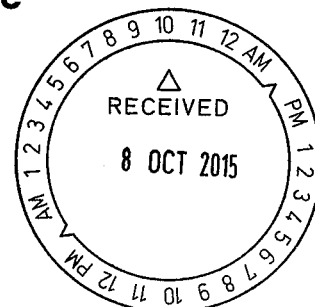




Hon Albert Jacob MLA
Minister for Environment; Heritage

Our Ref: 50-09717



Hon Simon O'Brien MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament of Western Australia
GPO Box A11
PERTH WA 6837

Attention: Ms Margaret Liveris - Committee Clerk

Dear Mr O'Brien

I refer to the email dated 11 August 2015 from Dr Colin Huntly providing me with the Standing Committee on Environment and Public Affairs' *Report 41 – Petition 42, Request to Repeal the Environmental Protection (Environmentally Sensitive Areas) Notice 2005*.

The State Government has considered the Committee's nine recommendations. Please find enclosed the response to the recommendations.

I take this opportunity to thank the Committee for its work and findings in respect to this matter.

In general, I agree with the Committee that further improvements can be made in this area, in particular, in the area of public communication and provision of easily accessible information. While a small number of recommendations are not supported, I consider that these matters can be addressed administratively through guidance statements and procedures, rather than legislative change,

I also take this opportunity to outline the positive work this Government has achieved and is working towards achieving in the area of regulation of native vegetation clearing.

In 2013, the Government amended the *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* to increase the total area of limited clearing exemptions for purposes such as lawful buildings or structures, firewood, vehicle and walking tracks, and clearing of isolated trees from one hectare to five hectares per financial year per property. The amendments also increased the 10 year period for maintaining previously lawfully cleared areas for pasture, cultivation or forestry to 20 years allowing these areas to be brought back into production. These changes recognise contemporary farming practices and better farming technology, including automated machinery.

The current provisions under the *Environmental Protection Act 1986* relating to clearing have been criticised for their complexity and for focusing on process rather than outcomes. The Government is investigating future legislative options to assist in remedying these concerns. These legislation options would also address any negative impact of ESAs, while retaining their value in protecting small but high value areas, and providing for accreditation of clearing permit processes and decisions under bilateral agreements.

One option is a referral system to provide flexibility, avoid unintended regulatory capture, and ensure that clearing is only regulated where regulation is necessary to improve environmental outcomes. Under this approach, clearing that is not otherwise exempt from the requirement to hold a permit is required to be referred to the Chief Executive Officer (CEO). The CEO will then make a decision within 21 days on whether a permit is required having regard to specified criteria. A preliminary analysis of clearing permit application data suggests that this approach would reduce the number of clearing cases requiring a decision to grant or refuse a clearing permit by around 30%. The referral model will ensure that clearing within ESAs can be evaluated at no cost and without undue delay. Only where proposed clearing of native vegetation requires regulation to manage impacts would a permit be required.

The amendments to the legislation and the regulations make an important contribution to the Government's 2013 election commitment to work to reduce unnecessary regulatory burden on farmers prohibiting their future growth and success. Clearing of native vegetation is one of the key relevant areas of regulation.

The Government remains committed to improvements in this area without diluting our high environmental standards.

Yours sincerely



Albert Jacob MLA
MINISTER FOR ENVIRONMENT; HERITAGE

Att.

06 OCT 2015

**GOVERNMENT RESPONSE TO THE RECOMMENDATIONS OF
THE STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS
PETITION NO. 42**

REQUEST TO REPEAL THE *ENVIRONMENTAL PROTECTION (ENVIRONMENTALLY SENSITIVE AREAS) NOTICE 2005*

Recommendation	Government Response
<p>The Committee recommends that the Minister for Environment repeals regulation 6 of the <i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i>.</p>	<p>Regulation 6 expired (by operation of the <i>Environmental Protection Amendment Act 2003</i> section 110(4)(b)) on 9 April 2005 (i.e. on the expiration of 9 months after section 110 came into operation). As regulation 6 has expired, it cannot be repealed.</p> <p>In the electronic version of the regulations, regulation 6 has been removed and replaced with a note “[6. Expired on 8 April 2005 by operation of the <i>Environmental Protection Amendment Act 2003</i> section 110(4)(b)].” The next hard copy reprint will not include the provision.</p>
<p>The Committee recommends that the Minister for Environment review the <i>Environmental Protection (Environmentally Sensitive Areas) Notice 2005</i> and the scope of land declared an ESA with a focus on wetland ESAs.</p>	<p>Several Environmental Protection Policies (EPPs) are being reviewed to ensure they are appropriate, necessary and not duplicative of existing protections/regulations. This includes EPPs which protect wetlands declared as ESAs (for example, Swan Coastal Plain Lakes and South-west Agricultural Zone Wetlands).</p>
<p>The Committee recommends that the Minister for Environment introduce an effective mechanism of Departmental review where a landowner disputes the Department’s decision that their land includes an ESA. This review should include a Departmental officer visiting the land in question.</p>	<p>ESAs are based on areas defined in legislation (for example, areas covered by EPPs made under the EP Act, Ramsar convention wetlands or World Heritage properties listed under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>), or based on policies and mapping such as Bush Forever; conservation category wetlands in the geomorphic wetlands dataset; wetlands mapped in the Busselton-Walpole area; and certain wetlands mapped for Augusta to Walpole.</p> <p>Where the areas are adopted based on policy or mapping, the custodian for the ESA value is responsible for reviewing and maintaining the accuracy of the data and there are existing processes for this. Understanding the Committee’s primary focus on wetlands, I can advise that the Department of Parks and Wildlife as the custodian of wetland mapping has a protocol for updating the boundaries or management category of wetlands. Further information is available at www.dpaw.wa.gov.au/management/wetlands.</p>

Recommendation	Government Response
<p>The Committee recommends that the Minister for Environment amend land clearing laws to provide that the grazing exemption at regulation 5, item 14 of the <i>Environmental Protection (Clearing of Native Vegetation) Regulations 2004</i> apply to ESAs declared in <i>Environmental Protection (Environmentally Sensitive Areas) Notice 2005</i>.</p>	<p>The scheme of the existing legislation provides that exemptions in regulations do not apply in ESAs.</p> <p>This matter has been addressed through the finalisation of grazing guidelines. This guideline clarifies that sustainable grazing at levels that are consistent with existing, historic grazing practices where such grazing does not result in significant modification of the structure and composition of the native vegetation is not considered to be clearing.</p>
<p>The Committee recommends that the Minister for Environment ensures that the Department of Environment Regulation conducts broad consultation with the public and Members of Parliament on the draft <i>A guide to grazing, clearing and native vegetation under Part V Division 2 of the Environmental Protection Act 1986</i>.</p>	<p>DER released a 'Draft guideline: A guide to grazing and clearing of native vegetation' for public comment between 24 June and 22 July 2015. DER also wrote separately to seek comment from the Pastoralists and Graziers Association, WA Farmers Federation and the Gingin Property Rights Group. Four submissions were received. The submissions received, a consultation summary addressing submissions and a final guideline are available on DER's website and are attached to this response.</p>
<p>The Committee recommends that the Minister for Environment (in the Government response to this report) advises the Legislative Council of the details of consultation undertaken, or to be undertaken, and the outcome of the public consultation process.</p>	<p>See comment above</p>
<p>The Committee recommends that the Minister for Environment directs the Department of Environment to provide a link to the <i>Environmental Protection (Environmentally Sensitive Areas) Notice 2005</i> and documents referred to in that Notice on its website.</p>	<p>DER has included a clearer link on its website for public to view information regarding ESAs. This includes the list of publicly available individual datasets and a link to the State Law Publisher's website which includes the <i>Government Gazette</i> containing the ESA Notice.</p> <p>DER's Clearing Permit System and Landgate's Shared Land Information Platform map the locations of ESAs. In addition, all clearing application decision reports are available on DER's Clearing Permit System.</p>
<p>The Committee recommends that section 51C of the <i>Environmental Protection Act 1986</i> be redrafted to state in direct positive language the circumstances in which a person is authorised to clear native vegetation.</p>	<p>The intent of listing areas or classes as ESAs is to ensure that clearing that is allowed by exemption in regulations cannot be undertaken in these areas without consideration through a permit application. It is important to acknowledge that the presence of ESAs does not necessarily preclude clearing from taking place. Since the regulations took effect a total of 924 clearing permits have been granted within ESAs. DER has reviewed its guidance statements relating to native vegetation clearing requirements to ensure clear and consistent advice is available for landholders.</p>

Recommendation	Government Response
<p>The Committee recommends that the Minister for Environment directs the Department of Environment Regulation to write to each affected landowner to advise of the existence of the ESA and its impact.</p>	<p>Section 51B of the EP Act provides that the Minister for Environment may declare by notice either a specified area of the State, or a class of areas of the State, to be an ESA. The notice must be made after consultation with the Environmental Protection Authority (EPA) and such public authorities, persons and groups as the Minister considers to have an interest in its subject matter (section 51B(4)). The current ESA notice was made by the then Minister for Environment on 8 April 2005. It is not considered necessary or practicable to write to each affected landholder.</p> <p>The ESA Notice only has effect where clearing that is otherwise exempt under regulations is within an area declared as an ESA, in which case a clearing permit is required. In order to determine whether proposed clearing is within the scope of the Environmental Protection (Clearing of Native Vegetation) Regulations, landholders would refer to DER's explanatory material and consult with the department as necessary. This ensures that appropriate advice on ESAs is provided.</p> <p>DER will however ensure that its guidance statements, guidelines and fact sheets available on its website are prominent and easily accessible.</p>