SUBMISSION OF THE WESTERN AUSTRALIAN GOVERNMENT TO THE INQUIRY INTO THE IMPACTS OF NATIVE VEGETATION AND BIODIVERSITY REGULATIONS

The Government of Western Australia appreciates the opportunity to provide a submission to the Productivity Commission's inquiry into the impact of native vegetation and biodiversity regulations.

1. Native Vegetation and Biodiversity Regulations

The Productivity Commission's Issues Paper provides a brief overview of the principal existing Western Australian legislation that relates to native vegetation and biodiversity conservation. A more comprehensive outline of Western Australia's native vegetation and biodiversity conservation regimes is attached (**Attachment A**).

The trend has been for native vegetation and biodiversity regulations to be tightened over time as greater recognition has been given to the benefits of protecting native vegetation and biodiversity. This trend is particularly apparent in relation to rural clearing since the 1980s, as illustrated in the following table.

Table 1: Clearing applications under the Soil and Land Conservation Act (1986-2002)

Year	Area notified (ha)	Area without objection (ha)	% without objection
1986/87	34632	30467	88
1987/88	43259	35624	82
1988/89	78030	61541	79
1989/90	48041	39356	82
1990/91	36137	22953	63
1991/92	12640	7342	58
1992/93	5967	5110	86
1993/94	13078	9443	72
1994/95	10587	6916	65
1995/96	21504	5624	26
1996/97	17132	2258	13
1997/98	9214	956	10
1998/99	9572	1377	14
1999/00	3039	378	12
2000/01	2722	1034	38

The major milestones in the transition to the present clearing controls applying in rural Western Australia are as follows:

- **1976**: Introduction of clearing controls in country drinking water catchments in the South West of Western Australia.

- **1986**: Introduction of a requirement, through regulations made under the *Soil and Land Conservation Act 1945*, that landowners and occupiers must provide notice of their intention to clear in excess of one hectare of land for a change in land use at least 90 days before the commencement of the intended land clearing. This regulation gave

the Commissioner of Soil and Land Conservation an opportunity to object to land clearing if he or she was of the opinion that land degradation was liable to occur as a result of the clearing and subsequent use of the land.

- **1995**: The State Government adopted a stricter approach to land clearing applications dealt with under the *Soil and Land Conservation Act 1945*, under which clearing in local government districts with less than 20% remnant vegetation would not be permitted to proceed in most circumstances (see further **Attachment B**). This greatly slowed the rate of clearing in Wheatbelt Shires.

- **1997**: Signing of the *Memorandum of Understanding for the Protection of Remnant Vegetation on Private Land in the Agricultural Region of Western Australia*, which created a more coordinated process that took into account biodiversity conservation and water resource issues as well as land degradation.

- **1999**: Publication of the Environmental Protection Authority's *Position Statement on Environmental Protection of Native Vegetation in Western Australia*, which included the statement that "from an environmental perspective any further reduction in native vegetation through clearing for agriculture cannot be supported."

- **2002**: Announcement of proposed amendments to the *Environmental Protection Act 1986* that would introduce a system of clearing permits to replace the current complex arrangements for regulation of land clearing. Given the low levels of authorised clearing, the most substantial effect of the amendments (which are presently before the Legislative Council) will be to reduce illegal clearing.

2. Economic impacts of native vegetation clearance and biodiversity conservation regimes

Western Australia faces enormous economic costs from salinity and rising water tables, which could have been avoided or ameliorated with the earlier introduction of native vegetation clearance controls. Annual costs to the State due to salinity are estimated at $660M. These costs include:

- Opportunity cost of lost operating profit on agricultural land: $80M per year;
- Additional repair and maintenance costs for roads: $505M per year;
- Additional repair and maintenance costs for railways: $11M per year;
- Impact on rural towns: $5M per year.[1]

It is important to point out that the retention of native vegetation assists in containing these costs by maintaining watertable levels and thus reducing salinity impacts. As is noted in the *National Framework for the Management and Monitoring of Australia's Native Vegetation*, native vegetation also has other economic benefits, particularly for agriculture, including:

- providing shade for stock, thus reducing heat stress and leading to higher weight gains, improved fertility in sheep and improved milk production in dairy cattle;
- providing stock shelter which reduces lamb and sheep off-shears mortality and improves growth rates;

[1] National Land and Water Resources Audit, *Australian Dryland Salinity Assessment* (2000), http://audit.ea.gov.au/ANRA/land/docs/national/Salinity_WA.html.

- providing shelter and windbreaks for crops and pastures, reducing moisture loss and physical damage to crops;
- preventing soil erosion and reversing other land degradation;
- providing habitat for crop pest predators such as insectivorous bats and birds;
- maintaining water quality and yields;
- providing timber and timber products;
- providing generic resources for future development of pharmaceutical or agricultural products;
- providing fodder resources, especially in drought;
- providing a foundation for the apiary industry;
- providing buffers between agriculture and other land uses, particularly residential areas; and
- providing resources for native plant seed and wildflower harvesting.

Having said this, it is acknowledged that the progressive tightening of clearing controls during the 1990s has affected land values, albeit not in a uniform way. The Valuer-General's office advises that in the more remote wheat and cropping areas the value of uncleared land has been significantly discounted, but in the higher rainfall and more populated areas land values are being sustained by non-agricultural buyers.

The rural real estate market has been adjusting to the tighter clearing controls introduced in the past decade. The landowner who has held bushland for more than a decade with the expectation of future development prospects is most affected. The proportion of landowners in this category is small.

3. Government measures to mitigate negative impacts of native vegetation clearance and biodiversity conservation regimes

As noted above, native vegetation clearance controls have been gradually tightened, particularly since 1995. Government assistance has been provided to assist landowners adversely affected by the transition to stricter controls.

The Natural Resources Adjustment Scheme (applications received 1997-2000) was open to eligible rural landholders who applied to clear remnant vegetation on their land and had had those applications rejected by Government. To be eligible, the property had to be zoned rural and it had to be practical to subdivide the land so that the remnant vegetation sat on a separate "bush block". Under the Scheme, the Government was responsible for coordinating and meeting the costs of subdivision. Once subdivision had occurred, a conservation covenant would be put on the title of the new block and the block would either be sold or a payment would be made to the landholder. Payments were calculated on the basis of the drop in the value of the land as a result of the person not being able to clear. A cap of $100,000 per property was placed on payments made under the scheme. During the life of the scheme, less than 100 landowners were eligible for assistance. About 25% registered an interest and less than 15% accepted offers of grants. More details on the Natural Resources Adjustment Scheme are set out at **Attachment C**.

The purchase of land for the conservation estate has also served as an adjustment measure. This is explicit in the Biodiversity Adjustment Scheme, which was recently established by the State Government to purchase land in rural Western Australia in order to better conserve biodiversity and at the same time provide adjustment assistance. Under this scheme,

applicants must meet both conservation and hardship criteria. If the criteria are met, the Government will purchase the land at the pre-clearing control price. The criteria for the Biodiversity Adjustment Scheme are attached (**Attachment D**).

Land purchase is also used in conjunction with the protection of areas identified in Region Schemes as being of regional conservation significance. Region Schemes presently apply to the Perth metropolitan region and the Peel region south of Perth. Acquisition occurs at market value as if the reservation did not exist. In the Perth metropolitan region the Western Australian Planning Commission has expended in excess of $100M through the 1990s acquiring properties for native vegetation protection. It has also committed a further $100M for the period 2000-2010 to acquire additional properties for native vegetation and conservation under the *Bush Forever* program.

It should also be noted that in 1976, special arrangements to control clearing were introduced for five South-West catchments, where clearing for agriculture was causing a rapid increase in the salinity of previously fresh rivers. These arrangements included a right to compensation for "injurious affection" from the clearing controls in some circumstances.

In addition to the schemes noted above, which directly address the negative effects of native vegetation clearance controls, a range of schemes help to ameliorate the costs of managing native vegetation (e.g. assistance for fencing and management of threatened flora populations). It should also be noted that the State Government is reviewing disincentives relating to the conservation of native vegetation, such as the apparent disincentive created for holders of bush blocks by land tax arrangements, under which there is a land tax exemption for primary producers but not for landowners holding land for conservation purposes.

In respect of biodiversity protection controls under the *Wildlife Conservation Act* 1950, an owner or occupier of private land may apply for compensation for loss of use or enjoyment of land resulting from the refusal of consent to take threatened flora: see s23F(7), *Wildlife Conservation Act 1950*. No compensation has been paid under this provision to date. However, some lands have been purchased for incorporation under the reserve system for their biodiversity conservation values. This right to compensation is somewhat anomalous: there is no right to compensation where a refusal of a licence to take threatened fauna (as opposed to threatened flora) affects the use or enjoyment of land, and there is no right to compensation where biodiversity is protected by a decision under the environmental impact assessment regime.

4. Efficiency and effectiveness of native vegetation clearance and biodiversity conservation regimes in reducing the costs of resource degradation

As noted in Table 1 above, authorised clearing in rural Western Australia has declined significantly in recent years. It is clear that if authorised clearing had continued at 1980s levels, a great deal of native vegetation would have been lost, with associated resource degradation.

For example, in the wool and wheat belt areas east of the Darling Range, farming properties on average retain 10-12% of the original vegetation. Historical clearing to this level has had a significant adverse effect on biodiversity, but clearing controls have at least prevented the further fragmentation of native vegetation remnants, which would have had an even more devastating impact on threatened species and ecological communities. Very few applications

to clear land for agricultural purposes have been received from these areas during the past 7-8 years.

In addition to avoiding biodiversity loss that would otherwise have occurred, clearing controls have helped avoid the loss of other benefits associated with native vegetation. A list of these benefits, drawn from the *National Framework for the Management and Monitoring of Australia's Native Vegetation*, is attached (**Attachment E**).

It is acknowledged that the penalties for illegal rural clearing (a maximum $2,000 fine for individuals failing to notify proposed clearing) have been inadequate, and that illegal clearing in the order of 1000ha per year has reduced the effectiveness of clearing controls in rural areas. This problem will be addressed by proposed amendments to the *Environmental Protection Act 1986*, which will substantially increase the penalties for illegal clearing. It should be noted that the amendments to the Act include retrospective provisions announced by the State Government on 25 June 2002, under which a person undertaking illegal clearing between the date of that announcement and the date on which the amendments come into effect can be required to revegetate the land. This is intended to reduce the risk of illegal clearing increasing in the period leading up to the enactment of the new laws.

5. Appropriateness of current distribution of costs for preventing environmental degradation

[Note: The following statements represent the Government's present policy position concerning the appropriateness if the current distribution of costs for preventing environmental degradation. However, the Government has received representations from interested persons and groups, including the Western Australian Farmers' Federation, and is involved in ongoing dialogue concerning this issue].

In considering the appropriateness of the current distribution of costs for preventing environmental degradation, regard must be had to the "polluter pays" or "impacter pays" principle, according to which the person who causes environmental damage should bear the cost of avoiding or abating that damage. As noted in the Productivity Commission Staff Research Paper *Cost Sharing for Biodiversity Conservation: A Conceptual Framework* (2001), this principle should be supported because it promotes the internalisation of otherwise external costs and promotes efficient outcomes.

The Western Australian Government supports the application of the "impacter pays" principle in the area of native vegetation and biodiversity conservation. However, it also recognises that there may be a case for short-term adjustment assistance where there is a significant increase in a landowner's obligations which could not reasonably have been anticipated by the landowner. These considerations have guided the formulation of criteria for the Biodiversity Adjustment Scheme, under which assistance is only available to landowners who are significantly affected by clearing controls (more than 20% of the property under native vegetation) and who purchased their land before they could reasonably have expected strict clearing controls to be introduced (prior to 17 May 1995 when a stricter Government policy on clearing of remnant vegetation took effect).

In broad terms, the Western Australian Government is satisfied that the current distribution of costs for managing land clearing is acceptable. Having said this, it intends to implement clearing and biodiversity controls in a manner that protects Western Australia's natural assets

while causing the least possible impact on landowners. It will also monitor the implementation of present adjustment assistance measures such as the Biodiversity Adjustment Scheme to see whether current policy settings need to be changed to better assist landowners caught in the transition to stricter controls.

6. Overlap or inconsistency between Commonwealth and State/Territory regimes

There is, in general, no problem of inconsistency between the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ("EPBC Act") and Western Australia's native vegetation and biodiversity conservation regimes. The normal practice of the Commonwealth is to accredit the State's assessment process on a case-by-case basis, so that any dual assessment is avoided. This will be formalised when a bilateral agreement between the Commonwealth and Western Australia comes into effect. Under this bilateral agreement, which will come into effect once minor changes have been made to the *Environmental Protection Act 1986* (WA), environmental impact assessment is carried out by the State for all matters requiring approval under Part 9 of the EPBC Act.

However, concerns have been expressed by the petroleum industry in Western Australia concerning the overlap between the EPBC Act and Commonwealth petroleum legislation. The Commonwealth *Petroleum (Submerged Lands) (Management of Environment) Regulations 1999* ("PSLME Regulations"), which are administered by the Western Australian Department of Industry and Development, require that an Oil Spill Contingency Plan be produced as part of the operational requirements of an offshore facility Environment Plan. The operator cannot commence the operation of a facility without an accepted Oil Spill Contingency Plan. The petroleum industry advises that Environment Australia officers do not appear to recognise this Commonwealth legislation and often duplicate conditions imposed under the PSLME Regulations in conditions imposed under the EPBC Act. Since the enactment of the EPBC Act, condition setting by Environment Australia is often at an operational level which appears to be outside the original objectives of using the EPBC Act to deal with matters of national environmental significance.

7. Assessments of economic and social impacts of decisions

The assessment of the economic and social impacts of decisions under native vegetation and biodiversity conservation regimes differs depending on the nature of the decision:

- In respect of rural clearing proposals, the Commissioner of Soil and Land Conservation assesses whether land degradation is likely to result from the proposed clearing prior to issuing a soil conservation notice. The likelihood of land degradation resulting from the proposed clearing is not balanced against social and economic benefits that may result from the clearing.

- In the environmental impact assessment process, the Minister for the Environment consults with interested Ministers and decision-making authorities and considers social and economic factors raised by those Ministers and authorities before deciding whether a proposal should be implemented.

- Planning mechanisms account for economic and social impacts in a number of ways, such as consultation, hearings and market-based property valuation. Development trade-offs are generally by agreement.

- In considering applications for approval to "take" threatened flora or fauna, the Department of Conservation and Land Management will attempt to reach outcomes that have the least impact on the proponent without compromising native vegetation and biodiversity conservation objectives.

It is recognised that in the environmental impact assessment process, social and economic factors are not subject to the rigorous and public processes associated with assessment of environmental factors. The State Government is presently trialling a "triple bottom line" assessment process in relation to the Gorgon Gas Development proposal, for which biodiversity conservation is a major consideration. This has involved the preparation of publicly available advice on social and economic considerations, in addition to a report prepared by the Environmental Protection Authority on environmental factors. Further information on this process is available on the web site of the Department of Industry and Resources (http://www.mpr.wa.gov.au/).

8. Transparency and extent of community consultation when developing regimes

The Commission is to report on the degree of transparency and extent of community consultation when developing and implementing the native vegetation and biodiversity regulation regimes of the States and Territories (para 3(f) of the Terms of Reference). Because there are a number of elements to the present regimes (e.g. in respect of rural land clearing, a number of different statutes and policies created since 1996), it would take some time to provide an exhaustive account of the community consultation that was carried out in developing those regimes.

The level of consultation has varied depending on whether the change that has been implemented is an incremental change or a major change. For example, the 1995 policy announcement signalling a tougher approach to clearing applications was a change in approach to clearing applications rather than a whole new regime for considering clearing applications, and so did not go through a broad public consultation process. On the other hand, the proposal for a new Biodiversity Conservation Act to replace the existing *Wildlife Conservation Act 1950* is a clear change in the regime relating to biodiversity conservation, and is going through a detailed public consultation process involving public comment on a consultation paper and draft Bill.

The clearing permit provisions to be inserted in the *Environmental Protection Act 1986* were not published for public comment before they were introduced to Parliament because the Government wanted to move quickly to solve obvious problems with existing land clearing laws (e.g. the clearly inadequate penalty of $2,000 for failing to notify illegal clearing). However, the Government will consult with peak bodies such as the WA Farmers Federation, Pastoralists and Graziers Association and Conservation Council of Western Australia concerning regulations to be promulgated under the Act, which will set out the detail of exemptions from the clearing permit provisions (e.g. clearing for the taking of firewood or for making firebreaks).

It should be noted that the Government has established the Natural Resource Management Council to provide advice to Government on natural resource management issues. The Natural Resource Management Council has a majority of community members, and includes members with expertise in a range of areas including sustainable agriculture, biodiversity

conservation and industry development. One of the terms of reference of the Council is to "foster a consultative approach that ensures broad community involvement in NRM policy development."