

32. Land degradation

Land degradation – in its various forms – is one of the most significant environmental threats facing Western Australia. Salinity is predicted to affect six million hectares of agricultural land over the next century, whilst erosion, soil structure decline, acidification and waterlogging are contributing to ecosystem decline, reduced productivity levels and damage to roads, buildings and water reserves.

This fact sheet explains the laws controlling land degradation in Western Australia, and identifies the bodies responsible for their management.

See also **Fact Sheet 7: Clearing native vegetation**, **Fact Sheet 21: Rivers and watercourses**, **Fact Sheet 23: Wetlands**, **Fact Sheet 33: Drainage on agricultural land** and **Fact Sheet 34: Pastoral land management**.



What is “land degradation”?

For the purpose of this Fact Sheet, “land degradation” means the deterioration in the quality of land or soil caused by erosion, salinity, waterlogging, eutrophication, soil acidification, soil structure decline, soil compaction, sedimentation and flooding. It does not include deterioration caused by pollution - refer to **Fact Sheet 27: Pollution and environmental harm** and **Fact Sheet 30: Contaminated sites**.



What are the legal controls on land degradation?

The principal land degradation controls are found in the *Soil and Land Conservation Act 1945*. This Act is administered by the Commissioner of Soil and Land Conservation (“the Commissioner”) within the Department of Agriculture. Local governments also have powers to regulate some types of land degradation through erosion notices and restrictions on vehicle use.



Soil conservation notices

A soil conservation notice (a “Notice”) is a compulsory order that the Commissioner of Soil and Land Conservation can serve on any person causing (or likely to cause) land degradation. A Notice can direct a person to take steps to counter land degradation risks, or cease activities that may cause land degradation.

When can a Notice be issued?

A Notice can be issued where land degradation is likely to result from agricultural or pastoral practice, clearing, or failure to prevent or control soil erosion, salinity or flooding.

Who can be issued with a Notice?

A Notice can be issued (or “served”) on the owner or occupier of the land, or any other person who in the opinion of the Commissioner is acting in a way which is causing or likely to cause land degradation. It is likely that a Notice can be served on State and local governments and their employees.

What can a Notice require a person to do?

A Notice can require a person to take steps to control land degradation, including requiring a person to cease an activity, such as clearing vegetation or running stock on the land. It is likely also that a Notice can be issued to restrain activities in urban areas which are likely to cause land degradation, though the focus of the Act is on agricultural and pastoral land uses.

Important disclaimer:

This Fact Sheet is for general information purposes. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your specific circumstances you should contact the Environmental Defender's Office WA (Inc) or your solicitor. The EDO takes no responsibility for any loss or damage resulting from any error in this Fact Sheet.

What is the penalty for failing to comply with a Notice?

Failure to comply with a Notice is an offence. A maximum fine of \$3,000 applies (or \$15,000 for a company). In addition, when a person fails to comply with a Notice, the Commissioner may authorise a person to enter the land and undertake any works required under the Notice. Any costs incurred by the Commissioner can be recovered through court action.

Who is bound by a Notice?

A Notice is binding on anyone on whom it was served. It is also binding on any subsequent owner or occupier where it has been registered on the land title.

Is there a right of appeal against a Notice?

A person may lodge a written appeal against the service of a Notice with the Minister for Agriculture within 30 days of service. Before determining the appeal, the Minister must seek the advice and recommendations of an appeal committee. A person must comply with the Notice pending the determination of the appeal except where the Notice required positive steps to be taken, in which the lodgement of the appeal postpones the requirement to implement those steps.

A person may also request the Commissioner discharge a Notice at any time where it has been fully complied with or is no longer necessary, or there is other just cause for it being discharged. An appeal can be lodged with the Minister against the Commissioner's refusal to discharge a Notice.

There is no public register of Soil Conservation Notices, although the Commissioner must provide details of all new Notices to the Soil and Land Conservation Council. A third party can request the Commissioner apply a Notice to particular land, or can lodge a complaint that a Notice is not being complied with – for example, where land is in the process of being cleared.



Local government erosion notices

A local government may give written notice (an "Erosion Notice") requiring an owner or occupier of land to take specified measures to prevent or minimise sand drifts which might affect other land.

An Erosion Notice would most commonly be made when a landholder fails to take steps to control sand movement during a new building or subdivision development. Note that the provision relates only to "sand drifts". It is doubtful therefore that it could be used to control dust or erosion caused by the movement of water.

It is an offence not to comply with an Erosion Notice – a maximum fine of \$5,000 applies, together with a daily penalty of \$500. For a company, the maximum penalty may be five times these amounts. Where a person fails to comply with an Erosion Notice, the local government may undertake the works itself and claim the cost of doing so from the person served with the Erosion Notice.



Restrictions on vehicle use

Off-road vehicles such as dune buggies, four-wheel drives and trail bikes can cause significant erosion and destruction of native ecosystems. The use of these vehicles is therefore subject to legal controls under the *Control of Vehicles (Off-road Areas) Act 1978*. Under this Act, the use of off-road vehicles may be restricted by the Minister for Planning and Infrastructure establishing:

- › **permitted areas** – where registered off-road vehicles (e.g. trail bikes and dune buggies) can be lawfully used; and
- › **prohibited areas** – within which the movement of any vehicle is prohibited without a permit.

Maps of permitted and prohibited areas are available for public inspection at the Department of Planning and Infrastructure or the relevant local government office.

A declaration of a prohibited area can apply to private land without the owner's consent, but the Minister can only make such a declaration where it is in the public interest to do so after taking into account matters such as the environmentally sensitive nature of the land or things growing on the land.

In addition to the controls under this Act, vehicles are generally not permitted outside the boundaries of made roads within any reserve or unallocated Crown land. Significant penalties may apply to anyone unlawfully damaging native flora or fauna by driving a vehicle through native vegetation. [See Fact Sheet 12: Crown land management.](#)



Planning approval

Before commencing a development of land, approval is usually required from the relevant local government. The types of activity that require approval varies between local governments. In some areas, earthworks that contribute to erosion may require development approval, whilst in other areas, approval may be required to remove vegetation. Failure to comply with a town planning scheme is an offence, the maximum fine for which is \$50,000 (or \$250,000 for a company). For further information, see [Fact Sheet 3: Planning laws](#) and [Fact Sheet 4: Development controls](#).



Clearing controls

Proposed changes to the *Environmental Protection Act* impose significant penalties on anyone illegally clearing land. For details on the content of these laws, refer to the [Fact Sheet 7: Clearing native vegetation](#).



Drainage controls

Drainage of sub-surface water to control salinity is a growing issue in many agricultural areas, particularly the eastern Wheatbelt. Environmentally sustainable disposal of this water is essential to ensure that drainage practices do not exacerbate land degradation. For more information, refer to [Fact Sheet 33: Drainage on agricultural land](#).



Other controls

Special rules in land conservation districts

Under the *Soil and Land Conservation Act*, regulations can be enacted to control degrading land use practices within any or all land conservation districts. Such regulations can regulate the lighting of fires, the clearing of land and restricting the use of any land for agricultural or pastoral purposes. Regulations have, to date, only been used once – to control land clearing within the Bruce Rock land conservation district in the eastern Wheatbelt.

Damaging native habitats or communities

Land use development proposals that are likely to have a significant impact on a matter of “national environmental significance” need to be approved by the Federal Environment Minister. For information on this process, refer to [Fact Sheet 6: Commonwealth environmental impact assessment](#). For information on other protection on biodiversity, see [Fact Sheet 8: Biodiversity conservation in Western Australia](#).

Interfering with watercourses and wetlands

Activities that may lead to erosion within a watercourse or wetland are subject to special controls administered by the Water and Rivers Commission. For more information, refer to [Fact Sheet 21: Rivers and watercourses](#) and [Fact Sheet 23: Wetlands](#).

Activities on Crown land and reserves

Crown land accounts for 93% of Western Australia’s land area. It is an offence for a person to construct a track or enclose, cultivate or allow stock to graze on Crown land without approval from the Minister for Lands or a reasonable excuse. See [Fact Sheet 12: Crown land management](#).

Mining operations

Mining operations may cause significant localised land degradation. This is especially so in the establishment and rehabilitation phases of a mine’s life. See [Fact Sheet 36: Mining law](#).

Pastoral lands

Pastoral leases occupy approximately one-third of Western Australia’s land area. Improper use of pastoral leases (for example, by over-grazing) can cause significant erosion and loss of biodiversity. See [Fact Sheet 34: Pastoral land management](#).

Environmental harm

A person causing land degradation may be charged with causing material or serious environmental harm under proposed changes to the *Environmental Protection Act*. The maximum penalty for causing serious environmental harm is a fine of \$500,000 (or \$1 million for a company). See [Fact Sheet 27: Pollution and environmental harm](#).

How can you become involved?

There are limited opportunities for public involvement in the administration of land degradation laws. However, if you become aware of an activity that is causing or is likely to cause land degradation, you should report it to the Commissioner of Soil and Land Conservation or local government (see below). Other things you can do include:

- monitoring local government agendas for development proposals that could cause land degradation, and make submissions through the planning process (see **Fact Sheet 3: Planning laws**);
- referring development proposals likely to lead to significant environmental harm to the Environmental Protection Authority for assessment (see **Fact Sheet 5: Environmental impact assessment in WA**);
- recommending to the Minister for Planning and Infrastructure that areas be declared to be “prohibited” to vehicular use under the *Control of Vehicles (Off-road Areas) Act 1978*;
- reporting potentially illegal clearing to the Commissioner of Soil and Land Conservation or the Department of Environmental Protection (see **Fact Sheet 7: Clearing native vegetation**); and
- where authorisation has been granted for an activity, find out what conditions were placed on the activity and if the conditions are not complied with make a complaint to the body which imposed the conditions (may need an FOI request to obtain conditions – see **Fact Sheet 40: Freedom of information under WA law**).

Contacts and further information

Commissioner of Soil and Land Conservation, South Perth

Tel: (08) 9368 3282

Local government

Refer to White Pages for listings

Department of Environmental Protection, Perth

Tel: (08) 9222 7000

Environmental Protection Authority, Perth

Tel: (08) 9222 7000

Water and Rivers Commission, East Perth

Tel: (08) 9278 0300

Pastoral Lands Board, Midland

Tel: (08) 9273 7073

Department of Planning and Infrastructure, Perth

Tel: (08) 9264 7777

Department of Conservation and Land Management, Crawley

Tel: (08) 9442 0300

For copies of WA legislation considered in this fact sheet, contact the State Law Publisher

Tel: (08) 9321 7688

The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- ◆ to provide community groups and individuals with legal advice and representation to help protect the environment;
- ◆ to promote law reform that improves environmental protection; and
- ◆ to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal Attorney-General's Department. However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

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