

Pastoralists & Graziers Association of WA

Submission on:

**Discussion Paper on Cost Recovery for the Department of
Water and Environmental Regulation**



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Submission from Pastoralists & Graziers Association of WA on Cost Recovery for DWER: Supporting delivery of improved environmental and water regulation

The Pastoralists and Graziers Association of WA (PGA) appreciates the opportunity to make comment on the Discussion Paper.

The Pastoralists and Graziers Association of WA

The PGA is a non-profit industry organisation established in 1907, which represents primary producers in both the pastoral and agricultural regions in Western Australia. Members include pastoral leaseholders and freehold farmers through the full spectrum of some of Australia's largest corporate pastoral groups to family-owned companies and trusts and individual landholders in Western Australia.

The PGA's core and guiding principles are subsidiarity¹, self-interest, self-reliance, property rights, rule of law, free markets, competition, lean², small government and reduced regulations.

In both pastoral and agricultural regions of WA, the viability and success of PGA member businesses, and the economic benefits that flow to both regional economies and to the entire Western Australian economy, are totally dependent of access to land and water.

In the south-west agricultural region, member operations are dominated by broad-acre production of grain and livestock on land historically cleared of native vegetation. In order to increase efficiency of grain or livestock production, members may seek approval to clear relatively small areas of remanent native vegetation.

In pastoral regions, livestock production is primarily based on utilization of native and introduced grass species within an otherwise intact natural ecosystem. Limited clearing of native vegetation has been undertaken historically for homesteads, equipment sheds, livestock yards, internal roads and fences. With the advent of irrigated production in pastoral regions, applications are being made, and are expected to increase in number, for clearing relatively large areas of native vegetation.

In the agricultural region, grain production is nearly always rain fed and livestock production uses a mix of overland flow stored in dams, groundwater and scheme water. In pastoral regions, livestock production typically uses groundwater or access to flowing rivers and streams in wet season and residual lagoons in the dry season. While the "watering stock" exemptions in the Rights in Water and Irrigation Act permit PGA members to take water without a licence for many livestock production situations, they will still require a 26D licence to construct or alter a bore, a 5C licence to take water

¹ Subsidiarity - the principle that decisions should always be taken at the lowest possible level or closest to where they will have their effect, for example in a local area rather than for a whole country;
<http://dictionary.cambridge.org/dictionary/english/subsidiarity>

² LEAN simply means creating more value for customers with fewer resources (<https://www.lean.org/WhatsLean/>)

from a watercourse, wetland or underground source for non-exempt uses and a permit to interfere with the bed and banks of a watercourse (s.17, s.11 and s.21A).

The Western Australian Environmental Regulatory Regime and the Role of DWER

The PGA acknowledges that under WA legislation the DWER has regulatory responsibility for protection of the environment and water resources as laid out in various Acts and Regulations.

The PGA supports streamlining of regulatory processes to minimize the costs to both its members directly in the form of regulatory fees and charges and indirectly as members of society co-funding the public funded component of regulatory costs.

The PGA supports the concept of a one-stop-shop for environmental and water approvals as part of this streamlining of processes.

What is a modern regulatory approach?

The current Western Australian environmental regulatory system is by definition contemporary, in the sense that it is the current system, but is it modern?

The regulatory philosophy and practice in Western Australia, is strongly influence by the early 20th Century economist Pigou and his welfare economics; in particular that regulations are required to address so called 'market failures' and that 'taxes' are an efficient and effective means of minimizing externalities imposed by one person's activities on others.

The PGA believes there is substantial evidence that this 'Pigovian' regulatory approach is failing, if not failed. The environmental regulatory framework in WA has steadily grown since the 1970's into a 'leviathan' that successive state governments increasingly struggle to service financially and with sufficient fit-for-purpose human resources.³ Furthermore the gap between the demands of the regulatory system and the ability to service it is widening.

The demands of the current environmental regulatory system can also be perceived or experienced as burdens; both to government regulators and those being regulated. One tangible expression of the burden of the current system is long delays in approval processes undertaken by regulators and the associated significant opportunity costs to both applicants and the broader community.

In this context, the PGA sees the current move by WA Government to increase land clearing fees and to introduce fees for water licenses and permits, **in part** to sustain a failed paradigm and its associated overly complicated and costly processes.

The PGA believes it is clear that a new paradigm is needed to replace the current broken regulatory paradigm. The PGA believes that a more modern solution to regulating environmental matters lies in the seminal work of the Nobel Laureate economist Ronald Coase in developing a property rights-based solution to *The Problem of Social Cost*⁴ and the New Institutional Economics subsequently developed by the likes of Nobel Laureates Oliver Williamson, Douglass North and Elinor Ostrom and research

³ See *The Growth of Federal Environmental Law 1971-2016* (April 2017) Institute of Public Affairs; (https://ipa.org.au/wp-content/uploads/2017/05/IPA_Report_Growth_Of_Federal_Environmental_Law_170430.pdf); while this is an analysis of Australian Federal environmental laws, the PGA believes the growth trajectory is mirrored in the growth trajectory of WA environmental laws.

⁴ <https://www.law.uchicago.edu/files/file/coase-problem.pdf>

programs of organizations such as the Property Environment Research Centre (PERC)⁵. This approach to 'regulating' environmental issues is a late 20th Century solution.

In this regard, the PGA supports the alternative framework proposed recently by the Institute of Public Affairs (IPA) in *Five Principles of Red Tape Reduction* (2018)⁶. The IPA alternative framework is based on these five principles:

1. Eliminate the need for approvals by replacing with an inspection and reporting regime
2. Embrace market-based solutions that are based on the trading of secure property rights
3. Harness the benefits of economic competition
4. Use the power of subsidiarity by decentralizing regulatory authority
5. Minimize interaction with government

The PGA, like the IPA, believes that the implementation of these principles would result in a significant reduction in the cost of regulation to both the public (through reduced government regulatory costs) and proponents of economic activities (through reduced or eliminated approval costs), dramatically increase economic activity while not decreasing environmental outcomes.

However, the PGA does recognize that we are some way away from a broad societal recognition that the current 'Pigovian' regulatory framework has failed and is in need of replacement by a more modern 'Coasian' regime that is more effective, efficient and less costly. Consequently at this point in time, while advocating for this paradigm change, the PGA recognizes that it must continue to work to minimize and ameliorate the negative impacts of the current regime.

Government Direction on Cost Recovery

The PGA understands that the current WA Government, like its predecessors, is pursuing cost recovery using the principles outlined in *Costing and Pricing Government Services: Guidelines for use by agencies in the Western Australian Public Sector* (June 2015)⁷ or earlier editions.

The PGA is also aware of national publications such as the Productivity Commission's Report *Cost Recovery by Government Agencies* (2001)⁸; the *Australian Government Charging Framework* (2015)⁹; the Australian Government Cost Recovery Guidelines (2014)¹⁰ and the *National Water Initiative Pricing Principles* (2010)¹¹ that have influenced, or should have influenced, the development of cost recovery policies in state jurisdictions including WA.

The following specific principles are stated in the Discussion Paper as being used as in DWER's current consideration of cost recovery measures:

- Ensure a fair and equitable process for applicants
- Achieve, or make adequate progress towards achieving, full cost recovery where appropriate
- Resist over-recovery of costs
- Achieve competitive pricing (in comparison to service providers locally and in other jurisdictions)

⁵ <https://www.perc.org/>

⁶ <https://ipa.org.au/wp-content/uploads/2018/06/IPA-Report-Principles-of-Red-Tape-Reduction.pdf>

⁷ https://www.treasury.wa.gov.au/uploadedFiles/Treasury/Publications/costing_and_pricing_guidelines_june2015.pdf

⁸ <https://www.pc.gov.au/inquiries/completed/cost-recovery/report>

⁹ <https://www.finance.gov.au/sites/default/files/RMG302-Australian-Government-Charging-Framework.pdf>

¹⁰ https://www.finance.gov.au/sites/default/files/australian-government-cost-recovery-guidelines_0.pdf

¹¹ <http://www.agriculture.gov.au/water/policy/nwi/pricing-principles>

- Reflect movements in input costs

The PGA agrees that consistent, timely and transparent decision-making benefits a diverse range of stakeholders including individuals, businesses, the community, the economy and the environment. In economic terms, these benefits can be categorised as delivering a mixture of private and public good or benefits.

In the case of both land clearing and economic use of WA's water resources, there is clearly a private benefit to the individual or entity applying for the clearing permit or water licence/permit. However, there are also significant benefits to the public. The economic activity and wealth creation that flows from land clearing or use of water has a wide range of public good outcomes to Western Australian society including employment and more vibrant regional and state communities and economies.

From a philosophical perspective, the PGA supports user pays but does not support wealth transfers or subsidization of one group by another as these create economic distortions and false economies. Consequently, for PGA it is important that any proposed user pay contribution to a regulatory 'service' is underpinned by a sound and transparent private-public good analysis; so as to minimize the likelihood of wealth transfers or subsidization. While any private-public good analysis is inherently challenging, there is currently a dearth of such analyses in regulatory discussions in Western Australia¹². This needs to change.

While the PGA supports user pays, it also strongly believes that purchasers of any product or service have an absolute right to be confident that the price is as low as possible and they are getting value for money. Normally in a non-monopoly market this would be provided by the downward pressure that competition places on competing sellers of products and services. However, DWER is a monopoly supplier of regulatory 'services' and therefore there is no competition providing incentives for minimizing the cost of providing the regulatory 'services'. Consequently we must engineer alternative mechanisms to competition that emulate the downward pressure on the cost of the regulatory 'service'.

One alternative mechanism is purposely limiting the budget of regulators so as to force the development of a lean culture that is continually reviewing regulatory processes, looking for opportunities to improve efficiency. This of course is what all businesses are subjected to every day.

In this context, the pursuit of a user pay contribution from entities seeking approvals for clearing permits or water licences and permits, should not be used to alleviate the pressure on regulatory agencies to be as lean as possible. On the contrary the user pay contribution should only be based on an assessment of what the private-public good breakdown is.

The PGA believes that approval processes should be fully transparent so that both applicants and the general public can be confident that the processes are efficient, effective and economical. It is also important that all criteria used in assessment of applications are clearly defined, and methodologies and regulatory decisions are clearly articulated. The ability of both applicants and the general public to continually scrutinize regulatory processes will ensure that there are strong drivers for continual improvement in the efficiency, effectiveness and cost of the processes.

Another potential mechanism for monitoring the efficiency, effectiveness and cost of regulatory processes is regular review by an independent body such as the Economic Regulation Authority (ERA).

¹² The work of the Economic Regulation Authority (ERA) would be one exception to this generalization.

An example of this role by the ERA is the *Inquiry into Water Resources Management and Planning Charges* (2011)¹³.

The PGA strongly supports the application of modern risk management principles and tools to regulatory processes; that is an evidence-based approach for assessing the risks associated with each application and each applicant. The modern risk management philosophy and practice is based on considering both the likelihood of an event occurring and the impact of an event if it was to occur. Modern risk management combined with modern quality management philosophy and tools can dramatically reduce regulatory cost to both applicants and regulators (public).

The 'hand' of regulation should be light where an applicant has demonstrated a high level of understanding of their current activities and their impact on environmental values, a track record of low impact on environmental values, and a clearly articulated understanding of the potential environmental impacts of proposed activities and how to ameliorate or prevent them. These demonstrations are most efficiently and effectively made through applicants possessing modern management systems that measure and record operations and any associated environmental impacts.

In contrast, the 'hand' of regulation should be heavier where an applicant has not demonstrated a high level of understanding of their current activities and their impact on environmental values, lacks a track record of low impact on environmental values, and has not clearly articulated an understanding of the potential environmental impacts of proposed activities and how to ameliorate or prevent them.

In between these two extremes the 'weight' of regulatory attention will depend on the degree that each of these type of evidence exists.

The differential 'weight' of regulatory attention, based on risk and the associated costs to applicants, is a very strong driver for applicants to improve their management (evidence) systems which in turn should result in a lightening of the regulatory burden. This is market forces at work at the applicant level.

Similarly, the differential 'weight' of regulatory attention, based on risk and the associated costs to the regulator (public), is a very strong driver for regulators to prioritize their limited budgets on the high risk applications and not on low risk applications. This is market forces at work at the regulator level.

A very important aspect of modern risk management philosophy and practice is that risk is not eradicated, but minimized. This is one reason that bureaucratic and political decision-makers often struggle with properly applying a modern risk management framework as any risk of a negative outcome is unacceptable for political reasons. In this regard, transparency of regulatory processes and decisions will permit non-government scrutiny of the application of modern risk management practice.

¹³ <https://www.erawa.com.au/cproot/9476/2/20110329%20D62487%20Final%20Report%20-%20Inquiry%20into%20Water%20Resource%20Management%20and%20Planning%20Charges.PDF>

Schedule 1 - Native Vegetation Clearing

PGA comments and recommendations:

1. Complete or partial clearing of native vegetation is a pre-requisite for efficient and profitable modern agricultural production.
2. PGA members need to be able to clear native vegetation with the minimum of regulatory cost and time delays.
3. A strategic approach to clearing, provided through a strategic purpose permit would therefore be beneficial if it delivered streamlined clearing activities for PGA members.
4. The PGA and its members need more detailed information about what front-end requirements (cost, time and information) a strategic purpose permit would require before being able to understand the cost benefit advantages of this type of permit.
5. A strategic purpose permit could potentially encourage PGA members to develop a whole of property plan for approval which then permit them to clear approved areas at time of their choosing.
6. The PGA supports a user pay component to help pay for regulatory processes, but it should be proportionate to the private benefit estimated from private-public benefit analysis.
7. The entire regulatory process for assessing clearing permits should be publically transparent so all parties paying for the regulatory processes (both private and public) are able to understand the criteria, methodology and rationale for regulatory decisions, monitor the efficiency, effectiveness and cost of the regulatory processes and ensure that only cost recovery of regulatory costs is occurring and not tax collection.
8. Currently in the absence of fully transparent regulatory processes for assessment of land clearing permits and a private-public benefit analysis it is difficult to impossible for PGA to make comment on the proposed revised fee structure for clearing permits detailed in Table 1 of the Discussion Paper¹⁴.
9. In planning annual budgets, businesses require adequate notice of increases in input costs, including regulatory costs. The proposed fee increases for clearing permits are significant and PGA recommends that they are phased in over a 5 year period in a stepwise fashion.

¹⁴ Discussion Paper on Cost Recovery (Aug 2018), DWER, p10.

Schedule 2 - Water:

Implementation of Cost Recovery Process for Water Licences and Permits to Date:

The PGA regards the unilateral imposition of water licencing and permit fees on the mining and public water scheme supply sectors that was announced in May 2018 as problematic for the following reasons:

1. It denied two industry sectors 'procedural fairness'
2. It established a 'benchmark' for all industry sectors without any opportunity for non-government organizations to challenge and review the current approval processes, including transparently assessing approval process efficiency and the associated costs.
3. In conjunction with the Discussion Paper, introduced the possibility of differential charges for different industries which fundamentally introduces inequity and increases the potential for political interference in regulatory decision-making.

Other PGA comments and recommendations:

1. Sustained access to water is a pre-requisite for efficient and profitable modern agriculture.
2. PGA members need to be able to access water with the minimum of regulatory cost and time delays.
3. The PGA supports a user pay component to help pay for regulatory processes.
4. Economic use of water delivers both private and public benefits.
5. Therefore the PGA supports the introduction of a user pay component for the assessment of water license and permit applications, but it should proportionate to the private benefit estimated from private-public benefit analysis.
6. The entire regulatory process for assessing water license and permit applications should be publically transparent so all parties paying for the regulatory processes (both private and public) are able to understand the criteria, methodology and rationale for regulatory decisions, monitor the efficiency, effectiveness and cost of the regulatory processes and ensure that only cost recovery of regulatory costs is occurring and not tax collection.
7. Currently in the absence of fully transparent regulatory processes for the assessment of water license and permit applications and a private-public benefit analysis it is difficult to impossible for PGA to make comment on the proposed fee structure for assessment detailed in Table 5 of the Discussion Paper¹⁵.
8. A strategic water licence or permit should be possible whereby an applicant can aggregate all water activities requiring assessment to be assessed together with a commensurate cost reduction.

¹⁵ Discussion Paper on Cost Recovery (Aug 2018), DWER, pp.19-20.

9. The PGA supports the application of modern risk management philosophy and practice in the determining what level of regulatory assessment is required. This should be reflected in the user pay charge.
10. In planning annual budgets, businesses require adequate notice of increases in input costs, including regulatory costs. From a zero starting point, the proposed fee increases for assessment of water licenses and permits are significant and PGA recommends that they are phased in over a 5 year period in a stepwise fashion.
11. For similar reasons, collection of fees annualized over the term of license would minimize negative impact on business budgets.

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