

From: [Karen Smith](#)
To: [Publication and Confidentiality Regulations](#)
Cc: [Brendan Dooley](#); [Sophie Moller](#); [Jan Rayner](#)
Subject: Consultation on Draft Publication and Confidentiality Regulations
Date: Tuesday, 7 September 2021 3:30:36 PM

Good afternoon,

Thank you for providing the Department of Biodiversity, Conservation and Attractions with the opportunity to provide feedback on the draft Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021.

Please see below comments for your consideration:

Regulation	Comments
Part 2 / regulation 12 – CEO may keep certain matters confidential	We note that this provision does not include ‘threatened ecological communities’ (TECs) as defined in section 5(1) of the <i>Biodiversity Conservation Act 2016</i> (BC Act). Is this deliberate or an oversight? This may also be applicable to listed TECs under section 528 of the Commonwealth Environment Act.
Part 3 / regulation 3C – Authority may keep certain matters relating to proposals confidential	We note that this provision does not include ‘threatened ecological communities’ as defined in section 5(1) of the BC Act. Is this deliberate or an oversight? This may also be applicable to listed TECs under section 528 of the Commonwealth Environment Act.
Part 2 / Part 3 – proposed inclusion	<p>Certain statutory protections are being provided through the new regulation, for withholding publication of specific information relating to BC Act related values, but there are no similar provisions relating to Indigenous heritage and culture values (of reserves in particular from our perspective) that may be confidential to Aboriginal stakeholders such as our jointly vested Aboriginal bodies corporate or joint management partners.</p> <p>In this regard we note that although draft regulations relate specifically to information discussed as part of native vegetation clearing permits, one of the clearing principles that must be considered by the CEO of DWER in relation to a permit application is whether “The clearing of the vegetation is likely to have an impact on the <u>environmental</u> values of any adjacent or nearby <u>conservation area</u>”</p> <p>The definition of ‘environment’ within the EP Act (section 3, subsection 1) is as follows:</p> <p><i>“environment, subject to subsection (2), means living things, their physical, biological and <u>social surroundings</u>, and <u>interactions between all of these</u>”;</i></p>

(2) For the purposes of the definition of environment in subsection (1), the social surroundings of man are his aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by his physical or biological surroundings.”

This may not be an issue if the latter aspects are covered by confidentiality provisions under other legislation such the *Aboriginal Heritage Act 1972* (AH Act), however it may be applicable in circumstances where affected values of CALM Act reserves subject to clearing applications by third parties fall outside the scope of matters of the AH Act and need to be addressed in the clearing assessment. In that case there may well be information that affected Aboriginal stakeholders may wish to have withheld from publication.

If you would like to discuss the comments provided, please feel free to contact me at any stage.

Regards,

Karen

Karen Smith

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From: Publication and Confidentiality Regulations

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Sent: Tuesday, 24 August 2021 5:35 PM

Subject: Consultation on Draft Publication and Confidentiality Regulations

[External Email] This email was sent from outside the department – be cautious, particularly with links and attachments.

Dear stakeholder,

The [Environmental Protection Amendment Act 2020](#) was passed by the Western Australian Parliament on 19 November 2020. It introduces a raft of amendments to Western Australia’s primary environmental legislation – the *Environmental Protection Act 1986* (EP Act). These amendments are being introduced through a staged approach. The Department of Water and Environmental Regulation is developing regulations and guidance which will support the effective implementation of amendments being proclaimed under each stage. Further information is available [here](#).

The Department is seeking your feedback on the draft Environmental Protection Regulations Amendment (Publication and Confidentiality) Regulations 2021, which have been developed as

part of this process. The Draft Regulations will improve and streamline the materials the State can publish and hold in confidence. This will provide greater transparency on the matters that can be held confidential and those matters that the public can expect to be published. These regulations are intended to continue current Environmental Protection Authority and Department of Water and Environmental Regulation practices in relation to protecting confidential information that has been received in connection with proposals submitted under Part IV of the EP Act and clearing permits under Part V Division 2 of the EP Act.

To view these Draft Regulations and for further information on how to submit your views, please click [here](#).

Kind regards,
Department of Water and Environmental Regulation

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