

Environmental Factsheet: Fencing Requirements within the Main Roads Road Reserve

Roadside vegetation plays an important role in maintaining the State's biodiversity, particularly in agricultural regions. Clearing vegetation to install a new fence, or maintenance of an existing one, can have a damaging impact on roadside vegetation. This Factsheet aims to provide landholders with the necessary information to minimise this impact and summarises the legislation relating to boundary fencing, including the clearing of vegetation. Please note, this Factsheet is provided for general information only and is not, and does not replace any need for, legal advice.

Legalities of Clearing

'**Clearing**' means any act that results in killing, destroying, removal or substantial damage¹ to native vegetation. Clearing includes severing or ringbarking trunks or stems (this includes pruning), root damage and burning of vegetation.

'**Native vegetation**' means indigenous aquatic or terrestrial vegetation, including dead vegetation. It does not include vegetation that was intentionally sown, planted or propagated (with some exceptions).

'**Fence**' refers to a structure that is permanently fixed to the ground for controlling the movement of persons or animals. Main Roads considers pastoral fences, boundary fences, and pedestrian fences, to align with this definition. Noise walls and safety barriers are not considered a fence.

Clearing of native vegetation in Western Australia is regulated under the *Environmental Protection Act 1986* (EP Act) and *Environmental Protection (Clearing of Native Vegetation) Regulations 2004* (the clearing regulations) both of which are administered by the Department of Water and Environment Regulation (DWER).

Clearing native vegetation is an offence, unless done under a **clearing permit**, or the clearing is for an **exempt purpose**. **All exemptions apply to the owner; if you are not the owner**, prior authority is required before any works can commence. The clearing of native vegetation along a fence line is exempt from the requirement to obtain a permit. There are two types of exemptions associated with fencing, which are:

- If the fence line is separating crown land and non-crown land, which includes freehold farming properties, clearing of up to 1.5 metres from the fence line can occur on the crown land side, while the owner can clear to the width necessary to provide access to construct or maintain a fence on

¹ Substantial damage means the worsening condition of the road reserve, including its vegetation, as deemed by Main Roads.

the non-crown side. It should be noted that on the non-crown side, together with all other clearing, the clearing must not exceed 5 hectares in a financial year (**Regulation 5, Item 10**).

- For fence lines separating crown land and crown land, including pastoral properties, clearing can occur up to 5 metres on one side and up to 1.5 metres on the other (refer to Figure 1) (**Regulation 5, Item 11**). Although the road reserve often ends up having the 1.5 metre wide strip due to the other side often needing a fire break, there is no hard and fast rule as to which side of the fence must have the 1.5 metre strip and which one can clear up to 5 metres.



Figure 1. Clearing along a Fence Line (Crown land)

The owner of freehold land (e.g. green title land) adjoining a main road or highway cannot clear within the road reserve for the purpose of constructing or maintaining a fence without prior authority of Main Roads and/or the Local Government. Main Roads and/or Local Governments are not obliged to provide that authority. If Main Roads does decide to provide authority to clear, it has the option of specifying a shorter distance from the fence line i.e. less than 1.5 metres.

Exemptions do not apply if:

- The clearing carried out on the non-crown property exceeds 5 hectares in a financial year; or,
- The clearing is in an Environmentally Sensitive Area (ESA). ESAs are declared under the EP Act to prevent incremental degradation of important environmental values such as threatened ecological communities, conservation category wetlands, areas within 50m of threatened flora, Bush Forever sites and areas covered by Environmental Protection policies. Further information on ESAs is available on DWER's website ([Environmentally Sensitive Areas - Department of Water and Environmental Regulation \(der.wa.gov.au\)](http://www.der.wa.gov.au/environmentally-sensitive-areas)).

Further Information on Clearing Exemptions and Permits:

- Refer to '[A Guide to the Exemptions and Regulations for Clearing Native Vegetation](#)' on DWER's website ([Native vegetation clearing permits | Western Australian Government](#)).
- If the clearing does not fit within an exemption, a clearing permit is required. Refer to DWER's website for further information on clearing native vegetation and clearing permits ([Native vegetation clearing permits | Western Australian Government](#)) and the factsheet on '[Native vegetation clearing legislation in Western Australia](#)' on DWER's website ([Native vegetation clearing legislation in Western Australia](#)).

Seeking Permission from Main Roads to Conduct Works in the Road Reserve

Permission must be obtained from the managing authority of the roadside on which any clearing on state roads is to occur. Approval to clear vegetation in the road reserve must be sought as per section 15A (1) of the *Main Roads Act 1930*. If approval is not first granted then an **offense** has been committed under Section 15A(1) of the *Main Roads Act 1930*.

To obtain approval from Main Roads, the [Seeking Approval to Undertake Works within the Road Reserve Application Form](#) needs to be submitted to Main Roads. This form and its associated [Procedure for Seeking Approval to Undertake Works within the Road Reserve](#) is available from Main Roads website at <https://www.mainroads.wa.gov.au/technical-commercial/working-on-roads/> (Technical & Commercial > Working on roads > Third Party Works).

By completing this form, it will identify if a clearing exemption exists for the works or if a clearing permit is required. A [Guide to Completing the Environmental and Heritage Checklist to Undertake Works within the Road Reserve](#) is also available on the website to assist applicants with completing the environmental and heritage checklist within the form to determine what approvals are required, and details the standard Main Roads requirements for working in our road reserve.

Management Strategies

The following management strategies need to be considered:

- When replacing a fence, landowners should minimise unnecessary vegetation disturbance, limit damage to neighbouring native vegetation, and are encouraged to set back the new fence inside their boundary if in an SEA.
- When erecting a fence to prevent wildlife from crossing the road, the standard fence design should be modified for the targeted fauna type, as described in [Design of Fencing/Walls | Main Roads Western Australia](#). Where there is an existing fauna underpass, the fence must tie into the underpass wing-walls and prevent crossing at other locations.
- Where trees are located within the 1.5m fencing exemption limit, they are to be retained unless they are causing damage to property.
- Minimising clearing will help to reduce weed growth and maximise the shelter and habitat values of the roadside vegetation.
- Use a chainsaw to minimise the extent of clearing and soil disturbance. Consider if pruning can allow the works to proceed without clearing large trees.
- The roadside must be left in a safe condition to the satisfaction of Main Roads e.g. (dead) trees stumps and cut branches must be removed to 100mm from ground. Main Roads may request the works area to be cleaned up if it presents a safety hazard to road users.

Road Reserve Fencing Agreement

The *Dividing Fences Act 1961* combines with local government by-laws to regulate the erection and maintenance of dividing fences in Western Australia. This Act provides a process for sharing costs between neighbours and the determination of boundaries. A dividing fence is a 'sufficient fence' that separates the land of different owners, whether on the common boundary of adjoining lands or in a line other than the common boundary.

Where the adjoining land is owned by the Commonwealth, State or local government and is used for public purposes, **the Crown (government) is not required to contribute to the costs of erecting or maintaining the fence.** Main Roads is only able to contribute to the cost of fencing the road reserve when a fencing agreement is entered with the current landowners or leaseholders. Main Roads' *Operational Procedure 81 - Fencing Road Reserves on Highways and Main Roads in Pastoral Areas* (D13#120692) details the aspects to consider for pastoral lessees proposing to enter into a fencing agreement with Main Roads. Contact the relevant Main Roads regional office for further information available at [Contact Us | Main Roads Western Australia](#).