



Hon Albert Jacob MLA
Minister for Environment; Heritage

Your Ref Petition No 42
Our Ref 50-08398

Hon Simon O'Brien MLC
Chairman
Environment and Public Affairs Committee
Legislative Council
Parliament House
PERTH WA 6000

Simon

Dear ~~Mr O'Brien~~

Thank you for your letter dated 6 May 2015 seeking further information on the location of the Explanatory Memorandum on the *Environmental Protection (Clearing of Native Vegetation) Regulations 2015* (Clearing Regulations) and my views on using section 70A of the *Transfer of Land Act 1893* (TL Act) to notify proprietors or prospective proprietors of the existence of environmentally sensitive areas (ESAs) on the Certificate of Title.

You should have by now received my letter of 4 May 2015 providing a copy of the Explanatory Memorandum on the Clearing Regulations, which was located in the records of the Department of Water.

I note the requirements for notification of ESAs on the Certificate of Title under section 70A of the TL Act include:

- Payment of a prescribed fee of \$160 (Schedule 1, Division 2 of the *Transfer of Land Regulations 2004*); and
- The written consent of the proprietor of the land to accompany the notification.

The Minister for Lands' letter of 17 April 2015 further notes that the notification would require a spatial/graphic description and a deposited plan lodged at Landgate so the ESA can be accurately recorded on the title.

I do not consider that this mechanism would be effective as a means of notifying prospective proprietors of the existence of ESAs and their effect for a number of reasons, including:

- Based on the scheme of the clearing provisions of the *Environmental Protection Act 1986* (EP Act), the single most important factor in triggering a requirement for a clearing permit is the presence of native vegetation. As I noted in my letter of 2 October 2014, ESAs are only relevant in the limited context of the Clearing Regulations which provide an exemption from the requirement for a clearing permit for certain routine land management activities provided that the clearing is not within an ESA. The notification of ESAs would therefore be ineffective in guiding proprietors and potential proprietors on how the clearing provisions most significantly affect "the use or enjoyment of the land or part of the land".
- The data on the presence of native vegetation as defined in the EP Act and Clearing Regulations are inadequate for the purpose of providing the necessary spatial element of notification, and it would be beyond the resources of the Department of Environment Regulation to develop such a dataset.
- The consent of the proprietor of the land is likely to be difficult to obtain based on the views expressed to the current Inquiry about the perceived effect of ESAs on property values. Unless the notification were universal in its coverage, it would be of very limited value and could not be relied upon as accurately representing the location of ESAs.
- I am aware that the Director General of the Department of Environment Regulation wrote to the Committee on 31 March 2015 providing additional advice on issues relating to the registration of ESAs on the Certificate of Title. The information in that letter relating to costs is relevant to notifications under section 70A of the TL Act, as the prescribed fee for both is \$160. Based on the number of titles which include ESAs (98,042), the cost of notification without any allowance for the administrative resources required to undertake the process would be more than \$15.6 million.

I trust this information is of assistance to the Committee.

Yours sincerely



Albert Jacob MLA
MINISTER FOR ENVIRONMENT; HERITAGE

12 MAY 2015