

22 July 2021

Better Regulation Practice
Department of Water and Environmental Regulation
Locked Bag 10
Joondalup DC, WA 6919

Sent via email: betterregulatorypractice@dwer.wa.gov.au

Dear Sir / Madam,

RE: CONSULTATION FOR DRAFT GUIDELINE – NATIVE VEGETATION REFERRALS

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia (WA). CME is funded by member companies responsible for more than 88 per cent of the State's mineral and energy workforce employment.¹ The value of royalties received from the sector totalled \$9.3 billion in 2019-20,² accounting for 28.8 per cent of general government revenue.³ Now accounting for 47 per cent of the State's total industry Gross Value Added,⁴ the sector's exports are likely to remain a major contributor to Australia's economic recovery from its largest global contraction since the 1940s.⁵

CME welcomes the opportunity to provide a submission to the Department of Water and Environmental Regulation (DWER) on the draft Guideline: Native vegetation referrals (the Guideline), released for public consultation on 30 June 2021. CME supports the development of the Guideline, and initiatives more broadly that aim to improve regulatory practice and make it easier to interact across Government – consistent with the whole of government Streamline WA initiative.

Detailed comments and recommendations on the draft Guideline are outlined in the table below. In summary, CME considers it should make clear that the referral process is complementary and additional to the existing processes regarding native vegetation clearing exemptions and approvals.

For the referral process to be effective in its intent to streamline native vegetation clearing assessments and approvals, it is critical that proponents understand that where an exemption for a native vegetation clearing permit (NVCP) already exists, the proposed clearing need not be referred. Similarly, where it is expected that a NVCP will likely be required, the proponent need not refer the proposed clearing and may directly apply for a NVCP – thus avoiding duplicated applications.

CME recommends clarifying the scope of the native vegetation referral process in the context of existing native vegetation clearing exemptions and approvals processes through a diagram, such as Figure 1 below.

¹ Full-time employees and contractors onsite in 2019-20, excludes non-operating sites. Government of Western Australia, *2019-20 Economic indicators resources data*, Safety Regulation System, Department of Mines, Industry Regulation and Safety, 25 September 2020.

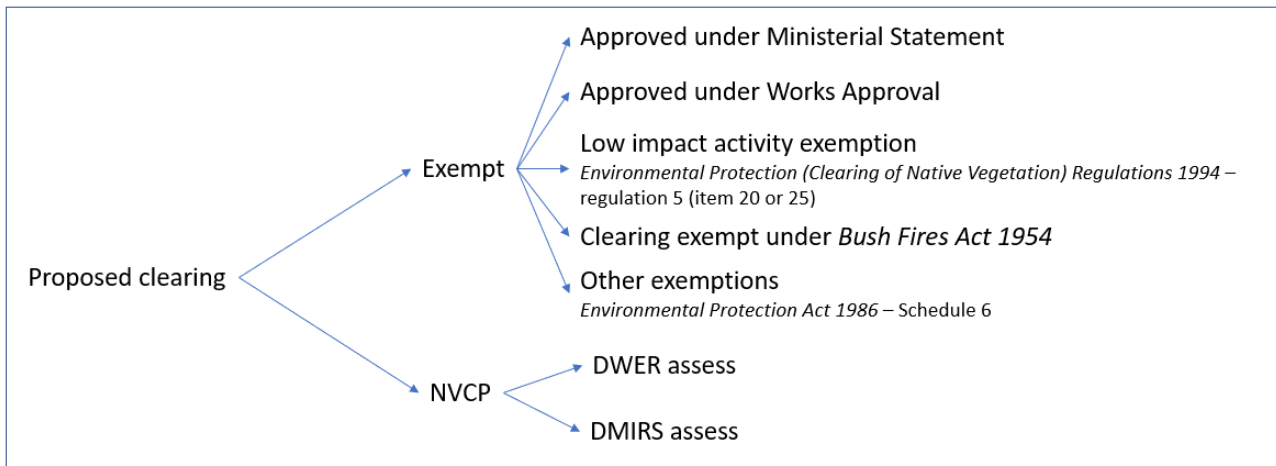
² Ibid.

³ Government of Western Australia, *2019-20 Annual report on State finances*, Department of Treasury, 25 September 2020.

⁴ Cassells, R. *et al*, *BCEC Quarterly economic commentary*, Bankwest Curtin Economics Centre, 26 November 2020, p. 2.

⁵ Commonwealth of Australia, *Resources and energy quarterly: September 2020*, Department of Industry, Science, Energy and Resources, 29 September 2020.

Current native vegetation clearing approval process summary



NEW native vegetation clearing approval process summary

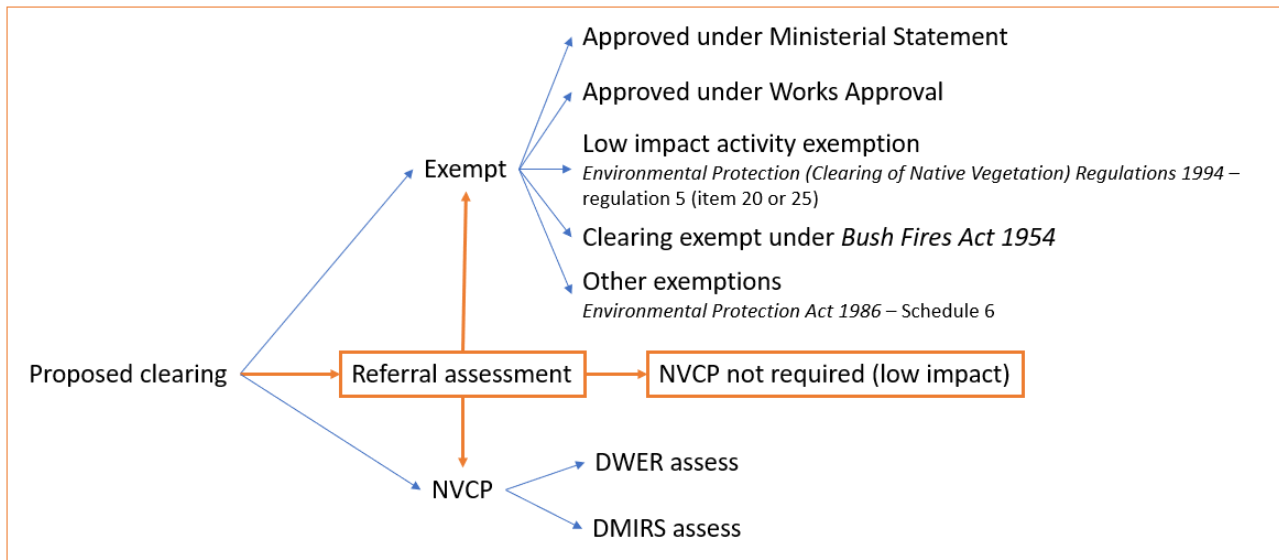


Figure 1: Overview of native vegetation clearing exemptions and approval processes.

CME thanks DWER for the opportunity to comment on the draft Guideline and looks forward to continuing to work with DWER (and related agencies) through this review process.

Should you require any further information, please contact Kira Sorensen, Senior Adviser – Environment & Sustainability.

Yours sincerely,

Robert Carruthers
Director – Policy & Advocacy

Page	Relevant Excerpt from the Guideline	Comments / Recommendations
2. Scope and context		
1	<p>“A clearing permit issued under the EP Act is required for clearing native vegetation in Western Australia, unless:</p> <ul style="list-style-type: none"> • an exemption applies.” 	<p>CME recommends clarifying that if the person undertaking the clearing considers that an exemption applies, that person need not make a referral.</p> <p>The Guideline should also clarify how the referral process interacts with the requirement for disturbance permits under other Acts (such as Permit to Interfere with Bed and Banks under the <i>Rights in Water and Irrigation Act 1914</i>, and permit to take threatened flora under the <i>Biodiversity Conservation Act 2016</i>).</p>
2	<p>“The Department of Mines, Industry Regulation and Safety (DMIRS) has delegated statutory authority under s.20 of the EP Act to receive, assess, and determine applications for clearing permits.”</p>	<p>CME recommends clarifying that the statutory timeframes applied to DWER for assessment of an application are also applicable to DMIRS.</p> <p>A link to the agreement between DMIRS and DWER could also be provided in this section.</p>
3. Guidance		
2	<p>3.1 What is a referral process?</p> <p>“This referral process provides prospective applicants with an option to refer their proposed clearing activity to the relevant department (i.e. either DWER or DMIRS) to make a decision on whether a clearing permit is required.”</p>	<p>As above, CME recommends clarifying that if the person undertaking the clearing considers that an exemption applies, that person need not make a referral.</p>
2	<p>3.2 How does this referral process differ to referrals submitted to the Environmental Protection Authority?</p> <p>“<i>By contrast</i>, referrals submitted to the Environmental Protection Authority (EPA) are assessed under Part IV of the EP Act. They are required for proposals that are likely to have a significant impact on the environment. The EPA’s website has further information on Part IV referrals.”</p>	<p>CME recommends removing “by contrast”.</p>
3	<p>3.3 Which proposed clearing activities are not suitable for this referral process?</p>	<p>CME recommends clarifying native vegetation clearing processes under bilateral assessments and include a link to Fact Sheet 25: Native vegetation clearing processes under the assessment bilateral agreement.</p>

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	<i>"[...] referral to the Commonwealth Department of Agriculture, Water and the Environment under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) [...]"</i>	CME recommends include a link to the DAWE website page on EPBC Act referrals: https://www.environment.gov.au/heritage/management/referrals
3	3.4 How to submit a clearing referral <i>"Applicants should ensure that all required information is included [...]"</i>	CME recommends including a link to where information requirements can be found.
3	3.5 How will the department determine when a clearing permit is required?	Inconsistent terminology is used to refer to the considerations made when determining if a permit is required, as outlined in section 3.5 of the Guideline. Throughout sections 3.5 and 3.6, these considerations are referred to as "matters" and "criteria". CME recommends the terminology is made consistent throughout the document to refer to the "consideration" made when determining if a permit is required.
4	Consideration 1: The area proposed to be cleared is small relative to the total remaining vegetation <i>"[...] relative to total remaining vegetation of the ecological community [...]"</i>	There is a lack of guidance as to how and at what scale the "total remaining vegetation of the ecological community" will be determined. The Guideline specifies thresholds for relative assessment of remaining vegetation at the regional level, however not at the ecological community level. CME recommends clarifying how and at what scale the "total remaining vegetation of the ecological community" will be determined.
4	Table 1 <i>"Extent of proposed clearing"</i>	The Guideline lacks clarity regarding how the extent of proposed clearing will be applied, whether this be per authority area, per year, or per referral. CME recommends clarifying how the extent of proposed clearing will be assessed.
	<i>"Threshold for remaining vegetation in the region"</i>	This threshold will require an accurate and up-to-date assessment of the percentage of native vegetation currently remaining in each region, including effective tracking of approved and actual clearing under the EP Act as well as the 11 other Acts ⁶ under which clearing of native vegetation may be approved or otherwise exempt. It is unclear how in practice this will be achieved, and whether the onus will be on DWER (or DMIRS as applicable) to determine this or if the onus will be on the referrer.
	<i>"Threshold for vegetation surrounding the proposed clearing"</i>	It is unclear how this proximity radius will be determined. CME recommends clarifying that the proximity radius will be determined from the perimeter of the proposed clearing area.

⁶ WA legislation under which clearing of native vegetation may be undertaken – *Energy Operators (Powers) Act 1979, Bush Fires Act 1954, Land Administration Act 1997, Conservation and Land Management Act 1984, Sandalwood Act 1929, Biodiversity Conservation Act 2016, Forest Products Act 2000, Planning and Development Act 2005, Bush Fires Act 1954, Fire Brigades Act 1942, and Fire and Emergency Services Authority of Western Australia 1998.*

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6	Table 2	CME notes that these considerations will need to be as specific and binary as possible to ensure clarity for proponents, and consistency between and within DWER / DMIRS. CME recommends including links for referrers to directly access the information on ‘mapped wetland’ or ‘mapped watercourse’.
	“The <u>proximity</u> of the proposed clearing [...]”	Assessment of proximity should be clarified – how close is too close?
	“The proximity of the proposed clearing to <u>any records</u> of threatened or priority flora.”	Need to confine to a reasonable timeframe on date of records, use of historical records would be inappropriate.
	“Whether the proposed clearing <u>may</u> impact a watercourse [...]”	CME recommends changing “may” to “likely”.
	“Whether the proposed clearing <u>may</u> impact a ‘Conservation reserve’.”	CME recommends changing “may” to “likely”.
6	Consideration 3: The state of scientific knowledge of vegetation within the region “[...] to determine whether the level of scientific knowledge in the area is <u>adequate</u> .”	CME recommends defining what is considered an “adequate” (or conversely, an inadequate) level of scientific knowledge. CME notes the EPA has guidance on what is considered scientifically valid for the purposes of environmental impact assessment.
	“If it is not adequate, and additional information is required to support the department’s decision, a permit is likely to be required.”	Where additional information is required to support a decision on a referral, the referrer should be afforded the opportunity to provide such information before a determination that a permit is required. CME recommends including a process step whereby the assessing department may request additional information from the referrer prior to determining that a permit is required.
6	Consideration 4: Whether conditions are likely to be required to manage environmental impacts “Applicants should, as much as practicable, avoid and mitigate environmental impacts to the area <u>before</u> planning their clearing activity.”	CME recommends changing “before” to “while” – these are considerations during the planning process, not before.
	“Clearing activities that are likely to require conditions to minimise, mitigate, or offset effects on the environment will likely require a permit.”	The Guideline is unclear as to whether, in the instance that the referrer offers commitments to mitigate the impacts of proposed clearing, that this automatically would require the conditioning of such commitments and subsequent requirement for a permit. CME recommends clarifying whether a permit is automatically required where an referrer offers commitments to mitigate the impacts of proposed clearing.

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7	3.6 What happens after a referral form is submitted? “Permit required”	CME recommends clarifying that the referral application must comply with the requirements under section 51E(1)(b), (1)(d), and (2) in order for it to be dealt with as an application for a clearing permit.
	“If the proposed clearing contravenes a soil conservation notice, the department will notify the referrer that the clearing cannot proceed [...]”	CME recommends clarifying that there may be other reasons (other than a soil conservation notice) for why clearing may not proceed.
7	3.7 What happens if a decision notice is not received within 21 calendar days?	The Guideline lacks transparency regarding the decision timeline and stop-the-clock provisions relevant to the referral process. It is unclear whether the 21-day timeframe includes the referral validation process, and at what point the stop-the-clock mechanism may be activated by either DWER or DMIRS. CME recommends including more detailed information on the referral decision timeline and stop-the-clock provisions. CME understands that the clock will be restarted where a referral is subsequently processed as a clearing permit application. CME recommends clarifying the interaction between the clearing referral process timeline and the native vegetation clearing permit assessment timeframe.
	“If you have not received a notification after 21 calendar days [...]”	CME recommends changing to “If you have not received a notification after 21 calendar days of lodging the referral [...]”
Document implementation		
8	“[...] email to info@dwer.wa.go.au .”	The hyperlink for the email address does not work and needs to be fixed.

Page	Relevant Excerpt from the Guideline	Comments / Recommendations
Related documents		
8	DWER DOCUMENTS	<p>CME recommends including references to more related documents, including:</p> <ul style="list-style-type: none"> • Clearing of native vegetation – offsets procedure • Fact Sheet: How to apply for a permit to clear • Fact Sheet: Native vegetation clearing frequently asked questions • Fact Sheet 1: Native vegetation clearing legislation in Western Australia • Fact Sheet 9: Clearing limited to five hectare a year (limited clearing exemptions) • Fact Sheet 11: Environmental offsets for native vegetation clearing permits • Fact Sheet 25: Native vegetation clearing processes under the assessment bilateral agreement • Guide to native vegetation clearing processes under the assessment bilateral agreement • Guide 1: A guide to the exemptions and regulations for clearing native vegetation • Guide 2: A guide to the assessment of applications to clear native vegetation
General		
For consistency of terminology with the EP Act, CME recommends all references to the “applicant” be changed to the “referrer” .		