

Review of Clearing Legislation: KRG Submission



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1. Arguing for an Exemption for Gravel Extraction under Western Australian Clearing Legislation

The **Environmental Protection (Clearing of Native Vegetation) Regulations 2004** in Western Australia (WA) provide important exemptions for clearing native vegetation related to essential public works, particularly the construction and maintenance of roads. However, there is a significant gap in these regulations concerning the sourcing of materials, such as gravel, from Crown (Reserves, Unallocated, National Parks, Mining and Pastoral Leases) or privately owned land for these public works.

Given the specific provisions in the Land Administration Act 1997 and the Local Government Act 1995, there is a strong case to be argued that exemptions should be extended to include the extraction of gravel and other materials without requiring a clearing permit. This would help streamline public works projects while maintaining environmental protections.

1.1 Current Legal Exemptions for Road Construction and Maintenance

1.1.1 The Environmental Protection (Clearing of Native Vegetation) Regulations 2004

The **Environmental Protection Regulations** exempt certain infrastructure-related clearing activities from requiring a clearing permit, most notably road construction and maintenance. Regulation 5 provides that clearing is permissible for the construction, maintenance, or improvement of public roads, railways, and utilities without the need for a clearing permit. This is crucial for ensuring that public infrastructure can be developed and maintained without significant delays due to regulatory hurdles.

However, while this exemption applies to clearing land for infrastructure, it does not explicitly address the sourcing of gravel and other materials necessary for road construction. Gravel, as a fundamental material for building and maintaining roads, often needs to be extracted from the land in proximity to construction sites, including Crown and private land. Given the increasing demand for local materials, the current regulatory framework does not provide the same level of exemption for material extraction, despite its clear relevance to public works.

1.1.2 The Land Administration Act 1997: Ministerial Powers for Temporary Occupation of Land

The **Land Administration Act 1997** provides a clear legal basis for temporary occupation of land for public works purposes. Section 185 of the Act grants the Minister the authority to allow individuals or entities to temporarily occupy and use Crown land for constructing or repairing public infrastructure. This section explicitly permits the extraction of materials, including stone, gravel, and earth, from the land for these projects.

This provision is critical for ensuring that local governments and contractors can access the materials (at reasonable cost) needed for road construction without facing delays in acquiring permits or navigating lengthy regulatory processes. The extraction of gravel, a common requirement for roadwork, could be carried out under the same authorisation without the need for additional environmental clearances, as long as the material is being used for public infrastructure projects.

Importantly, the Land Administration Act allows for the extraction of these materials with minimal oversight, which is consistent with the approach to facilitating infrastructure development. The Act's exemption for gravel and material extraction is inherently aligned with the public interest, ensuring that necessary materials are readily available to meet the needs of ongoing public works projects.

1.1.3 The Local Government Act 1995: Powers for Material Extraction

The **Local Government Act 1995** further supports the case for exempting local governments from requiring a clearing permit for gravel extraction. Specifically, **Schedule 3.2** allows local governments to take materials, including **gravel**, from land for the purpose of constructing and maintaining infrastructure such as roads, bridges, and culverts. Section 3.27(1) states that local governments may extract native growing or dead timber, earth, stone, sand, or **gravel** that they deem necessary for public works, including the creation and repair of thoroughfares.

This provision reflects the practical needs of local governments, which often rely on locally sourced materials to carry out road maintenance and construction projects. The ability to extract gravel and other materials directly from the land helps reduce costs and delays associated with transporting materials from distant quarries. By providing an exemption under the Local Government Act, local governments are empowered to carry out their duties effectively while ensuring that materials needed for public infrastructure are accessible and affordable.

1.2 The Case for Extending Exemptions to Material Extraction

The Environmental Protection (Clearing of Native Vegetation) Regulations 2004 currently do not extend the same exemptions for material extraction as they do for clearing related to infrastructure construction. Given the provisions in the Land Administration Act and the Local Government Act, it is logical to argue that local governments and other public authorities should be granted the same level of exemption for the extraction of gravel and other materials as they have for road construction.

Extending the exemption to include the sourcing of gravel from Crown and privately owned land would achieve several important objectives:

1. **Streamlining Public Works:** Exemptions for material extraction would reduce the regulatory burden on local governments and contractors, allowing for more efficient and timely completion of public infrastructure projects.
2. **Cost-Effectiveness:** Local governments would be able to source materials closer to their construction sites, which would significantly reduce transportation costs and the environmental impact of transporting materials over long distances.

3. **Alignment with Existing Legislative Frameworks:** Both the **Land Administration Act** and the **Local Government Act** already provide exemptions for material extraction for public works. Extending these exemptions to include clearing-related activities would create a more cohesive and comprehensive approach to facilitating infrastructure development.
4. **Environmental Protections:** The proposed exemption could be designed with appropriate safeguards to ensure that material extraction is done responsibly. For instance, it could be conditioned on the requirement to rehabilitate the land post-extraction, as is already common practice for other activities under the relevant Acts.

1.3 Conclusion

The Environmental Protection (Clearing of Native Vegetation) Regulations 2004 provide valuable exemptions for clearing activities related to road construction and maintenance. However, there is a clear need to extend these exemptions to the extraction of gravel and other materials from Crown and privately owned land. By utilising the powers provided under the Land Administration Act 1997 and the Local Government Act 1995, local governments and public authorities can effectively meet their material needs for infrastructure projects while minimizing regulatory delays and costs. Such an exemption would not only facilitate the construction and maintenance of critical public infrastructure but also ensure that these works can be carried out in an environmentally responsible and cost-effective manner.

In the development of the original clearing legislation this exemption was drafted by parliamentary council in 2004, however sadly it did not survive the upper house review process. It should again be reconsidered as part of any clearing regulations review.



2. Arguing for Clearing Exemptions under Western Australian Legislation to apply in Environmentally Sensitive Areas (ESA's) within the State

The Environmental Protection Act (EP Act) of Western Australia provides a range of exemptions from the requirement to obtain a clearing permit for certain activities. These exemptions are designed to allow for specific land-use activities while protecting the environment and ensuring that critical operations can proceed without unnecessary delays. Below is an overview of the key exemptions under the EP Act, with a specific focus on the safety-related exemptions and how the exclusion of such exemptions within environmentally sensitive areas (ESAs) is impractical and flawed.

2.1 Exemptions under the Environmental Protection Act (EP Act)

The **Environmental Protection (Clearing of Native Vegetation) Regulations 2004** outline several exemptions for clearing activities under the EP Act. These exemptions are categorised to address common land management activities or situations that don't pose significant risks to the environment. The exemptions are broadly grouped into the following categories:

- **Safety Exemptions**

The **safety-related exemptions** allow clearing activities to be undertaken in certain circumstances to address immediate safety threats, such as the removal of hazardous vegetation or the creation of emergency access routes. These exemptions are vital for ensuring public safety in areas where hazardous vegetation may obstruct roads or infrastructure, particularly in the event of bushfires or floods.

However, **safety exemptions are currently not applicable in ESAs**, which creates significant challenges when immediate action is required to protect human life or property.

- **Fire Management Exemptions**

Certain activities related to fire prevention and management are exempt from the clearing permit requirement. These include the clearing of vegetation to create **firebreaks** (both in urban and rural settings) or to reduce fuel loads in areas prone to wildfires. This exemption is particularly important for landowners and local governments who need to manage fire risks.

However, the limitation of fire management exemptions within ESAs is particularly problematic when areas at high risk of wildfire also fall within these protected zones. The inability to use firebreak creation or fuel load reduction exemptions in these areas may increase the risk of uncontrollable fires, making safety concerns secondary to environmental restrictions.

- **Infrastructure Exemptions**

This category allows for the clearing of vegetation necessary for maintaining or improving public infrastructure. Activities that qualify for this exemption include clearing for the construction or maintenance of roads, railways, pipelines, and other utilities. These infrastructure-related activities are often necessary for the ongoing functionality of communities and businesses.

While the exemption is important for maintaining infrastructure, its exclusion within ESAs can create a situation where critical infrastructure, such as access roads or powerlines, cannot be safely maintained. In areas prone to natural disasters, such as bushfires or floods, failing to maintain these vital routes due to ESA restrictions could result in greater harm to both the environment and public safety.

- **Agricultural Exemptions**

Certain agricultural activities, such as the clearing of land for cropping, grazing, or the construction of farm infrastructure, may be exempt from clearing permit requirements. These exemptions are designed to support agricultural activities while ensuring that they do not result in significant environmental degradation.

While agricultural activities are vital for food production and the economy, these exemptions should be carefully considered in ESAs. Certain farming practices, like land clearing for agriculture, could lead to significant loss of native vegetation and biodiversity, especially in sensitive areas. Nonetheless, the exclusion of safety-related agricultural activities, such as clearing hazardous vegetation in farm infrastructure areas within ESAs, adds an unnecessary layer of restriction when safety is at risk.

- **Clearing for Research Purposes**

Another exemption allows for clearing in areas designated for scientific or ecological research. This exemption supports research that can contribute to environmental conservation, biodiversity studies, and ecosystem restoration. However, this exemption does not address the need for safety-related clearing in areas where research activities may involve risks or where clearing is necessary for access to research sites, such as for emergency evacuations or ensuring safe working conditions for researchers. In these cases, the exclusion of safety exemptions becomes a barrier to necessary actions.

- **Maintenance of Existing Land Uses**

Exemptions also exist for clearing that is required to maintain existing land uses. This includes maintenance activities like the clearing of vegetation to maintain existing roads, tracks, or facilities. The lack of safety exemptions in ESAs can complicate maintenance efforts where there is a need to ensure safety along existing infrastructure, especially in areas prone to floods, wildfires, or other hazards. Without the ability to clear hazardous vegetation, the safety of infrastructure users can be compromised, undermining the purpose of land-use management.

- **Routine and Minor Clearing**

Routine and minor clearing that does not have significant environmental impacts, such as **clearing for the maintenance of existing tracks or minor vegetation trimming**, can also be exempted under the regulations. This exemption allows for the ongoing management of land without the need for extensive permitting processes.

However, this exemption is unlikely to cover safety-related activities like clearing trees after a storm, or removing fallen debris in ESAs. The inability to quickly address these safety concerns—due to the exclusion of safety exemptions in ESAs—could lead to hazardous conditions in areas that would otherwise be safe with timely intervention.

2.2 Why Excluding Safety Exemptions in ESAs is Impractical and Flawed

The exclusion of safety-related exemptions for clearing in ESAs is problematic for several reasons:

2.2.1 Public Safety and Emergency Response

Safety exemptions, including those for clearing hazardous vegetation or creating firebreaks, are critical for public safety, particularly in high-risk areas like bushfire-prone regions. Without the ability to access these exemptions in ESAs, critical safety interventions such as creating firebreaks, clearing hazardous trees from roads, or establishing emergency access routes become subject to unnecessary delays. These delays could result in significant property damage, harm to individuals, and, in extreme cases, loss of life.

2.2.2 Inability to Address Immediate Risks

When safety exemptions are not allowed within ESAs, emergency responses to urgent threats, such as bushfires or flooding, are hindered. The time it takes to apply for and receive a clearing permit under the current framework may be too long to effectively mitigate imminent threats. Delays in clearing hazardous vegetation could exacerbate the damage caused by natural disasters, potentially making the environmental damage worse in the long run.

2.2.3 Contradicting the Dual Goals of the EP Act

The Environmental Protection Act aims to strike a balance between protecting the environment and enabling practical land management. Excluding safety exemptions from ESAs creates a conflict between these two goals. In many cases, clearing for safety reasons does not lead to significant long-term environmental harm and, in fact, can help prevent larger-scale ecological damage caused by unmanaged fires or other natural disasters. The failure to acknowledge this balance creates a regulatory framework that is overly rigid and unresponsive to real-world needs.

2.2.4 Incentivising Non-Compliance

When necessary, safety interventions are delayed due to the lack of exemptions, landowners or local authorities may choose to undertake clearing activities without permits. This circumvention of the regulations could lead to greater environmental degradation, as clearing may be done without proper consideration of ecological factors. It also undermines the integrity of the regulatory system by encouraging non-compliance in situations where the environmental harm is minimal compared to the safety benefit.

2.3 Conclusion

The Environmental Protection Act provides important exemptions for clearing activities, but the exclusion of safety-related exemptions within environmentally sensitive areas (ESAs) is both impractical and flawed. Safety exemptions, such as those for creating firebreaks or clearing hazardous vegetation, are essential for managing risks to public safety and protecting both human life and the environment.

The current restrictions on safety exemptions in ESAs hinder emergency responses, create unnecessary bureaucratic delays, and may lead to non-compliance. A more flexible, case-by-case approach that includes safety exemptions within ESAs would ensure a balanced, practical, and effective regulatory framework that can respond to both environmental and public safety needs.

