



Government of **Western Australia**  
Department of **Water and Environmental Regulation**

# Consultation summary

Compliance and Enforcement Policy

Department of Water and Environmental Regulation

November 2020

Department of Water and Environmental Regulation  
Prime House, 8 Davidson Terrace  
Joondalup Western Australia 6027  
Locked Bag 10 Joondalup DC WA 6919

Phone: 08 6364 7000

Fax: 08 6364 7001

National Relay Service 13 36 77

[dwer.wa.gov.au](http://dwer.wa.gov.au)

© Government of Western Australia

November 2020

FIRST 115897

This work is copyright. You may download, display, print and reproduce this material in unaltered form only (retaining this notice) for your personal, non-commercial use or use within your organisation. Apart from any use as permitted under the *Copyright Act 1968*, all other rights are reserved. Requests and inquiries concerning reproduction and rights should be addressed to the Department of Water and Environmental Regulation.

### **Disclaimer**

This document has been published by the Department of Water and Environmental Regulation. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Department of Water and Environmental Regulation and its employees are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be in respect of any representation, statement, opinion or advice referred to herein. Professional advice should be obtained before applying the information contained in this document to particular circumstances.

This publication is available at our website [www.dwer.wa.gov.au](http://www.dwer.wa.gov.au) or for those with special needs it can be made available in alternative formats such as audio, large print, or Braille.

# Contents

1	Introduction.....	1
2	Consultation submissions .....	2
	Table 2: Response to Submissions.....	3



# 1 Introduction

Following the creation of the Department of Water and Environmental Regulation (the department) on 1 July 2017, development of a Compliance and Enforcement Policy commenced to replace the policies of the three former departments.

On 27 May 2019, the department released its draft Compliance and Enforcement Policy for 12 weeks of public comment. This Policy detailed the department's approach to ensuring compliance with the legislation it administers, responding to breaches of the law to deter and punish offenders, and rehabilitate damage caused to the environment.

On 1 July 2019, the department identified that because of a technical malfunction, some registered stakeholders did not receive notification of the Policy's release for consultation. This malfunction was rectified, and all registered stakeholders were notified of the release of the Policy for consultation on 2 July 2019. To ensure all stakeholders had sufficient time to prepare a submission, the consultation period was extended until 20 September 2019.

Seventeen submissions were received during the consultation period and this consultation report summarises these submissions and the department's response to the issues raised.

Feedback received during the consultation period has informed the finalisation of the Policy. The department thanks all stakeholders who took part in the process.

## 2 Consultation submissions

Submissions were received from 17 stakeholders as listed in Table 1.

Table 1 Consultation submissions received

<b>Organisation/Individual</b>
Aqwest
Byford Progress Association
The Chamber of Minerals and Energy of Western Australia
Environment Institute of Australia and New Zealand (EIANZ) and National Environmental Law Association (NELA)
Peel-Harvey Catchment Council
Peel Preservation Group
Serpentine Jarrahdale Ratepayers Association
Shire of Mundaring
Shire of Serpentine-Jarrahdale
South-West Forests Defence Foundation Inc
Thomas Dyer
Urban Bushland Council
WALGA
Warwick Boardman
Water Corporation
Wildflower Society
Waste Management and Resource Recovery Association Australia (WMRR)

**Table 2: Department response to submissions**

Submitter	Section	Stakeholder comment	Department response
Shire of Serpentine-Jarrahdale	General comment	<p>The nature of compliance is different to the nature of enforcement, which questions the appropriateness of combining these functions in the one policy.</p> <p>Compliance strategies for example are often regarded as based upon advice and persuasion, emphasising the prevention of environmental harm through industry cooperation and self-regulation. Conversely, enforcement takes an emphasis on punishing environmental harm, with such punishment being sufficient to act as a deterrent. Thus the draft policy needs to be able to deal with what appears to be very mixed approaches.</p> <p>Officers point out that:</p> <ul style="list-style-type: none"> <li>• These are varied strategies at either end of the regulatory spectrum;</li> <li>• There is research critical of compliance based strategies, such as arguing that advice and persuade/compliance oriented strategies of enforcement can degenerate into laxity and failure to deter those who have no interest in complying voluntarily;</li> <li>• There is likewise research critical of enforcement based strategies, such as its effectiveness being influenced by the specific legal frameworks on offer, and the often difficulty encountered in detecting/proving breaches and then harshly penalising such breaches;</li> </ul>	<p>The department considers compliance and enforcement to be linked and believes it is appropriate to discuss them within a single policy.</p> <p>The placement of compliance and enforcement functions into a single policy is common, with most environmental regulators in Australia having combined policies, along with other regulators such as the Australian Competition and Consumer Commission and the Fair Work Ombudsman.</p> <p>It should be noted that the compliance promotion aspect of the department's compliance activities, which is raised in your comment, is only a part of the department's compliance function. Likewise punishment, or sanction is only one half of our enforcement response.</p>

Submitter	Section	Stakeholder comment	Department response
		<p>Given therefore, the broad difference between the two, the broad difference in approach and application, and the broad difference in consequence, it does not appear apparent why this policy is seeking to guide both functions;</p> <p>A policy based upon compliance strategies would appear to emphasise discretion, education and participation by industry - whereas a policy based upon enforcement would be specific and very measurable, to ensure no doubt existed in respect of how and why enforcement would be taken. Community expectation would be clearly addressed and achieved through depiction of enforcement actions and thresholds that would have to occur.</p>	
<p>Shire of Serpentine-Jarrahdale</p>	<p>General comment</p>	<p>The draft policy indicates that it relates to all sectors of the Western Australian community. This is a broad statement, covering a broad State with a broad range of industries comprising highly variable environmental risk.</p> <p>This scope should instead reflect that certain sectors may need different approaches in respect of the compliance vs enforcement spectrum, and there should be an attempt to define these in the policy and adjust for accordingly. In the absence of definition, the community does not understand how the reality of risk management will be used to influence choices of compliance vs enforcement functions across the range of industry types and risk faced.</p>	<p>The statement is deliberately broad because the department has compliance and enforcement responsibilities across a diverse range of environments, activities and industries.</p> <p>Policies are high-level documents and more detailed information related to specific environments, activities or industries is more appropriately placed in supporting documents such as guidelines.</p>

Submitter	Section	Stakeholder comment	Department response
Shire of Serpentine-Jarrahdale	General comment	The draft policy emphasises a particularly strong slant towards discretion and performance based assessment. While there is a role for discretion to underpin decision making, it is also reasonable that the community expect DWER to act in a consistent and dependable manner which should be defined in policy. The absence of procedures creates an absence of confidence that the community can have in a policy which is broadly written through the lens of discretion and judgement.	<p>The Policy does emphasise discretion because of the broad range of environments, activities and industries which it applies to.</p> <p>The department will, however, exercise discretion within the framework outlined in the Policy.</p>
Shire of Serpentine-Jarrahdale	6.1 Establishing compliance priorities	While the Shire agrees that compliance priorities should be established, what isn't clear is how such priorities are to be determined. For example consideration should be given to addressing areas of community concern and emerging environmental risks due to changes in industry.	<p>In accordance with <b>6.1 Establishing compliance priorities</b>, compliance priorities will be determined based on risk.</p> <p>The five factors that inform risk calculation for establishing compliance priorities are considered comprehensive and fact based.</p> <p>Addressing areas of community concern and emerging environmental risks because of changes in industry are included in dot point 4 - the location of people and their susceptibility to impact, and dot point 5 - suspected impacts to public health, the environment, water resources and users.</p>
Shire of Serpentine-Jarrahdale	6.1 Establishing	The Shire is increasingly facing proposals for the use of liquid waste in the organics / composting industry, which relies on regulator performance to enforce licencing conditions and control all aspects	Noted. The approval of facilities and development of licensing conditions is outside the scope of the Policy.

Submitter	Section	Stakeholder comment	Department response
	compliance priorities	of waste use. This places exceptional pressure on DWER identifying this industry as a compliance priority, and then applying resources to meet that priority. The lack of clarity regarding the design of facilities utilising liquid waste, and the likely serious consequences as a result of liquid waste mismanagement, means compliance priorities would need to be continually directed to this area.	
Shire of Serpentine-Jarrahdale	6.3 Compliance monitoring	The draft policy states the department will not pursue all complaints and reports as resources are allocated according to risk. This is an exceptionally broad and unclear statement, and may result in the perception that complaints will only be responded where sufficient numbers of complaints, or persistence of complaints, occurs. This is a risk to community confidence in the regulator to perform their regulatory functions in ultimately protecting the environment.	Noted. The Policy has been amended to clarify that the department will receive, record, acknowledge and assess all community reports, however, the level of response will be dependent upon risk.
Shire of Serpentine-Jarrahdale	7.2 Types of enforcement action	<p>The types of enforcement actions included in the draft policy table mentions that (among other enforcement actions) written warnings, infringement notices, modified penalties or commencement of prosecution may result from particular breaches being identified.</p> <p>The Shire considers that it would be beneficial to include guidance in the policy as to circumstances where these enforcement actions are likely to be initiated. As stated earlier, issues of deterrence become important to ensuring any such punitive action is sufficient enough to drive a pragmatic position of industry that it would be economically irrational not to comply with the rules and requirements.</p>	<p>Noted. The department has decided not to definitively link certain circumstances to a specific enforcement action because the diverse combinations of factors relevant to a particular breach mean enforcement actions are selected on a case by case basis.</p> <p>However, the factors detailed in <b>7.3 Selecting the appropriate enforcement action</b> are consistently applied when determining the appropriate enforcement action.</p>

Submitter	Section	Stakeholder comment	Department response
Shire of Serpentine-Jarrahdale	7.3 Selecting the appropriate enforcement action	<p>While the Shire acknowledges that the Department will determine the seriousness of the offence due to several factors including location, it is noted that there are varying landscapes throughout the regions that the Department is responsible for.</p> <p>Many local government agencies would benefit from the Department considering a unique approach to particularly sensitive areas or land use types (e.g. abattoirs, poultry farms, waste facilities, groundwater supply areas etc.) The communities which may be potentially impacted by any adverse effects created by breaches in these unique landscapes will also be offered a greater level of comfort should a unique approach be taken in these circumstances. A policy that clearly sets compliance thresholds, and enforcement procedures, means the community will be able to hold the performance of the regulator and industry to account more effectively.</p>	<p>The Policy is a high-level document and needs to be broad because the department has compliance and enforcement responsibilities across a diverse range of environments, activities and industries.</p> <p>Detailed information related to specific types of environments, activities or industries is more appropriately placed in supporting documents such as guidelines.</p>
Shire of Serpentine-Jarrahdale	General comment	<p>The role of local government as a co-regulator needs to be identified in the policy and some value put upon this relationship. Environmental Health Officers are delegated authorised persons from the DWER, and perform many of the compliance functions that impact communities, mainly regarding noise and unauthorised discharges, all of which fall under the <i>Environmental Protection Act</i>.</p>	<p>Noted, in some circumstances other government departments, local government and water service providers have a compliance and enforcement role under legislation administered by the department. However, due to the differences in how these roles are managed under different legislation, clarity is better provided through agency specific agreements rather than this Policy.</p>

Submitter	Section	Stakeholder comment	Department response
Shire of Serpentine-Jarrahdale	General comment	<p>Greater communication in regards to compliance and enforcement action for prescribed premises is required. The Shire's experience with Bio organics and Permapole is that the Shire fields a significant number of complaints that in many cases we do not have jurisdiction to act upon. This will be the same for Aussie Organics if it is approved by SAT. The Shire is generally under pressure to not just act on complaints but answer questions directed towards the Shire which adds a huge burden on the administration. Therefore the policy needs to state that open lines of communication between DWER and Local Governments will exist where there is a clear community interest on a matter.</p>	<p>Community complaints pertaining to issues managed by the department should be directed to its Pollution Watch hotline.</p> <p>Where a local government is receiving complaints pertaining to an issue managed by the department in their area, the department will work with the local government to address the issue.</p> <p>Dot point 3 in <b>6.3 Compliance monitoring</b> indicates that information from other regulatory authorities is one of the department's compliance monitoring methods.</p>
Shire of Serpentine-Jarrahdale	General comment	<p>The policy does not make an attempt to embrace citizen science as a key contributor to both the compliance and enforcement task. Citizen science provides a significant resource to assist DWER, and through smart device enabled technologies should be capable of integration within this draft policy.</p>	<p>Noted. Citizen science can play an important role in assisting the department to undertake its compliance monitoring functions. While not specifically mentioned, citizen science is included in dot point 4 - Community reports and complaints under <b>6.3 Compliance monitoring</b>.</p> <p>An example of the department utilising citizen science was the community odour reporting program undertaken in Cockburn in early 2019.</p> <p>While citizen science can play a role in the department's compliance monitoring activities, it is not appropriate for the department's enforcement actions.</p>

Submitter	Section	Stakeholder comment	Department response
Byford Progress Association	General comment	<p>Past experience leaves us with little faith in Government agencies capabilities to protect our natural environment.</p> <p>We are concerned about levels of monitoring and auditing and a lack of involvement in some projects.</p> <p>Failure to act in a timely manner and to take action where breaches have obviously occurred.</p> <p>Reliance on reports from experts who do not appear to be independent.</p> <p>Audits scheduled well in advance which gives licence holders the opportunity to modify their operations long enough to gain a satisfactory audit report.</p>	Noted.
Byford Progress Association	General comment	The proposed Compliance and Enforcement Policy does not adequately explain what monitoring tools will prevent breaches and provide compliance.	<b>6.3 Compliance monitoring</b> outlines the monitoring tools the department uses to determine compliance.
Byford Progress Association	4. Regulatory approach	<p>With regard to the 'streamlined approach to regulatory assessment' what new strategies will be introduced to improve outcomes?</p> <p>The term <b>Mandatory compliance</b> is lacking from this document.</p>	<p>The 'streamlined approach to regulatory assessment' is one of the department's five strategic directions outlined in its Strategic Plan 2018-21. Information about the Streamline WA project and its initiatives is available on the department's website, <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p> <p><b>6. Compliance</b> states compliance is not a matter of choice, it is a requirement. This establishes that compliance is mandatory.</p>

Submitter	Section	Stakeholder comment	Department response
Byford Progress Association	5.1 Regulatory best practice principles	The Regulatory Best Practice Principles should be regularly reviewed by an independent body to ensure they suit current requirements.	The establishment of an independent body to review the department's regulatory principles is outside the scope of the Policy.
Byford Progress Association	7.3 Selecting the appropriate enforcement action	If the Department decides not to take action when a breach of department standards has occurred will the complainant be notified?	In accordance with <b>7.1 Enforcement principles</b> - in every case where a breach of legislation is established, some form of written enforcement action will result.
Byford Progress Association	General comment	If a complainant is in dispute with the Department on an issue there should be an independent body to review the decision.	This is outside the scope of the Policy.  The department's Customer Service Charter is available on its webpage and contains information regarding our complaints process. Matters may be referred to the Ombudsman of Western Australia.
Thomas Dyer	General comment	It appears to me to be a big joke. All I read in these pages are what we may do, not what we will attempt to do e.g. in the Oakford area there is a company who has been accused of very serious pollution of local properties and water ways including leaching into and polluting the Jandicott (Jandakot) water supply. The DWER are only acting when enough pressure is put on Government Departments including DWER to take action, including two O'Brian enquires into the action of the company. They were asked to put test bores down, to date this has not happened. The one they have put down are not	The Policy is a high-level document and needs to be broad because the department has compliance and enforcement responsibilities across a diverse range of environments, activities and industries.

Submitter	Section	Stakeholder comment	Department response
		in the area of water flow, and appears that there is no time frame putting these new bores down. Which appears in my view very unprofessional by the regulator (regulator).	
Thomas Dyer	General comment	Moving to another area Cardup Business Park has still not been formally approved, and was not to be developed until there was scheme water and sewage put on. We have been to DER now DWER about dust coming from these properties, including a company which is no longer there, was sand blasting out in the open within 75m of the Cardup town site. DER said that they had been on site and they were doing no wrong. We has also notified out local council who sent the ranger down to inspect the site. He told us that the aggregate they were using was the best they could use.	This comment pertains to a specific situation and is outside the scope of the Policy
Thomas Dyer	General comment	The company that is still there have been given approval by a council officer to manufacture cement products 90m from town of Cardup homes. We are perpetually being inundated with dust. We have called council health department because a truck going near the cement shed, sent a cloud of dust approximately 5m high in the air engulfing the truck and drifting towards the houses. I asked him to check whether it was cement dust or not. He claimed that he could not do spot checks and had to give three weeks' notice to do an inspection which never happened. This company has been non-conforming to conditions put forward to them. With new councillors and officers leaning on this company things should improve. Due to locations with strong easterly winds off the scarp, most people in	This comment pertains to a specific situation and is outside the scope of the Policy

Submitter	Section	Stakeholder comment	Department response
		this area have complained of dense dust coming into their homes. Even people half a kilometre away.	
Thomas Dyer	6.3 Compliance monitoring	Another issue is self-regulation leaves it open for abuse, as a lot of companies will not report spills or accidents unless they can't cover it up.	As per <b>6.3 Compliance monitoring - industry reporting – statutory and self reporting</b> is only one method used to monitor and determine compliance. The department will use a range of different methods to monitor compliance. It does not rely solely on self-regulation.
Thomas Dyer	General comment	It appears to me that all levels of government are pushing for development and industry at any cost. I have no complaints about industrial development as long as it is done correctly with consideration to the local area. It appears to me that government departments such as DWER are not genuine about doing their job properly as it was intended. I would like to see DWER develop some intestinal fortitude, stand out from the rest and do their job properly.	Noted. This comment is outside the scope of the Policy
Serpentine Jarrahdale Ratepayers Association	6.3 Compliance monitoring	The draft does not seem to:  1. understand that self-regulation is unlikely to provide adequate protection to the environment. Businesses are mandated to maximise profits and this puts them in immediate conflict with environmental care	As per <b>6.3 Compliance monitoring - industry reporting – statutory and self reporting</b> is only one method used to monitor and determine compliance. The department will use a range of different methods to monitor compliance. It does not rely solely on self-regulation.

Submitter	Section	Stakeholder comment	Department response
Serpentine Jarrahdale Ratepayers Association	7.1 Enforcement principles	<p>2. provide clarity as to how the Department will act, rather it contains vagaries such as 'a timely manner', enforcement action may be taken, DWER may take physical action, a written notice may be given and further enforcement action may be taken.</p> <p>3. require the DWER to proactively provide feedback to the Minister where weaknesses in the Act are identified</p> <p>4. Deal with the risk of inappropriate relationships being established over time between its staff and licence holders.</p>	<p>The Policy is a high-level document applicable to a diverse range of legislation, environments, activities and industries. It is not appropriate to state specific timeframes within the Policy as these will vary according to different activities.</p> <p>The department does identify weakness in legislation. Proposed amendments to the <i>Environmental Protection Act 1986</i> were released for public consultation in October 2019. These amendments have now been considered by Parliament and further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p> <p>The department's officers operate under a Code of Conduct which requires they undertake their duties in a particular manner.</p>
Serpentine Jarrahdale Ratepayers Association	3. Context	Requires expansion on examples of monitoring capabilities with regard to what are the tools used to prevent breaches and provide compliance and address issues while providing a satisfactory conclusion to such issues.	<p><b>6.3 Compliance monitoring</b> outlines in detail the four main tools the department utilises for monitoring compliance.</p> <p>The context section is an introductory statement and it is therefore more appropriate to have the details of the compliance-monitoring tools provided in the relevant section of the Policy.</p>

Submitter	Section	Stakeholder comment	Department response
Serpentine Jarrahdale Ratepayers Association	5. Regulatory approach	Exactly what actions will be introduced in the 'streamlined approach to regulatory assessment' undertaking that have not been used in the past or are not practised currently?	<p>The 'streamlined approach to regulatory assessment' is one of the department's five strategic directions outlined in the Strategic Plan 2018-21.</p> <p>Information about the Streamline WA project can be found at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
Serpentine Jarrahdale Ratepayers Association	5. Regulatory approach	'Undertaking appropriate compliance' should read 'undertaking mandatory compliance'	<p>The statement 'undertaking appropriate compliance and enforcement' refers to utilising the most suitable type of compliance monitoring and enforcement action when a breach is determined, not whether compliance and enforcement will occur.</p> <p>For example in one situation a letter of warning may be the most appropriate type of enforcement action, while in another situation prosecution in court may be most appropriate.</p>
Serpentine Jarrahdale Ratepayers Association	5. Regulatory approach	The only guarantee that a satisfactory outcome has been achieved to the satisfaction of aggrieved parties is by determination by an independent umpire. State Ombudsmen for example	<p>The department's Customer Service Charter, available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>, provides a service for feedback and complaints regarding the department's service delivery. If this is not sufficient, complaints about service delivery can be made to the State Ombudsman.</p>

Submitter	Section	Stakeholder comment	Department response
Serpentine Jarrahdale Ratepayers Association	5.1 Regulatory best practice principles	Again these principles require a review by an autonomous body to ensure they do in fact conform and are adjusted from time to time to suit such a requirement.	This is outside the scope of the Policy. The establishment of an autonomous body to review the department is a matter for government.
Serpentine Jarrahdale Ratepayers Association	5.1 Regulatory best practice principles  Responsive and effective	A determination on this has such broad variables that it requires once again an oversight by an autonomous authority.	It appears this comment is stating that an independent authority should determine if the department is a responsive and effective regulator.  This is outside the scope of the Policy and is a matter for government
Serpentine Jarrahdale Ratepayers Association	6.3 Compliance monitoring  Community reports and complaints	What response will be received by a complainant should the Department decide not to proceed with what was deemed to be a breach of Departmental standards?	The Policy has been amended to more clearly state that all reports by the community will be received, recorded, acknowledged and assessed.  In accordance with the enforcement principles outlined in the Policy, in every case where a breach of legislation is established, some form of written enforcement action will result.  The department is currently developing new guidelines surrounding its processes for managing reports which will contain guidance on notification of complainants.

Submitter	Section	Stakeholder comment	Department response
Serpentine Jarrahdale Ratepayers Association	General comment	In the event of a dispute arising between the Department and a reporting body or organisation, what options are available to the complainant to have the matter overseen or reviewed by an independent authority	The department's Customer Service Charter, available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> , details the procedure for complaints regarding the department's service delivery. If this is not sufficient, complaints about service delivery can be made to the State Ombudsman.
Warwick Boardman	5.1 Regulatory best practice	There appears to be a typo regarding item 3.1 within Section 4	Noted. The Policy has been amended accordingly.
Warwick Boardman	5.1 Regulatory best practice	It would be good if transparency was better defined. Could it be that offences and names at the difference levels can be put into the Annual Report or even on the Web? Thus people reporting compliance issues can see what action has been taken. The rest of us can see the rate of compliance and the range of issues and be assured that compliance actions are being taken. Corruption is always a worry and it is always reassuring to see that compliance actions are being taken. We shouldn't have to rely on media to announce compliance/enforcement measures that have been taken.	Noted. The Policy has been amended to include <b>8. Compliance and enforcement outcomes</b> which details where information about compliance and enforcement outcomes can be assessed.  The department currently publishes details of prosecutions and the issue of some statutory notices at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> .  Quarterly regulatory performance, including the numbers of inspections, non-compliances identified and community pollution reports, are also available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> .
Warwick Boardman	6.2 Compliance promotion	I was anticipating something about prevention and was pleased to see Section 5.2 on compliance promotion. However, I was disappointed that the only effort in this direction appears to be on	Noted.  In relation to clearing the department is currently developing four initiatives to improve consistency,

Submitter	Section	Stakeholder comment	Department response
		<p>providing website information. In relation to compliance with clearing native vegetation on roadsides it would be much better to retain the last remnants of certain species than to prosecute someone for making them go locally extinct. Thus education of contractors and local government managers should be a very high priority. Perhaps only certificated authorities and contactors can be authorised to clear any native vegetation. There are probably other instances where education in environmental and legal requirements of people active in potentially environmentally harmful activities is very important.</p>	<p>transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
Wildflower Society of WA	General comment	<p>The introduction to the draft policy provides ... statements ... The WSWA strongly supports these aims</p>	Noted
Wildflower Society of WA	General comment	<p>DWER's Compliance and Enforcement Policy and actions implementing the Policy are one part of the scope of DWER's activities that are designed to 'achiev (e) improved outcomes for public health, the environment and our water resources'.</p> <p>Such actions can send a very strong signal to those who do not have the same objectives. Therefore it is essential that DWER's Compliance and Enforcement Policy and actions penalise those who have transgressed, and that penalties send a very strong signal to those who might transgress.</p> <p>However, the WSWA is concerned that in the past, DWER has frequently approved proposals that do not conform with these aims and commitments, resulting in the continued deterioration of our</p>	Noted

Submitter	Section	Stakeholder comment	Department response
		<p>environment and water resources, rather than their protection or improvement.</p>	
<p>Wildflower Society of WA</p>	<p>5.1 Regulatory Best Practice Principles</p>	<p>DWER states that it has developed six best-practice regulatory principles as part of being a responsive and credible regulator (Section 4). However, there is no statement or principle in those listed, including in one of DWER’s strategic directions quoted, that DWER’s role and driving principle is to protect, conserve, improve and sustainably use the environment or water resources. This fundamentally hampers DWER’s effectiveness as a manager of the environment and water resources.</p> <p>This is particularly the case in DWER’s approach to Compliance and Enforcement Policy, where there is a focus on <b>how</b> to make decisions rather than on ensuring that decisions actually protect, conserve and improve the environment or water resources.</p>	<p>In the <b>Purpose</b> it is stated “the department is responsible for ensuring the state’s water resources and environment are healthy and able to support a strong economy and thriving communities. The department strives to ensure there is a balance between protecting environmental values while still enabling responsible socio-economic growth.”</p> <p>The department’s role in compliance and enforcement is to identify breaches, rectify non-compliance and take appropriate enforcement action against those who breach the legislation.</p>
<p>Wildflower Society of WA</p>	<p>3. Context 5. Regulatory approach</p>	<p>While the WSWA endorses risk management, we are concerned by DWER’s objective in Sections 2 and 4 that ‘DWER will focus its resources on those matters that pose the greatest risk to public health, the environment and water resources’. We regard this as problematic because the cumulative impact on native vegetation of many individually small, unlawful actions committed without consequence is large; the environment suffers by a ‘death by a thousand cuts’. Focusing on large matters only does not send the right message. Furthermore, we contend that clearing that would have been deemed lawful if a permit had been sought should remain unlawful when done without the required Clearing Permit.</p>	<p>The department uses a risk-based allocation of resources. The highest risk does not always equate to the largest scale.</p> <p>In establishing compliance priorities the department will use a range of criteria to inform and provide context to the determination of risk. Many of these criteria address the issue you raised i.e. nature and complexity of activity, location of the environment and its susceptibility to impacts to their value, beneficial use, quality, vulnerability or rarity and suspected impact to the</p>

Submitter	Section	Stakeholder comment	Department response
		<p>The WSWA contends that the focus of DWER’s resources should include the risk posed to loss of natural resources and the natural heritage of WA through consideration of the incremental degradation of those resources, particularly those managed by public authorities. The application of a broad definition of permitted activities when considering compliance and enforcement relating to actions carried out by public authorities is resulting in degradation of natural resources. WSWA believes a more precise description of “permitted activities” is needed within the objectives relating to actions of public authorities and their management of natural resources.</p> <p>While education and warnings are necessary, important and appropriate, they need to be combined with substantial financial penalties and enforced restoration of the environmental damage caused.</p> <p>The WSWA agrees that large, high-impact unlawful clearing needs to be pursued vigorously, with high costs including monetary penalties and/or conviction of offenders, as well as restitution by offenders. However, the regulatory approach also needs to take into account incremental damage to the environment, from, for example, small-scale clearing in over-cleared parts of the state, such as the Wheatbelt and Southwest, which we contend is often unlawful and unnecessary, and is now having an unacceptably high impact, especially when multiplied by the number of offenders.</p> <p>Therefore, all these offenders, including Local Government Authorities (LGAs), must be pursued and prosecuted appropriately,</p>	<p>public health, the environment, water resources and users.</p> <p>Offences and penalties are prescribed by legislation and outside the scope of this Policy.</p> <p>The decision to grant clearing permits is also outside the scope of this Policy. However, the department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state’s native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives.</p> <p>Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>

Submitter	Section	Stakeholder comment	Department response
		<p>to send a message to others who might be thinking of doing the same.</p> <p>Further, the WSWA strongly believes that clearing should cease in the over-cleared Wheatbelt and south west biodiversity hotspot regions.</p>	
<p>Wildflower Society of WA</p>	<p>6.1 Establishing compliance priorities</p>	<p>The WSWA agrees that in determining compliance priorities, DWER needs to prioritise events or activities that represent the greatest level of risk or impact. However, at least for native vegetation clearing, this should not solely be based on the criteria listed in Section 5.1. We suggest that the Policy document include an Appendix that allows specific activities, in particular the clearing of native vegetation, to be highlighted in more detail. This Appendix could include the following priority activities applicable to the clearing of native vegetation:</p> <ul style="list-style-type: none"> <li>• maintenance activities in road reserves that currently widen the cleared footprint outside the previous and approved maintenance zone. The WSWA contends that too often, DWER’s inspection and conclusions in these cases give too much benefit of the doubt to the LGA, when there is little evidence that the LGA has employed best practice to address the need to protect native vegetation, particularly in areas that are already highly cleared. We strongly encourage DWER to ensure that the environment is protected from clearing by stealth and poor work practices.</li> </ul>	<p>This level of detail is not appropriate for a policy. However, the department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state’s native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>

Submitter	Section	Stakeholder comment	Department response
		<ul style="list-style-type: none"> <li>• stubble burning that escapes into adjacent bushland (either on private or public land) because adequate precautions have not been taken.</li> <li>• clearing areas along roadsides delineated with Threatened or Priority flora markers.</li> <li>• clearing, whether on-farm or along roadsides, in heavily cleared landscapes such as the Wheatbelt and the Southwest.</li> </ul> <p>The WSWA recommends that certain industries or activities where there is the greatest risk of occurrence or re-offending, whether through ignorance, lack of training or because of the economic advantage of the unlawful clearing, warrant a greater compliance focus. This should include instances where the cost of penalties can be easily absorbed in the cost of business. The WSWA therefore recommends that the following groups should be carefully monitored for compliance:</p> <ul style="list-style-type: none"> <li>• land developers</li> <li>• farmers, including through scrub fires and fencing</li> <li>• LGAs, especially through road construction and maintenance.</li> </ul> <p>We further submit that the EP Act and the Clearing Regulations need to be made clearer (or amended) so that acceptable maintenance activities in the maintenance zone of road reserves are clearly defined, with a strong emphasis on clarifying that:</p> <ul style="list-style-type: none"> <li>• clearing cannot be undertaken in a transport maintenance zone without a Clearing Permit if more than 10 years has</li> </ul>	

Submitter	Section	Stakeholder comment	Department response
		<p>elapsed since any previous valid Clearing Permit was issued</p> <ul style="list-style-type: none"> <li>• clearing in transport maintenance zones must be undertaken using best practices that avoid disturbing areas outside the existing maintenance zone</li> <li>• it is illegal to take any Priority Flora (in addition to Threatened Flora) without a specific Permit.</li> </ul>	
<p>Wildflower Society of WA</p>	<p>6.3 Compliance monitoring</p>	<p>Within Section 5.3, DWER should add to and expand upon the methods used to monitor and determine compliance, in order to strengthen their capabilities. Additional methods may include the following:</p> <ul style="list-style-type: none"> <li>• in the case of vegetation clearing, the use of high-resolution satellite imagery to detect changes in vegetation location, presence and condition</li> <li>• requiring evidence from potential offenders regarding the situation before and after the alleged offence, and demonstration by the potential offender that their action is within the law</li> <li>• requiring and reading project completion reports and comparing them to licences and approvals.</li> </ul> <p>One method used by DWER to determine compliance is through community reports and complaints. Transparency for complainants would be greatly assisted if DWER made it much easier for the community to obtain information about approved clearing and about</p>	<p>The department already utilises satellite imagery to assist in the detection of native vegetation non compliances. The Policy has been amended to highlight this method of compliance monitoring.</p> <p>Requiring confirmation or evidence from potential offenders and review of reports and comparison to licences and works approvals are already part of the inspection, review and audit tasks department officers undertake.</p> <p>Noted. The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native</p>

Submitter	Section	Stakeholder comment	Department response
		<p>the results of any investigation of reported suspected illegal clearing.</p> <p>In particular, we strongly recommend that it should be mandatory for proponents to complete and submit a closeout/completion report of work done under every Clearing Permit, including before and after photos, evidence that the minimum area possible was cleared, and evidence of actions taken to avoid and minimise clearing. These reports should be made publicly available.</p>	<p>Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
<p>Wildflower Society of WA</p>	<p>7.1 Enforcement principles</p>	<p>The WSWA endorses the enforcement principles in Section 6.1. However, we believe other principles need to be confirmed, added or re-enforced, including the following:</p> <ul style="list-style-type: none"> <li>• enforcement action acts as a deterrent and sends a clear message to other potential offenders</li> <li>• except in the most trivial of offences, all offences will attract both monetary (including restitution) and non-monetary enforcement action such as registering convictions</li> <li>• restitution of environmental damage will take precedence over simple monetary penalties</li> <li>• resolution and closeout of enforcement measures will be done in a timely manner.</li> <li>• enforcement will be undertaken through a transparent negotiation process rather than legal action wherever possible</li> <li>• Departmental Officers will have, and utilise, the power to take on-the-spot actions to stop and fine offenders</li> </ul>	<p>In the Policy <b>7. Enforcement</b> details that enforcement is a response to identified breaches of the law and involves a range of different actions to deter and punish offenders.</p> <p>Penalties are prescribed by legislation and therefore outside the scope of the Policy.</p> <p>In accordance with the Policy, enforcement has two key elements; remedy and sanction.</p> <p>One of the enforcement principles in the Policy is that decisions regarding enforcement action will be made in a timely manner. Furthermore being responsive and effective is a regulatory principle meaning the department will make regulatory decisions, including those pertaining to enforcement action in an effective and timely manner.</p>

Submitter	Section	Stakeholder comment	Department response
		<ul style="list-style-type: none"> <li>• ignorance of the law, or not reading or understanding exemptions, Licence Conditions or Permits, is not an excuse for not complying with legal requirements</li> <li>• the ability to undertake enforcement action will not expire when a Permit expires, and for a Clearing Permit, will extend through the period in which clearing could be undertaken (as in a maintenance zone) before another Clearing Permit is required</li> <li>• enforcement and penalties will be applied irrespective of whether a Permit is subsequently approved or modified to seek approval for the illegal activity.</li> </ul>	<p>Being transparent is a regulatory principle and enforcement actions are selected in accordance with <b>7.3 Selecting the appropriate enforcement action</b></p> <p>Under legislation relevant to the Policy there are some provisions which allow officers to issue on the spot infringements.</p> <p>Ignorance of the law is not a factor in <b>7.3 Selecting the appropriate enforcement action.</b></p> <p>Statute of limitations for offences are prescribed by legislation and are outside the scope of the Policy.</p>
Wildflower Society of WA	7.2 Types of enforcement action	<p>The WSWA endorses the enforcement actions in Section 6.2, with the addition of the following:</p> <ul style="list-style-type: none"> <li>• on-the-spot fines, similar to traffic or fire infringement notices (possibly called modified penalty notice in the draft (revised) Compliance and Enforcement Policy)</li> <li>• the names of offenders be published in publicly accessible media.</li> </ul> <p>With respect to penalties, especially fines, there should be a scale of fees that applies to certain types or scales of non-compliance. These fees should be publicly available.</p>	<p>Noted, penalties are prescribed under legislation and therefore outside the scope of the Policy.</p> <p>Details of prosecutions and statutory notices, including Vegetation conservation notices, are already published at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>

Submitter	Section	Stakeholder comment	Department response
Wildflower Society of WA	7.2 Types of enforcement action	<p>There is a non-sequitur or missing phrase in the box labelled 'Physical intervention' as follows:</p> <p style="padding-left: 40px;">'DWER may take physical action itself to remedy unlawful conduct including non-compliance, rehabilitate an area or clean up pollution. If this occurs, the offender may be pursued for the cost of the action taken.'</p>	Noted, the text has been amended to increase clarity.
Wildflower Society of WA	7.3 Selecting appropriate enforcement action	<p>There is a significant omission in the box labelled 'Infringement notice' as follows:</p> <p>'An infringement notice will generally not be issued when:</p> <ul style="list-style-type: none"> <li>• the offence has significant impact upon other persons or property</li> <li>• the offence is continuing and not able to be rectified quickly</li> <li>• multiple related offences have occurred, and/or</li> <li>• another government department has issued a notice for the same or similar offence in the same period. ' <p>The way this is written seems to imply that there is no penalty for these types of offences. This is presumably not correct, and needs to be clarified.</p> <p>It is also not clear what the difference is between a 'Modified penalty notice' and an 'Infringement notice'.</p> </li></ul>	Agreed, text has been amended to clarify.

Submitter	Section	Stakeholder comment	Department response
Wildflower Society of WA	7.3 Selecting appropriate enforcement action	<p>The WSWA generally supports the three main factors DWER considers in selecting the most appropriate enforcement action (Section 6.3): the seriousness of the alleged offence, behaviour of the alleged offender and the alleged offender’s previous history. These are certainly necessary factors.</p> <p>However, the WSWA contends that the DWER and its predecessors have not sufficiently strongly enforced the law when breaches have occurred. In our experience with alleged unlawful clearing, there has been too much reliance on warning letters. The WSWA believes these have not had the desired effect, and unlawful acts (even if admittedly through ignorance) have continued unabated, especially amongst LGAs, even after warnings have been given. Therefore, it is recommended that much more frequent and severe enforcement actions (including penalties and restitution) need to be taken, even for what might be deemed minor or trivial offences, but ones that have a cumulative impact when considered on an ecosystem basis because of the frequency of similar offences by the same or other parties.</p>	<p>Noted</p> <p>The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state’s native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a></p>
Wildflower Society of WA	7.3 Selecting appropriate enforcement action	<p>The WSWA therefore recommends that DWER devise a scale of monetary penalties, similar to that created under the <i>Biodiversity Conservation Act</i> for offences such as unauthorised sandalwood pulling, for a range of environmental offences including clearing. Wide dissemination of this scale of penalties will alert potential offenders to the seriousness and consequences of environmental offences, especially clearing, and hopefully reduce their occurrence.</p>	<p>Amendment of legislation is outside the scope of the Policy.</p> <p>The department is currently seeking feedback on management of WA’s native vegetation. More information can be found at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a></p>

Submitter	Section	Stakeholder comment	Department response
Wildflower Society of WA	7.3 Selecting appropriate enforcement action	<p>In Section 6.3, the DWER indicates that enforcement action will be consistent, transparent and proportionate to the seriousness of the offence. We would like to see this modified to include reference to the role of the Department, which is to protect, conserve, improve and sustainably use the environment or water resources. We therefore recommend this statement be changed as follows:</p> <p style="padding-left: 40px;">‘in accordance with the department’s regulatory principles, decisions regarding enforcement action will be consistent, transparent and proportionate to the seriousness of the offence and its impact on the environment’</p>	Noted, however, the Policy already details the impact of the alleged offence as a factor in determining the seriousness of the alleged offence.
Wildflower Society of WA	7.3 Selecting appropriate enforcement action	<p>In determining the scale and appropriateness of enforcement actions, DWER indicate they consider the costs avoided or profits realised by the alleged offence. We support this approach, and further suggest that restitution of the environmental harm caused by the offence may be much more financially punitive than a simple penalty, because of the potential development opportunity forgone as much as the actual cost of restitution. In any event, we recommend that any financial penalty should be such that it is not considered by the offender simply as a cost of doing business.</p>	Penalties for offences are prescribed by legislation and are outside the scope of the Policy. However, costs avoided, or profits realised by the alleged offence is one of the factors the department considers when determining the seriousness of the alleged offence.
Wildflower Society of WA	7.4 Selecting appropriate party for enforcement action	<p>The WSWA generally supports the DWER’s position with respect to identifying the most appropriate party for enforcement action. We strongly support the DWER in listing public authorities as potential offenders, subject to enforcement action, as in the past it appears that DWER has been reluctant to prosecute LGAs with financial penalties for unlawful clearing. It should also be recognised that</p>	Noted, <b>7.4 Selecting the appropriate party for enforcement action</b> contains the types of factors the department will consider when selecting the appropriate party for enforcement action.

Submitter	Section	Stakeholder comment	Department response
		<p>with respect to LGAs, the actual person responsible for the unlawful clearing may not necessarily be the grader driver/machine operator, but the CEO, Shire President or those Council officers who supervise or manage (directly or indirectly) the operator and who either failed to provide the appropriate education or instruction to the employee, or who themselves failed to be educated or concerned about the environmental impact of the clearing being undertaken.</p>	
<p>Wildflower Society of WA</p>	<p>6.2 Compliance promotion</p>	<p>The WSWA recommends that the Compliance and Enforcement Policy includes a section on education. A change of culture and approach is needed as a priority to improve future compliance. A warning by itself may also not necessarily result in a change of culture and approach towards unlawful clearing, particularly by those parties who undertake regular vegetation clearing.</p> <p>The WSWA therefore recommends that education be part of every enforcement action and suggests the following types of educational activities be considered as part of the enforcement toolkit:</p> <ul style="list-style-type: none"> <li>• attendance of the offender, and if appropriate their manager, at Roadside Conservation Committee training on roadside environmental management</li> <li>• attendance of the offender, and if appropriate their manager, at a DWER or WA Local Government Association workshop on native vegetation conservation, Clearing Permits, exemptions and unlawful clearing</li> </ul>	<p><b>6.2 Compliance promotion</b> - contains the department's commitment to providing information and support to promote understanding and encourage compliance.</p> <p>When selecting the appropriate enforcement action for a particular offence, deterrence is a key consideration.</p> <p>Development of specific educational programs is outside the scope of the Policy; however, the department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives.</p>

Submitter	Section	Stakeholder comment	Department response
		<ul style="list-style-type: none"> <li>the offender, and if appropriate their manager, organise, fund and/or attend a community native vegetation planting event.</li> </ul>	<p>Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a></p>
Wildflower Society of WA	Prosecution guidelines	<p>We note that the proposed Prosecution Guidelines are not available for review at the same time as this Compliance and Enforcement Policy as we understand that it is intended that the Policy inform the Prosecution Guidelines. We strongly recommend that the Prosecution Guidelines are also released for public review and comment.</p>	<p>The Prosecution Guideline is scheduled to be released shortly after the finalised Policy. The Guideline is derived from the Director of Public Prosecutions' Statement of Prosecution Policy and Guidelines 2018.</p>
Wildflower Society of WA	General comment	<p>The WSWA supports the DWER on revising its Compliance and Enforcement Policy, and making it more specific with respect to compliance and enforcement principles and actions. We trust that our comments are useful and hope that they are incorporated into the final Compliance and Enforcement Policy.</p>	<p>Noted</p>
Wildflower Society of WA		<p>WSWA believes the Compliance and Enforcement Policy must reflect DWER's role and driving principle to protect, conserve, improve and sustainably use the environment or water resources.</p> <p>With respect to clearing of native vegetation, WSWA believes specific emphasis on compliance and enforcement need to be directed to the cumulative loss of vegetation in those LGAs where vegetation cover is &lt;30% of the total land area and where there is potential for the presence of Threatened Species and Ecological Communities (including species listed as Priority Species by the Department of Biodiversity, Conservation and Attractions). The</p>	<p>Noted, the text in the Policy's introduction has been amended to increase clarity regarding the department's role.</p> <p>The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the State's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation</p>

Submitter	Section	Stakeholder comment	Department response
		onus of proof that they are not present when lodging an application for a Clearing Permit, or were not present if clearing was undertaken without a valid Clearing Permit, should lie with the proponent and not DWER or any other advisory agency to DWER.	management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> .
Wildflower Society of WA		Penalties for non-compliance should be sufficient that they are not considered a cost of doing business, and should include the cost of restitution and the cost of monitoring restitution to establish success or otherwise.	Agreed, as stated in <b>7. Enforcement</b> - enforcement action is undertaken to punish, deter and change behaviour.  Monetary penalties for offences are set by legislation and therefore outside the scope of this Policy.
Wildflower Society of WA		We emphasise the importance of appropriate and effective education as part of the role-out of a revised Compliance and Enforcement Policy.	Noted
Wildflower Society of WA		We also look forward to reviewing and commenting on specific information about prosecution as an enforcement action during the comment period for the DWER Prosecution Guidelines, which are under development.	The Prosecution Guideline is scheduled to be released shortly after the finalised Policy. The Guideline is based on the Director of Public

Submitter	Section	Stakeholder comment	Department response
			Prosecutions' Statement of Prosecution Policy and Guidelines 2018.
Wildflower Society of WA		We further hope that the finalisation and implementation of the Compliance and Enforcement Policy and the Prosecution Guidelines occur swiftly following this consultation.	Noted
WMRR	General comment	Compliance and Enforcement Policy is a high level document that provides a fair overview of the Department's proposed regulatory and enforcement approaches and principles, which WMRR agrees with broadly. WMRR also supports DWER's risk and evidence based approach, as well as DWER's commitment to clearly communicating compliance obligations to the industry.	Noted
WMRR	5.1 Regulatory best practice principles	<p>There is however, a current gap that WMRR is urging DWER to consider before finalising its policy, and that is the lack of focus on non-licensed operators and premises. In fact, there is no mention in the policy of what DWER will do to manage non-licensed sites, which are a major concern for the licensed industry, impacting both their business viability and reputation of our essential industry.</p> <p>DWER notes in the paper that consistency is one of its regulatory best practice principles, stating 'compliance monitoring and enforcement action will be applied consistently across all sectors of industry, the community, and government'. WMRR agrees and supports this principle but if this is truly one of the foundations of the Department's regulatory approach, and if it is indeed embedded in the Department's compliance and enforcement actions, then DWER</p>	<p>The Policy is applicable to both licensed and unlicensed industries and activities. However, to improve clarity the Policy has been amended to specifically state it is also applicable to non-licensed premises.</p> <p>It is unclear how the Policy increases the pressure and cost of compliance on those complying with their licence conditions.</p> <p>Given the very diverse range of environments, activities and industries which the Policy covers, it is not feasible to provide a list of situations related to a particular industry.</p>

Submitter	Section	Stakeholder comment	Department response
		<p>needs to ensure that the final policy also captures non licensed operators and facilities.</p> <p>As it stands, this draft policy increases the pressure (and costs of compliance) on those who are already doing their best to comply with their licence conditions and the relevant State legislations. WMRR therefore urges DWER to consider how best to also tackle unlicensed operators within this policy, even if it is to prompt an investigation at first instance, to prevent them from falling through the gap.</p> <p>As such, WMRR recommends that DWER includes a list of situation within the policy that would trigger a comprehensive investigation, including a fraud or breach that would undermine a market mechanism or scheme and enforcement policy which comprises a comprehensive list of situations.</p> <p>WMRR also recommends that DWER establishes a dedicated team of officers to investigate non licensed sites and to develop a reporting measure for these unlawful operators moving forward.</p>	<p>Compliance officers are already undertaking compliance monitoring activities related to non-licensed sites.</p>
WMRR	7.3 Selecting appropriate enforcement action	<p>Finally, while the paper does discuss the factors in selecting the appropriate enforcement action, this is still lacking in detail. It would assist industry if DWER drills into culpability of offenders based on the seriousness of their action on human health and the environment, breaking down the level of seriousness against the level of harm caused (i.e. low to severe). This should then be aligned to the corresponding enforcement action at each level.</p>	<p>The degree of culpability of the alleged offender as an aspect of determining the seriousness of the alleged offence is stated as a factor in the Policy. The department utilises the legal definition of culpability and therefore it is not considered necessary to provide further detail in the Policy.</p> <p>The department has decided not to include diagrams which definitively create a hierarchy of</p>

Submitter	Section	Stakeholder comment	Department response
			<p>enforcement action because it believes the selection of an appropriate enforcement action should be done using the unique combination of factors related to that particular event.</p>
WMRR	General comment	<p>The policy offers an adequate high-level summary of DWER's principles and priorities but WMRR strongly recommends that DWER considers the details that it could include in the final policy and to turn to Victoria's policy as a worthy guide.</p>	<p>Noted</p> <p>The department reviewed compliance and enforcement policies of other States and countries in the development of the Policy.</p> <p>The Policy is similar to the Victorian policy in many ways; however, it was decided not to include diagrams such as those in the Victorian policy which definitively link a particular group of factors to a specific enforcement outcome.</p> <p>The reason is because the department believes due to the diverse environments, activities, events and combinations of factors, the selection of an appropriate enforcement action should be done using the unique combination of factors related to that particular event.</p>
Water Corporation	General comment	<p>Water Corporation is generally supportive of the approach proposed by DWER as it seeks to apply best practice regulatory principles to its compliance and enforcement functions.</p>	<p>Noted</p>

Submitter	Section	Stakeholder comment	Department response
Water Corporation	5.1 Regulatory best practice principles	We acknowledge and support the expanded version of the Department's six best practice principles having previously been outlined in the Department's interim Compliance and Enforcement Policy. The Corporation also welcomes the collaborative approach and focus on 'whole-of-government' outcomes in regards to compliance and enforcement action, whilst reducing risk of unnecessary regulatory duplication with other agencies.	Noted
Water Corporation	General comment	The Corporation welcomes further discussion with the Department regarding the implementation process of the final policy as a matter of interest and as an authorised delegate of the Minister or CEO of the Department, with powers to prosecute for offences under the <i>Water Services Act 2012</i> , <i>Metropolitan Water Supply Sewerage and Drainage Act 1909</i> and <i>Country Areas Water Supply Act 1947</i> . Specifically, discuss on how the Department determines and investigates cumulative impacts to public health, the environment and water resources.	Noted
Water Corporation	7.3 Selecting the appropriate Enforcement action	We recommend that the final policy should detail how the Department will interact with the Corporation and other stakeholders such as Department of Health, to assist them to determine the level of compliance prior to undertaking any enforcement actions. We also suggest that the final policy should consider and account for its implementation by authorised delegates such as the Corporation.	Noted, in some circumstances other government departments, local government and water service providers have a compliance and enforcement role under legislation administered by the department. However, due to the differences in how these roles are managed under different legislation, clarity is better provided through agency specific agreements rather than this

Submitter	Section	Stakeholder comment	Department response
			Policy. The department will work with Water Corporation directly to address this issue.
Water Corporation	7.2 Types of enforcement action	In determination on whether certain enforcement action will be undertaken by the Department, the draft policy suggests that the 'public interest' may be taken into account. It may be valuable to further define how the public interest may relate to a compliance incident, and what constitutes the 'public interest'. In situations where the public interest is determined significant in the course of a major compliance incident. Is there scope for negotiated settlements or agreements with the compliance branch of the Department?	In the context of the Policy, public interest in enforcement actions has the meaning provided for in Director of Public Prosecution's Statement of Prosecution Policy and Guidelines 2018. Further information about the factors involved in determining public interest is provided in the department's Prosecution Guidelines.
Water Corporation	4. Legislation	This section contains an incorrect reference to the Act, which should read <i>Metropolitan Water Supply, Sewerage and Drainage Act 1909</i> .	Noted. Policy has been amended accordingly.
Water Corporation	6.3 Compliance monitoring	Point three references information sources including other regulatory authorities, 'such as local government or other statement government departments'. Water Corporation is not categories as either, however, regularly provides information to DWER. We recommend considering inclusion of the terminology of 'Water Service Providers' as an information source for compliance monitoring.	Agreed. Policy amended to reflect this comment
Water Corporation	7. Enforcement	The Corporation recommends this section expand on DWER's ability to delegate its enforcement function to a third-party. The Corporation currently administers by-law enforcement of the <i>Water</i>	Noted, in some circumstances other government departments, local government and water service providers have a compliance and enforcement

Submitter	Section	Stakeholder comment	Department response
		<i>Service's Regulations 2013, Metropolitan Water Supply, Sewerage and Drainage Act 1909. And Country Areas Water Supply Act 1947.</i>	role under legislation administered by the department. However, due to the differences in how these roles are managed under different legislation, clarity is better provided through agency specific agreements rather than this Policy. The department will work directly with Water Corporation on this issue.
Water Corporation	7.1 Enforcement principles	The Corporation seeks further discussion and elaboration on the enforcement principles outlined in section 6.1 of the draft policy, and the alignment of these principles with existing water legislation. In relation to the 'Types of enforcement action' discussed under section 6.2 of the draft policy, a notable omission is the potential for consideration by the Department not to apply an enforcement action, for example a fine, in the event of extenuating circumstances beyond the control of the alleged offender.	Noted. However, in accordance with <b>7.1 Enforcement principles</b> in every case where a breach of the legislation is established, some form of written enforcement action will result.  The department will work with Water Corporation directly to provide clarity regarding the compliance and enforcement roles it undertakes for legislation administered by the department.
Water Corporation	General comment	The Corporation is keen to align with the Department on the implementation of its compliance and enforcement objectives, and we support the draft policy's scope and approach. We would be interested to discuss any further practical and process measures that will support the Corporation's efforts to align with the final policy.	Noted, the department will work with Water Corporation directly to provide clarity on this issue.
WALGA	Prosecution guidelines	WALGA notes that other than the removal of guidance regarding prosecutions, the proposed policy differs only minimally from the	Noted

Submitter	Section	Stakeholder comment	Department response
		<p>existing DER Enforcement and Prosecution Policy (July 2013). WALGA considers that any revised compliance and enforcement policy should be informed by a thorough review of the effectiveness of the Department's existing approach to compliance and enforcement.</p> <p>With regard to prosecutions, it is not clear from the information provided in the draft Policy why this needs to be included in a separate Guideline, particularly given the relatively small number of prosecutions that have historically occurred <i>Environmental Protection Act 1986</i> (refer to Figure 1).</p>	<p>The decision to put specific information pertaining to the particular type of enforcement action-prosecution, into a guideline is in line with the department's approved document framework.</p> <p>The framework sets out the level of information to be provided in each type of document. A guideline is designed to provide more specific, detailed information, while policies are high-level documents. Further information about the approved document framework can be found at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p> <p>The Prosecution guideline is scheduled to be released shortly after the finalised Policy and the link between the two documents will be clearly stated.</p>
WALGA	General comments	<p>In previous Submissions, WALGA has commented on the need to further examine the adequacy of the <i>Environmental Protection Act 1986</i>, along with the resources allocated to deliver the Department's regulatory functions, including compliance and enforcement. These factors have the potential to undermine the regulatory efforts of the Department, and compromise the implementation of the Policy. Further commentary on this is provided in Section 4 of this Submission.</p>	Noted

Submitter	Section	Stakeholder comment	Department response
WALGA	General comments	<p>The draft Policy reaffirms the Department's commitment to a risk based approach in the delivery of its compliance and enforcement functions. The draft Policy covers a number of the Department's operational areas, including; native vegetation, contaminated sites, licencing of prescribed premises, waste discharges and emissions, WARR Levy Compliance and water licencing (refer to Section 3 of the draft Policy). Clarity is required on how a risk based approach will be applied to the different areas that are being regulated.</p> <p>WALGA considers that specific guidance for a range of licenced premises is required, so that a risk based approach can be used to determine the level of risk to public health, the environment and water resources. This guidance would need to include considerations relating to siting of facilities (using a risk based approach) and operational guidance. It is also essential that there is alignment between the licencing and compliance and enforcement regimes. The licencing process, and conditions attached, should be clear and provide the compliance and enforcement teams with the relevant information to determine what compliance and enforcement actions are required. Conversely, the compliance and enforcement teams should be providing feedback to those undertaking licencing to ensure that any problems with compliance and enforcement of licences is addressed in a timely manner.</p>	<p>Noted. Policies are high-level documents and more specific guidance on particular topics will be detailed in guidelines. The department has a range of guidelines related to licencing premises and activities which are available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
WALGA	General comments	<p>Existing approach to compliance and enforcement</p> <p>The effectiveness of the Department's approach can be determined by assessing the performance of the sectors it regulates and the</p>	Noted

Submitter	Section	Stakeholder comment	Department response
		<p>consequent number, type and success of enforcement actions undertaken.</p> <p>Performance of regulated sectors</p> <p><b>Regulation of the WARR Levy</b></p> <p>WALGA has previously commented on the issues associated with the regulation of the WARR Levy<sup>1</sup>. There appears to be significant underreporting of C&amp;I and C&amp;D waste through the WARR Levy reporting regime and the Recycling Activity Report as a result of the WARR Levy increase in the 2015/16 Financial Year. The diversion of leviable material away from landfill has had a direct financial and environmental impact, with an increase in the amount of material that is illegally dumped, illegally stored or illegally landfilled. Some Local Governments on the fringes of the Perth metropolitan area have reported spending in excess of \$1 million annually to collect and dispose of illegally dumped material. Due to deficiencies with existing data capture systems, the full impact of the diversion of leviable material away from landfill is not clear.</p>	
WALGA	General comments	<p><b>Compliance with offset conditions</b></p> <p>WALGA has been concerned to learn through the offset review process conducted by DWER that there was insufficient information to determine the status of a significant number of offsets conditioned for approved projects, and that there was insufficient</p>	Noted

Submitter	Section	Stakeholder comment	Department response
		<p>reporting to determine if the intended environmental benefits of on-ground management offsets have been achieved. WALGA notes that this is a longstanding issue, having been identified by the WA Auditor General in 2011 and the DER in 2014. WALGA therefore supports the recommendations that strengthen the regulatory capacity to ensure that offsets are being delivered as intended and are realising their intended benefits.</p>	
WALGA	General comments	<p><b>Number, Type and Success of Enforcement actions</b></p> <p>In considering Section 6.2 of the draft Policy, WALGA has reviewed publicly available information on the number and type of enforcement actions undertaken by the Department. Information was not available on the effectiveness of these enforcement actions – in relation to whether the environmental harm was eliminated/reduced. Where possible, WALGA has sought to differentiate enforcement action that occurred under different Departmental structures.</p> <p>See submission for graphs</p>	Noted
WALGA	7.2 Types of enforcement action	<p>Effective Implementation of the Policy</p> <p>From the information provided in Figures 1 and 2, it is evident that some of the enforcement actions listed in Section 6.2 of the draft Policy are rarely used. It is not clear if this is due to one or more of the following factors:</p> <ol style="list-style-type: none"> <li>1. Level of investment in both compliance and enforcement resourcing</li> </ol>	Noted

Submitter	Section	Stakeholder comment	Department response
		<ol style="list-style-type: none"> <li>2. Strategic direction provided by senior DWER management and the Government</li> <li>3. Limitations with the legislative framework, and court processes.</li> </ol>	
WALGA	General comment	<p><b>Level of Investment</b></p> <p>WALGA understands that the Government allocated \$19.4 million in the 2018-19 State Budget to the Department (over 4 years) to employ additional staff in environmental regulation and compliance<sup>2</sup>. However, it is not clear if these funds have translated into additional resources for compliance and enforcement, resources for environmental approvals or on ground outcomes. Inadequate compliance and enforcement activity by the Department places an additional burden on Local Government. For example, responding to an increase in occurrences of illegal dumping.</p> <p>Recommendation: The Department adequately resources the delivery of its compliance and enforcement functions.</p>	Noted
WALGA	General comment	<p><b>Strategic Direction</b></p> <p>WALGA recognises that there is often a degree of discretion and judgement exercised on the need, and type of activity required to deliver the Department's compliance and enforcement functions. However, the extent of and type of compliance and enforcement action undertaken by the Department appears to be unduly</p>	Noted

Submitter	Section	Stakeholder comment	Department response
		<p>influenced by the strategic direction provided by the approach of senior management and the Government of the day. Publicly reported information on the number of infringements issued by the former Department of Environment Regulation indicates that a total of 49 infringement notices were issued in the period 2013 to 2017. While the Machinery of Government changes have had an impact on the structure and legislative responsibilities of the Department, 46 infringement notices were issued in the Environment portfolio for the Q2, Q3 and Q4 periods of the 2017-18 Financial Year.</p> <p>Recommendation: That compliance and enforcement functions and actions are prioritised as an essential component of the Departments function.</p> <p>Recommendation: That compliance and enforcement functions and actions are applied across the state, ensuring that rural and remote communities are equally serviced by DWER in this regard.</p> <p>Recommendation: That where there is an absence of suitably qualified DWER staff in rural and remote communities, State Government staff from other departments are authorised under the <i>Environmental Protection Act (1986)</i> to undertake the necessary regulatory and compliance functions of the DWER.</p>	
WALGA	General comment	<p><b>Legislative Framework and Court Processes</b></p> <p>In WALGA’s view, the adequacy of the legislative framework that underpins the compliance and enforcement activities of the Department should to be reviewed, to ensure it aligns with</p>	Noted. Amendment of legislation is outside the scope of the Policy.

Submitter	Section	Stakeholder comment	Department response
		<p>community expectations and can be used to address risks to public health, the environment and water resources.</p> <p>For example, the legislative framework provided by the <i>Environmental Protection Act (1986)</i> cannot require an operator to obtain a licence, and officers can only encourage the operator to obtain a licence and inform them of the penalties if they are found to have polluted the environment. The limited number of successful prosecutions indicates that the compliance pathway established by the Act is not straightforward to use and as shown in Figure 3, the time period for prosecutions which do occur is lengthy. WALGA would therefore support amendments to the Act that require a licence to undertake Schedule 1 activities. This would facilitate other enforcement options and ensure a more rapid pathway for the resolution of any issues.</p> <p>Furthermore, the current structure of the legislative framework may have contributed to the limited number of successful prosecutions for unlawful activity (Figure 4). Section 49A of the <i>Environmental Protection Act (1986)</i> establishes an offence for the unauthorised discharging or abandonment of waste. This carries a maximum penalty of \$62,500 for individuals, and \$125,000 for corporations. The information provided in Table 1 on unauthorised discharge of waste (Illegal Dumping), demonstrates that magistrates have different views as to the seriousness of unlawful activity such as illegal dumping under environmental law.</p>	<p>As an independent arm of government, the judiciary determines the quantum of a penalty upon conviction.</p> <p>Prosecution outcomes and media releases are published at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>

Submitter	Section	Stakeholder comment	Department response
		<p>It is also important for effective regulation that the Law is not only enforced, but seen to be enforced. Hence the importance of clearly communicating the outcomes of prosecutions.</p> <p>The Association commends recent media releases by the Minister for the Environment which highlighted successful prosecutions for illegal dumping</p> <p>Recommendation: The adequacy of the legislative framework for compliance and enforcement is reviewed, including:</p> <ol style="list-style-type: none"> <li>1. Requirement of a licence to undertake Schedule 1 activities</li> <li>2. Introduction of a minimum penalty for certain offences.</li> </ol>	
WALGA	General comment	<p>WALGA appreciates the opportunity to provide feedback on the draft DWER Compliance and Enforcement Policy. It is concerning that the effective implementation of the Policy could be limited by a number of factors outside the control of individual staff. These factors include the level of investment in resources allocated to deliver these functions, the strategic direction provided by senior management and the Government, and the adequacy of the framework established by the <i>Environmental Protection Act 1986</i>.</p> <p>WALGA extends its support for the timely resolution of these matters, to ensure that the Department can address risks to public health, the environment and water resources in manner that aligns with community expectations.</p>	Noted

Submitter	Section	Stakeholder comment	Department response
Urban Bushland Council	Purpose	<p>The aim is commended. The DWER commitment to ensuring compliance with the legislation it administers is <u>strongly supported</u>. 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.</p> <p>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.</p>	<p>Noted.</p> <p>The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the State's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
Urban Bushland Council	3. Context	<p>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.</p>	<p>Noted</p>

Submitter	Section	Stakeholder comment	Department response
Urban Bushland Council	5. Regulatory approach	<p>The first dot point is not clear and may be better omitted.</p> <p>The second and third dot points are <u>strongly supported</u>. <i>'Applying regulatory best practice principles'</i> 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.</p> <p><b>We emphasise the importance of this key major increase needed in compliance and enforcement as the present practices are not adequate and <i>'improvement and enhancement of public health, environmental and water resource outcomes'</i> is not being achieved.</b> They are declining and this is unacceptable.</p>	<p>The three dot points are derived from the department's Strategic plan.</p> <p>The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
Urban Bushland Council	5.1 Regulatory best practice principles	<p><b>Risk based:</b> Consideration of <u>cumulative impacts is strongly supported</u>. 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 (&lt;&lt;10%) remaining in the Wheatbelt that all remnants and roadside connectivity is critical habitat and must be retained, regardless of how small.</p> <p>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.</p>	<p>Noted.</p> <p>The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>

Submitter	Section	Stakeholder comment	Department response
		<p><b>Evidence based:</b> Supported.</p> <p><b>Transparent:</b> 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.</p> <p><b>Collaborative:</b> Supported. Enforcement action in the outstanding <u>public interest of climate change</u> 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.</p> <p><b>Consistent:</b> 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. <u>Exemptions</u> are not applicable and should not be permitted.</p> <p><b>Responsive and effective:</b> 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</p>	

Submitter	Section	Stakeholder comment	Department response
		by community groups nearly all fail to be upheld. <u>A legally strengthened effective appeals process is needed, such as an Environmental Appeals Tribunal based on merits or an Environment Court for WA.</u>	
Urban Bushland Council	6. Compliance	First paragraph is strongly supported. So please do it.	Noted.
Urban Bushland Council	6.1 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 <u>no exemptions should apply.</u>	Noted.
Urban Bushland Council	6.2 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.	Noted.
Urban Bushland Council	6.3 Compliance monitoring	Supported with the exception of no.4. It should be modified so that DWER <u>investigates all reports</u> 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.	Agreed. The text has been amended to clarify that the department will receive, record, acknowledge and assess all reports.

Submitter	Section	Stakeholder comment	Department response
Urban Bushland Council	7. Enforcement	<p>Introductory section needs to include rigorous decision-making by DWER to comply with provisions of the EP Act and its principles of environmental protection.</p> <p>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.</p>	Noted. The establishment of improved legal processes for appeals and breaches of the law is outside the scope of the Policy.
Urban Bushland Council	7.1 Enforcement principles	<p>Supported. We especially support the second last dot point <i>'Enforcement actions will be applied consistently across all sectors of the community, industry and government .....'</i>. <u>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.</u></p> <p>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.</p> <p>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.</p>	Noted

Submitter	Section	Stakeholder comment	Department response
Urban Bushland Council	7.2 Types of enforcement action	<p>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.</p>	<p>Noted. The penalties for offences are prescribed in legislation and imposed at the discretion of the judiciary and therefore beyond the scope of the Policy.</p>
EIANZ and NELA	General comment	<p>The EIANZ and NELA are supportive of a culture of compliance, where individuals, business and industry take responsibility for ensuring that their activities do not cause unlawful impacts. However, effective protection of the environment will sometimes need state regulatory departments take enforcement action, providing a strong deterrent to non-compliance.</p> <p>It is important to have clear and concise guidelines which set out principles that provide transparency and educate the public about the department's expectations, approach to compliance (or non-compliance) and enforcement. This is imperative to achieve consistency, efficiency, effectiveness and transparency in the administration of legislation by the Department.</p> <p>From our perspective it is critical that the DWER compliance and enforcement policy is based on the following principles; responsive and effective, targeted and outcomes focused, proportionate and graduated, evidence based, risk based, fair and consistent, collaborative and transparent.</p>	<p>Noted</p>

Submitter	Section	Stakeholder comment	Department response
EIANZ and NELA	5.1 Regulatory principles	We note the Department has developed six best practice regulatory principles.....as the foundation of the department’s regulatory framework and are embedded into its compliance and enforcement actions. EIANZ and NELA are supportive of the proposed principles but would like to see further information provided for each principle in how the Department will determine responses to non-compliance. For example, with regard to the principle ‘transparent’, further details regarding the provision of all relevant information in relation to a matter of compliance and enforcement to affected persons should be provided by DWER	Noted. The Policy is a high-level document and does not provide detailed information about all the statement made.  However, in accordance with procedural fairness the department will always ensure that the alleged offender is aware of the allegations made against them.
EIANZ and NELA	6. Compliance	Part 5 of the draft policy concerns compliance. It is important that DWER publishes detailed guidance on the means by which it will ensure compliance with legislation that it administers. We see that government must lead by example through the establishment of helpful and informative guidance that ensure industry and the community understand that standards that are expected, thereby aligning with section 5.2	Noted. The department is working to ensure that appropriate guidance and educational materials are available to stakeholders.
EIANZ and NELA	7. Enforcement	It is pleasing to see the proposed enforcement action, set out in section 6 of the draft policy, aligns with enforcement methods adopted by most Environmental agencies across Australia. DWER make reference to the key element ‘remedy’ under section 6. With regard to the type of enforcement action taken, greater clarity could be provided in relation to the DWER’s decision making process to decide on which enforcement action is selected. For example in	Noted. The department decided not to include diagrams which definitively create a hierarchy of enforcement action because it believes the diverse environments, activities, events and combinations of factors which are encountered mean the selection of an appropriate enforcement action should be done using the unique

Submitter	Section	Stakeholder comment	Department response
		<p>which circumstances might the DWER decide to issue a statutory notice as opposed to a direction.</p> <p>The draft policy should include greater detail around the department's approach to consider remediation. For example, clarity could be provided on whether the department will support, direct or force the regulated party to 'make good' or take reasonable steps to remediate impacts. This should incorporate the risk based principle and take into account the harm that has occurred or the likelihood of harm occurring, the consequence of the harm and the likely outcome or effectiveness of remediation.</p>	<p>combination of factors related to that particular event.</p> <p>Remedy is one of the department's key elements of enforcement. However, it is not considered feasible to provide statements in the Policy on how the department requires remedy. This will vary according to the situation.</p>
EIANZ and NELA	Prosecution guidelines	<p>The paper indicates that the Department will use prosecution as an enforcement tool. However, this document suggests that the detail on Prosecution (page 14) will be detailed in a separate document which is yet to be finalised. To limit confusion, it would be better that details on the DWER's prosecution approach is included in the draft Policy rather than a separate document. The DWER's prosecution approach should detail, among other matters: the evidence led to the making of the decision and considerations of public interest in the exercise of discretion to commence a prosecution.</p>	<p>The decision to put specific information pertaining to the particular type of enforcement action-prosecution, is in line with the department's approved document framework. Policies are high-level documents, with more detailed information about specific aspects explained in guidelines.</p> <p>The Prosecution guideline will be released shortly after the Policy and the link between the two documents will be clearly stated.</p>
EIANZ and NELA	6. Compliance 6.2 Compliance promotion	<p>Greater emphasis is required on the hierarchy of compliance and enforcement with additional resource being allocated to encouraging and assisting with compliance (see diagram)</p>	<p>The department decided not to include diagrams which definitively create a hierarchy of enforcement action because it believes the diverse environments, activities, events and combinations of factors which are encountered mean the selection of an appropriate enforcement</p>

Submitter	Section	Stakeholder comment	Department response
			action should be done using the unique combination of factors related to that particular event.
EIANZ and NELA	General comment	Without adequate investment in compliance and enforcement resources, updated guidance is unlikely to result in a tangible increase in the identification of breaches, rectification of non-compliance and appropriate enforcement action against those who breach the legislation	Noted
EIANZ and NELA	General comment	<p>The draft policy should place greater emphasis on collaboration, consistency and impartiality when approaching matters of compliance and enforcement. It is foreseeable that increased emphasis on these matters would improve current and future relationships between the DWER and the public. For example, the draft policy could contain a commitment to help affected persons understand their obligations under the law, while acting in a way that is procedurally fair.</p> <p>The draft policy may achieve this by incorporating a modified version of Figure 1, which illustrates the hierarchy of preferred approaches to compliance and enforcement, namely first by encouraging and supporting compliance (i.e. self-reporting, then by directing compliance and last by forcing compliance (i.e. sanctions).</p>	<p>The department's Regulatory best practice principles of being risk based, evidence based, transparent, collaborative, consistent and responsive and effective are embedded into our compliance and enforcement actions.</p> <p><b>6.2 Compliance promotion</b> contains a commitment to providing information and support to promote understanding and encourage compliance.</p> <p>The department decided not to include diagrams which definitively create a hierarchy of enforcement action because it believes the diverse environments, activities, events and combinations of factors which are encountered mean the selection of an appropriate enforcement action should be done using the unique</p>

Submitter	Section	Stakeholder comment	Department response
			combination of factors related to that particular event.
Chamber of Minerals and Energy	General comment	CME understands DWER is moving towards a standardised, risk-based approach to regulatory assessment, together with a stronger focus on using appropriate compliance and enforcement where stakeholders do not meet their commitments. At a high level, CME and its members are supportive of this approach.	Noted
Chamber of Minerals and Energy	5. Regulatory approach	Refers to the DWER Strategic Plan 2018-2021. It is important to note in the Strategic Plan, and as set out in the draft Policy 'undertaking appropriate compliance and enforcement and ensuring regulated stakeholders meet their commitments' is coupled with the following two points: providing consistency and certainty for stakeholders through a streamlined approach to regulatory assessment and advice, applying regulatory best practice principles and ensuring effective internal practices, online systems and resources to deliver good customer service.	Noted
Chamber of Minerals and Energy	5. Regulatory approach	CME is supportive of the regulatory approach set out in the draft Policy and recognises it as being consistent with the direction of the State Government's Streamline WA approach. CME does however consider it important for DWER's focus on compliance and enforcement to be kept in-step with its initiatives already underway to improve regulatory assessment and advice, as well as its internal practice, online systems and resources. It is important that the congruent adoption of these initiatives be prioritised with an overriding direction to streamline processes and regulatory burden,	Noted

Submitter	Section	Stakeholder comment	Department response
		and achieve the intent of being responsive and credible, but also fair.	
Chamber of Minerals and Energy	6.3 Compliance monitoring	<p>The draft Policy states DWER will consider information from other regulatory authorities as part of its compliance monitoring methods. CME recommends any information obtained from other regulatory authorities regarding compliance should be independently verified by DWER, before this information can be used for the purpose of determining compliance or otherwise in accordance with legislation administered by DWER.</p> <p>CME further recommends that adequate transparency is provided for with regards to any use of and/or investigation related to such information obtained from other regulatory authorities. CME notes the State Government is currently consulting on 'Privacy and Responsible Information Sharing', and recommends DWER consider the implications of the proposed model as part of finalising its data sharing arrangements associated with compliance and enforcement.</p>	The Policy uses the term 'consider' information from other regulatory authorities which is thought to cover the varieties of situations applicable under this heading.
Chamber of Minerals and Energy	5.1 Regulatory best practice principles	The presentation in this section implies that the text presented are the published best practice principles however, only the headings are common. The bulk of the text appears instead to be the interpretation or translation of DWER's principles as they may relate to compliance and enforcement activities. This should be clarified and a link to the actual DWER principles should be provided.	Agreed. The Policy has been amended to remove the table, provide a link to the department's principles and state that the principles are embedded into compliance and enforcement.

Submitter	Section	Stakeholder comment	Department response
Chamber of Minerals and Energy	6.3 Compliance monitoring-community reports and complaints	Amend wording to be ‘DWER will receive, record and consider all reports and complaints’. Although DWER may ultimately determine not to action the complaint, the receipt of the complaint at a minimum should be recorded”	Agreed, the wording seems to have caused confusion and therefore the Policy has been amended to clearly explain that all reports are received, recorded, acknowledged and assessed. However, resources are prioritised and the level of response varies according to risk.
Chamber of Minerals and Energy	6.2 Compliance promotion	Amend wording to be “DWER is committed to providing information and support to promote understanding and strengthen compliance”	The sentence is under <b>6.2 Compliance promotion</b> and the use of the term ‘encourage compliance’ rather than ‘strengthen compliance’ is more appropriate because the section is about the proactive ways the department encourages voluntary compliance i.e. through education, guidance documents etc.
Chamber of Minerals and Energy	7.1 Enforcement principles	Enforcement principles (and generally in the document)- the terms ‘breach’, ‘legislated breach’ and ‘offence’ are used interchangeably in the document but not defined, nor is it clear how these terms relate (or otherwise) to a court determination.	Noted, terminology has been reviewed and made consistent where appropriate.
Chamber of Minerals and Energy	7.2 Types of Enforcement action	Types of enforcement action- where applicable, references to specific sections of Acts should be provided. Additionally, some statements require correction. For example, non statutory notices and written warnings are not true “enforcement actions” as they have no statutory basis. As these are not an enforcement action, they should not be classified as such. Similarly, a modified penalty notice is not “a written notice of an alleged Tier 2 offence”. It is a	The draft policy defines enforcement- as a response to identified breaches and has two parts; remedy and sanction (being enforcement action is undertaken to punish, deter and change behaviour). The department does not believe enforcement action to only be those with a statutory base. Non-statutory notices such an

Submitter	Section	Stakeholder comment	Department response
		determination by the CEO that a person against whom there has already been an allegation of a Tier 2 offence is eligible for a modified penalty.	Environmental Field Notice require the offender to rectify the issue in a specific manner within a specified timeframe - if they are not complied with then further action may be taken.
Chamber of Minerals and Energy	7.2 Types of Enforcement action	With regards to the CEO deciding to suspend or revoke an instrument, the Act sets out the circumstances in which this can occur (s.59A). CME notes the policy goes well beyond those circumstances (for example including a fit and proper person test, a detrimental effect test and an unacceptable damage test- none of which are in the EP Act). The inclusion of these additional criteria should be included.	The department's compliance and enforcement activities extend to a range of legislation, not just the <i>Environmental Protection Act 1986</i> . The criteria detailed in the Policy are derived from a variety of legislation. For example the fit and proper person criteria is listed in the <i>Environmental Protection (Controlled Waste) Regulations 2004</i> for controlled waste licences.
Chamber of Minerals and Energy	7.3 Selecting the appropriate enforcement action	Selecting the appropriate enforcement action- "costs avoided or profits realised by the alleged offence" and "the degree of culpability of the alleged offender" may be more appropriately listed under "behaviour of alleged offender" rather than "seriousness of the alleged offence".	Noted. While these factors do reflect the behaviour of the offender, they also contribute to the seriousness of the offence.
Shire of Mundaring	General comment	Overall the draft Policy is comprehensive and addresses important issues in compliance and enforcement as it relates to protection of WA's water and environment	Noted
Shire of Mundaring	General comment	There is concern that DWER do not have sufficient staff and resources to adequately enforce compliance across the State. There have been instances where Shire has referred compliance matters to DWER for investigation and there has been insufficient	Noted. Schedule 3 of the <i>Litter Act 1979</i> authorises employees of a local government to

Submitter	Section	Stakeholder comment	Department response
		<p>or no response (in one instance, requiring intervention of the Office of the Auditor General at the Shire’s behest). We suggest there are aspects of enforcement that could be improved. For example, prosecution is difficult when notices for activities such as illegal dumping are not followed up due to a lack of response from notified offenders. Whilst the Shire is committed to supporting DWER in compliance matters wherever possible, our capacity is limited. Unfortunately as with many local government agencies we simply do not have the staff, skills or resources to deal with compliance that falls outside our jurisdiction.</p>	<p>issue infringements or initiate prosecution proceedings.</p> <p>Local government authorities are welcome to enter into a partnership with the department to tackle illegal dumping.</p>
Shire of Mundaring	7.3 Selecting the appropriate enforcement action	<p>The policy does not address the issue of breaches that DWER and local government are unable to deal with. Breaches not deemed ‘high risk’ may be significant in other respects and lead to a negative community perception about a lack of proper enforcement. Some members of the community will take advantage of this and knowingly commit offences, confident that chances of prosecution are slim. Illegal firewood collection in reserves is a particular concern within the Perth hills, which can risk dieback spread as well as directly removing habitat for native fauna.</p>	<p>In accordance with <b>7.1 Enforcement principles</b> in every case where a breach of the legislation is established, some form of written enforcement action will result.</p> <p>However, it should be noted that the Policy is only applicable to legislation administered by the department. Enquiries regarding illegal firewood collection, the spread of <i>Phytophthora dieback</i> and fauna habitat destruction should be directed to the Department of Biodiversity Conservation and Attractions.</p>
Shire of Mundaring	6.2 Compliance promotion	<p>“DWER is committed to providing information and support to provide understanding and encourage compliance”. This approach is supported as clarification of the compliance priorities and risk based methodology will assist local government and the community</p>	Noted

Submitter	Section	Stakeholder comment	Department response
		in reporting and/or referring breaches that are high risk and fall within DWER jurisdiction	
Shire of Mundaring	6.1 Establishing compliance priorities	Risk based methodology for determining compliance priorities may delay necessary clean up or cessation of activities. It would be helpful for local government officers to be aware of risk evaluation methodology/processes and timing of response and potential remediation actions.	<p>The use of risk-based methodology to determine compliance priorities refers to how the department will identify and prioritise types of industries, premises or activities for compliance monitoring purposes.</p> <p>The need for 'clean up' would generally be identified as a result of compliance monitoring i.e. through an inspection, pollution report etc. and would fall under <b>7. Enforcement</b>. Remedy, or fixing the problem is a key element of enforcement.</p>
Shire of Mundaring	5. Regulatory approach  6.3 Compliance monitoring	There appears to be conflicting statements in the policy; section 4 "where a breach of the law is identified, there is a requirement for enforcement to act as a deterrence against future breaches of law by the offender and others within the community' and Section 5.3 "public reports play a vital role in assisting to identify potential breaches and DWER will receive and consider all reports and complaints. However, in line with its compliance priorities, not all complaints and reports will be pursued as resources are allocated according to risk. The first statement clearly implies that DWER is required to act whenever a breach is identified. The second statement is ambiguous and implies that not all potential breaches will be pursued. The second statement could be re-worded to state	<p>The statements are not conflicting. <b>Section 5</b> refers to established breaches, while <b>Section 6.3</b> refers to the over 3,000 reports received every year from the public. These reports may not actually involve a breach and therefore no enforcement action is required. Where a breach is established, the department will always take some form of enforcement action.</p> <p>However, it is acknowledged that the wording in <b>Section 6.3</b> may be confusing so the Policy has been amended to improve clarity.</p>

Submitter	Section	Stakeholder comment	Department response
		that not all complaints and reports (that are clearly not breaches) will be pursued. Further, it would be helpful to clarify if or when complaints and reports not deemed breaches would be pursued (e.g. instances where a breach hasn't yet occurred but is likely to occur and be of a high risk nature if activities continue unabated)	
AqWest	General comment	Aqwest considers that the draft Compliance and Enforcement Policy that was released for public comment seems 'logical and reasonable'	Noted
Peel-Harvey Catchment Council	General comment	As a general comment, the PHCC is disappointed with the Draft Policy. It fails to set out in any detail DWER's approach to compliance and enforcement. The wording in the Draft Policy is overly vague and contains very general motherhood statements. The PHCC is concerned that this draft Policy presents as a weaker document than the existing policies which it is replacing. The draft Policy contains mostly in principle statements. There is very little meaningful detail or substance in the draft Policy.	Noted
Peel-Harvey Catchment Council	General comment	<p>The draft Policy lacks transparency. The draft Policy fails to explain</p> <ul style="list-style-type: none"> <li>• what risk based methodology will in fact be applied</li> <li>• how risks will be applied to compliance and enforcement actions (see example below)</li> <li>• when conditions will be reviewed</li> <li>• what monitoring regimes are required in what circumstances</li> </ul>	<p>The Water Quality Improvement Plan for the Rivers and Estuary of the Peel Harvey System is a document which provides guidance about a specific water resource.</p> <p>The Policy is a high-level document applicable to a very diverse range of environments, industries and events. As such it is not feasible for it to state</p>

Submitter	Section	Stakeholder comment	Department response
		<ul style="list-style-type: none"> <li>• frequency of assessing monitoring data</li> <li>• triggers for when non-compliance will be actioned</li> </ul> <p>Further, the PHCC believes that the publication of monitoring data is critical for ensuring transparency and accountability. The PHCC urges DWER to consider including the publication of data in its policy.</p> <p>By way of example, the WQIP (Environmental Protection Authority, 2008, Water Quality Improvement Plan for the Rivers and Estuary of the Peel-Harvey System- Phosphorous Management, Perth Western Australia) sets targets for the long term health of the estuary with a need to reduce phosphorous input to the estuary by 50% or at least 75 tonnes per annum. Ensuring zero discharge from licensed agricultural premises (WQIP Management Measure 4.1.5) is an important instrument towards achieving this target. The current reports available to the public provide no useful information to gauge local (catchment scale) effectiveness of DWER's compliance activities in regard to these licensing conditions. The draft Policy lacks detail on how the current situation will be improved, so that the public can have confidence that, in this example, prescribed premises are not contributing to eutrophication.</p>	<p>specific targets for each of these diverse environments, industries and events.</p> <p>The Policy does, however, indicate the factors which it will consider in determining risk under <b>6.1 Establishing compliance priorities.</b></p> <p>It is noted that greater transparency in compliance and enforcement performance and outcomes would be useful to the public and the Policy has been amended to include a section on Compliance and enforcement outcomes.</p>
Peel-Harvey Catchment Council	General comment	The PHCC notes that jurisdictions in other States and Territories have far more comprehensive compliance and enforcement policies. The PHCC submits that the draft Policy fails to explain DWER's compliance and enforcement functions. An example of	The department reviewed the compliance and enforcement policies of other States and countries in the development of the Policy.

Submitter	Section	Stakeholder comment	Department response
		<p>best regulatory practice is Victoria’s EPA’s compliance and enforcement policy. Victoria’s policy clearly correlates the regulatory enforcement response with risk. DWER’s draft Policy, in comparison, fails to explain what actions will be taken by DWER in what circumstances. The draft Policy fails to explain how compliance, enforcement and approvals are related in the regulatory cycle.</p> <p>PHCC urges DWER to consider replacing the draft Policy with a comprehensive, transparent, contemporary and best practice approach to compliance and enforcement similar to other jurisdictions in Australia.</p>	<p>The Policy is similar to the Victorian policy in many ways; however, it was decided not to include diagrams such as those in the Victorian policy which definitively link a particular group of factors to a specific enforcement outcome.</p> <p>The reason being the department believes because of the diverse environments, activities, events and combinations of factors, the selection of an appropriate enforcement action should be done using the unique combination of factors related to that particular event.</p> <p>However, to ensure transparency and consistency, the Policy clearly states in <b>7.3 Selecting the appropriate enforcement action</b> the factors we will consider in making our determination. These factors will always be used to make a decision which is reflective of the uniqueness of the particular circumstances.</p>
Peel-Harvey Catchment Council	General comment	<p>For the Peel Inlet and Harvey Estuary specifically, declining water quality has been well documented but little coordinated action has taken place.</p> <p>The draft Policy fails to address how compliance and enforcement activities are undertaken with respect to high risk industries (which may or may not be licensed) to protect ecologically sensitive areas such as the Peel-Yalgorup Ramsar Wetlands.</p>	<p>The Policy in <b>6.1 Establishing compliance priorities</b> states that the department will prioritise events or activities that represent the greatest level of risk to public health, the environment or water resources. The calculation of that risk considers the factors stated in the Policy, including the location of water resources and the</p>

Submitter	Section	Stakeholder comment	Department response
			<p>environment and its susceptibility to impacts to their value, beneficial use, quality, vulnerability or rarity.</p> <p>Furthermore, <b>7.3 Selecting the appropriate enforcement action</b> will assess the seriousness of the alleged offence with regard to location and issues of public concern, among other factors.</p>
Peel-Harvey Catchment Council	General comment	<p>This issue also highlights the ongoing failure by DWER to apply appropriate legislative instruments to protect water quality and our waterways. As a result, no meaningful 'compliance' or 'enforcement' can be undertaken; we use the Bio-Organics case as an example of this. PHCC requires a high level of confidence that DWER's new Compliance and Enforcement Policy will address the shortfalls identified in the O'Brien report with respect to the Bio-Organics composting facility. PHCC does not believe this is the case with the Draft policy as presented.</p>	Noted.
Peel-Harvey Catchment Council	General comment	<p>The PHCC urges DWER to ensure that enforceable and appropriate regulatory approvals, instruments and tools are applied to protect our waterways and environment. Compliance and enforcement will not be of any benefit to protect our environment if the initial approval or instrument is not appropriate and enforceable.</p>	<p>Noted. <b>5. Regulatory approach</b> acknowledges that compliance will provide an input into the regulatory cycle to encourage continual improvement in statutory instruments and drive decisions on new and amended applications.</p> <p>Further information about the department's Regulatory approach is available on its website (<a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>)</p>

Submitter	Section	Stakeholder comment	Department response
Peel-Harvey Catchment Council	General comment	The draft Policy clearly fails to align with DWER’s existing regulatory policy documents, including DWER’s Guidance Statement- Risk Assessments. The PHCC notes a considerable difference in draft style and detail in the draft Policy to the Guidance Statements. As stated above, the draft Policy lacks any real, meaningful information to enable the policy to meet its objective.	<p>The Policy is in the new department format and being a Policy is a high-level document, sitting below legislation, but above all other document types in our document framework. It therefore contains high-level, overarching statements. More detailed documents such as guidelines sit under policies.</p> <p>The Guidance Statement - Risk Assessment is a document from the former Department of Environment Regulation (DER). The department is currently working to update all documents from the three former departments into the new agreed templates.</p> <p>The Guidance Statement - Risk Assessment specifically relates to the risk assessment process for developing and applying conditions on works approvals and licences under Part V of the <i>Environmental Protection Act 1986</i>. It is unclear which bit of the Guidance Statement contradicts the Policy as it is not related to compliance and enforcement.</p>
Peel Preservation Group	General comment	DWER is to be commended for reviewing and updating its Compliance and Enforcement policy, a process that needs to be carried out on a regular basis to be currently relevant and in tune with best practice.	Noted

Submitter	Section	Stakeholder comment	Department response
		<p>The policy reads well and is understandably written in very general terms without going into the specifics of implementation and delivery.</p>	
Peel Preservation Group	General comment	<p>Nevertheless, our group would like to make several comments about DWER's policy and delivery based on our local experience. We are very aware of the substantial difficulties experienced by another local environmental group affiliated with our own group in their several recent submissions to DWER regarding the Tim's Thicket Liquid Waste Facility. It was hard to get an appropriate ear for these local concerns and for these concerns to be taken seriously and acted upon. Hence the feedback from this affiliated group was that there is a significant gap between DWER's espoused policies and the implementation of these policies, a delivery gap that that needs to be looked at very seriously during any review process.</p>	Noted
Peel Preservation Group	General comment	<p>The other significant point that we think needs to be reflected in DWER's policies is the substantial need for DWER to broaden its scope to take on due advice from outside agencies, particularly local environmental groups. There is so much local knowledge and wisdom that is often overlooked or ignored by centralised government agencies, to the detriment of what those policies are supposed to protect in the first place. Environmental degradation and loss of biodiversity are the sad outcomes if we don't all work together.</p>	<p>Under <b>6.3 Compliance monitoring</b>, point three is information from other regulatory authorities and point 4 is community reports and complaints.</p> <p>Furthermore, one of the department's regulatory best practice principles is transparency and states "DWER will be informed by the public and consider public interest in regulatory decision making". Further information on the department's Regulatory best practice principles can be found on its website (<a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>).</p>

Submitter	Section	Stakeholder comment	Department response
South-West Forest Defence Foundation Inc	General comment	SFDF endorses DWER's commitment to ensuring compliance with the legislation it administers. However, we recommend a stricter approach on the part of DWER to ensure compliance with the Clearing Principles the Clearing Regulations under the <i>Environmental Protection Act 1986</i> .	Noted
South-West Forest Defence Foundation Inc	General comment	It is clear the Clearing Regulations are not being properly applied, and clearing proceeds apace in the South West and the Wheatbelt, within an internationally recognised Biodiversity Hotspot with its threatened ecological communities and endangered species. Clearing is one, of not the worst, of the threats. Any permit to clear must comply with every one of the Clearing Principles and patch size is not a relevant consideration	This is outside the scope of the Policy; however, the department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> .
South-West Forest Defence Foundation Inc	3. Context	The Western Australian community has an expectation that the relevant authorities will enforce the State's laws. DWER will focus its resources on those matters that pose the greatest risk to public health, the environment and water resources.	This is a statement from the Policy
South-West Forest Defence	4. Legislation	The list should include the Conservation and Land Management Act and Forest Products Act, both of which permit clearing under	The Policy is only applicable to legislation administered by the department. The <i>Conservation and Land Management Act 1984</i> is

Submitter	Section	Stakeholder comment	Department response
Foundation Inc		certain circumstances that are left to the agencies created under these Acts to determine.	administered by Department of Biodiversity, Conservation and Attractions and the <i>Forest Products Act 2000</i> is administered by the Forest Products Commission.
South-West Forest Defence Foundation Inc	5. Regulatory approach	This is clearly not working as rather than experiencing 'improvement and enhancement', public health, the environment and water sources continue to decline. Whether from lack of resources for DWER or lack of will on its part, the desired outcomes are not being achieved	Noted. This is outside the scope of the Policy.
South-West Forest Defence Foundation Inc	5.1 Regulatory best practice principles	<p>Risk based- who decides what are 'unacceptable risk' and 'greatest risks? What are the criteria?</p> <p>It is not just 'cumulative impacts'. It is cumulative and interactive impacts. Loss of one species of flora will lead to the loss of all species of fauna that depend on that particular flora species for survival. Thus the loss of even small remnants and strips of roadside vegetation may be disastrous. As Professor Stephen Hopper has stated, a single tree in a paddock may be important for genetic diversity. The loss of native vegetation and biodiversity in the south west, especially in the Perth Peel region, continues and must be stopped. There is now so little vegetation (less than 10 per cent) left in the Wheatbelt that all remnants and roadside strips are critical habitat and must be retained, no matter how small. Groundwater continues to decline and this problem must be addressed, especially with rising temperatures and declining rainfall throughout the south west and Wheat belt. Excessive groundwater</p>	<p>Risk assessment is a tool which guides the department's decision making processes.</p> <p>The 'Assessment of the risk-weighted consequences' is incorporated at 1(b) in the precautionary principle in Section 4A of the <i>Environmental Protection Act 1986</i>. Risk criteria are specifically developed for the particular environment, industry etc. they are relevant to.</p> <p>The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and</p>

Submitter	Section	Stakeholder comment	Department response
		<p>abstraction is a serious problem, especially as the full amounts being extracted are not known. DWER has a duty to find out how much groundwater is being extracted and by whom, to bring the amounts within sustainable limits taking climate change into account, and to enforce compliance with licences.</p>	<p>regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
<p>South-West Forest Defence Foundation Inc</p>	<p>5.1 Regulatory best practice principles</p>	<p>Transparent- it is not sufficient that DWER will consider the public interest in regulatory decision making. Public interest must take priority over private, political or commercial interests. The public has the right to know how much land has been cleared in each region of the State and access this information on line updated every 12 or preferably 6 months. Vegetation loss due to fire and progressive regrowth should also be provided via satellite imagery such as Land Monitor</p>	<p>The term public interest means the combination of considerations applicable to the wider community. It will be considered with other factors.</p> <p>The department is working to improve the transparency and quality of information to enable better management of the state's native vegetation. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
<p>South-West Forest Defence Foundation Inc</p>	<p>5.1 Regulatory best practice principles</p>	<p>Collaborative- public interest must include climate change and biodiversity conservation. 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</p>	<p><b>6.1- Establishing compliance priorities</b> details factors for considering risk and this includes impacts, location, susceptibility to impacts to their value, beneficial use, quality, vulnerability or rarity</p>
<p>South-West Forest Defence</p>	<p>5.1 Regulatory best practice principles</p>	<p>Consistent- all LGAs must be required to comply. Clearing roadsides, especially the Wheatbelt, must be stopped. Exemptions should not be permitted</p>	<p>Noted, but this comment is outside the scope of the Policy.</p> <p>The department is currently developing four initiatives to improve consistency, transparency</p>

Submitter	Section	Stakeholder comment	Department response
Foundation Inc			and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> .
South-West Forest Defence Foundation Inc	5.1 Regulatory best practice principles	Responsive and effective- clearing permits should be refused where the clearing is at variance with one or more of the Clearing principles. The current appeals process is failing to protect the environment and needs to be replaced with an effective, strengthened process such as an Environmental Appeals Tribunal or an Environment Court	Noted, the establishment of an Environmental Appeals Tribunal or an Environmental Court is outside the scope of this Policy.  The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> .
South-West Forest Defence	6. Compliance	A fundamental role of the department as a regulator is to monitor and ensure compliance with the legislation it administers	Agreed, this is stated within the Policy.

Submitter	Section	Stakeholder comment	Department response
Foundation Inc			
South-West Forest Defence Foundation Inc	6.1 Establishing compliance priorities	Cumulative and interactive 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. In assessments and decisions, DWER must ensure strict compliance with the Clearing Principles, especially in the over cleared Wheatbelt and South West. Exemptions should not be permitted.	Noted. The department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a> .
South-West Forest Defence Foundation Inc	6.2 Compliance promotion	DWER is responsible for compliance by government agencies such as Landcorp, Main Roads, Water Corporation, DBCA and FPC and should ensure they are aware of their legal obligations.	The department is responsible for promoting and monitoring compliance with the legislation it administers. As stated in <b>2. Scope</b> , it is relevant to all sectors of the Western Australian community, including government agencies.
South-West Forest Defence Foundation Inc	6.3 Compliance monitoring	DWER should investigate all reports and complaints made by the community to DWER Pollution Watch. It must receive sufficient resources to do this work	The department does receive, record, acknowledge and assess all reports.  It is noted that the wording in the Policy was not sufficiently clear in relation to Community reports and complaints and it has been updated accordingly.

Submitter	Section	Stakeholder comment	Department response
South-West Forest Defence Foundation Inc	7. Enforcement	DWER must comply with provisions of EP Act and the principles of environmental protection. An appeals Tribunal or an Environmental Court like the NSW Land and Environment Court is urgently needed to provide a good appeals and judgement process.	<p>The department's role is to assist the Ministers for Environment and Water to administer a range of legislation pertaining to the state's water and environment. The <i>Environmental Protection Act 1986</i> is one of the legislation administered by the department.</p> <p>The establishment of an Environmental Court is outside the scope of the Policy. However, it should be noted that the Appeals Convenor and State Administrative Tribunal both have roles in the appeal of some decisions.</p>
South-West Forest Defence Foundation Inc	7.1 Enforcement principles	<p>DWER must ensure that enforcement actions are applied consistently across all sectors of the community, industry and government in action as well as word. This must include Local Governments and government agencies such as Main Roads, Western Power, Water Corporation, DBCA and the FPC. Offsets and exemptions must not be used to justify permission to clear when it is contrary to any clearing principle. DWER must comply the precautionary principle, the principle of intergenerational equity and the principle of the conservation of biological diversity and ecological integrity as set out in section 4A of the EP Act. Exemptions for clearing for bushfire mitigation need urgent review. So called fire breaks are not what they are called. They are fuel breaks and not wide enough to stop most fires. They are in fact access tracks. As currently required, they cause serious</p>	<p>The department will consistently apply the enforcement principles outlined in the Policy and will use the factors stated in <b>7.3- Selecting the appropriate enforcement action</b> to determine the action most appropriate to the specific situation.</p> <p>In relation to native vegetation clearing specifically, the department is currently developing four initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. This will include a State Native Vegetation Policy, a bioregional approach to explore setting regionally tailored objectives for</p>

Submitter	Section	Stakeholder comment	Department response
		<p>environmental problems; erosion, weed invasion (by vegetation often denser and more flammable than the native vegetation they replace) and access tracks for feral predators (cats and foxes). If they were assessed as what they really are- access tracks- different criteria would apply and less clearing would be required. An exemption for 3 m wide fire breaks cleared on both sides of a dividing fence causes extensive loss of native vegetation. In small 5 acre of less lots this exemption manes the loss of a high percentage of the native vegetation on adjacent properties and is surely unnecessary. Clearing for asset protection has become a major source of loss of native vegetation. Exemptions for this category of clearing are too broad and need to be made much tighter. Any move by government to legally compel land owners to prescribe burn their bush (clearing by burning) would be an environmental disaster.</p>	<p>native vegetation management and better information and regulation initiatives. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>
<p>South-West Forest Defence Foundation Inc</p>	<p>7.2 Types of enforcement action</p>	<p>Rather than looking at enforcement, education should be the first line of defence. The public and especially land owners and land managers, need to be made aware of clearing regulations, what they cover (e.g. burning, rubbish dumping and off road vehicles), why they exist and the consequences of non-compliance. The second is incentive. Land owners and land manager should be acknowledged and rewarded for retaining and protecting their native vegetation with, for example, awards and rate concessions.</p> <p>Unauthorised clearing, rubbish dumping and off road vehicles cause serious damage to native vegetation and should be prosecuted and have increased penalties (including costs of</p>	<p>The department agrees that education is an important aspect of both compliance and enforcement. <b>6.2 Compliance promotion</b> details the department’s commitment to providing information and support to promote understanding and encourage compliance.</p> <p>The department’s approach to enforcement is always two fold; remedy and sanction. The appropriate sanction may be educational such as non-statutory notices and written warning, where</p>

Submitter	Section	Stakeholder comment	Department response
		rehabilitation) Once lost, native vegetation cannot be restored even at great expense	<p>the aim is to remedy the situation and change behaviour.</p> <p>In relation to native vegetation clearing, the department is currently developing initiatives to improve consistency, transparency and quality of information to enable better management of the state's native vegetation. Further information is available at <a href="http://www.dwer.wa.gov.au">www.dwer.wa.gov.au</a>.</p>