because of the lack of reliable data on the extent and circumstances of the clearing that has occurred since 2004.

However, the Committee has applied the derived policy position outlined (above) in its consideration of the first of its Terms of Reference.

In reviewing the performance of the statutory provisions against the Committee's derived policy position, the Committee acknowledges that submissions and representations have identified that there have been some problems with the implementation of the EP Act and Regulations. Some of these may be related to teething issues common to the introduction of new Legislation or to the absence of a consolidated policy statement. DEC in particular in its submission conclude that the latter would have assisted its administration and decision-making. The Committee saw evidence that officers of DEC (and DMP under delegation) have worked hard to establish a robust process for controlling clearing of native vegetation in WA. Managing this process was always going to have a degree of difficulty given that the protection of native vegetation, particularly on private land, would likely be highly contentious.

Notwithstanding this, the Committee has identified a number of significant opportunities for improvement and has made specific recommendations to this effect.

The Committee is also of the view that DEC should carry out a review of its current processes, working/operational policies and previous decisions against a finalised and Government endorsed policy position to ensure consistency.

Recommendation 2: Therefore the Committee recommends that DEC reviews and consolidates its current operational policies to better aid its own decision making so that the operational policies:

- **better articulate its interpretation of the clearing principles;**
- **provide guidance to proponents in formulating their proposals;**
- **provide guidance to the community; and**
- **ensure consistency with the overall Legislation, Regulations and the supporting Government policy position.**

3. Significant Issues

3.1. Summary of Significant Issues

The Committee concluded that there were nine further issues considered significant enough to warrant special consideration and specific recommendations. These are:

1. Risk-based Assessment of Applications to Clear;
2. Consideration of socio-economic and other factors and planning instruments, to allow clearing at variance or serious variance with the clearing principles and the giving of reasons for such decisions (Section 51O);
3. 10 Year Restriction for Clearing of Regrowth without Further Permitting;
4. Support Mechanisms for Disadvantaged Landowners;
5. Database for Improved Monitoring and Auditing of Land Clearing;
6. Clarification of the Role of Offsets;
7. Appeals Process;
8. Bush Forever Areas;
9. Local Government Resources.

3.2. Risk-Based Assessment of Applications to Clear

3.2.1. Context

The Committee noted proponent and community concerns that currently exist over DEC's ability and capacity to process applications for clearing permits in a timely manner. While DEC has advised that it currently processes around 90% of applications within the specified 90 day time limit, it does acknowledge that, due to a perceived high turnover rate and lack of experienced staff, there is potential for "poor judgement and inefficient use of resources" in regards to how an application to clear is assessed.

3.2.2. Views of Submitters

A common theme throughout the submissions, including from the Water Corporation, Western Power and Main Roads WA, was unreasonable delays in the approval of what were considered by proponents to be environmentally insignificant proposals that demonstrated little to no variance to the clearing principles of the EP Act: in particular for routine clearing such as for the maintenance of public infrastructure.

Submitters went on to propose a "Quick Yes" pathway for the assessment of applications to clear that allows proposals with clear minor to negligible environmental impacts to be fast

tracked to a decision. Another suggestion from the Environmental Consultants Association (ECA) was the establishment of a “filtering committee” to separate insignificant from substantial applications at the start of the process. In addition there were requests from the Chamber of Minerals and Energy (CME) and the Urban Development Institute of Australia (UDIA) for a more certain timeframe and statutory time limit for approvals to be clearly established.

DEC has also advised that it has initiated a risk-based approach to its decision making.

3.2.3. Committee Considerations and Recommendations

The Committee sees an articulated policy position as the starting point for a good approvals process, with there being a specific need for better definition of ‘significant’ clearing. The Committee has prepared a statement of principles, based on the 2002 Keating Review of the Project Development Approvals system, which outlines nine key principles that should be incorporated into native vegetation clearing approvals systems as the basis of a risk-based framework that streams applications to clear into predetermined pathways based on the significance of their potential impacts.

Recommendation 3: The Committee recommends that the Government endorses this, or a comparable, statement on principles for the native vegetation clearing approvals systems as the basis for implementing a risk-based framework for streaming of applications based on this approvals system document found below, which should allow for a streamlined and simplified clearing permit application system.

KEY PRINCIPLES FOR THE NATIVE VEGETATION CLEARING APPROVALS SYSTEM

The Keating Review of the Project Development Approvals system (April 2002) established a number of principles that characterise a “good” approvals system. These provide the basis for efficient and effective native vegetation clearing approvals processes.

The approvals system should have the following nine characteristics:

Timely: defined and realistic timelines are in place to avoid delays. There is certainty about the time required to complete the process.

Transparent: decisions are clear, open and accessible. The community is able to access application information, understand proposals and provide input. Adequate information is provided by proponents to enable the approving body to make a sound decision, and to enable the community to evaluate the proposal.

Clear: there is clarity of requirements for applications and assessment criteria. Policies are clear. The outcome of an application should be predictable.

Single approval based: there is a single point of assessment - dual approvals are avoided. If referral agencies are necessary in the process they provide consistent and timely advice. There is minimal duplication of information requirements.

Fair: takes into account stakeholders’ views and provides a mechanism for independent review of decisions. There are objective rules and tests, linked to policy intentions.

Appropriate: requirements and assessment processes are fit for purpose; that is, appropriate to the likely impact of the proposal.

Consistent: requirements and policies are consistently applied. Issues associated with a proposal are identified at the earliest possible stage in the approvals process. Once a 'critical' approval has been given, decisions should be supported in subsequent approvals and issues not revisited.

Efficient: approvals should be delivered at reasonable cost to the community and the proponent.

Reviewed: Decisions are reviewed to ensure consistency and appropriate outcomes. Policies are regularly reviewed and monitored.

CONSIDERATION OF SUSTAINABILITY PRINCIPLES

The inclusion of *sustainability* considerations, that is, the balancing of the "triple bottom line" issues of economic, social and environmental impacts of a proposal, is cited in the Keating report as a principle of a good approvals system. The Committee noted that "triple bottom line" sustainability, as a key principle, has limited application for the native vegetation clearing process, since the Legislation is focussed specifically on environmental protection. However, statutory provision has been made in the EP Act for the consideration of other matters- via the appeals process, in the broad circumstances prescribed in s51O, and in the Regulations for specified exempt activities.

WALGA requested legislative change to require the State Government to consider "triple bottom line" issues in its decision making on the clearing of native vegetation. It's the Committees view that this is beyond its Terms of Reference. However recommendations for improvement to the operation of s51(O) provisions that already allow for consideration of socio-economic and other matters are outlined in Section 3.3.

ADOPTION OF A RISK-BASED ASSESSMENT APPROACH

An appropriate approvals system would have application processes and requirements linked to the likely severity of impact of a proposal. The use of different approval 'tracks' allows applications to be streamed into appropriate assessment pathways and resources allocated proportionally. As well, expectations of proponents and the information required of them should also be in proportion to the likelihood and consequences of impacts.

Six assessment tracks have been identified that are appropriate for the native vegetation clearing permit process.

Agency resourcing should be refocussed on the more significant proposals that are at variance or serious variance with clearing principles.

1. **Exempt**: clearing that is exempt from the need for application and permit, as specified in the EP Act.

2. **Delegated:** clearing decisions are delegated to a third party, being a government agency. At present, DMP has delegated authority for certain clearing under the EP Act. In addition to determination of clearing applications, delegated authorities should have responsibility for monitoring for compliance (but not for enforcement).

3. **Minor clearing**: minor clearing that requires application for a clearing permit to DEC but is not at variance with the clearing principles.

4. **Not minor clearing but not at variance**: clearing that is not minor by virtue of its scale, requires application for a clearing permit to DEC but is not at variance with the clearing principles.

5. **At variance with clearing principles**: clearing that requires application for a clearing permit to DEC and is at variance to one or more clearing principles.

6. **At serious variance with clearing principles**: clearing that requires application for a clearing permit to DEC, is at serious variance to one or more clearing principles and requires a decision by the CEO taking other matters into account.

The success of a “risk-based” approach is conditional on proponents providing the approval authorities with sufficient information to enable the correct assessment track to be identified. The impact of a proposal, and therefore its “risk” assessment track, will relate not only to the scale of the proposed clearing, but to the environmental quality and relative value of the areas impacted, having regard to the clearing principles. It is therefore important that application information requirements are clearly stated, easily accessible on DEC’s website and are followed by proponents.

The Committee is aware that the adoption of the above principles would be consistent with the direction DEC wishes to go with its administration of the statute. The Committee was of the view, however, that the decision making processes of DEC, whilst showing some elements of a risk-based approach, had some way to go to be a comprehensive risk-based approach. The adoption of the above principles would involve building on the approach already adopted by DEC.

3.2.4. Associated Measures to Deliver a Risk-based Approach

The Committee also advises that a number of other issues arising from the review could be addressed by the implementation of this risk-based process, namely:

- While the allocation of resources for staff to DEC, particularly in comparison to the delegation to DMP, does appear inequitable (see Section 4.2), a simplified approvals process should facilitate better decision making within DEC that would allow officers to more adequately focus on issues such as monitoring and enforcement of the Legislation without any changes to staff resources;
- The Committee noted concerns of submitters over initial problems with DEC meeting approval timeframes, but that this has improved in recent times. In general the Committee did not support fixed timeframes, but does acknowledge that low risk proposals under the risk-based process should be dealt with expeditiously, while larger proposals merit proper consideration requiring an adequate timeframe. **Recommendation 4: Therefore the Committee recommends that DEC develop reasonable target timeframes for each assessment track against which it should publicly report on a regular basis.**
- There have been calls for the permitting process to be funded from full cost recovery. The Committee notes that DEC advises that current application fees contribute about 1% of operational costs. It is a matter for Government policy as to whether this or any other approvals process should be funded from full cost recovery noting that such systems need to address inequities. However the Committee has concluded that the current application fees appear on the low side compared with other approvals processes in the State.
- The Committee noted that requests for a minimum area threshold that would constitute significant clearing were aired in several submissions and believed that these requests should be adequately addressed by streaming of such proposals into the ‘minor clearing’ pathway.
- The Committee found that DECs website did not provide ease of access to assist applicants in making applications, establishing assessment criteria and reviewing past decisions. It is **recommended** that DEC review its policy and guidance documents in conjunction with stakeholders to ensure ease of use, and review and

improve the navigability of its website so information on native vegetation clearing is more readily accessible.

- The Committee **recommends** DEC promote the wider use of purpose permits, especially by State and Local Government agencies, to deal with routine and maintenance clearing as a more efficient approach where clearing proposals are frequent and minor.

3.3. Consideration of socio-economic and other factors and planning instruments, to allow clearing at variance or serious variance with the clearing principles and the giving of reasons for such decisions (Section 51O)

3.3.1. Context

Sections 51O(3) and (4) of the EP Act make provision for the CEO to allow clearing which it at serious variation with the clearing principles if there is good reason to do so, notably where there is a relevant planning instrument or relevant socio-economic matters involved. The CEO's reason(s) must be recorded and published. Clearing may also be allowed at the discretion of the CEO or his or her delegate in cases of variance not constituting serious variance. In such instances the procedural requirements of s51(O)3 which apply only to allow clearing "seriously at variance with the clearing principles", do not apply.

The Committee was advised by DEC that there have been two such examples of serious variance and the details of both the decisions were provided to the Committee.

3.3.2. Views of Submitters

Decisions made under these sections of the EP Act, for both approvals and refusals, were raised by many submitters. The CCWA was of the view that it is inappropriate for DEC to take into account planning instruments and other matters in its decision making, and sought to have these considerations transferred to the Minister, leaving DEC's decision making to be based only on the clearing principles. The Department for Planning and Infrastructure (DPI) and industry groups including WALGA and the Civil Contractors Association questioned whether socio- economic factors such as road safety and access to basic raw materials, were given adequate consideration by DEC in many cases. In addition submitters raised concerns about the transparency of decision making under these sections of the EP Act: that is, it was unclear how DEC arrived at it decisions when taking into account relevant planning instruments or other matters.

WALGA was concerned about the weight given to matters such as road safety, in the consideration of “other matters”, when these matters are likely to be regulatory obligations for a Local Government authority.

The CCWA expressed an additional concern that the EPA should always assess a proposal to clear ‘significant’ native vegetation and should not rely on DEC or DMP processes for such proposals. This is partly based on the concern that the EP Act specifically allows DEC to take into account factors other than environmental matters when it assesses proposals, whereas the EPA has an environmental protection mandate which is the purpose of the clearing controls.

3.3.3. Committee Consideration and Recommendations

1. It was noted that some, but perhaps not all, proposals that are at serious variance with the clearing principles could be considered environmentally significant under the EP Act. Consequently, the Committee was of the view that should DEC be considering approving an environmentally significant proposal it should be referred to the EPA in accordance with Part IV of the EP Act. However, should DEC be of a mind not to approve an environmentally significant proposal, referral to the EPA would not be required.

   Recommendation 5: The Committee recommends that DEC and EPA should develop a Memorandum of Understanding (MOU) identifying the types of proposals involving clearing of native vegetation that are environmentally significant in the context of Part IV of the EP Act and therefore which require referral to EPA.

2. The Committee does not agree that it is inappropriate for DEC to take into account planning instruments and other matters in its decision making- this is clearly the intent of the Parliament- nor does it agree that these considerations should be confined to the Minister. The Minister would already deal with them at the Appeals stage. However, the Committee is of the view that decision making involving proposals at variance or serious variance with the principles needs to be more clear and transparent so as to better inform both the applicant and other stakeholders. The Committee examined several proposals that were either at serious variance or at variance with the principles and concluded that the published decisions of DEC did not appear to be consistent in every case.

   As well, the conclusions reached regarding whether a proposal was at variance or serious variance with a principle were indecisive at times: for example concluding that

a proposal “may be at variance”. It is difficult to establish what weighting is given to such a conclusion in deciding whether or not to grant a clearing permit.

A further point is that it is not always apparent, where mitigation, management or the application of offsets may change a conclusion, whether or not a proposal is at variance with one or more principles, or indeed whether a proposal merits an approval or not.

The Committee acknowledges that a key factor in causing the concern about how these sections of the EP Act are implemented is that the EP Act itself does not provide clear guidance on how the planning instruments and other matters are to be taken into account and what weight should be attributed to them in dealing with variance to the principles.

Consequently, DEC needs clear guidance from Government as to relative importance it should place on planning instruments and other matters in its decision making.

If these matters are addressed, then DEC’s decision making in these cases would be more clear and transparent to all parties with the additional benefit of enabling the Appeals process to be more informed and focused- and therefore more timely.

Recommendation 6: The Committee supports the retention of sections 51O(3) and (4) of the EP Act, but recommends that DEC, as part of its reporting for proposals at serious variance and variance to the principles, makes a clear statement as to how it balances the clearing principles against the planning instruments and other matters in arriving at these decisions. In this way, these decisions will be more clear and transparent. This should include giving proper reasons for the grant or refusal of clearing permits, setting out the facts found, the conclusions drawn and the reasoning supporting the conclusions.

Recommendation 7: The Committee also recommends that there should be greater guidance provided by Government to the CEO of DEC as to the relative importance it should place on various planning instruments and other matters when considering proposals at serious variance with principles and that this guidance should be made public.

3. In relation to the concerns about the EPA not assessing significant clearing proposals, it is noted that the EPA chooses to not assess significant proposals in cases where it is of the view that other approvals processes can deal with the environmental impacts, but that not assessing the proposal should not be read as

implying that the proposal is not significant. The Committee noted that sometimes confusion is created when the EPA chooses to not assess a proposal to clear significant native vegetation and that this confusion arises partly because the EP Act requires that the EPA make an appealable decision regarding the assessment of significant proposals.

These concerns can be addressed to some extent through the development of an MOU between the EPA and DEC as discussed above. There is merit in the EPA making it clear when it chooses to not assess a proposal to clear significant vegetation, but that the vegetation is still considered significant by the EPA, that Part V of the EP Act, including the possible uses of sections 51O(3) and (4) is the most appropriate mechanism to deal with the mix of issues associated with the proposal.

3.4 Ten Year Restriction for Clearing of Regrowth without Further Permitting

3.4.1. Context

The '10 year rule' refers to the 10 year time limit of an approval where the clearing has been carried out, regrowth has occurred and the re-clearing of the land is subject to that use being either for pasture, cultivation or forestry purposes (Item 14 of Section 5 of the Regulations), and also for re-clearing around infrastructure (Item 15 of Section 5 of the Regulations).

3.4.2. Views of Submitters

The Western Australian Farmers Federation (WAFF) and the Pastoralists and Graziers Association of Western Australia (PGA) both addressed this issue, believing that it is an unfair restriction to be placed on landowners of properties used for pastoral and agricultural pursuits. Both organisations specifically asked for removal of the 10 year timeframe, with WAFF requesting the removal of any time restriction for this clearing given that it is not always possible to determine the age of regrowth.

The PGA and also the Appeals Convenor sought clarification for the interpretation of applicable land uses in Item 14: for example, could the land use be changed from pasture to cultivation and the 10 year exemption be retained where the initial clearing was for cultivation only. The PGA was of the view that because "all three uses defined in the section are all agriculture based under the ANZ coding system" any change between them is not a land use change and therefore the Regulations should still apply so that further permitting is not required.

The CCWA was of the view that any regrowth should be considered native vegetation and that reference to the 10 years be removed.

3.4.3. Committee Consideration and Recommendations

1. The Committee examined the systems in place in other States for evaluation of regrowth using 'performance' criteria: that is, bio-physical measures of the vegetation that characterise mature native vegetation. The Committee concluded that due to the inherent subjectivity of this method and the difficulty in getting scientific agreement as to when re-growth could be considered mature enough to be classified as native vegetation, a specified timeframe methodology was the preferred method. It needs to be borne in mind that the clearing controls cover the whole State including State waters with the concomitant broad range of vegetation and habitats. The Committee also acknowledged the view of DEC in regards to clearing around infrastructure such as roads that 10 years was already a generous provision and that re-clearing of significant vegetation should normally be completed well within this timeframe.

   The Committee concluded therefore that some limit needs to be placed on the time within which clearing of re-growth can occur without further permitting, and that 10 years is a reasonable time limit.

   Recommendation 8: The Committee recommends that the 10 year limit remain to allow for clearing of re-growth without further permitting where an approval to clear has been allowed and implemented in accordance with Items 14 and 15 of Section 5 of the Regulations.

2. The Committee agreed that the applicable land uses under Item 14 of the Regulations need to be clarified, and that some flexibility should be used in interpreting the meaning of this part of the Regulations regarding these specific land uses. The Committee noted that changing land use between any of these three categories is comparable with respect to environmental impacts.

   Recommendation 9: The Committee recommends that clarity be brought to the interpretation of the meaning of this part of the Regulations in that where an approval was originally given to the land uses of pasture, cultivation and forestry, and regrowth has occurred, any or all of these land uses should be allowed without the need for a new approval. However change to more intensive land uses such as irrigated horticulture should trigger a new application because of the change to potential environmental impacts.

3.5. Support Mechanisms for Disadvantaged Landowners

3.5.1. Context

Should a clearing application be refused, the EP Act provides no statutory mechanisms to link that refusal to incentives or other mechanisms. Where the land is also subject to a planning application in an area with development pressure, there may be planning mechanisms available to both protect the land and provide some benefit to the land owner. In other places, for example the agricultural region, these mechanisms may not exist and the land owner may be denied the right to use the land.

3.5.2. Views of Submitters

The WAFF, UDIA and PGA all raised the need for specific compensation for landowners where approval to clear native vegetation has been denied. The PGA is also of the view that the market price set on land with native vegetation is very low, but that if the vegetation is valued for environmental protection or conservation such that it cannot be cleared, then the valuation of the land should reflect this. Further, the PGA is of the view that rural areas are disadvantaged compared to the metropolitan area where funding is available to purchase bushland through the Bush Forever programme. DEC also noted that the purchase of bushland by government is a useful means for reducing inequity and hardship on landowners.

3.5.3. Committee Considerations and Recommendations

1. The Committee noted that a refusal to grant a clearing permit could lead to personal hardship under certain circumstances for some land owners. The Committee noted that there are a range of support mechanisms other than out-right purchase by government that could provide some benefits to affected land owners whilst providing protection for the native vegetation. Programs like ‘bio-banking’ as suggested by DEC, reduction in rates or land tax, and incentives to provide fencing are all useful mechanism that could be pursued as a means to reduce hardship on landowners where approval to clear native vegetation has been refused. The Commonwealth Government’s emission trading scheme may also provide opportunities to place a commercial value on remnant native vegetation.

   Recommendation 10: The Committee recommends that in certain circumstances related to personal hardship there is a need for support mechanisms to be provided to some landowners who have been refused an application to clear. Additional resources to establish or fund these programs would likely be needed.

3.6. Database for Improved Monitoring and Auditing of Land Clearing

3.6.1. Context

Information on compliance with approvals granted by DEC and DMP and the general requirements of the Legislation and Regulations is necessary to know how effective the Legislation and Regulations are in controlling clearing.

In particular, data on the extent and quality of native vegetation in the State, and the rate of its loss from all sources including through permits to clear and exempt activities should be collected to provide the basis for decision making.

3.6.2. Views of Submitters

Many submitters requested the there should be increased monitoring of all native vegetation clearing in the State. The Commissioner for Soil and Land requested a stronger link between the Native Vegetation Protection Branch and compliance activities with a greater emphasis on remote sensor monitoring. The DPI, CCWA, DEC and DMP all took a similar view, with a general agreement that an up-to-date and publicly available database is needed to monitor all legal and illegal clearing that is occurring in the State. DEC requested that all agencies that approved any land clearing which is exempt from approval under the EP Act should be required to report that to DEC. The CCWA submission suggested the establishment of a 'Clearing Response Unit', trained in investigation methods and similar to DEC's 'Pollution Response Unit', to deal with reports of possibly unauthorised clearing in a timely manner.

3.6.3. Committee Considerations and Recommendations

1. The Committee agreed that having a single database that provides all of the information on the extent and condition of remnant native vegetation in WA as well as on rates of clearing, including from approvals granted under the EP Act and clearing that is exempt is highly desirable (while recognising some of the difficulties involved). The Committee took a broad view of this issue and noted that that the existing state-wide data on the spatial distribution, quality and classification of native vegetation is incomplete and presents a barrier to good decision making and also in proponents capacity to provide adequate information at the time of referral, especially smaller Local Governments.

Recommendation 11: The Committee recommends that resources be provided to improve the quality and public accessibility of data on native vegetation, of both its extent and significance, so as to allow for better decision making in DEC and to better

inform land owners and the broader community, and that this be implemented as a priority.

3.7. Clarification of the Role of Offsets

3.7.1. Context

Section 51H (1) of the EP Act allows DEC to set conditions of approval for a clearing permit to cover a range of matters including offsetting the loss of the cleared vegetation.

3.7.2. Views of Submitters

Several submitters expressed a view that in some cases the offsets set by DEC were unreasonable and did not match the severity of the impact of the loss of the vegetation to be cleared.

Another view was that a strategic approach be adopted to offsets where DEC identifies important areas of remnant vegetation in the State in private ownership which are a priority for conservation. Offsets for individual proposals should be focussed on acquiring these significant areas, rather than on the rehabilitation of cleared land with native vegetation or the setting aside of small, unviable and unconnected pockets of vegetated land.

3.7.3. Committee Considerations and Recommendations

1. The Committee was of the view that the EPA's position on environmental offsets as described in its Position Statement No 9 and its Guidance Statement No 19 should form the basis of how offsets are applied in any approval to clear native vegetation.

   Recommendation 12: The Committee recommends that offsets should not be required routinely as a condition of approval for clearing permits but should be applied in the specific circumstances as described below consistent with the Committee's recommended risk-based approach:

   a. **the use of offsets should be consistent with the EPA position paper;**
   b. **offsets are most appropriate for approvals which are at serious variance with the clearing principles;**
   c. **offsets are normally appropriate for proposals which are at variance with principles but application should be commensurate with the loss of environmental value of the relevant principle;**
   d. **offsets are generally not appropriate for minor proposals and those not at variance with principles.**

2. The Committee supports the adoption of a strategic approach to the application of offsets and notes that there would be opportunities to address the issues raised in

Section 3.6 in relation to land owners disadvantaged by a refusal to grant a clearing proposal.

Recommendation 13: The Committee recommends that the work recommended in Section 3.6, in relation to the database for improved monitoring and auditing of land clearing, should include identification of sites that would form the basis of a strategic approach to the use of offsets. As well the database should clearly identify sites of native vegetation that have been set aside as an offset so that security of tenure, purpose and management is enhanced.

3.8. Appeals Process

3.8.1. Context

Clearing proposals approved and any conditions set, and clearing proposals refused are subject to appeal rights.

3.8.2. Views of Submitters

Several submission raised concerns about the appeals process, in particular the unrestricted opportunities for third party appeals. UDIA specifically raised concerns about what it sees as significant delays associated with these appeals despite the majority of them being dismissed. These submissions have sought restrictions on the opportunities for third party appeals. Concern was also expressed that in some circumstances, two appeal rights exist which further delays any approval: this is where a proposal is initial referred to the EPA and it chooses to 'not assess' the proposal relying on Part V of the EP Act to consider the application on its merits. Appeal rights exist on this decision and on DEC's decision.

3.8.3. Committee Consideration and Recommendations

1. The Committee noted that, following the introduction of the Legislation, there were a number of appeals submitted that could be considered minor or trivial that added to the delays for some of the proposals. However, the Committee also noted that the number of these appeals has declined in recent times and that the concerns over delays have also declined.

   The Committee supports the retention of existing appeal provisions associated with applications to clear native vegetation and notes the opportunity for appeals to be dismissed quickly if considered groundless or vexatious.

2. The Committee noted that it was inconsistent to have no appeals fee for clearing proposals whilst other appeals under the EP Act attracted fees, and that the lack of

an appeal fee could have contributed to the initial high number of minor or trivial appeals.

Recommendation 14: The Committee recommends fees be introduced for appeals associated with clearing proposals at a level consistent with other appeals under Part V of the EP Act.

3. In relation to the "double" appeal opportunities in cases where a referral is made to the EPA prior to a final decision by DEC, the recommendations in Section 3.3 go a considerable way to addressing this concern.

3.9. Bush Forever Areas

3.9.1. Context

Bush Forever is a Government policy that identifies the areas of native vegetation that are to be protected within the Swan Coastal Plain portion of the Perth Metropolitan area. The implementation of Bush Forever is through the land use planning system, involving primarily the reservation of many sites as Parks and Recreation Reserves under the Metropolitan Region Scheme (MRS). Other sites are to be the subject of a Negotiated Planning Solution (NPS) where some of the site could be developed with the remaining areas of native vegetation protected. The planning agencies are responsible for the implementation of Bush Forever in cooperation with the EPA and DEC. The EPA can still choose to assess individual proposals affecting Bush Forever Sites.

3.9.2. Views of Submitters

Some submitters are concerned that many of the NPS outcomes are subject to both planning and environmental approvals with the subsequent generation of two approvals with the potential to be inconsistent. The Conservation Council expressed support for the on-going involvement of the EPA and DEC in Bush Forever proposals.

3.9.3. Committee Consideration and Recommendations

1. The Committee acknowledged that there was no formal delegation from DEC to the WAPC or DPI to allow only one approval process for Bush Forever sites, and that DEC does not support such a delegation. The Committee identified two major issues in relation to Bush Forever sites:
    - proposals to clear in sites subject to NPS; and
    - proposals to clear within Bush Forever sites reserved for Parks and Recreation in the MRS.

The Committee noted that outcomes of NPS are always subject to referral to and possible assessment by the EPA.

Recommendation 15: The Committee recommends that proposals to clear native vegetation in a site subject to an NPS should be subject to concurrent and harmonised approvals processes between DEC and statutory planning consents. Consequently the current practice of DEC being part of the negotiated outcome should continue, but that the negotiated outcome should lead, as far as reasonably possible, to harmonious sets of conditions for the outcome a single set of conditions set through of the planning process and the Part V approval process.

2. **Recommendation 16: The Committee recommends that developments involving clearing of land within Bush Forever sites reserved for Parks and Recreation in the MRS should be consistent with an approved management plan for the site and not be *ad hoc*. This relies on appropriate management plans being prepared and approved for these sites by the planning authorities in a timely manner.**

   Further, any Part V approvals process should run concurrent and, as far as legally possible, be consistent with the planning approvals process and should lead, as far as reasonably possible, to harmonious sets of conditions for the outcome of a single set of conditions set through the planning process. In the Committee's view, reference can properly and reasonably be made to conditions being set in the planning process in considering what conditions if any should be set under Part V. Alternatively, a Purpose Permit should be sought by the WAPC to cover the implementation of management plans.

3.10. Resources in Local Governments

3.10.1. Context and View of Local Government

Many smaller Local Governments have limited resources and expertise to carry out the survey work needed to support an application to clear and to meet approval conditions set, including any offsets.

3.10.2. Committee Consideration and Recommendations

1. The Committee acknowledged the important role that Local Government play in conservation and noted that the adoption of a risk-based approach as described in Section 3.2 will go some way to addressing Local Governments' concerns. The

Committee is of the view that Local Governments should appropriately anticipate approval requirements and timelines and that the availability of resources to address the requirements of a clearing application and approval could be included as part of the funding proposal for the road works in question.

2. The Committee noted that some of the concerns related to the use of offsets are in relation to proposals to clear in the agricultural region and that a strategic approach to offsets would go some way to addressing these concerns.

Recommendation 17: The Committee recommends that the Government establish a position within DEC to be the liaison between DEC and Local Governments to assist Local Governments in working with the Legislation and Regulations and to also assist in identifying relevant information for any proposals to clear native vegetation. The position should be funded for up to 3 years after which time Local Governments should take over the responsibility for of the position if it is still required.

4. Less Significant Issues

4.1 Civil penalties

A number of submissions suggested that the EP Act should be amended to allow for civil penalties rather than criminal penalties for minor breaches of the EP Act. The Committee agreed that civil penalties are more appropriate for lesser offences and **recommends** that, if or when the Government proceeds with amendments to the EP Act, this matter be included. The threshold of what should be considered a 'lesser' offence will require input from key stakeholders.

4.2. Equitable Resources between DEC and DMP

In July 2005 a delegation was granted to DMP (then DoIR) to grant approvals for certain applications to clear associated with mining and petroleum proposals. This was done to improve coordination and efficiency for decision making involving these proposals.

In its submission DEC note that, despite the similar functions of their staff, DMP staff were paid a higher salary, which contributed to difficulties in retaining experienced staff within DEC. In addition DEC noted the recent budget reduction of 20% in 2008/09, but that an increase in application fees was a possible option to compensate for the loss of funds (see Section 3.2.4). DEC specifically requested that the delegation to DMP be discontinued with funds and responsibilities transferred back to DEC. DMP, however, requested that the delegation remain.

The Committee has concluded that:

1. based on the evidence provide to it there does appear to be a measure of inequity in the distribution of resources between the two agencies;
2. there was insufficient evidence provided to the Committee to determine the effectiveness or otherwise of the DMP delegation;
3. if the delegation is to continue, the issue of inequitable resources between the departments should be reviewed and addressed as appropriate. In addition, it is **recommended** that the delegation should be a full delegation in the sense that the monitoring and auditing of clearing associated with mining and petroleum industry should be carried out by DMP with full reporting to DEC. The enforcement role and the auditing of the delegation should remain with DEC.
4. If the Government were to consider it appropriate to increase funding to DEC, the Committee **recommends** it be for the following 3 priority areas first:

- Improving DEC website to provide more user friendly and freely available native vegetation information;
- More extensive data collection for the extent and quality of native vegetation in the State, and;
- A more strategic approach to offsets, particularly in regional areas.

4.3. State Agreement Acts

There is an issue of some complexity regarding the relationship of State Agreement Acts to mining legislation and the EP Act. This received some coverage in the ODAC review. The Committee did not reach a conclusion as to whether this was an issue of sufficient magnitude to warrant immediate attention and resourcing. However it is one that merits discussion between DEC and DMP senior officials to move to resolution and coordinated advice to Government.

4.4. Minor Amendments to Legislation

As noted in the table summarising submissions, there are a number of specific requests for changes to the EP Act and Regulations. These proposals are at a level of detail that would represent 'fine-tuning' and were not considered in detail by the Committee in the available time. These requests are best considered by the Government should it consider other changes to the Legislation and or Regulations.

4.5. Response to Victorian Bushfires

The Victorian bushfires occurred during the time the Committee sat to consider its recommendations to the Minster, and it was thought prudent to ask FESA if it would like to make a further submission based on what happened in Victoria. The Committee noted that the EP Act already provides for both FESA and Local Governments to be exempt from the needing an application to clear to carry out works in the case of an emergency.

FESA made two specific additional requests:

1. that all bushfire mitigation, prevention and suppression activities to be exempt regardless of time of year; and
2. clearing undertaken in accordance with a FESA approved fire management plan be exempt.

The Committee considered both of these requests and decided that it could not support either. On the first matter, it was noted that a strategic approach should be taken to bushfire

mitigation, prevention and suppression activities, which could be managed comprehensively through a purpose permit.

On the second matter, it was noted that, notwithstanding FESA's primary responsibilities to protect human life and property, there is no requirement for a FESA approved fire management plan to take into account flora and fauna conservation issues. It would be more appropriate, therefore, for FESA and DEC to work collaboratively in developing FESA approved fire management plans to ensure they adequately consider conservation objectives so a balance can be struck between potentially competing objectives. Again, a purpose permit could be a suitable mechanism to achieve this.

4.6. Clearing Principles to be made Legally Binding

The CCWA were strongly of the view that the clearing principles should be made legally binding, and that any proposal that was at variance to these principles should not be approved. This also relates to the Conservation Council's view that DEC's decision making should only be based on the environmental values of the proposal and that planning and other matters should be taken into account by the Minister (rather then the DEC CEO) on appeal.

As noted in Section 3.3, the Committee does not support the removal of DEC's ability to take into account planning and other matters. The Committee has made specific recommendations that would improve the clarity and transparency of these decisions thus enabling both the applicant and third parties to understand how the decision was arrived at and the relative importance given to environmental values and planning and other matters. The Committee also noted that should this decision only rest with the Minister, there would be no appeal right on that decision.

On the issues of making the principles binding, the Committee was of the view that the EP Act was deliberately constructed to allow for some variance from the principles in certain circumstances and that this represents the view of both the Parliament and Government when the Legislation was drawn up. This flexibility in certain circumstance is also consistent with the policy position developed by the Committee as set out in Section 2.

Appendices

Appendix 1. List of Submitters

Western Australian Farmers Federation (WAFF)
Commissioner of Soil and Land Conservation
Western Australian Local Government Association (WALGA)
Roadside Conservation Committee (RCC)
Fire and Emergency Services Authority of Western Australia (FESA)
Chamber of Minerals and Energy (CME)
Urban Development Institute of Australia (Western Australia) (UDIA)
Civil Contractors Federation (CCF)
Office of Road Safety (ORS)
Pastoralists and Graziers Association of Western Australia (PGA)
Western Power (WP)
Department of Planning and Infrastructure (DPI)
Conservation Council of Western Australia (CCWA)
Wildflower Society of Western Australia
Urban Bushland Council WA
Wilderness Society Western Australia
Main Roads Western Australia (MRWA)
Water Corporation
Department of Environment and Conservation (DEC)
Office of the Appeals Convenor
Department of Mines and Petroleum (DMP) (formerly DoIR)
Environmental Consultants Association (ECA)
Australian Petroleum Production and Exploration Association (APPEA)

Appendix 2. Summary of Submissions and Responses of Committee

Significant issues raised from submissions (numbers in table)

1. Risk-based Assessment of Applications to Clear;
2. Consideration of socio-economic and other factors and planning instruments, to allow clearing at variance or serious variance with the clearing principles and the giving of reasons for such decisions (Section 51O);
3. 10 Year Restriction for Clearing of Regrowth without Further Permitting;
4. Support Mechanisms for Disadvantaged Landowners;
5. Compliance Auditing for Increased Enforcement of Legislation;
6. Clarification of the Role of Offsets;
7. Appeals Processes;
8. Bush Forever Areas;
9. Local Government Resources.

Submitter	Key Issues Raised	Committee's Response
The Western Australian Farmers Federation (WAFF)	• No further 'watering down' of clearing exemptions in the Regulations, including the one hectare rule. • (3) Removal of 10-year restriction for re-clearing. • Introduction of civil penalties for minor breaches. • (4) Adequate compensation for landowners with restricted property.	• Noted. Any changes recommended by the Committee will based on their merits. • The Committee acknowledged the 10-year rule as a significant issue and has addressed both the time restriction and applicable land uses that apply to it in Section 3.4. • The Committee agreed that civil penalties are more appropriate for lesser offences and has addressed this issue in Section 4.1. • The Committee agreed that in certain circumstances there is a need for support mechanisms for landowners who have been refused an application to clear and is covered in Section 3.5.
Commissioner of Soil and Land Conservation	• Government policy statement, building on 1995 statement by Monty House, which clearly identifies its native vegetation clearing outcomes. • Improved public reporting to demonstrate progress towards these outcomes. • Reinforce organisational structural changes in the Department of Environment and Conservation (DEC). • (5) Stronger link from Native Vegetation Protection Branch to compliance activities to allow greater emphasis on monitoring	• The Committee acknowledged the need for a clear government statement on native vegetation clearing and has provided suggested policy framework in Section 2. • The Committee agreed that the public reporting of decisions made on clearing applications should contain all the information relevant to those applications so that the reasons for the decisions are transparent. • Committee has been advised by DEC that they have centralised their decision making processes, which should address this issue. • The Committee acknowledged the need for an up to date database to facilitate

	from remote sensors.	better monitoring of all legal and illegal native vegetation clearing in Section 3.6.
Western Australian Local Government Association (WALGA)	• No State Government objectives. Recommended that the goals and intentions of the Government for the Legislation be clearly defined, stated and supported with public awareness campaigns. • There appears to be no strategic context for the Legislation. Needs to be a framework of sustainable and strategic goals and policies that the legislation can fit into. • Current inconsistencies of the legislation with other State strategies need to be addressed with the development of interrelated land use, environmental and transport planning strategies. • (2)(9) Current legislation is proving difficult for Local Government to comply with, while at the same time not appearing to be producing sustainable or constructive results, and requires a closer relationship between state and local governments to develop 'triple bottom line' asset management plans. • This improved relationship between State and Local Government to be based on empowerment and education, rather than enforcement (including exclusion from presumption of guilt in 51R(3)), with exploration of how best they can work together to reach mutual goals.	• The Committee acknowledged the need for a clear Government statement on native vegetation clearing and has provided suggested policy framework in Section 2. • This is covered in part above but the Committee also noted that this relates to the application of offsets, particularly in the agricultural area that is discussed in Section 3.7. • The Committee noted that these concerns relate primarily to the use of s.51O of the *Environmental Protection Act 1986* (EP Act) and is covered in Section 3.3. • The Committee noted that these concerns relate primarily to the use of s.51O of the EP Act and also concerns about the ability of smaller Local Governments to fund the survey work and offsets required in some of the proposals to clear in the agricultural region in particular. Finally, the adoption of a risk-based approach will go some way to addressing Local Governments' concerns. Advice on this is covered in Sections 3.2, 3.3 and 3.10. • The Committee noted that these concerns relate primarily to the use of s.51O of the EP Act and also concerns about the ability of smaller Local Governments to fund the survey work and offsets required in some of the proposal to clear in the agricultural region in particular. Funding for road works received from State and

		Commonwealth Governments should include a component for funding in support of requirements under the EP Act and Regulations. In addition, the Committee recommended that Local Governments should appropriately anticipate approval requirements and timelines. Finally, the adoption of a risk-based approach will go some way to addressing Local Governments' concerns. Advice on this is covered in Sections 3.2, 3.3 and 3.10.
	• (2) A more holistic approach is needed for Legislation to allow for improved decision making and efficiency, including incorporation of road safety and engineering considerations. • (1) The assessment process specifically needs to focus on conservation of priority (remnant) vegetation that will facilitate better decision making.	• The Committee noted that these concerns relate primarily to the use of s.51O of the EP Act that is discussed in Section 3.3. • The Committee noted that the adoption of a risk-based approach will go some way to addressing Local Governments' concerns, which is discussed in Section 3.2.
	• (6) A regional based strategic vegetation clearing offset program.	• The Committee noted that these concerns relate primarily to the use of offsets required in some of the proposal to clear in the agricultural region in particular and the need for a strategic rather than case-by-case approach that is discussed in Section 3.7.
	• Shift emphasis from enforcement and implementation to empowering and encouraging permit applications while prosecuting parties not using this system.	• The Committee noted these concerns but also noted that Local Governments must comply with the EP Act. However, the adoption of a risk-based approach will go some to addressing Local Governments' concerns, which is discussed in Section 3.2.
	• (9) The majority of Local Government works already avoid unnecessary clearing, yet the application process is time consuming and financially burdening. The State Government	• The Committee acknowledged the important role that Local Government play in conservation, but noted that these

	should acknowledge the role that Local Governments plays in environmental protection by being adequately funded to keep providing this protection at a state level, particularly for rural governments. • (5) A current lack of mapping and data sharing of environmental information could be addressed by establishing a 'Dial before you Clear' office that is empowered to collect all environmental information and advice.	concerns relate primarily to the use of offsets required in some of the proposal to clear in the agricultural region in particular. Funding for road works received from State and Commonwealth Governments should include funding in support of requirements under the EP Act and Regulations. Finally, the adoption of a risk-based approach will go some way to addressing Local Governments' concerns. These issues are covered in Sections 3.2 and 3.7. • The Committee acknowledged the need for an up to date database to allow better monitoring of all legal and illegal native vegetation clearing in Section 3.6.
Main Roads Western Australia (MRWA)	• (3)(1) Definition of a minimum area (more than one hectare) that would constitute significant clearing. • Removal of dead vegetation from the definition of native vegetation; • Redefinition of the word 'clearing' so it covers only significant clearing; • Amendment of s51G to allow for extension of duration clearing permits; • Amendment of s51R(3) to make it less onerous on the occupier and landowner; • Exemption of clearing in Item 2 in response to emergency situations from ESA's; • Amendment of Item 11 to increase allowed width of fence line clearing to 5 metres or unrestricted;	• The issue of a minimum area that would constitute significant clearing was raised in several submissions; however the Committee believed that a risk-based approach as discussed in Section 3.2 is a more appropriate way to address these concerns. • Committee was of the view that these specific requests for minor amendments to the Legislation and Regulations were at a level of detail that would represent 'fine-tuning' and were not considered further by the Committee. These requests are best considered by the Government should it consider other changes to the Legislation/Regulations, on advice of the DEC, as discussed in Section 4.4.

	• Amendment to Item 15 to include tracks providing access to infrastructure; • Amendment of Item 21 to include ESA's; • Amendment to S.6(1)(d) to reduce set distance to Declared Rare Fauna below 50m; • Amendment to S.6(6) to allow for a maintenance area that is legally created or extended; • Redefinition of 'transport corridor infrastructure' in Schedule 2 to include drainage sumps, culverts, lighting and electrical facilities and dual use paths; • Amendment of cl.2 of Schedule 2 to exclude sight lines from the condition of previous clearing; • Inclusion of a clause in Schedule 2 to allow for removal of individual trees presenting hazard to property; • Rewriting of cl.3 of Schedule 2; • Removal of S.1.(1) of Schedule 3. • (3) Removal of 10 year restriction (with no restriction)	• The Committee acknowledged the 10 year rule as a significant issue and has addressed both the time restriction and applicable land uses that apply to it in Section 3.4.
Fire and Emergency Services Authority of Western Australia (FESA)	• Explicit and permanent exclusion of all their suppression and prevention activities. • Two-tiered approach where a second party endorsement is required for potential beneficiaries of land clearance. • Partnership with DEC that includes advice to FESA and local governments on burning/fire cycles. • Continued exemption of: 1. Emergency response fire controls; 2. Hazard reduction burning when undertaken under the Bush Fires Act; 3. Burning undertaken during wet months under the Bush Fires Act; 4. Firebreaks for planned and unplanned fire management	• The Committee specifically asked FESA for a further submission in the light of the Victorian Bushfires and the matters raised here, including the extended use of purpose permits, are covered in more detail in Section 4.5.

	under the Bush Fires Act; 5. Clearing on Crown land for fire prevention and control purposes. • All bushfire mitigation, prevention and suppression activities to be exempt regardless of time of year. • Clearing undertaken in accordance with a FESA approved fire management plan be exempt.	
The Chamber of Minerals and Energy of Western Australia (CME)	• Certain timeframe for approval of clearing permits. • Better definition of 'riparian vegetation' to account for regional variations. • The status of clearing exemptions under State Agreement Acts. • Request for DMP to continue as the delegated authority for clearing provisions administration in the resources sector.	• The Committee has included its recommendations on statutory timeframes and certain time limits for approval of applications in its discussion of risk-based assessment in Section 3.2. In general, it does not support fixed timeframes but prefers that DEC establish target timeframes within a risk-based approach against which it should publicly report. • Committee was of the view that these specific requests for minor amendments to the Legislation and Regulations were at a level of detail that would represent 'fine-tuning' and were not considered further by the Committee. These requests are best considered by the Government should it consider other changes to the Legislation/Regulations, on advice of the DEC, as discussed in Section 4.4. • The Committee provide advice on State Agreement Acts in Section 4.3. • The Committee has discussed the delegation to DMP in Section 4.2.
Urban Development Institute of Australia (WA) (UDIA) and the Civil Contractors Federation (CCF)	• Conclusive timeframe and statutory time limit for approvals.	• The Committee has included its recommendations on statutory timeframes and certain time limits for approval of applications in its discussion of risk-based assessment in Section 3.2. In general, it

		does not support fixed timeframes but prefers that DEC establish target timeframes within a risk-based approach against which it should publicly report.
	• Duplication and double handling in the assessment process.	• The adoption of a risk-based approach as described in Section 3.2 will go some to addressing UDIA's concerns. This is also covered in the discussion of issues relating to Bush Forever areas in Section 3.9.
	• (1) 'Quick Yes' solution for fast tracking insignificant applications, including a minimum threshold for requiring a permit.	• The adoption of a risk-based approach as described in Section 3.2 will go some way to addressing UDIA's concerns, including any possibility of a minimum threshold for significant clearing.
	• (7) Restriction on opportunities for third party appeals.	• The Committee examined the appeals process including third party opportunities and has outlined its recommendations in Section 3.8.
	• (6) Offset policies that mimic eastern states versions.	• The Committee viewed environmental offsets as a major issue that is discussed in Section 3.7.
	• Clearing and replacement of poor vegetation to access sand.	• The Committee noted that these concerns relate primarily to the use of s.51O of the EP Act and the use of offsets required in some of the proposals. Advice on this is covered in Sections 3.3 and 3.7. The Committee further noted that this issue also relates to the WAPC's draft Basic Raw Materials Policy and believed that, should this policy be finalised and agreed to by the Government, it would become a relevant 'planning instrument' that DEC could consider.
	• (4) Adequate compensation for landowners with restricted	• The Committee agreed that in certain

	property.	circumstances there is a need for support mechanisms for landowners who have been refused an application to clear and is covered in Section 3.5.
Western Power (WP)	• (1) Introduction of significance test, with an alternative being to give discretionary powers granted to Western Power on significance of clearing. • (6) Offset requirements.	• The adoption of a risk-based approach as described in Section 3.2 will go some to addressing WP's concerns. • The Committee viewed environmental offsets as a significant issue that is discussed in Section 3.7.
Department for Planning and Infrastructure (DPI)	• Statutory time frame for assessment of applications. • Forms and brochures for Local Government roads and reserves that clearly indicate co-signing by SLS is not required; • Extra provisions on application forms for owner to sign and grant access to land; • Recognition of native title requirements; • Amendment of regulations regarding maintenance of Common Law roads; • Amendment of Clause 13 of Schedule 6 in relation to pastoral leases; • Allowance to clear in ESA's for the purpose of maintaining public purpose infrastructure that is owned by a private entity; • Removal of Dampier to Bunbury Natural Gas Pipeline from the requirement for clearing approvals.	• The Committee has included its recommendations on statutory timeframes and certain time limits for approval of applications in its discussion of risk-based assessment in Section 3.2. In general, it does not support fixed timeframes but prefers that DEC establish target timeframes within a risk-based approach against which it should publicly report. • Committee was of the view that these specific requests for minor amendments to the Legislation and Regulations were at a level of detail that would represent 'fine-tuning' and were not considered further by the Committee. These requests are best considered by the Government should it consider other changes to the Legislation/Regulations, on advice of the DEC, as discussed in Section 4.4.

	• More strategic area clearing permits that are not on a site-by-site basis.	• The adoption of a risk-based approach as described in Section 3.2 will go some way to addressing DPI's concerns. However the Committee did note that Purpose Permits offer a suitable mechanism for more strategic approaches that are relevant for this issue and would support amendments to the Legislation/Regulations to allow purpose permits to be more widely used.
	• (6) Flexible offset requirements that are aimed at achieving an overall net environmental benefit.	• The Committee viewed environmental offsets as a major issue that is discussed in Section 3.7.
	• (2) Appropriate consideration of economic and social factors in the assessment process.	• The Committee viewed the need for appropriate consideration of social and economic factors to be linked to the role of the CEO under Section 51O and addressed this whole issue in Section 3.3.
	• (8) Memorandum of Understanding between DEC and WAPC/DPI in regards to Bush Forever areas.	• The Committee has included its discussion of Bush Forever issues, including consideration of a formal DEC delegation, in Section 3.9.
	• (5) Better communication of spatial data of native vegetation leading to a system to monitor all legal and illegal clearing in the state.	• The issue of better spatial data is linked with improved monitoring which is discussed in Section 3.6.
The Pastoralists and Graziers Association of Western Australia (PGA)	• (4) Inconsistencies with value placed on native vegetation and incentive mechanisms with a need for adequate compensation.	• The Committee agreed that in certain circumstances there is a need for support mechanisms for landowners who have been refused an application to clear and this is discussed in Section 3.5.
	• (3) Removal of 10-year restriction and clarification of applicable land uses to this Item.	• The Committee acknowledged the 10-year rule as a significant issue and has addressed both the time restriction and applicable land uses that apply to it in Section 3.4.

	• Flexibility for the 1 hectare rule such as for clearing around fencing and vehicular tracks. • Introduction of civil penalties for minor offences.	• The issue of a minimum area that would constitute significant clearing was raised in several submissions; however the Committee believed that a risk-based approach as discussed in Section 3.2 is a more appropriate way to address these concerns. • The Committee agreed that civil penalties are more appropriate for lesser offences and has addressed this issue in Section 4.1.
The Conservation Council of Western Australia (CCWA), The Wildflower Society of WA, Urban Bushland Council WA and The Wilderness Society WA.	• Clearing principles be made legally binding with no discretion to allow variance from them. • 30% minimum threshold for any vegetation type. • Rationalise exemptions by their environmental significance. • Removing exemptions for clearing for subdividing, mineral and petroleum exploration and re-growth.	• The Committee was of the view that the EP Act was structured in a way that allowed for some variance from the principles and to change the EP Act to give no discretion is a significant change in approach. The Committee did note the concern raised by CCWA in relation to clearing allowed at variance to the principles (s.51) and this is discussed in Section 4.6. • The Committee noted that this concern relates to the lack a clear and robust policy framework that form the basis of the EP Act and for its implementation, which is addressed in Section 2. • The Committee was of the view that exemptions have been made for a variety of reasons other then environmental significance. • The Committee noted the concerns about these exemptions, especially the subdivision exemption on land where the Planning Scheme has not been assessed by the EPA, but also notes that the

		exemption does not apply to Part IV of the EP Act and does not remove the responsibility for the decision making authority to refer significant proposals to the EPA. In this way, proposals affecting remnant native vegetation of significant value can still be assessed.
	• Cost recovery fee for clearing of vegetation	• Committee noted that a full cost recovery system for application fees is mentioned for the Government to consider, and that, based on current data provided by DEC that cost recovery is at ~1%, fees structure does appear to be modest. This is discussed in Section 3.2.
	• (6) Clarification of offsets.	• The Committee viewed environmental offsets as a major issue that is discussed in Section 3.7.
	• (5) Establishment of a 'clearing response unit' to provide stronger enforcement of clearing offences.	• The Committee noted that this concern relates to the need for improved monitoring and enforcement that is discussed in Section 3.6.
	• Introduction of civil penalties.	• The Committee agreed that civil penalties are more appropriate for lesser offences and has addressed this issue in Section 4.1.
	• Clearing awareness and education campaign for landowners.	• While the Committee agreed that landowners, including local governments, need to be aware of the Legislation and Regulations, the Conservation Council provided no evidence that this was a significant issue. However, the Committee has made a recommendation to Local Government in Section 3.10.
	• (5) Compulsory monitoring and reporting of clearing that is to be made available to the public.	• The Committee acknowledged the need for an up to date database to allow better

	• Exemptions removed for all ESA areas. • Restore clearing Regulation from Part V to Part IV (strongly recommended). • (2) Socio-economic decision making responsibilities be shifted back to Minister. • Carbon emissions accounting and mitigation.	monitoring of all legal and illegal native vegetation clearing in Section 3.6. • The Committee did not see this as necessary given the Legislation provides for specific consideration of situations where clearing of ESA's are necessary, for example in emergency situations such as those raised by FESA. • The Committee noted that the key issue of concern here relates to the consideration of those applications where the impact on vegetation, if approved, could be considered significant under the EP Act and raises questions about referral to the EPA. Further, this also relates to the use of s.51O of the EP Act, and the use of offsets. These matters are covered in Sections 3.3 and 3.7. • The Committee noted that the key issue of concern here relates to the use of s.51O of the EP Act and the use of offsets. These matters are covered in Sections 3.3 and 3.7. The Committee also noted that should the responsibility be given directly to the Minister such decisions would not be subject to appeal and public scrutiny. The Committee has made specific recommendations on how s.51O decisions could be more accountable. • The Committee noted the potential for any ETS to be used to protect native vegetation on private land and also agreed that in certain circumstances there is a need for support mechanisms for landowners who have been refused an

		application to clear and is covered in Section 3.5.
Water Corporation	• Clearing without a permit allowed for maintenance of existing water services infrastructure, as well as for internal firebreaks around public infrastructure. • (1) Risk-based assessment. • Definition of the term 'structure' that includes dams; • Amendment of errors in Item 15 of Regulations; • Deletion or amendment of Item 23 and associated Schedule 3 of the EP Act. • (3) Removal of 10 year restriction around water services infrastructure.	• The Committee noted that Purpose Permits offer a suitable mechanism for more strategic approaches that are relevant for this issue and would support amendments to the Legislation/Regulations to allow Purpose Permits to be more widely used. • The adoption of a risk-based approach as described in Section 3.2 will address WC's concerns. • Committee was of the view that these specific requests for minor amendments to the Legislation and Regulations were at a level of detail that would represent 'fine-tuning' and were not considered further by the Committee. These requests are best considered by the Government should it consider other changes to the Legislation/Regulations, on advice of the DEC, as discussed in Section 4.4. • The Committee acknowledged the 10 year rule as a significant issue and has addressed both the time restriction and applicable land uses that apply to it in Section 3.4.
Department of Environment and Conservation (DEC)	• (1) Continuing focus on risk management of applications. • Reinstatement of budget, with options including increasing application fees and a further resource application to the treasury; with specific request for termination of the DMP delegation, with administration of clearing for mining and petroleum purposes back to DEC.	• The adoption of a risk-based approach as described in Section 3.2 will address DEC's concerns. • The Committee has discussed the apparent inequitable distribution of resources within DEC, including the delegation to DMP, in Section 4.2.

	• Better integration and communication with referrals under section 38.	• The Committee noted that the key issue of concern here relates to the consideration of those applications where the impact on vegetation, if approved, could be considered significant under the EP Act and raises questions about referral to the EPA. These matters are covered in Section 3.3.
	• Minimisation of duplication that occurs between Part V of the EP Act and section 45 of the *Environment Protection and Biodiversity Conservation Act 1999.*	• The Committee viewed this as an example of dual approvals (see Section 3.2) and supports the relevant Government agencies from both levels of Government working together to establish a joint approvals process as a matter of priority.
	• Lack of experienced DEC staff, citing the 30% salary bonus at DMP as increasing staff turnover rate at DEC.	• The Committee has discussed the apparent inequitable distribution of resources within DEC, including the delegation to DMP, in Section 4.2.
	• General government policy drawing on the broad agreement that exists in respect of biodiversity, land degradation and water quality objectives.	• The Committee acknowledged the need for a clear government statement on native vegetation clearing and has provided suggested policy framework in Section 2.
	• Use of biodiversity conservation programs based on advice and incentives as complementary mechanisms to regulation	• The Committee agreed that in certain circumstances there is a need for support mechanisms for landowners who have been refused an application to clear and is covered in Section 3.5. The extension of the of biodiversity conservation programs is consistent with this.
	• Possible amendment of section 51C to make clearing without notification to the CEO an offence, leading to potential redrafting of the Regulations.	• The Committee noted DEC's view on this issue but did not see it as a practical suggestion, and instead recommended a risk-based approach as discussed in Section 3.2.

	• Deletion of clause 1 of Schedule 6 due to a lack of clarity of the written laws that apply. • Insertion of a defence to clearing under section 74 and consequential amendment to delete regulation 5(2) of the Regulations; • Deletion of section 51F(1) with subsequent amendments to third party appeal dates; and • Inclusion of covenants into the EP Act for protection of native vegetation, similar to those in the *Soil and Land Conservation Act 1945*, that are enforced by the CEO. • (4) Purchase of land with native vegetation that has been refused an application to clear to decrease hardship on landowners. • EP Act to remain the principle legislation for NV clearing. • Introduction of a 'Biobank' for offset payments. • (5) Requests other agencies report to DEC on extent of clearing so that DEC becomes the custodian and coordinator of periodic and regular analysis of vegetation extent in WA • Better performance of Clearing Permit System Database.	• The Committee believed this matter has been clarified by the Supreme Court. • Committee was of the view that these specific requests for minor amendments to the Legislation and Regulations were at a level of detail that would represent 'fine-tuning' and were not considered further by the Committee. These requests are best considered by the Government should it consider other changes to the Legislation/Regulations, on advice of the DEC, as discussed in Section 4.4. • The Committee agreed that in certain circumstances there is a need for support mechanisms for landowners who have been refused an application to clear and is covered in Section 3.5. • The Committee supports this. • The Committee agreed that in certain circumstances there is a need for support mechanisms for landowners who have been refused an application to clear and is covered in Section 3.5. A 'Biobank' program is consistent with this. • The Committee acknowledged that DEC should have a complete database on the nature and extent of native vegetation, and that this relates to the need for an up to date database to allow better monitoring of all legal and illegal native vegetation clearing as discussed in Section 3.6. • The Committee supports this.
Office of the Appeals Convenor	• (3) Clarification of the 10 year restriction and its applicable land uses.	• The Committee acknowledged the 10 year rule as a significant issue and has addressed both the time restriction and

		applicable land uses that apply to it in Section 3.4.
Department of Mines and Petroleum (DMP) (formerly DoIR)	• Emphasise effectiveness of DEC delegation. • (1) Risk-based and outcomes focus approach to assessment of applications. • Clarification of environmental controls that can be placed on proponents acting under State Agreement Acts. • Redefinition of the term 'structure'; • Extending the application of the exemption in Regulation 5 to cover ESA's; • A more detailed description of 'prescribed clearing'; • Possible increase in application fees. • Government policy advice and direction. • Revision of the Administrative Agreement between DEC and DMP.	• The Committee has discussed the apparent inequitable distribution of resources within DEC, including the delegation to DMP, in Section 4.2. • The adoption of a risk-based approach as described in Section 3.2 will address DMP's concerns. • The Committee provided advice on State Agreement Acts in Section 4.3. • Committee was of the view that these specific requests for minor amendments to the Legislation and Regulations were at a level of detail that would represent 'fine-tuning' and were not considered further by the Committee. These requests are best considered by the Government should it consider other changes to the Legislation/Regulations, on advice of the DEC, as discussed in Section 4.4. • Committee noted that a full cost recovery system for application fees is mentioned for the Government to consider, and that, based on current data provided by DEC that cost recovery is at ~1%, fees structure does appear to be modest. This is discussed in Section 3.2. • The Committee acknowledged the need for a clear government statement on native vegetation clearing and has provided suggested policy framework in Section 2. • The Committee saw merit in renegotiation of this Agreement and recommends the

	• Adequate resourcing provided to DEC and DAFWA to supply DMP with specialist advice on biodiversity and land degradation. • DEC allowing DMP complete access to their native vegetation information databases. • (5) Extension across the state of the Land Monitor program. • Direct access to DEC's Incident and Complaints Management System.	two agencies investigate this further. • The Committee has discussed the resources issue within DEC in Section 4.2. • The Committee believed this issue should be addressed through any renegotiation of the Administrative Agreement between DEC and DMP. • The Committee acknowledged the need for an up to date database to allow better monitoring of all legal and illegal native vegetation clearing as discussed in Section 3.6. • The Committee believed this issue should be addressed through any renegotiation of the Administrative Agreement between DEC and DMP.
Environmental Consultants Association (ECA)	• (1) Filter committee to fast track insignificant applications to facilitate an outcome not process focussed assessment system. • Consultation with parties immediately after receiving their applications. • Internal accreditation scheme for applicants with history of environmental assessment, or; • Systems run by ECA to allow certification of environmental consultants. • MOU between departments including more DEC delegations similar to that given to DMP. • DEC to only assess applications on matters for which they have legislative authority (not NRM or EMS).	• The adoption of a risk-based approach as described in Section 3.2 will address ECA's concerns. • The Committee acknowledged the benefits of early consultation with parties to resolve minor issues in the assessment process. • The Committee believed that improvements recommended elsewhere in the report, such as extended use of purpose permits and the adoption of a risk-based approach in Section 3.2 should go some way to addressing these points. • The Committee noted that no other Government agency requested delegation authority, and hence saw no reason to recommend this. • The Committee agreed with this, but noted that the ECA provided no examples of

	• (1) Avoiding detailed, costly and time-consuming wildlife surveys on low impact proposals; • Incorporation of scientific-based flexibility into the assessment process; and • Development of a triage approach to assessment.	deviation to support this claim. • The adoption of a risk-based approach as described in Section 3.2 will address these 3 ECA concerns.
Roadside Conservation Committee (RCC)	• Vegetation clearing on roadsides should be minimal and for essential purposes only. • (5) Increase in funding and resources for implementation, auditing and enforcement. • (9) In particular, increasing the capacity of Local Governments in primary rural areas to undertake permit condition activities. • Funding for education for proponents on Regulations, application requirements and offsets. • (5) Increased funding and resourcing within DEC for assessment, auditing and enforcement. • Increased funding for road projects as alternative to clearing (rumble strips, crash barriers).	• The Committee noted that in some situations, especially in agricultural regions, only remnant vegetation is present on roadside nature reserves; however the protection of this vegetation is covered by the clearing principles. • The Committee acknowledged the need for an up to date database to allow better monitoring of all legal and illegal native vegetation clearing in Section 3.6. • The Committee noted that these concerns relate primarily to the use of s.51O of the EP Act and also concerns about the ability of smaller Local Governments to fund the survey work and offsets required in some of the proposals to clear in the agricultural region in particular. Advice on this is covered in Sections 3.3 and 3.10. • Funding recommendations for DEC are found in Section 4.2. • The Committee acknowledged the need for an up to date database to allow better monitoring of all legal and illegal native vegetation clearing in Section 3.6. • Funding recommendations for DEC are found in Section 4.2.
The Australian Petroleum Production and Exploration Association (APPEA)	• 'Hard-wiring' timelines in legislation to improve the processing of clearance applications.	• The Committee has included its recommendations on statutory timeframes and certain time limits for approval of

		applications in its discussion of risk-based assessment in Section 3.2. In general, it does not support fixed timeframes but prefers that DEC establish target timeframes within a risk-based approach against which it should publicly report.
	• (5) Annual reporting of the number of clearing applications assessed by DEC and DMP, the time taken to process applications and the outcomes of this assessment process. • Ensuring the DMP has timely and unrestricted access to technical databases held by the DEC.	• The Committee acknowledged the need for an up to date database to allow better monitoring of all legal and illegal native vegetation clearing in Section 3.6. • The Committee recommended improvements to the DEC website in Section 4.2 that will go some way to addressing this issue, but also noted that not all the information on the DEC database can be made more readily available due to its sensitive nature.
	• (5) Increased focus on compliance auditing in line with an outcomes based approach to regulation to ensure ongoing public confidence in the system. • Consolidation of resources within the Native Vegetation Clearing Branch of the DEC to enable a stronger focus on assessment.	• The Committee acknowledged the need for an up to date database to allow better monitoring of all legal and illegal native vegetation clearing in Section 3.6. • The Committee noted that it was advised by DEC that this has occurred.
	• (7) The third party objections process should be removed as it is redundant, functions as a duplication of the appeal period and can result in delays to permit processing with no improvement in environmental outcomes. • Exemptions from the clearing regulations that are currently granted for petroleum exploration activities outside ESA's could be granted to all low impact petroleum-related activity. • (7) There is a lack of consistency in the appeals process conducted under clearing regulations appeals and environmental impact assessments under Part IV of the *Environmental Protection Act 1986*.	• The Committee examined the appeals process including third party opportunities and has outlined its recommendations in Section 3.8. • The Committee was provided with no evidence to support these further exemptions. • The Committee examined the appeals process including third party opportunities and has outlined its recommendations in Section 3.8.

Appendix 3. History of Native Vegetation Clearing in Western Australia

- First pressures for land clearing controls came from Farmers Union in mid 1960s due to concerns that over-clearing was leading to rising salinity (Andrew Watson, 2008).

- Education approaches were used by the Government during the 1950-70's to minimise the impacts of clearing on the environment, but were largely unsuccessful.

- Initial measures to review all land for its suitability to clear prior to release produced no obligations or long term compliance from farmers.

- Initial development plans for new block sites after their release were also introduced, however due to marginal land and economic reasons block sizes grew each decade through the 1950-80's.

- As the detrimental effects of salinity in regional areas became apparent after the loss of clover pastures around the Wellington Dam Catchments, Legislation was finally introduced in the form of clearing control amendments to the *Country Areas Water Supply Act* in 1976.

- All clearing from this point required a license, unless it fell under specific exemptions, with compensation (~$80M to date) given to land owners where clearing had been refused (DEC Submission, 2008).

- Regulations made under the *Soil and Land Conservation Act* in 1986 addressed increasing state-wide concerns over salinity and required all clearing over 1 hectare to be approved by the Commissioner.

- Compliance to Regulations remained an issue as only failure to notify of illegal clearing was considered an offence (not the act of illegal clearing itself), with salinity subsequently remaining a serious threat to agriculture into the 1990's.

- Incentive schemes, including the *Remnant Vegetation Protection Scheme* in 1988, were introduced in the late 1980-90's to complement the Education and Regulation instruments already in place by the Government to control clearing.

- Ministerial announcement in 1995 outlining penalties for illegal clearing effectively stopped clearing in the wheat belt, and remains the last official Government statement on clearing to this day.

- Part IV of the *Environmental Protection Act 1986* was used increasingly throughout the 1990's; however compliance and assessment issues, highlighted by the Palos Verdes case in 1992, became increasingly more apparent.

- The EP Act was eventually considered to be inappropriate for providing the Governments outcomes for clearing control, leading to the introduction of the *Environmental Protection (Clearing of Native Vegetation) Regulations* in 2004.

Appendix 4. Native Vegetation Clearing Legislation in Other States

State	Governing Body Responsible for Legislation
Victoria	• Main policy document is *Native Vegetation Management: A Framework for action*, which was released in 2002 by the State Governments Department of Sustainability and Environment.
New South Wales	• Land clearing in rural areas in regulated under *Native Vegetation Act 2003* and *Native Vegetation Regulations 2005*, with the main aim of the Legislation being to end broad scale clearing in the state. • The *Native Vegetation Act 2003* is administered by the NSW Department of Environment and Climate Change. • The *Native Vegetation Act 2003* does not apply in urban areas, which is regulated under: o Local environment plans o Tree preservation orders o Development control plans o State Environmental Planning Policy No 19 - Bushland in Urban Areas
Queensland	• State-wide regulating Legislation is the *Vegetation Management Act 1999* which gives most protection to remnant vegetation, with regrowth mostly unprotected. • It is administered by the Department of Natural Resources and Water.
South Australia	• The *Native Vegetation Act 1991* is the regulatory base used by the Department of Water, Land and Biodiversity Conservation to ensure that the 20% remaining native vegetation in the state is protected. • The Native Vegetation Council is the primary governing body responsible for the administration of the native vegetation application and approval process.
ACT	• Native vegetation clearing is regulated in the ACT primarily under the *Planning and Development Act 2007* (via development approval requirements) and the *Tree Protection Act 2005* (for removal of certain individual protected trees, native and non native). • Development approvals under the P&D Act are granted by the ACT Planning and Land Authority (or the Minister who also has a call in power). The relevant Minister (who administers the P&D Act) is the Minister for Planning. Approvals under the TPA are granted by the Conservator for Flora and Fauna (an ACT public servant within the ACT Department of Territory and Municipal Services) • However any works to be undertaken in designated areas of National Land is dealt with by the *Planning and Land Management Act*, which is administered by the National Capital Authority. • These designated areas include the Central National Area, its surrounding inner hills and main avenues and approach routes.

State	Key Clearing Principles and Exemptions
Victoria	• Main outcomes are identified for the *Framework*: o Focuses on catchments as a whole; o Addresses critical issues on private land where native vegetation has been cleared or fragmented; o Provides a strong focus on protection and improvement of higher conservation significance vegetation; and o Provides a flexible but accountable approach for lower conservation significance vegetation, enabling landholders to move towards more sustainable land use options. • The *Framework* has 4 guiding principles: 1. Retention and management of remnant native vegetation is the best way to conserve biodiversity. 2. Conservation of native vegetation and habitat depends on the maintenance of catchment processes. 3. Costs should be equitably shared according to benefits that the landholder, community and region get. 4. A landscape approach to planning native vegetation management is required and priorities should be based on bioregions within Catchment Management Authority regions.
New South Wales	• The NV Act and Regulations deliver: o The Government's commitment to end broad scale clearing, to protect the health of our land, rivers and wildlife; o Investment security and increased flexibility for farmers; o $436 million over four years from the NSW and Australian Governments which will go direct to farmers and other local groups to repair damaged rivers and restore over cleared landscapes; and o New powers to local Catchment Management Authorities (CMAs) to make decisions in the best interests of the community. • The NV Act makes it an offence to clear native vegetation except in accordance with: o A development consent granted under the NV Act, or o A property vegetation plan (PVP). • However many exemptions apply for circumstances including: o Clearing of regrowth that is not 'protected regrowth'; o Clearing of groundcover if only 10% or less of the area is covered with vegetation, and less than 50% of that vegetation is indigenous; o "Routine agricultural management activities" such as for rural infrastructure; o Continuation of existing farming activities; o Sustainable grazing; o Clearing authorised by other Legislation.
Queensland	• The *Vegetation Management Act 1999* gives most protection to remnant vegetation with regrowth mostly unprotected, which is achieved by the classification of communities of remnant vegetation as Endangered, Of

	Concern or Not of Concern. • Some exemptions for clearing without a permit include: o Maintenance of infrastructure and firebreaks; o Non-remnant vegetation; o Urban purposes not in Endangered remnant areas; o Specified industrial activities.
South Australia	• The NVC can only grant approval if the clearing is not in serious variation with the Principles of Clearing in the Act, which relate to: o Plant species diversity; o Significant remnants; o Wetlands; o Soil erosion; o Flooding. • The *Native Vegetation Regulations 2003* outline circumstances where clearing can occur without specific consent from NVC. • These Regulations exist under 4 categories: o Housing and Development; o Environment; o Agriculture; o Fire.
ACT	• Under the Planning Act a proposal that involves the clearing of more than 0.5ha of native vegetation, or a proposal that involves the clearing of native vegetation which could have a significant impact on land identified in a nature conservation strategy or action plan or a biodiversity corridor, requires development approval and automatically requires an EIS to be prepared. • Some developments (not clearing) are exempt from the Act (ss.133-135), and some are prohibited (s.136). The Territory Plan includes development tables for each land use zone in the ACT and these tables show whether a development is exempt, assessable or prohibited within that zone.

State	Approvals Approach
Victoria	• The Government also outlined 3 key steps for landowners and managers when applying the policy: 1. Avoid adverse impacts, particularly through vegetation clearance; 2. If impacts cannot be avoided, minimise impacts by careful planning, design and management; and 3. If clearing must occur, the clearing must be offset. • They have developed a standard approach for estimating the quality of an area of native vegetation called 'habitat hectares', and involves measuring site condition and landscape context. • Site condition measures the change from a benchmark of average characteristics of vegetation and looks at: o Presence of large old trees (for woodlands and forests); o Amount of tree canopy cover (for woodlands and forests); o The amount of logs (for woodland forests); o The cover and diversity of the understorey; o Presence of appropriate regeneration; o How weedy the site is; o How much leaf litter there is. • Landscape Context considers how well the patch of vegetation can cope with natural fluctuations and disturbances and is measured by: o How big the area of vegetation is that the site is within; and o Links to, and amount of, neighbouring patches of vegetation.
New South Wales	• A landholder who wishes to clear land can either apply for development consent or negotiate a PVP with DECC. • A land clearing consent is issued by the Environment Minister, rather than a local council or the Planning Minister, and once granted the consents and their conditions are legally binding with any breaches considered an offence. • Property vegetation plans allow the landholder to lawfully carry out the clearing which is identified in the plan, and also to take advantage of financial incentives offered by the State Government in return for taking conservation measures on their land. • As with development consent under the NV Act, the Minister must not approve a PVP that allows broad scale clearing of native vegetation unless the clearing will improve or maintain environmental outcomes. • The NV Act prohibits clearing on vulnerable land, and therefore requires approval to clear (or a PVP) unless it is excluded clearing which is authorised under other legislation, and includes: o Steep or highly erodible land; o Protected riparian land; o Special category land.
Queensland	• Vegetation is protected using a 3 step process: 1. Does the clearing require a permit or is it exempt?

	2. If a permit is required, is the clearing for one of the allowed purposes? 3. If the clearing is for an allowed purpose, what conditions does the relevant clearing code require to be met for a permit to be granted? • If a permit must be sought, it must comply with one of the following: *1.* Clearing for significant projects declared under the *State Development and Public Works Organisation Act 1971;* 2. Clearing necessary to control non-native plants or declared pests; 3. Clearing to ensure public safety; 4. Clearing to establish a necessary fence, firebreak, road or other built infrastructure if there is no suitable alternative site; 5. Clearing which is a natural and ordinary consequence of other assessable development; 6. Clearing for fodder harvesting; 7. Clearing for thinning; 8. Clearing of encroachment; 9. Clearing for an extractive industry; 10. Clearing regrowth on agricultural or grazing leases. • For a permit to be granted clearing codes must be met that outline: o Offsets are not a suitable option where the impacts of development have an irreversible effect on biodiversity; o Offsets must be land areas that are not already protected from clearing; o Offsets must be ecologically equivalent to the proposed land to be cleared; o Offsets must be legally protected from themselves being cleared.
South Australia	• Clearing applications are assessed by the Native Vegetation Council, an independent body responsible for a wide range of decisions concerning native vegetation. • The NVC can generally only grant approval if the clearing is not in serious variation with the Principles of Clearing in the Act. • This consideration can be superseded if the Council deems that the proposed action will have a greater environmental benefit than the detriment imposed by the native vegetation clearance. In these cases the NVC must consult the regional Natural Resources Management Board before approving. • If a permit is needed, the clearing must be conditional on a significant environmental benefit (SEB) offset, which can either be carried out by the landowner or through a payment into the Native Vegetation Fund. • Clearance of degraded native vegetation - SEB offset rate 2:1 level of clearance. • Clearance of high value native vegetation - SEB offset rate 10:1 level of clearance. • Clearance of semi-degraded native vegetation - SEB offset sliding scale from 2:1 to 10:1. • The Council can take into account the advice of other bodies such as the Natural Resource Management Board and Local Councils.

ACT	• As a general rule development approval will be required from ACTPLA unless the land to be developed is within a designated area identified in the *National Capital Plan* (NCP). • The Planning Act as administered by ACTPLA incorporates a system of three development tracks for applications for development (not clearing); from the simplest, code track, then the merit track, to the most complex impact track. • If the development is assessable, the next step is to decide which assessment track is the correct track for that development, as the requirements for each are quite different. • There is no requirement to publicly notify a code track development application; in fact a proposal in the code track which complies with all the relevant rules must be approved. • The aim of the merit track is to provide flexibility and a performance-based assessment that provides the opportunity for applicants to demonstrate that, even if their development deviates from prescriptive code requirements, approval is possible if the development can be shown to facilitate the best design outcome for a site and for neighbours. • Where native vegetation clearance results in certain impacts (for example a proposal that is likely to adversely impact on the conservation status of certain species, or to contribute to a threatening process in relation to a species or ecological community, or a significant impact on a domestic water supply catchment) it will also require development assessment and approval in the impact track, the highest form of assessment under the Act that automatically require an EIS.

State	Appeals Procedures
Victoria	• Generally, where a permit is required, third parties may be able to lodge objections to the granting or refusal of a permit. Section 57(1) of the *Planning and Environment Act 1987* provides that any person who may be affected by the grant of a permit may object to the grant of a permit.
New South Wales	• No available information on appeals procedures in New South Wales could be found.
Queensland	• The public have no appeal rights against the grant of tree clearing permits as any applications to clear are "code assessable" under the *Integrated Planning Act* 1997. However they can take action in the Courts if clearing is done in breach of permit conditions or without a permit when one is required. • Applicants for approval can appeal to the Planning and Environment Court against decisions by the Department of NRW. • However public rights of access to the application and supporting materials apply under the Integrated Planning Act. The facts of an application after it has been lodged are put on a website, which may prompt a member of the public to seek a copy of the application and supporting materials.
South Australia	• NVC decisions can be instituted in the Environment Resources and Development (ERD) Court to enforce the order, or more commonly, prevent a breach or continued breach of the conditions attached to a grant of consent to an application to clear native vegetation. • Persons able to appeal include the Native Vegetation Council, a person who owns or has any other legal or equitable interest in land that has been or will be affected by the breach, or in the case of failure to comply with a heritage agreement, a party to that agreement. • Following the lodging of an appeal any person who, in the opinion of the court, has a proper interest in the subject matter of the proceedings and desires to be heard in the proceedings may be heard in the proceedings.
ACT	• Under the P&D Act review rights relating to a decision to approve (or refuse) a proposal which involves native vegetation clearance depends on which 'track' a proposal is assessed under. • For impact track developments a person who has put in a representation in relation to the original development application and who may suffer material detriment (defined in s. 419) may seek review of a decision. • There are limited third party review rights for decisions made by the conservator under the TPA– to those who were required to be given notice of the original approval or refusal (basically the applicant, the lessee of the land where the tree is, the neighboring lessee (if within 50m of tree) and aboriginal organizations and heritage council in certain cases). • The decision of the NCA in relation to an application for works approval on National Land is final. There is no right of merits review available to an applicant.