

Amendments to the Environmental Protection Act 1986 (WA) - finally some good news for landowners

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3 min. read

Worthwhile read for: Landowners

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The *Environmental Protection Amendment Bill 2020* (WA), which is now the *Environment Protection Amendment Act 2020* (WA) (**EPA Act**), was passed by the WA Parliament and received Royal Assent on 19 November 2020. The EPA Act amends the *Environmental Protection Act 1986* (WA) (**EPA**) to streamline and improve regulatory processes for the protection of the environment.

In this alert, Solicitor [Lily Robinson](#) and colleagues discuss the amendments made to the EPA with respect to Environmentally Sensitive Areas (**ESA**).

ESA declarations

Under the EPA, ESAs are declared by Ministerial notice published in a *Government Gazette*. This means that landowners are often not aware that their land is or has become affected by an ESA as no notice is given before or after the declaration is made. Landowners not aware of an ESA may find themselves subject to significant penalties by undertaking clearing activities prohibited by the ESA or purchasing farms which are unable to be farmed.

In recognition of the need to ensure that landowners are notified and consulted prior to their property being impacted by an ESA declaration, the EPA Act requires that –

- ESA declarations are made by regulation rather than Ministerial notice;
- landowners are notified that their land stands to be affected by an ESA prior to the declaration taking effect and are given the opportunity to comment on the declaration; and
- the Minister must take into account any comments received prior to an ESA declaration taking effect.

The EPA Act also amends the EPA to require that all information relating to ESA declarations and amendments be provided to Landgate for inclusion in Property Interest Reports. Although many had hoped that ESAs would be required to be registered on Certificates of Title, inclusion in Property Interests Reports is a step in the right direction towards ensuring that information with respect to ESA declarations is readily accessible by landowners, occupiers, developers and potential purchasers.

What about land that has an existing ESA declaration?

Gradually all current ESA declarations will be rescinded and replaced by regulations. The Minister for Environment has committed to commencing consultation with all landowners who may potentially be affected by existing ESA declarations. Recommendations and other information gathered from the consultation process will be used to develop the regulations.

We will continue to monitor this space and will provide updates when available. It is hoped that the regulations will provide current landowners affected by ESA declarations with an avenue of appeal and relief in circumstances where the Minister chooses to rescind existing ESA declarations where the ESA was incorrectly issued or where a landowner's comments against an ESA are able to be reviewed other than by way of judicial review so as to allow for a simple and reasonably inexpensive review by

an affected landowner.

Comment

In today's society where private property is interfered with in a wide variety of circumstances, it is appropriate for the government to ensure that landowners, occupiers, developers and potential buyers are aware of the interference by introducing an appropriate legislative framework. Although there is a long way to go, the amendments to the EPA requiring landowners and occupiers to be notified of ESA declarations prior to them taking effect, being given the opportunity to comment on potential ESA declarations as well as the inclusion of ESA declarations in Property Interest Reports, are a step in the right direction.

For more information or discussion, please contact our [**Planning & Environment**](#) team.

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