



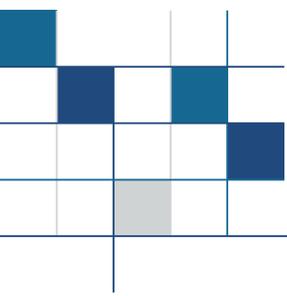
# Guideline

## Native vegetation clearing referrals

Native vegetation clearing activities regulated under the:

- *Environmental Protection Act 1986*
- Environmental Protection (Clearing of Native Vegetation) Regulations 2004

October 2021



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October 2021

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### **Acknowledgements**

The Department of Water and Environmental Regulation would like to thank the Department of Mines, Industry Regulation and Safety for its contributions to this publication.

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# 1. Purpose

The clearing referral process allows prospective referrers to refer their proposed native vegetation clearing to the Department of Water and Environmental Regulation (DWER) or the Department of Mines, Industry Regulation and Safety (DMIRS) to determine whether they need a clearing permit. This process is suitable for clearing activities with a very low environmental impact.

This guideline outlines what criteria DWER and DMIRS use to determine which clearing activities would have a very low environmental impact. Clearing activities that do not meet all of these criteria will require a permit.

The guidance is not mandatory. Its purpose is to provide information on the referral process.

# 2. Scope

This guideline applies to very low environmental impact clearing. The guideline does not apply to Part IV referrals for significant proposals submitted to the Environmental Protection Authority (EPA). For further information on the differences between clearing referrals and Part IV referrals, see Section 5.2.

The clearing referral process was added to the *Environmental Protection Act 1986* (EP Act) as part of the *Environmental Protection Amendment Act 2020* (s.51DA of the amended EP Act), which was proclaimed in October 2021. This guideline describes how the legislative provisions are interpreted and applied.

# 3. Context

A clearing permit is required to clear native vegetation unless:

- an exemption applies (see [A guide to the exemptions and regulations for clearing native vegetation](#)), or
- the proposed clearing was referred to DWER or DMIRS and the relevant department determined that a permit is not required because:
  - the clearing is exempt, or
  - the clearing satisfies all the referral criteria.

DWER assesses clearing permit applications and referrals. DMIRS also has delegated statutory authority to assess clearing permit applications and referrals related to ‘minerals and petroleum activities’. See the [DWER-DMIRS Administrative Agreement](#) for further details.

The referrals process supports a risk-based approach to assessing native vegetation clearing proposals by establishing a pathway to assess very low impact clearing activities that may not require a permit.



This guideline should be read together with other relevant guidance material on DWER's website, including the following:

- [\*Procedure: Native vegetation clearing permits\*](#): describes how the referrals process fits into the broader permit application process.
- [\*A guide to the exemptions and regulations for clearing native vegetation\*](#): provides information about clearing exemptions under Schedule 6 of the EP Act and regulation 5 of the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (Clearing Regulations).
- [\*A guide to the assessment of applications to clear native vegetation\*](#): provides information on the clearing principles (under Schedule 5 of the EP Act) used to assess clearing permit applications and data sources. These principles are similar but distinct from the referral assessment criteria.

## 4. Legislation

The clearing of native vegetation in Western Australia is regulated under Part V Division 2 of the EP Act and the Clearing Regulations.

Go to the [Western Australian Legislation website](#) for copies of the relevant legislation.

## 5. Guidance

### 5.1 What is a clearing referral?

The clearing referral process is suitable for clearing activities with a very low environmental impact.

Under this process, prospective applicants can choose to refer their proposed clearing to the relevant department (either DWER or DMIRS) to determine whether a clearing permit is required.

If DWER or DMIRS (as applicable) determines a permit is required, the referrer will need to apply for a permit by either:

- requesting their referral be treated as a clearing permit application, or
- completing a new [\*Application for new permit/Referral to clear native vegetation form\*](#).

A referral determination only applies to the proposed clearing specified in the referral. For example, the clearing to only be done during the timeframe specified in the submission, as this may be a relevant factor in the referral assessment due to the characteristics of some environmental values changing over time.

Clearing referral determinations cannot be transferred between property owners.



## 5.2 How does this referral process differ to referrals submitted to the EPA?

Native vegetation clearing referrals are assessed under Part V of the EP Act. This referral process relates to clearing activities with very low environmental impacts.

By contrast, referrals submitted to the EPA are assessed under Part IV of the EP Act. These referrals 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.

## 5.3 Which proposed clearing activities are not suitable for the referral process?

The referral process relates to clearing activities with very low environmental impacts.

The referral process cannot be used for proposed clearing that will occur on land subject to:

- an agreement to reserve or a conservation covenant under the *Soil and Land Conservation Act 1945* (SLC Act) (see the [Department of Primary Industries and Regional Development's website](#) for further details), or
- an environmental protection covenant under Part VB of the EP Act<sup>1</sup>.

It is also not suitable for proposed clearing that:

- is not likely to be completed within two years
- will contravene the requirements of a soil conservation notice issued under Part V of the SLC Act
- will or is likely to have a significant impact on [matters of national environmental significance](#) (in these instances, the clearing must be referred to the [Commonwealth Department of Agriculture, Water and the Environment](#) under the *Environment Protection and Biodiversity Conservation Act 1999*)
- includes marine native vegetation clearing activities
- may impact on protected or otherwise significant flora or fauna
- will be within a highly cleared landscape or an area containing limited or restricted native vegetation types (see criterion 1 for a list of factors that are used to determine this)
- is on land previously reserved as an environmental offset under the conditions of another approval under the EP Act (see [DWER-078](#) dataset)

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<sup>1</sup> Note: Part VB of the EP Act will not be in place until s.71 of the *Environment Protection Amendment Act 2020* is proclaimed in the WA Government Gazette. This guideline will subsequently be updated with a link to relevant resources.



- is on land subject to a [biodiversity conservation covenant](#) under the *Biodiversity Conservation Act 2016*, or
- is on land subject to a [covenant](#) under the *National Trust of Australia (WA) Act 1964*.

Figure 1 gives a high-level overview of the factors to consider when deciding whether to submit a clearing referral or a clearing permit application.

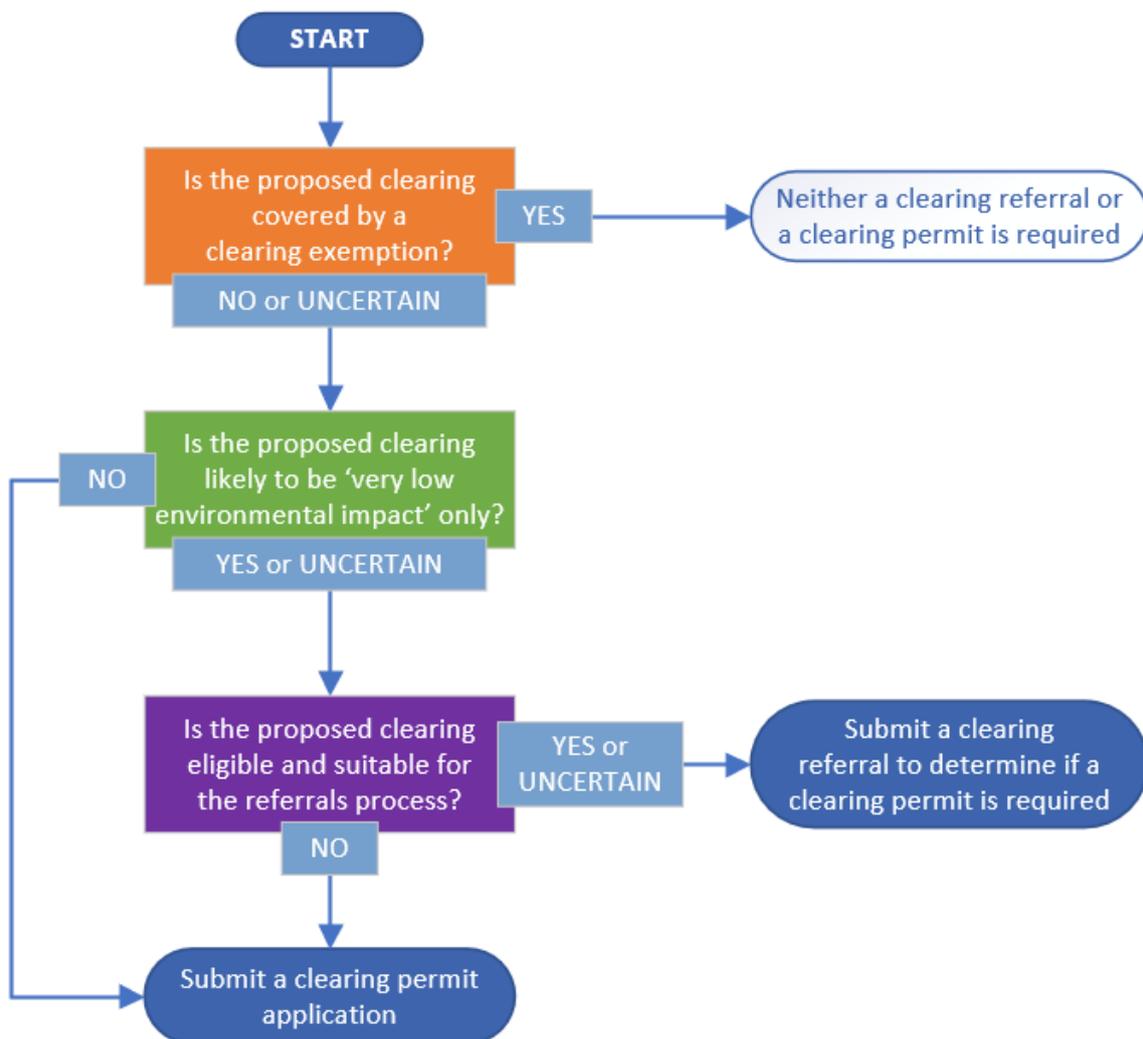


Figure 1. When to submit a clearing referral or a clearing permit application?

## 5.4 How to submit a clearing referral

Prospective referrers must submit a completed [Application for new permit/Referral to clear native vegetation form](#) to the relevant department (i.e. DWER or DMIRS). There is no prescribed fee to submit a referral.

Referrers should ensure they include all the required information specified on the form with the referral. This will facilitate a smooth transition into the clearing permit application process if necessary.



## 5.5 How will the department determine when a clearing permit is required?

The relevant department (either DWER or DMIRS) will first review the referral to determine whether the proposed clearing activity is exempt from requiring a permit. See [A guide to the exemptions and regulations for clearing native vegetation](#) for more information.

If no exemptions apply, DWER or DMIRS will then assess the proposed clearing against all criteria listed in s.51DA(4) of the EP Act. A permit will be required if the referral does not meet all of the criteria below.

### ***Criterion 1: The area proposed to be cleared is small relative to the total remaining vegetation***

When DWER or DMIRS considers whether a permit is required, the department looks at the size of the proposed area to be cleared:

- relative to the total remaining vegetation in the region where the proposed clearing is located, and
- relative to the total remaining vegetation of the ecological community that the vegetation proposed to be cleared forms a part of (as each ecological community has its own unique characteristics, this is assessed on a case-by-case basis).

The relevant department uses various data sources to determine how much remaining native vegetation is located within and near the proposed clearing, including:

- the *Interim Biogeographic Regionalisation for Australia* ([IBRA](#))
- Pre-European vegetation dataset ([DPIRD-006](#))
- South-west vegetation complexes datasets ([DBCA-046](#) and [DBCA-047](#))
- Current native vegetation extent dataset ([DPIRD-005](#))
- EP Act clearing applications and approved clearing ([DWER-075](#), [DWER-076](#), and [DWER-078](#)) datasets that show the areas with active applications, clearing permits, 'permit not required' determinations, or areas reserved for environmental offsets, and
- other [Data WA](#) datasets, and satellite and/or aerial imagery.

Table 1 summarises the criteria and thresholds applied when assessing a referral against 'criterion 1'.



*Table 1. Criterion 1 – Thresholds and criteria used to determine if a permit is required*

	Region in which the proposed clearing activity is located		
	Metropolitan Perth and Greater Bunbury Region Scheme constrained areas	The 'intensive land-use zone' located in south-west WA	Remaining areas of WA
<b>Extent of proposed clearing for each referral</b>	If more than 1 ha is proposed to be cleared, a permit is required.	If more than 1 ha is proposed to be cleared, a permit is required.	If more than 5 ha is proposed to be cleared (or more than 10 ha if north of the 26° South latitude line), a permit is required.
<b>Threshold for remaining extent of that native vegetation association or complex in the relevant IBRA bioregion</b>	If less than 10% of that native vegetation association or complex is remaining within the relevant IBRA bioregion, a permit is required.	If less than 30% of that native vegetation association or complex is remaining within the relevant IBRA bioregion, a permit is required.	If less than 30% of that native vegetation association or complex is remaining within the relevant IBRA bioregion, a permit is required.
<b>Threshold for remaining native vegetation surrounding the boundary of the proposed clearing</b>	If less than 10% native vegetation is remaining within a 5 km buffer of the proposed clearing, a permit is required.	If less than 30% native vegetation is remaining within a 5 km buffer of the proposed clearing, a permit is required.	If less than 30% native vegetation is remaining within a 10 km buffer of the proposed clearing, a permit is required.

The boundaries used in this table are based on the following:

- Metropolitan Perth and Greater Bunbury region zones, reserves and boundaries, as per the 'Region Scheme – Zones and Reserves' ([DPLH-023](#)) dataset. The 'constrained area' of Metropolitan Perth is the Swan coastal plain [IBRA](#) portion of the Perth Region Scheme. The 'constrained area' of Greater Bunbury includes any 'urban', 'urban deferred', or 'industrial' zones, or land with an existing development approval within the Greater Bunbury Region Scheme.
- The 'intensive land use zone' boundary, as per the 'South west agricultural region' boundary ([DPIRD-008](#)) dataset – see Figure 2 (below).
- The 26° South latitude boundary (see Figure 2 for an approximate location). The remnant native vegetation located north of this boundary generally exceeds 90 to 95% and therefore has a higher threshold; that is, the area of proposed clearing may qualify for a 'permit not required' referral determination.

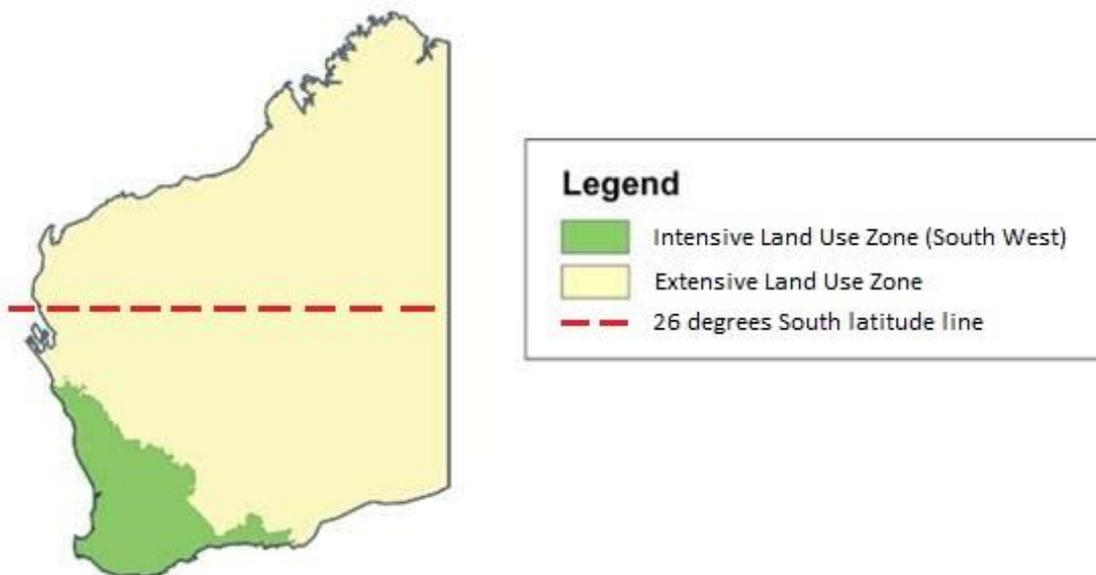


Figure 2: Land use zones and 26° South latitude boundaries

**Criterion 2: There are no known or likely significant environmental values within the area**

DWER or DMIRS will consider the potential impacts on environmental values within the area, including:

- biological values (e.g. flora, fauna, ecological communities)
- conservation values (e.g. impact to ecological linkages, conservation areas, heritage values)
- land and water resource values (e.g. wetlands and watercourses, water resources, land and soil quality).

Table 2 summarises the way DWER or DMIRS considers these values. Datasets that identify most of the values are available via [Data WA](#). Some datasets may be restricted or limited access because of their sensitivity.

Clearing activities with the potential to impact on significant environmental values and/or that require mitigation, management and/or offsetting conditions will need a clearing permit.

Table 2. Criterion 2 – Examples of known or likely significant environmental values considered when determining the need for a permit

Environmental value	Considerations used to determine if a permit is required
Vegetation condition	The quality of the existing remnant vegetation within and nearby the area to be cleared, based on the Keighery (1994) and/or Trudgen (1988) vegetation condition scales.
Significant fauna	Whether the proposed clearing area provides habitat for any threatened, priority, or specially protected fauna.



Environmental value	Considerations used to determine if a permit is required
Fauna habitat	Whether the proposed clearing area provides critical habitat for fauna.
Significant ecological linkage	Whether the proposed clearing is part of a significant ecological linkage.
Mapped ecological community	The proximity of the proposed clearing to any threatened ecological communities or priority ecological communities.
Significant flora	The proximity of the proposed clearing to any records of threatened or priority flora.
Mapped wetland	The proximity of the proposed clearing to any wetlands listed under the Convention on Wetlands of International Importance (Ramsar Convention) or the <a href="#">Directory of Important Wetlands in Australia</a> , or wetlands classified as 'conservation category' or 'resource enhancement'.
Mapped watercourse	Whether the proposed clearing may impact on a watercourse (e.g. the structural stability of a watercourse or deterioration of water quality).
Water resources (e.g. public drinking water supply areas)	Whether the clearing is in an area with high risk of decreasing water quality, rising groundwater levels, or increasing salinity.
Conservation reserve	Whether the proposed clearing is within a 'conservation reserve' (e.g. Bush Forever; Environmental Protection Policy areas; land managed by the Department of Biodiversity, Conservation and Attractions; Regional Open Spaces; crown reserves vested for conservation purposes).
Land and soil quality	Whether the clearing is in an area with high risk of land and/or soil degradation. Factors to determine this may include (among other matters) contaminated sites records, risk of dieback disease or acid sulfate soils, and susceptibility to erosion.
Heritage-related values and native title matters	Proximity to heritage-related values, including sites of Aboriginal significance, and native title matters.

***Criterion 3: The state of scientific knowledge of native vegetation within the region is adequate***

DWER or DMIRS will use the information included in the referral along with scientific data from various databases, spatial datasets, and other relevant and readily available information to determine the adequacy of the level of scientific knowledge about native vegetation within the region in which the area is situated. If the available information is not adequate, and additional information is required, a permit is highly likely to be required.



Referrals will be assessed using the information available at the time. However, this information does change over time; for example, as the conservation status of certain species are revised, or new cumulative impacts become evident. Accordingly, if the proposed clearing cannot be completed within two years, a permit will be required for that clearing. If the clearing authorised under the referral is not undertaken within two years, a new referral may be submitted.

**Criterion 4: Conditions will not be required to manage environmental impacts**

Applicants and referrers should, as much as practicable, avoid and minimise environmental impacts to the area while planning their clearing activity. Clearing activities that are likely to require conditions to minimise, mitigate, offset, or otherwise manage effects on the environment are highly likely to need a permit.

### 5.6 What happens after a referral form is submitted?

The department will return a referral form if:

- the referrer did not complete the correct form and/or did not provide the necessary information, and/or
- the proposed clearing is on land subject to an existing agreement to reserve, a conservation covenant, or an environmental protection covenant, and is therefore ineligible for the referrals process (see Section 5.3 above).

If valid, the department will review the referral and make one of the following decisions, having regard to the criteria listed above. For each of the below outcomes (see Figure 3), the department will notify the referrer of the decision in writing.

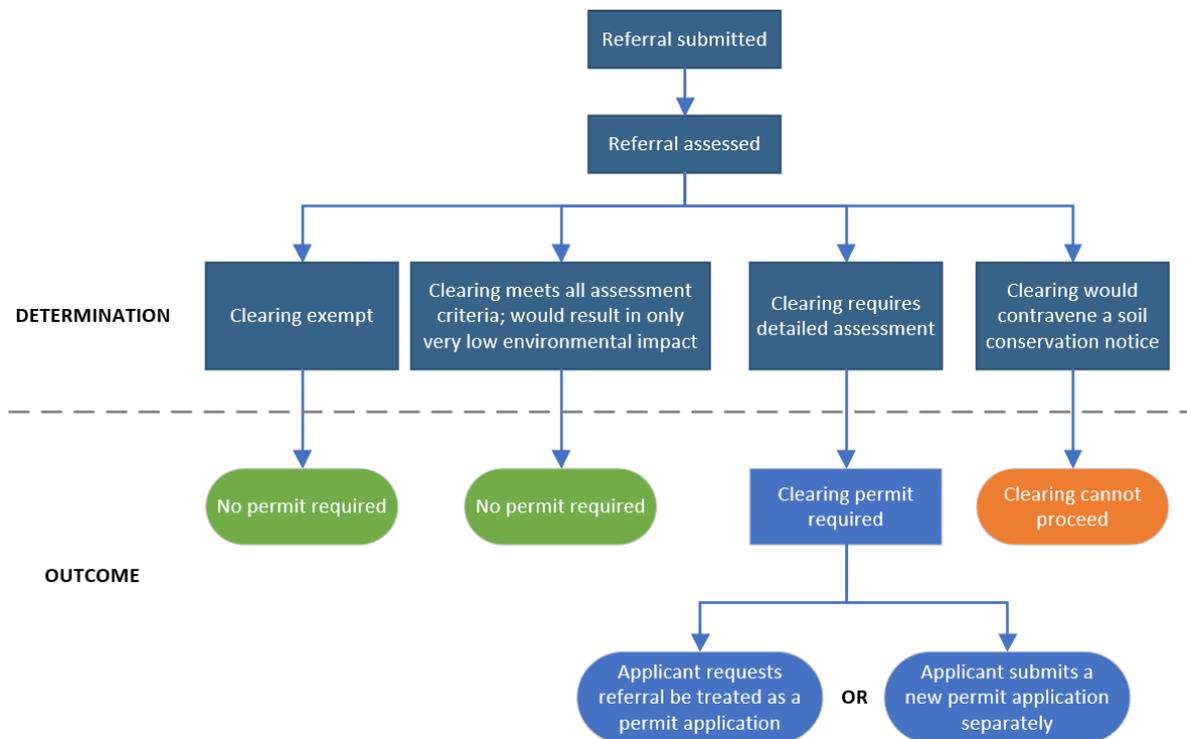


Figure 3. Possible outcomes for valid clearing referral submissions



### **a) No permit required**

The referral outcome will be that a permit is not required if it is determined that the proposed clearing activity:

- qualifies for an exemption, or
- satisfies all of the criteria specified in Section 5.5.

### **b) Permit required**

The referral outcome will be that a permit is required if it is determined that the proposed clearing activity:

- does not qualify for an exemption, and
- does not satisfy all of the criteria specified in Section 5.5.

Once notified, the referrer will have the option to submit a new clearing permit application, or request (in writing) to deal with the referral as if it were an application. They will also be required to pay the relevant prescribed application fee.

The application will then progress through a streamlined validation process, as most of the required information is already captured by the department (either in the referral/application form or in the department's other databases). See the [Procedure: Native vegetation clearing permits](#) for more details about the application process and timeframes.

### **c) Notice that clearing cannot proceed**

If the proposed clearing contravenes a soil conservation notice, clearing cannot proceed (see s.51DA(6) of the EP Act).

## **5.7 What happens if a decision notice is not received within 21 calendar days of submitting a referral?**

If the referrer has not received a notification within 21 calendar days of submitting their referral, they may:

- request in writing that the referral be treated as a clearing permit application and pay the prescribed fee, or
- wait until they are notified of the department's decision.

## **5.8 What happens after the department makes its decision?**

Once a decision is made, the relevant department (DWER or DMIRS) will publish the referral and referral outcome on its website. The referral decision will also be reflected in the [DWER-076](#) dataset.

The EP Act does not provide for an appeal process for referral decisions.



## 5.9 Other obligations that may apply

Referrers should be aware that they may have obligations under other local, state or federal legislation.

For example, a *Country Areas Water Supply Act 1947* (CAWS Act) clearing licence is not required if a referrer was granted an EP Act clearing permit. However, the 'permit not required' referral determination is not legally equivalent to a granted permit and so does not fulfill the requirements of that exemption. In that case, the referrer would still need to obtain a separate CAWS Act clearing licence.



## Document implementation

This guideline comes into effect on the day it is published.

If you have any queries about the information in this guideline, please contact DWER's Native Vegetation Regulation branch by phone on (08) 6364 7000 or via email at [info@dwer.wa.gov.au](mailto:info@dwer.wa.gov.au).

For queries about clearing related to mining and petroleum activities under delegation, please contact DMIRS by phone on (08) 9222 0951 or via email at [nvab@dmirs.wa.gov.au](mailto:nvab@dmirs.wa.gov.au).

## Related documents and resources

### Legislation

<b>Acts</b>
<i>Biodiversity Conservation Act 2016 (WA)</i>
<i>Country Areas Water Supply Act 1947 (WA)</i>
<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>
<i>Environmental Protection Act 1986 (WA)</i>
<i>Environmental Protection Amendment Act 2020 (WA)</i>
<i>Mining Act 1978 (WA)</i>
<i>National Trust of Australia (WA) Act 1964 (WA)</i>
<i>Petroleum and Geothermal Energy Resources Act 1967 (WA)</i>
<i>Petroleum Pipelines Act 1969 (WA)</i>
<i>Petroleum (Submerged Lands) Act 1982 (WA)</i>
<i>Soil and Land Conservation Act 1945 (WA)</i>
<b>Regulations and other subsidiary legislation</b>
Environmental Protection (Clearing of Native Vegetation) Regulations 2004

The Western Australian legislation and subsidiary legislation listed above is available at the [Western Australian Legislation website](#). Federal legislation is available from the [Federal Register of Legislation website](#).

### DWER documents

<b>Guidelines</b>
<a href="#">A guide to the assessment of applications to clear native vegetation</a>
<a href="#">A guide to the exemptions and regulations for clearing native vegetation</a>
<b>Procedures</b>
<a href="#">Procedure: Native vegetation clearing permits</a>



### ***Dataset and other information resources***

Reference	Resource name
<b>Data WA resources (<a href="http://www.data.wa.gov.au">www.data.wa.gov.au</a>)</b>	
DBCA-046	Vegetation Complexes – Swan Coastal Plain
DBCA-047	Vegetation Complexes – South West forest region of Western Australia
DPIRD-005	Native Vegetation Extent
DPIRD-006	Pre-European Vegetation
DPIRD-008	South west agricultural region
DPLH-023	Region Scheme – Zones and Reserves
DWER-075	Clearing Instruments Proposals (Areas Applied to Clear)
DWER-076	Clearing Instruments Activities (Areas Approved to Clear)
DWER-078	Offsets Register – Offsets
<b>Other data resources</b>	
<a href="#"><i>Interim Biogeographic Regionalisation for Australia</i></a>	

## Custodian and review

The currency of this document will be evaluated and reviewed no later than three years from the date of issue or sooner as required.

Document details	
Lead group (custodian)	Better Regulatory Practice, Regulatory Capability
Current version	Version 1.0, October 2021
Previous versions	DWERVT8484
Corporate file number	Better Regulatory Practice, Regulatory Capability