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Partnerships in Nature Conservation

A guide for landowners
wishing to protect nature conservation values
on private land through
Nature Conservation Covenants



Department of
Environment and Conservation



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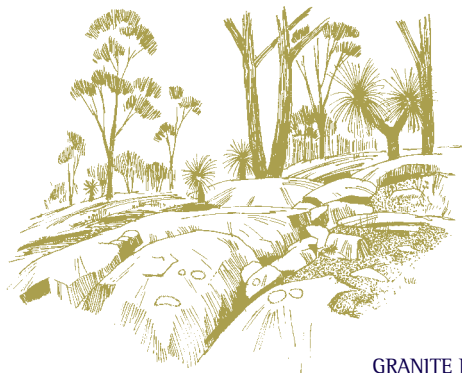


Department of
Environment and Conservation



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GRANITE ROCKS

Conservation of habitats on granite rocks is a high priority as they contain unusual plants and animals.



INTRODUCTION

Thank you for your interest in Nature Conservation Covenants. The following pages outline what Nature Conservation Covenants are, how you can benefit from them and why they are important for long-term conservation planning in Western Australia.

In a nutshell, when a Nature Conservation Covenant is signed between a landowner and the covenant agency, both parties demonstrate a mutual resolve to protect the land's natural values while retaining the existing ownership of the land.

Often, significant natural and cultural features in WA are located on private property outside the government system of nature reserves, national parks and other reserves.

These areas are important for retaining WA's biodiversity. Many are treasured by their owners, who may have been seeking a way to ensure that the conservation values are protected and managed beyond their stewardship of the land.

The Department of Environment and Conservation (DEC) welcomes enquiries from interested landowners and will endeavour to meet property owners on their land to discuss the design of a covenant to suit their needs, the conservation needs of the land and how the department can support the property owners in managing the conservation values.

WHAT ARE NATURE CONSERVATION COVENANTS?

Nature Conservation Covenants are offered by DEC on a voluntary basis. They are offered to landowners who approach the department and wish to have a covenant placed over their land. They seek to protect and enhance nature conservation values on private land. However, once formalised, they are a legally binding agreement between a landowner and the Director General of the department. Nature Conservation Covenants are statutory covenants; they are backed by an Act of Parliament, and enable a body, such as the department, to enforce the covenant.

Nature Conservation Covenants are flexible. They are primarily designed to protect nature conservation values but are individually designed to recognise human needs in living in harmony with nature. A conservation covenant can apply to all or part of a property. Nature Conservation Covenants are supported by practical management guidelines negotiated between the landowner and DEC, and these support sound management of conservation land.

Covenants are registered on the title for the land and bind present and future owners to comply with the terms of the covenant. Ownership and control of the property remains with the owner. Most covenants are designed to be permanent although they can be specified for a particular period where this is appropriate.

While covenants are binding commitments on both parties, they rely to a large extent on the goodwill of the landowner to ensure management is sympathetic to the conservation values of the land. It is intended that Nature Conservation Covenants encourage sympathetic management practices without causing economic hardship for the landowner.

WHY DO WE NEED TO PROTECT NATURE CONSERVATION VALUES ON PRIVATE LAND?

WA has an ancient landscape with a very rich and diverse flora and associated fauna. However, the agricultural development of the south-west of the state has involved the clearing of 17 million hectares of forest, woodland and shrubland since European settlement. This development has brought economic benefits, but with considerable adverse impacts on land and water, including the significant loss of nature conservation values.

Many of the original ecosystems are very poorly represented in agricultural and urban areas. The remaining ecosystems are often fragmented, small and are declining due to weed invasion, disease, predation by feral animals and changed fire regimes. It is now widely recognised that these adverse impacts must be arrested and reversed if we are to prevent local species extinctions and retain the state's biodiversity.

The WA network of conservation reserves is designed to represent and protect our native communities and species of plants and animals. However, many native animals and plants are now very rare and not adequately conserved in the reserve system, but may occur on private land. Maintenance of these landscapes and biodiversity requires recognition and support for private landowners to protect the conservation values on their land, thereby enabling a significant contribution towards protecting these values for future generations.

Partnerships between private landowners and covenant agencies, such as through DEC's Nature Conservation Covenant Program, will be vital for the long-term protection of WA's unique natural values.

why do we
need them?

ROLE OF THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION

DEC has responsibility under the *Conservation and Land Management Act 1984* for conserving native flora and fauna throughout the state.

This role extends to private land. The department is making use of its wealth of nature conservation research and management expertise to help the community protect biodiversity, particularly through its *Land for Wildlife* scheme and Nature Conservation Covenant Program. These two programs are providing landowners with practical ways to conserve the state's natural heritage.

Land for Wildlife is a simple, voluntary, flexible program that is designed to recognise and support landowners who wish to manage some or all of their land for nature conservation. The scheme involves an agreement between the landowner and the department, but the agreement is not binding on current or future owners of the land.

Nature Conservation Covenants provide a legally binding tool for landowners who wish to permanently conserve the natural heritage on their land. Nature Conservation Covenants are supported by state and Commonwealth governments and are recognised as an important tool in the state's Salinity Strategy (2000). The department's Nature Conservation Covenants are implemented through the provisions of the *Transfer of Land Act 1893*.



YORK GUM WOODLAND
Most York gum woodlands in the wheatbelt have been lost, so their protection on private property is important.

DOES MY LAND QUALIFY FOR A NATURE CONSERVATION COVENANT?

Land qualifies for a Nature Conservation Covenant if it:

- has owners who wish to permanently protect the natural values;
- has high nature conservation values; and
- is not seriously affected by unmanageable threats, such as salinity, mining or development proposals.

Normally the land must have freehold title, although Crown leasehold land may be covenanted with the approval of the government. Approval of all parties with an interest in the land to be covenanted, such as mortgagees, is required. Most importantly, covenants are voluntary and require agreement from all owners. Factors taken into account when determining the conservation significance of the land include:

- the presence of ecosystems which have been extensively cleared in the region;
- the presence of threatened plants, animals or ecological communities;
- the value of the land as wildlife habitat;
- corridors and stepping stones for wildlife movement;
- sites which provide buffers to conservation reserves;
- examples of poorly reserved ecosystems of local significance;
- sites which are valuable as an educational resource; and
- relics of original ecosystems which are in poor condition but which may contain important conservation values.

The land should not be subject to threats that would seriously alter the natural values in the short to medium term. Unmanageable salinity and plant diseases (for example, *Phytophthora* spp. dieback) are of particular concern. Small and narrow areas are particularly susceptible to weeds and edge effects, and without significant management are unlikely to retain their conservation values in the long term. Generally, small areas, such as those less than two hectares, will only be covenanted in special circumstances.

Land will not be covenanted where there are conflicts with government development proposals, but DEC will endeavour to resolve the issues to enable protection of important natural values.



BENEFITS TO LANDOWNERS

Nature Conservation Covenants are designed to be a true partnership between a landowner and DEC, a partnership where both parties make a contribution to managing the land.

The landowner is expected to manage the land to maintain and preferably enhance the nature conservation values and to abide by the terms of the covenant. In return, the landowner has peace of mind that DEC's involvement will mean capable conservation stewardship of their land in the long term, even after the ownership of the land has changed.

The establishment of a covenant may also provide financial benefits through the revaluation of the land, and support for grant applications to funding bodies that require some security for conservation efforts on the land.

Landowners who register conservation covenants with DEC may also be eligible for commonwealth tax concessions, including income tax and capital gains tax, and state land tax exemption. Please note that there are certain eligibility criteria which must be met to qualify, and landowners should contact their tax accountant or the Australian Taxation Office to find out how these concessions may be applicable.

DEC will also make significant contributions by:

- providing a free service to landowners by bearing costs associated with administration, survey, legal and covenant registration costs*;
- assisting landowners with the preparation of management guidelines and a monitoring program;
- arranging for the land to be re-valued for landowners to apply to have their rates adjusted if the land value varies as a result of the covenant; and
- providing advice, and assisting with negotiations when there are threats to the land from development proposals.



On application, the department may also provide:

- up to \$500 to cover the owner's reasonable independent legal costs to check the covenant document*;
- a contribution to finance for fencing*; and
- initial management costs to restore the land where past damage has occurred*.

Most importantly, DEC accepts a permanent obligation as a steward for the land, to monitor the condition of the land and to provide management advice, particularly when the land changes hands and to enforce covenant conditions when required.

** In cases where the covenant is being sought to comply with an approval for subdivision or development affecting the land:*

- *the landowner will be expected to pay for the costs involved in establishing the covenant where there is a loss of conservation values as a result of that proposal; and*
- *the landowner will not be eligible for financial assistance through the program.*

HOW DO I ACHIEVE A NATURE CONSERVATION COVENANT FOR MY LAND?

Placing a covenant on the title of land is an important decision for landowners. It requires careful thought and negotiation. DEC is aware of this and takes a sensitive approach when negotiating covenants with landowners.

This process can take six months but is often longer as landowners are encouraged to spend time considering their decision. At any point the landowner may discontinue the process, with no obligation to DEC. The following steps generally apply.

1. A landowner hears about covenants, is interested in the concept, contacts DEC (by writing or by phone), and provides details of the land to be assessed for a covenant (such as the area, the plant communities present and any threats to the land).
2. If the land appears to be suitable, a Covenant Officer skilled in nature conservation and conservation covenants is nominated. The Covenant Officer will arrange to visit the property for an assessment and to discuss the concept with the landowner.
3. The property is visited by the Covenant Officer, and the covenant is discussed with the landowner and landowner's family. The assessment involves:
 - assessing and recording the site's nature conservation values, threats to those conservation values and management requirements;
 - discussing the conservation covenant and how the covenant can be designed to protect the conservation values of the land and suit the requirements of the owners;
 - discussing management of the land, what is required and what the landowner is able and willing to do, and how this can be monitored to show the effects over time; and
 - discussing financial assistance, such as fencing.

The landowner then decides whether he or she would like a draft covenant with associated management guidelines to be prepared or whether they

how do I
achieve this?

would prefer advice from an alternative program such as *Land for Wildlife*. If the landowner does not want to proceed, a copy of the assessment report is sent out, but no further action is taken.

4. DEC evaluates the conservation merits of the covenant proposal. If the land appears to be of low conservation significance, such that a covenant is unlikely to assist with the conservation of the land in the long term, the Covenant Officer will suggest an alternative scheme from which the landowner can obtain equivalent advice and assistance. If the land is suitable, and the landowner appears to have a commitment to the long-term conservation of the land, a draft covenant and management guidelines are prepared and an offer of financial assistance may be made. DEC forwards the draft covenant, management guidelines and property assessment report to the landowner for comment, along with an offer of incentives if one is to be made.
5. Landowner comments are addressed in the draft covenant and management guidelines and returned to the landowner, who then decides whether or not to proceed.
6. DEC seeks legal advice, checks the land title details, gains mortgagee approval (if required), and checks for development proposals. A drawing of the covenant site is also prepared by the department to show features on the property such as dams or transmission lines. If there are no concerns, DEC proceeds with the process. If there are concerns the department will advise the landowner accordingly.
7. The landowner seeks independent legal advice if required, the costs for which may be reimbursed by the department on application (up to a value of \$500). If further changes to the covenant or management guidelines are suggested that are consistent with the objectives of the program, and the legal constraints of the covenant document, the documents are modified accordingly.

8. The final documents are prepared. The covenant and management guidelines are signed by the landowner, any mortgagees or other stakeholders on title who have an interest in the proposed area under covenant, and then by DEC's Director General.
9. The covenant is lodged with Landgate and registered on title.
10. DEC advises the landowner when the covenant has been registered, and forwards a copy of the covenant and management guidelines to them.
11. The Covenant Officer contacts the landowner regularly through the program's stewardship component to discuss the covenant and management guidelines, and to share information about managing the land. Every three years, the Covenant Officer will visit the land to review the management guidelines and monitoring system.



HONEY POSSUM
Survival of the pollen and nectar-eating honey possum requires protection of species-rich habitats.

DESIGNING YOUR COVENANT

Each covenant is designed primarily to protect the nature conservation values of the land by restricting any activities that would potentially damage those values irreparably. The covenant can be flexible, to allow for dwellings and other activities, provided they will have limited impact. Each covenant is individually designed to cater for the needs of the land and the landowner. The following are some common variations that landowners often choose to incorporate into their covenant. It should be noted, however, that the covenant does not override other legislative requirements that may control these issues.

Buildings and subdivision

Where the covenant is negotiated to cover the whole of the title, it will normally allow for a pre-existing dwelling, gardens, and outbuildings. If it is intended that a house be built on the property in the future, it is recommended that an area of the property already cleared of vegetation, and with easy access, be designated for this purpose. Ideally, this designated area (or ‘building envelope’) will contain all development, and include any requirements for fire protection. This is because fire protection often requires a much larger area of vegetation to be cleared to provide for fuel reduction and building protection zones around the buildings, access and services. This may result in a reduced area of intact vegetation after development, which is no longer viable for conservation, and a covenant may not be effective in protecting the area’s natural values.

The covenant does not normally allow for subdivision, particularly where areas of vegetation are to be fragmented. It is inappropriate for a covenant to be used to facilitate development that results in a reduction in conservation values.

Tiered covenants

In some instances, the covenant can be prepared to show that different management requirements and restrictions apply to different parts of the land. For example, farmland adjacent to an area of bushland can be included in the covenant as a buffer to the vegetation. This area can be used for timber production or some other use provided there is limited impact on conservation values. Such an area would be subject to different restrictions to those that apply to the bushland.

Timber and water supply

The covenant is designed to protect natural water bodies and native vegetation but may allow use of water for domestic or farm purposes and sustainable domestic use of timber for firewood or fencing on the property. In some cases, commercial use of timber can be permitted under strict conditions. Conditions for the removal of timber are designed to retain fauna habitat, including dead and hollow timber. Any use of timber must still comply with vegetation clearing regulations under the *Environmental Protection Act 1986* and the licensing of harvesting under the *Wildlife Conservation Act 1950*.

Pets

A covenant would normally restrict the keeping of pets because of their impact on wildlife. However, it may allow for some types of pets if kept under control or within a designated area. Cats are normally not permitted, but in some circumstances people have an existing pet and provision can be made to retain the pet during its lifetime. For example, a curfew can be applied, where the cat must be kept inside at night-time.

Grazing

Grazing is not normally allowed, because it can have a highly detrimental impact on conservation values. The covenant requires that stock must be excluded from the area under covenant, and generally a fence is the easiest way to do this.

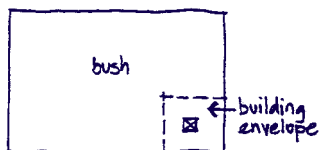
In some cases a covenant may allow grazing for either management purposes or to meet a short-term need. For example, a weedy area may be grazed at strategic times as a control measure or to reduce a fire hazard. In some cases an owner may want to be able to use the bushland for off-shears protection for sheep, but ideally alternative shelter on the property should be used for this.

EXAMPLES OF DIFFERENT DESIGNS FOR NATURE CONSERVATION COVENANTS



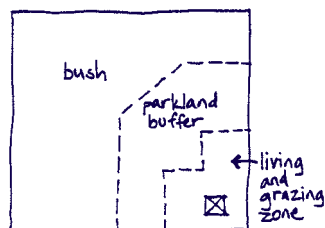
THE BUSH BLOCK

If the landowner does not wish to see any development or use of the land apart from the quiet enjoyment of its nature conservation values, the whole title can become subject to the covenant.



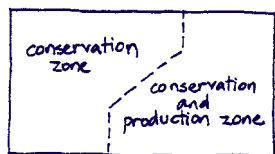
THE BUSH BLOCK WITH A DWELLING

In this instance, the landowner may have a house, or wish to build a house on the land, but wish to see the remainder of the block subject to full protection. A building envelope around the house is specified, with enough area to allow for domestic activities, a garden and fire protection. In some cases, dogs may be permitted to be kept within the building envelope. Usually, the types of plants that can be used in the garden are restricted so that no weeds or pests are introduced. The whole title may become subject to a covenant, although the restrictions within the building envelope are not necessarily the same as those for the bushland.



COVENANT ALLOWING FOR A BUFFER AND DOMESTIC/GRAZING AREA

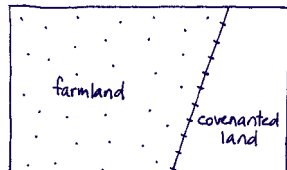
Under this type of covenant, part of the land is completely protected, and part acts as a buffer with different restrictions. An area may also be specified as a building envelope, in which domestic dogs may be permitted along with gardens, outbuildings, dams and grazing. The whole title is protected by a tiered covenant.



COVENANT ALLOWING FOR TIMBER PRODUCTION AND/OR SEED COLLECTION AND/OR WILDFLOWER HARVESTING

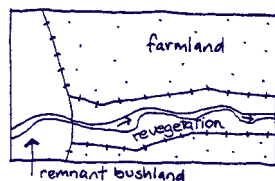
Under this arrangement, the covenant can include a zone where the vegetation is completely protected and another which allows for commercial production of natural products such as timber, seed and wildflowers under a management plan.

The whole title is protected by a tiered covenant.



COVENANTS ON FARMING TITLES

Where bushland exists on part of a title, for example, remnant bushland on farms, the covenant can apply to only this part of the title. The restrictions may vary, but generally preclude development and grazing.



COVENANTS PROTECTING AREAS OF REVEGETATION

An area which has been rehabilitated with local native species can be covenanted after it has been assessed against a number of criteria. These criteria are used to determine that the bushland can regenerate itself in the future and contribute to a viable and healthy ecosystem.

Only the remnant bushland and the revegetated land are protected by the covenant.

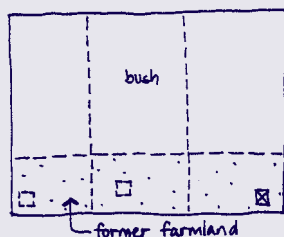
COVENANTS AND SUBDIVISION

Generally, any activity that detrimentally affects nature conservation would be prevented by the covenant. As such, the restrictions within the covenant would normally prevent the subdivision of the protected bushland. In some circumstances, the WA Planning Commission (WAPC) may approve the subdivision of bushland conditional on the remaining biodiversity values being conserved in perpetuity by a conservation covenant. Where the landowner is willing to enter into the covenant to achieve the subdivision, a covenant can be negotiated provided the residual bushland will have sufficient nature conservation value and viability to justify a covenant. However, no further subdivision of the bushland is allowed.

If a landowner is intending to apply for a subdivision at any point in the future, they should advise the Covenant Officer during the assessment of their land. If a landowner is seeking a covenant to clear a condition of subdivision, or has been advised that a covenant may be a condition of subdivision, they should contact the Nature Conservation Covenant Program as early as possible. Not all land will be suitable for a covenant, and the program may decline your application. In some circumstances, the program will recover the costs involved in preparing the covenant, and an estimate of these can be obtained from the Nature Conservation Covenant Program Coordinator.

Some examples of designs for covenants that limit the impact of the subdivision on the bushland are included on the next page.



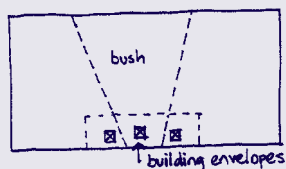


SUBDIVISION WITH TIERED COVENANT

In this example, the bushland is protected by a covenant, which contains an allowance for the proposed subdivision and for development and/or production on the farmland.

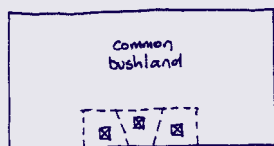
The farmland may be covenanted where restrictions are needed to further protect the bushland. The result is three individual titles, each with a tiered covenant over its entirety.

Ideally, the boundaries of the new titles are marked but no fences or firebreaks are permitted in the bushland. However, this will depend on planning requirements, such as the local government authority's fire protection regulations.



SUBDIVISION WITH CLUSTERED BUILDING ENVELOPES

In this example, the land is subdivided into three titles with building envelopes clustered together. The whole of the original bushland land title is protected by a covenant which is carried onto each title following subdivision.



STRATA TITLE SUBDIVISION WITH COMMON BUSHLAND

The whole of the original bushland land title is protected by a covenant that applies to all new landowners as well as the common bushland.

MANAGEMENT GUIDELINES

Alongside each covenant, management guidelines are developed between the landowner and DEC to guide day-to-day management of the land. These set out best practice management strategies and actions required for effective conservation of the land. The management guidelines are not legally binding, but can define the manner in which activities can be undertaken that would otherwise be restricted by the covenant conditions. Unlike the covenant, the management guidelines can be reviewed and management practices refined, including when land ownership changes. Management guidelines include:

- a description of the land's nature conservation values and identification of any threats to those values;
- management objectives for protecting the conservation values of the land;
- specific strategies, activities and mechanisms by which the identified threats can be managed; and
- monitoring activities that evaluate the success of strategies and actions in meeting management objectives.

The management guidelines should be reviewed at least every three years but can be amended at any time by agreement of both parties if required.

management
plan



CORRIGIN GREVILLEA
Government and
community are working
in partnership to conserve
rare species such as
the Corrigin grevillea
(*Grevillea scapigera*).

LANDOWNER RIGHTS

Covenanted land remains under the control and management of the landowner. The covenant does not affect the landowner's rights to the enjoyment of his or her land. Covenants do not provide for access to the land by the general public nor by DEC staff without the landowner's permission. DEC staff may require access to inspect the land if a breach of the covenant restrictions is suspected, but any such access will be with advice to the landowner.

The covenant is usually more restrictive than other regulations for land management, including state and Commonwealth legislation and town planning schemes. However, where an inconsistency occurs and a regulation is more restrictive than the covenant, the landowner must comply with that regulation. Also, land protected by a Nature Conservation Covenant is subject to the requirements of the *Mines Act 1978* and the *Bush Fires Act 1954* and DEC can play a useful role in assisting landowners to resolve any conflicts that may arise as a result of those Acts.

Information about specific covenants is not publicly available, unless agreed to by the landowner for purposes such as publicity for the program. DEC processes covenants on a confidential basis. However, it should be noted that the agreement of anyone with an interest in the land is sought prior to the covenant being approved. This includes the relevant local government authority and any mortgagees, and may include service providers.

FAIRY WREN

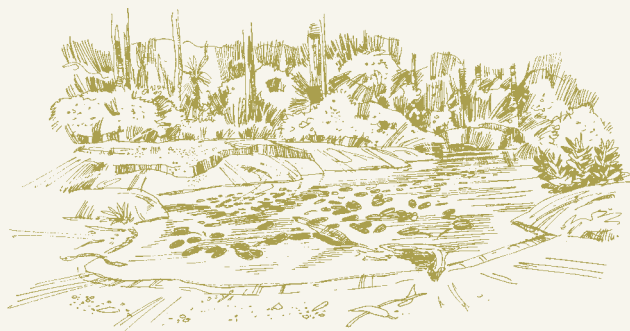
For survival, birds such as fairy wrens need buffer plantings around bushland patches and corridors of vegetation in the landscape.



COVENANTS AND LAND VALUES

Normally the placement of the covenant has little effect on the land's value, since land use generally remains unaltered. However, where a covenant is placed in an area that could otherwise have been developed, there is some possibility of a reduction in valuation. If this occurs, the land may be eligible for a reduction in rates. Overseas experience suggests that a covenant may lead to a slight increase in the land value because of the superior land management practices that often result.

It is possible that the property may take longer to sell since the number of prospective purchasers could be reduced. For example, the property will not attract people wanting to graze or develop the covenanted land. Conversely, the land may attract a different group of purchasers who simply wish to enjoy the bushland, and who consider the covenant an endorsement of its natural values. It all depends on the particular circumstances of the property, and anyone concerned with the potential impact should consult a qualified land valuer.



WETLAND

The aquatic plant and animal life in wetlands is remarkable, with many species adapting to long dry periods. Wetlands conservation is a high priority.

LEGAL BASIS FOR REMOVAL OF COVENANTS

Covenants are designed to be permanent or for a specified period, and bind all future owners of the land. There are, however, circumstances where a covenant can be removed or modified, such as where the conservation values for which the covenant was accepted no longer exist.

Nature Conservation Covenants under the *Transfer of Land Act 1893* may be discharged or modified either with the written consent of all parties with a registered interest in the covenant, or through a process of notification allowing for objection. If there are no objections, the removal or modification of the covenant is straightforward. If an objection is received, the issue can be resolved on application to a judge or court.

removal of
covenants

**SALMON GUM WOODLANDS**

Survival of the stately salmon gums of the wheatbelt requires protection of their habitat and research into regeneration.

PROPERTIES CHANGING HANDS

The purpose of Nature Conservation Covenants is to ensure good long-term management of covenanted land, even with changing ownership. Covenant holders are encouraged to notify DEC if they intend to sell their property. With the landowner's permission, the department can then ensure that the agent selling the land has a good knowledge of the covenant and can advise prospective purchasers of the covenant and of the conservation values of the land. DEC may also be able to help the agent in developing a market strategy for the land based on its values.

DEC will advise all new landowners of the terms of the covenant as soon as any actual or impending change of property ownership becomes known. Additionally, covenant staff can talk to prospective owners prior to sale to explain the covenant and management responsibilities.

MALLEEFOWL

The malleefowl, a unique mound-building bird, is increasing in numbers as habitats are protected and baiting reduces fox predation.





Thank you
for your interest in the
Department of
Environment and Conservation's
Nature Conservation
Covenant Program



