



compliancepolicy@dwer.wa.gov.au

18 September 2019

Compliance and Enforcement Policy Consultation
Department of Water and Environmental regulation
Locked Bag 10
JOONDALUP DC WA 6919

Draft Compliance and Enforcement Policy by DWER May 2019

The Urban Bushland Council WA Inc. makes the following submission. Comments are made under the headings in the draft.

Introduction - page 3

The aim is commended. The DWER commitment to ensuring compliance with the legislation it administers is strongly supported. In order to achieve this, it is strongly recommended that a significant increase in administration rigor is needed by DWER in order to ensure compliance with the Clearing Principles as specified in the Clearing Regulations under the EP Act. Our comments will focus mostly on the Clearing Regulations and environmental assessment under the EP Act.

There is considerable widespread community concern that the Clearing Regulations are not being properly applied in the spirit and intent in which they are written, and now as the result the environment is suffering severe decline especially in the over-cleared South West Biodiversity hotspot and the Wheatbelt. Both these regions are dominated by threatened ecological communities and endangered species and are under multiple threats. Native vegetation should not be cleared if it is at variance to 1 or more of the Clearing Principles. Therefore in these two regions, native vegetation clearing, regardless of patch size, should not be permitted. This must therefore be the approach in DWER's approach to ensuring compliance with the legislation it administers in these two regions.

2 Context – page 5

Strongly supported. We emphasise in this context that climate change is a risk to public health and the environment. Biodiversity loss from clearing accelerates, with flora, fauna and ecosystem losses and extinctions.

4 Regulatory approach - page 7

The first dot point is not clear and may be better omitted.

The second and third dot points are strongly supported. '*Applying regulatory best practice principles*' means that the Clearing Principles will be applied in assessing clearing applications. This is strongly supported and implies an approach of much improved application of the Clearing Principles under the Clearing Regulations.

We emphasise the importance of this key major increase needed in compliance and enforcement as the present practices are not adequate and '*improvement and enhancement of public health, environmental and water resource outcomes*' is not being achieved. They are declining and this is unacceptable.

Regulatory best practice principles - pages 7-8

Risk based: Consideration of cumulative impacts is strongly supported. Indeed the ‘classic death of a thousand cuts’ is now resulting in unacceptable native vegetation net loss and biodiversity decline in our South West biodiversity hotspot. This is especially the case in the Perth Peel region where cumulative impacts of patch by patch loss must be stopped. There is now so little vegetation (<<10%) remaining in the Wheatbelt that all remnants and roadside connectivity is critical habitat and must be retained, regardless of how small.

Cumulative impacts of groundwater decline must also be considered, especially in the context of declining rainfall in the south west and Wheatbelt, and excessive groundwater abstraction.

Evidence based: Supported.

Transparent: Supported. In line with the statements made, the public has a right to know the extent of land clearing in each IBRA region. This should continuously be available on line via DWER. Net changes in vegetation cover in each IBRA region should be publicly reported at least annually, preferably 6 monthly. Notably this could also include changes after fire, and regrowth after fire from satellite imagery such as Land Monitor.

Collaborative: Supported. Enforcement action in the outstanding public interest of climate change and biodiversity conservation is essential. This enforcement action must include rigorous enforcement of the Clearing Principles in assessments and decisions under the Clearing Regulations. This means that a land clearing moratorium is applicable for the South West region and the Wheatbelt and there should be no exemptions.

Consistent: Strongly supported. This requires a change to ensure that all LGA’s are required to comply. Currently some LGA’s are clearing roadsides without authority. All roadside clearing in the Wheatbelt must be stopped. Exemptions are not applicable and should not be permitted.

Responsive and effective: Supported. Notably there is a gap here in practice to date, with too many ineffective decisions. The Appeals process under the EP Act is weak and largely ineffective and this needs to change so that for example, Clearing Permits are refused where the clearing is at variance to one or more Clearing Principles. Appeals based on sound merits and scientific evidence by community groups nearly all fail to be upheld. A legally strengthened effective appeals process is needed, such as an Environmental Appeals Tribunal based on merits or an Environment Court for WA.

5. Compliance: pages 9 – 10

First paragraph is strongly supported. So please do it.

5.1 Establishing compliance priorities: Supported, especially the last dot point for cumulative impacts. Again we emphasise that this is currently not being applied, and must be rigorously applied to stop net loss of native vegetation and biodiversity values in the ‘classic death of a thousand cuts’ by clearing patch by patch.

Strict compliance with the Clearing Principles by DWER in assessments and decisions is essential, especially in the over cleared Wheatbelt and South West region. This should be a high priority, and no exemptions should apply.

5.2 Compliance promotion: Supported. More promotion is needed to inform landholders and especially government agencies such as Landcorp, Main Roads, Water Corporation and all LGA’s.

5.3 Compliance monitoring: Supported with the exception of no.4. It should be modified so that DWER investigates all reports and complaints by the community to DWER Pollution Watch. If more staff are needed to do this work, they should be employed and properly resourced to do so.

6. Enforcement – pages 11 – 16

Introductory section needs to include rigorous decision-making by DWER to comply with provisions of the EP Act and its principles of environmental protection.

Introduction of an improved legal process for appeals and breaches of law is needed such as an Appeals Tribunal based on merits or an Environment Court for WA. In NSW there is a Land and Environment Court which has been operating for many years.

6.1 Enforcement principles (page 11): Supported. We especially support the second last dot point '*Enforcement actions will be applied consistently across all sectors of the community, industry and government*'. Enforcement actions on LGA's and Main Roads concerning roadside clearing in the South West and Wheatbelt need to be greatly increased so that they are rigorously enforced with no more clearing permitted.

As stated in the last point on page 11, the DWER must apply and enforce use of the Clearing Principles in its decisions and enforcement actions. Offsets and exemptions are not applicable to justify permission to clear when it is contrary to a Clearing Principle. DWER must abide by the principles under the EP Act including the precautionary principle, the principle of inter-generational equity, and the protection of the environment.

Again it is recommended that legislative powers be strengthened to avoid the failures and weaknesses in environmental protection we are seeing with the introduction of a **State Environmental Appeals Tribunal based on merits, or an Environment Court for WA.**

6.2 Types of enforcement action – pages 12 – 14

Unauthorised clearing and/or rubbish dumping and off-road vehicle and other damage to native vegetation should all be serious offences with increased penalties. Once native vegetation has been damaged, especially on the Swan Coastal Plain, 100% restoration can never be achieved and is expensive. Thus the emphasis must be on prevention, with well publicised and heavy penalties for offences. Penalties for unauthorised clearing should be greatly increased.