

Submission from the Serrated Tussock Working Party for NSW and the ACT

The Serrated Tussock Working Party for NSW and the ACT believes that the following should underpin funding for Local Land Services biosecurity and ecological integrity activities:

- biosecurity and ecological integrity are the responsibility of the whole community
- compliance with good practice and the law is the responsibility of individuals
- the cost of non-compliance should be borne by individuals
- direct cost recovery from individuals is appropriate in a limited range of circumstances, and
- cost recovery processes must never be used as a cost shifting device to transfer responsibility and costs from the whole community to individuals.

A tax on the value of land (a 'rate' in this context), adjusted to a non-urban land value (see s 585 of the Local Government Act) would provide a basis for providing community funding for the Local Land Services functions.

If good practice is followed, Local Land Services functions will most often be based on information, assistance, and incentives and rewards, rather than on regulation and commercial services.

Any attempts to confine the Local Land Services activities to precise apportionment of costs based on the endorsed cost recovery guidelines will be cumbersome, expensive, delay ridden, unpopular, prone to inconsistency and controversy, imprecise, very complex, and will produce contestable and divisive outcomes.

Cost recovery as a concept is most useful where the activity in question is self contained and easily described and recognised, eg, importation of a horse or generation of a specific waste or pollutant, and where the parties responsible or benefiting are easily determined. The situation with natural resource management is, by contrast, quite different, with many parties contributing to, or gaining or losing from, an outcome, the causes of which may be complicated, not well understood, and spread over a wide, indeterminate, area. It would be manifestly unfair to 'cost recover' from a landholder just because of a first sighting of a new weed, where there could be many pathways for its dispersion. Therefore consideration of the draft IPART conclusions and recommendations needs to be in the context of the likely nature of Local Land Services operations.

As indicated in the draft report, Local Land Services will be concerned with catchment planning, improved environmental outcomes from human activities, safeguarding agriculture from pests and diseases, biosecurity and emergency management. Ecological integrity supporting human wellbeing and the functioning of natural ecosystems on which all production and other economic activities depend is the overall aim of these interrelated

activities. Success will depend on influencing individual activity by landholders and related interests so that the aggregate outcomes produce community wide benefits. Success requires a mixture of public investment and individual effort. It follows that it is imperative to have the widest possible range of funding sources for Local Land Services.

Traditional regulation, eg, granting approvals for specific activities, will only be a small part of Local Land Services. In practice, enforcement has been rare, and usually unsuccessful and counterproductive.

The need will be to empower and support landholders and related interests in acting positively, as is often the case now with the functions being brought together in Local Land Services and with biosecurity plans. Well designed Local Land Service and biosecurity programs will need to apply and continue to develop practices of collaborative action, provision of information and technical assistance, incentives, reward and recognition systems and fostering of compliance cultures to support standards laid down in laws and in agreed plans. Direct regulation, ie, the promulgation, monitoring, and policing and legally enforcing rules, should fade into the background for most functions. Consistent research results indicate that direct regulation does not work very well, if at all, in natural resource management situations.¹ The more effective approaches involve achieving better alignment of economic and financial drivers with Local Land Services goals, and changes in community values and behaviour. One example from another jurisdiction is the co-ordinated and community-friendly program of the South Burnett Regional Council in Queensland for essential land management activities such as weed control, biodiversity and fire regimes, where enforcement of environmental legislation has become a last resort only. The Council is able to link this program with others relating to natural resource management.²

There has also long been universal recognition that market forces alone will not deliver what is needed for success, and so there is a major public good issue. Anything to do with the environment and its exploitation is very complex. There are many parties contributing knowingly and unknowingly and directly and indirectly to success or failure. Many different interests, motives, perspectives and resources are brought to bear on any given issue. It is therefore usually very difficult to determine who has contributed what, or who benefits, in any particular situation.

¹ For example, see Leroy C Paddock, The George Washington University Law School, *Beyond Compliance: Compliance and Enforcement in the Context of Sustainable Development* 2012, C Demmke, The Jean Monnet Center for International and Regional Economic Law and Justice *New Approaches in Implementing and Enforcing Environmental Policy and Law – Administrative Reform and Innovation in Environmental Law and Policy*, 2001 and G Bates *A Duty of Care for the Protection of Biodiversity on Land*, a consultancy report for the Productivity Commission 2001

² See a longer description of the program in Small FARMS October 2013. Local government in Queensland has extensive natural resource management and biosecurity responsibilities, and so for the purposes here, its New South Wales equivalent is Local Land Services.

The issues will change dramatically over time, reflecting changing views on priorities, changes in land owners, changes in production methods, changes in land use, and changes in personal circumstances, that will often be driven by external or unpredictable factors.

Therefore there is a need to avoid any attempt at precise apportionment of costs thought to be based on the government endorsed cost recovery guidelines that will be cumbersome, expensive, delay ridden, unpopular, prone to inconsistency and controversy, imprecise, very complex, and will produce contestable and divisive outcomes. In many cases it will be more efficient as well as more productive to start and finish with a 'community pays' approach, rather than try to pin down individuals for 'cost recovery'.

There is also the risk of undue concentration on cost recovery leading to a narrowing down of activities to the currently popular rather than the necessary broadscale management of natural resources.

The IPART report relies heavily on the Productivity Commission report on cost recovery and documents and processes derived from it. The Productivity Commission analysis mostly does not fit the Local Land Services situation. The Commission expressly says that cost recovery should not apply to activities with public good characteristics or where there are Government policy reasons to the contrary. Any attempt to segregate the Local Land Services functions and expected outcomes into lists of discrete regulatory or mere information activities will fall foul of the need to see the environment and all the production and other activities occurring in it as an integrated whole. In addition, many Local Land Services functions fall squarely in the Government's 2020 Plan and relate to national priorities.

The starting point for Local Land Services boards should be consideration of what is needed to achieve goals, or avoid adverse consequences (the precautionary approach), how best to meet those needs, and then work out the best funding arrangement for the situation. As indicated at pages 88-89 of the IPART report, prevention is cheaper and more effective than subsequent control action, and the system needs to encourage it. At the early and preventive stages, it can be hard to determine precisely who all the beneficiaries will be from success, and so undoubtedly the whole community can safeguard its position by investing. This would not prevent specifically targeting particular interests as well. For example, the whole community will benefit from fewer introduced weeds, but at the same time, it would be reasonable to impose standards and costs on those who import, propagate and sell plants, and on those who encourage the use of chemicals that lead to long term weed spread.

The sources of funds for Local Land Services will be:

- ³the State budget,

³ See <http://www.dpi.nsw.gov.au/locallandservices>

- Commonwealth grants,
- any generally applicable rate determined as a result of the IPART review,
- specific continuing rates or charges,
- any agreed charges or levies for specific purposes, eg, dealing with an emergency, and
- fees for services.

Cost recovery from specific parties will often be considered after action is underway, rather than be a determining factor for initiating that action. Some situations will be straightforward, eg, thoroughbred stud breeders paying the total marginal costs of shuttle stallion importing and management, but many others will be mixed, eg, fox baiting or wild dog control activities that require action by many who are scarcely touched by the problems to support the potential big losers. So the Local Land Service Boards will need to start from a budget allocation process involving the funds they have from State and Commonwealth governments and any general rates. . This is consistent with the following Government statement: *Local Land Services will be funded via direct budget contributions from the NSW Government, ratepayer funds and a continuation of natural resource grant funding via the State Government and Australian Government.*

The desired results for Local Land Services aims will not come from relying on merely soliciting the desired action by individuals. It is important to avoid a situation where a program is diminished or even made ineffective because a landholder or other responsible party, for whatever reason, cannot act, or cannot do so in a reasonable time frame. Such cases should be considered a public good issue, with provision for funding. This could be the case with biosecurity plans, a biosecurity emergency or critical situation (ie, inaction is likely to lead to escalation to emergency), a pest animal or plant control program, or a broader based landscape improvement or biodiversity program.

It can be expected then that Local Land Service Boards will want to influence landholders and related parties to align their values and activities with those of the Board, by investing in services that empower and encourage them. The Boards will need to invest in overcoming externality problems, and in achieving public good goals such as ecological integrity.

Voluntary land management systems aligned to catchment priorities and compliant with international standards can link Local Land Services goals with the personal and business interests of landholders for mutual benefit, with reduced transaction costs compared with current practices, avoiding many of the costs and frictions involved in more 'top down' approaches.

To summarise:

- the context for consideration of the funding issues is that the overall aim of the Local Land Services system is ecological integrity supporting human wellbeing and the functioning of natural ecosystems
- the cost recovery concept described in Government documents will apply in only a limited range of situations dealt with by Local Land Services
- Local Land Services success will be most likely from collaborative activities involving information sharing, assistance and incentives
- enforcement procedures (ie, as normally associated with regulation) can be reserved for recalcitrants whose action or inaction is frustrating action by others, and for dealing with sophisticated entities failing to comply with the law ('we know they are in a position to know better')
- public good issues will be significant in many Local Land Services activities
- there is universal recognition that market forces alone will not deliver what is needed to deal with the public good issues
- the public good issues relate to everyone, not just to rural landholders
- the need is to develop Local Land Service processes, including for funding, that align with the economic drivers of the affected parties, and that generate supportive societal values
- determining the best funding approach should not be allowed to put off, slow down or otherwise frustrate effective action, particularly where an issue is critical or potentially an emergency
- as with other similar situations, eg, funding rural research and development, a general assessment of respective benefits will be more effective than constant analysis of cases
- voluntary land management systems would overcome many identified problems, to the mutual advantage of all parties.

There are comments on the specific IPART conclusions and recommendations in the attached document.

Comments on Summary Recommendations

1. LLS boards should adopt the 5-step cost recovery framework summarised below.

Phase Step

Review 1. Understand the problem, and confirm that LLS should take action

2. Specify the activity required to address the problem

Design 3. Determine who should fund and allocate costs:

– Select appropriate funder using hierarchy

– Allocate costs to selected funder(s)

– Cost-benefit analysis and consultation

4. Decide how to cost the activity and which funding approach (fee, rate or levy) to use

Implementation 5. Decide how the fee, rate or levy will be collected

In many situations that Local Land Services have to deal with, the better course would be a process like a budget allocation flowing from a rough and ready guide, eg, as used for rural research and development and in biosecurity situations. Use of voluntary land management systems linking LLS goals and landholder aspirations would reduce the number of situations requiring attention.

The kind of detailed analysis proposed here should be the exception.

2 Each LLS board should use the cost recovery framework to assess its operations at the activity level. These activities are determined by the strategic plans developed by the LLS Board of Chairs and LLS boards. The LLS Board of Chairs can also apply the cost recovery framework at the strategic level to assess if there are economies of scale between the LLS boards.

Again, this need should be the exception. In many cases, possibly most, the issue will be allocation of LLS funds, including those provided for public good reasons or derived from a general rating system.

3 LLS boards should follow a hierarchy approach to identify who should pay the cost of a regulatory and non-regulatory activity:

– impactor or risk creator, (including land managed by government), the cost of the activity should be allocated to the impactor(s) or risk creator(s) in proportion to their contribution to the impact or risk created, where it is efficient and cost effective to charge them

– beneficiary, where it is efficient and cost effective to charge them, subject to the following hierarchy:

o Where the direct beneficiary captures sufficient benefits to meet the costs of the activity, indirect beneficiaries should not pay.

o Where the direct beneficiary is unable to capture sufficient benefits to meet the cost of the activity, the direct beneficiary should pay up to the point where benefits equal costs and the indirect beneficiary should pay the residual to meet the cost of the activity for the additional benefits,

where it is efficient for them to do so.

– the taxpayer, as funder of last resort, where risk creators or beneficiaries have not been identified, and a public land management agency does not enter the hierarchy as an impactor/risk creator or beneficiary.

The distinction between regulatory and non-regulatory activities is often blurred, and often unhelpful. If the LLSs operate as intended, there should be very little activity that is strictly regulatory. In natural resource management often the general community is the beneficiary. Therefore in many cases the taxpayer will be the funder of first, not last, resort.

4 A sliding scale approach should be considered as a method of last resort for determining cost shares of non-regulatory activities where it is administratively inefficient to identify specific cost allocations.

This will commonly be the case with natural resource management decisions.

5 Fees-for-service should be the default funding mechanism for LLS.

It should be applied in appropriate cases, ie, where someone is obtaining a product or service that goes beyond what has been judged necessary to meet an LLS goal.

6 Rates and levies should be considered when a fee-for-service has been ruled out on the grounds that it is not feasible, efficient or effective.

As indicated in the accompanying submission, this may be the more common situation for many LLS functions. The problem is how to ensure the whole community, not just its rural component, pays.

7 Government funding be available to the LLS as a funding mechanism where:

- a public land management agency has been identified as the primary impactor or beneficiary of the activity, or
- as the funder of last resort, where it is inefficient or inappropriate to target actual impactors or beneficiaries with a fee or levy.

There will be many LLS foundation activities that should be funded by governments, as the general public will be the beneficiary.

8 LLS should develop an efficient, centralised billing system and charge each LLS board its share of the costs of the system. However, LLS boards should be able to seek the services of local government to collect some special purpose rates, where the benefits outweigh the costs. In these instances, LLS boards should pay local government a fee that reflects its marginal costs in collecting the rate on LLS' behalf.

It may be that the central costs of the system would more appropriately and efficiently be borne by taxpayers.

9 LLS boards should retain the ability to charge a general rate, and specific purpose rates (including the current animal health rate)

Agree.

10 LLS rates should comprise a fixed and a variable component.

Agree.

11 LLS boards should continue charging the animal health rate, and should widen the group liable to pay this rate to include all landholders with a rateable land area and 30 or more stock units. This includes continuing to attribute additional notional stock carrying capacity to intensive livestock operations.

All stockholders, urban and rural, should pay.

12 LLS should continue to collect the meat industry levy from rate payers liable to pay the animal health rate on behalf of the NSW Food Authority. Once it has established its rate collection mechanism, LLS should charge the Food Authority a fee that reflects the marginal cost of collecting the meat industry levy.

13 If LLS is to continue to collect the pest insect levy on behalf of DPI:
– the Department should amend the areas from which fees are collected to be consistent with the Draft cost recovery framework, and
– once LLS has established its rate collection mechanism, it should charge the Department a fee that reflects the marginal cost of collecting the pest insect levy.

14 The relevant LLS board should continue to charge the Hunter flood mitigation levy as a specific purpose levy. In addition, other LLS boards should be allowed to implement a levy like the Hunter flood mitigation levy to fund flood mitigation activities where it can be clearly demonstrated that stakeholders support and are willing to pay for those activities.

How can stakeholders be identified, and how can it be demonstrated that they support and are willing to pay?

15 LLS boards should charge a biosecurity levy separate from the animal health levy if they can demonstrate through the funding framework that such a levy is consistent with the funding framework, including that it does not crosssubsidise activities funded via the animal health rate (or vice versa).

Attempts to disaggregate activities and costs in relation to natural resource management and many biosecurity issues will often be doomed to failure and subject to distracting controversy. The idea of

crosssubsidation in these areas of activity requires fairly artificial and superficial analysis.

16 LLS boards should be allowed to charge a natural resource management or environmental levy on rateable properties if they can demonstrate:

- through the funding framework that such a levy is consistent with the framework, including that the levy does not duplicate any rates/services provided by State or local government, and
- has community support.

It needs to be made clear that the funds from the general rate are for all LLS functions, and that the levy referred to here is in addition to that. For example, general rates will contribute to weed control, and some LLSs might want to charge an extra levy to overcome what amounts to a critical or emergency situation, as with serrated tussock in some areas, or to prevent the spread of a problem from elsewhere.

17 The minimum rateable land area should be reduced from the current 10 hectares to 2 hectares. The reduction should occur no later than 1 July 2017, to give LLS boards time to educate and inform small landholders. Individual LLS boards should retain the ability to set a minimum above the proposed 2 hectare minimum.

Fairness requires that there be no minimum – all need to be covered, whether urban or rural. The Beale report reinforced the need to cover all.

18 Land area should be used as the rating base for any general or broad-based rate (such as those that target all LLS ratepayers as the beneficiary). Where the minimum rateable land area is below 10 hectares, LLS boards should be required to use land area as the rating base for general rates. However, where a board has chosen to maintain the minimum rateable land area at 10ha or above, it should have the option to use notional stock carrying capacity instead of land area for general rates if it considers this is more consistent with the draft cost recovery framework.

A simpler approach would be to use land valuation, with all values at a rural use rate (cf s 585 of the Local Government Act). The arguments for the more complicated proposal are still not convincing.

19 NCC should be used as the rating base for specific purpose rates that target the livestock industry as the risk creator or the beneficiary (such as the animal health rate and the meat industry levy).

Surely stock numbers should be the test. Otherwise there will be an unfair outcome with people with a few animals (often involving environmentally desirable outcomes) subsidising highly capitalized intensive enterprises (often also with significant environmental impacts).

20 LLS boards should be allowed to standardise their current rates before implementing IPART's recommendations and avoid different landholders

paying different rates for the same service.

Agree.

21 All current exemptions from rates for sugar cane growers and intensive poultry should be removed.

Agree.

22 LLS should establish a policy for assessing applications and granting individual landholders exemptions or discounts from specific fees, rates or levies in line with the principles in section 8.3.3, having regard to practical issues that might arise for LLS boards.

Agree, subject to simplification of the proposed arrangements. Use of voluntary land management systems would be one way to simplify differential obligations and benefits.

23 LLS should set the penalty for failure to submit an annual return on time so that it is higher than the cost of any rate the submitter could be required to pay based on the content of the return.

Probably would be strongly resisted and resented, and difficult to administer. This would be an example of counterproductive regulation, unless applied only to commercial corporations.

24 The LLS boards should prepare for implementation of a new cost recovery framework by conducting a review into existing and new activities from 1 July 2014. Implementation of the cost recovery framework should begin by no later than 1 July 2016.

Agree, subject to comments and proposals in the accompanying submission. Many activities will need only cursory review, as they are government policy requirements.

25 The cost recovery framework, rating bases and fee collection mechanism specified in this report should be adopted as the audit criteria for assessing the extent to which efficient cost recovery pricing has been applied to the services offered by LLS boards.

Agree.

26 An audit of the extent to which efficient cost recovery pricing has been applied to the services offered by LLS boards should be rolled into the audit of local strategic plans.

Agree.

27 Each LLS board should publish an annual compliance statement affirming their charges are set in accordance with efficient cost recovery pricing.

Presumably as part of annual reporting generally. Otherwise there will be an imposition on LLSs diverting resources from their primary activities.

28 A cost recovery impact statement should be developed at the time of preparation of the draft strategic plan. It should be published in a form and at a time to enable stakeholders to effectively engage in the service fee setting process.

Overkill.

29 The audit should be conducted in accordance with the Standard on Assurance Engagements, ASAE 3100.

Agree.