Reducing the Burden

REPORT OF THE RED TAPE REDUCTION GROUP

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Reducing the Burden – Report of the Red Tape Reduction Group

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Foreword

We are pleased to deliver the final report of the Red Tape Reduction Group to the Treasurer, the Hon Troy Buswell MLA.

The Red Tape Reduction Group was given the task of identifying, reporting and recommending measures that would reduce the compliance burden on the community of excessive and sometimes redundant regulation.

There are many Acts and Regulations that present little or no compliance difficulties. Others, however carry a significant financial and administrative burden and result in lost opportunities.

Western Australia has lagged behind other states in tackling red tape. The failure of successive governments to act on red tape has steered business away from innovation and efficiency and passed the burden of cost onto consumers.

The depth of frustration felt by business and the community became apparent throughout our consultation. It is disturbing to note that this was a consequence not only of the regulatory regime but from the apparent inability of Government Agencies to understand the needs of small business.

The evidence presented to us gave specific examples of poor regulation and duplication of compliance activities across agencies and provided confirmation that this review was timely and indeed overdue.

Many of the recommendations provided in this report are not easy to progress without cultural change within the Government sector. The Government must confront this challenge in order to meet the expectations of the community for reform.

In conclusion, we extend our thanks to members of the community for their engagement in consultation with the Red Tape Reduction Group. We look forward to the Government proceeding with the reform options presented.

Liza Harvey MLA
Member for Scarborough

Hon Ken Baston MLC
Member for Mining and Pastoral Region

Joint Chairs of the Red Tape Reduction Group


Unleaded

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Executive Summary

There is an urgent need for reforms aimed at reducing the regulatory burden in Western Australia. It is estimated that there are currently some 844 Acts and 761 statutory rules in force, amounting to approximately 63,500 pages of regulation. Adding to the regulatory burden is the enormous amount of departmental policies, rulings, explanatory memoranda, advisory notes and so on, which are commonly called 'quasi-regulation'.

Businesses and the community have expressed frustration with the compliance burden associated with this ever expanding stock of regulation. A number of recent reports by organisations such as the Business Council of Australia, the Chamber of Commerce and Industry (Western Australia) and the Institute of Public Affairs have revealed that Western Australia is still highly regulated and has poor regulation-making processes.

Until the Treasurer's announcement of the Red Tape initiatives on 30 January 2009, Western Australia has lagged behind other Australian states and territories, many of which have implemented major red tape reduction initiatives.

The Red Tape Reduction Group (RTRG) was established by the State Government as one of a number of initiatives aimed at reducing the regulatory burden in Western Australia. Other initiatives included the commitment to develop and implement a best practice Regulatory Impact Assessment process for new and amending regulatory instruments and the ability for Ministers to refer regulation for review.

The Red Tape Reduction Group and its reform agenda

The Treasurer, the Hon Troy Buswell MLA, established the RTRG in January 2009. The RTRG was jointly chaired by Liza Harvey MLA, Member for Scarborough and Hon Ken Baston MLC, Member for Mining and Pastoral Region. The RTRG was established to identify and report on opportunities to reduce the burden of existing State regulation and red tape on business and consumers (the full terms of reference for the RTRG can be found in chapter 1).

The RTRG consulted widely in preparing this report. Sixty two meetings were held with a wide variety of small and large businesses, industry associations, local governments and individuals across 12 regional centres and six metropolitan regions. The RTRG also received 64 written submissions. In all, 720 red tape issues were identified and have been examined in the course of preparing this report.

Through the consultation process the RTRG was provided with many examples of business and community frustration with red tape along with compelling arguments for reform. Participants understood and supported the need for regulation, but considered that there was often a lack of a common sense approach to the design and administration of regulation. A feature of the consultation process was the amount of practical and achievable reform suggestions raised by participants.

Following extensive analysis of the issues raised in the consultation process, the RTRG has developed a reform agenda that comprises 107 recommendations. Recommendations have been classified as either short, medium or long-term reform options and can be grouped in three main categories:

- those which aim to reduce the regulatory burden by improving the performance and accountability of government regulators (chapter 4);
- those which aim to maintain an impetus and mechanisms for on-going red tape reduction by government (chapter 5); and
- those designed to address specific areas of concern raised in the consultation process. Recommendations have been developed to address 16 specific reform areas (chapters 6-21).

There are substantial benefits available from reform

Numerous examples were provided by participants of the high costs associated with red tape. These included the often substantial time and paperwork costs involved with meeting regulatory requirements. However, for many participants, the greatest sources of frustration were the delays and uncertainties involved with obtaining the necessary regulatory approval to operate or expand their businesses.

Examples of the costs of red tape

To go through [the licensing process for motor vehicle repairers], if you stopped work and dedicated everything to do it, it would probably take you three days, once you had filled out the entire form and went around and got everything you needed to do.

Leon Pitt, Mt Barker Auto Electrics, Albany Consultation, 17 February 2009

[Mt Romance Australia] recently spent $34,420 in building a new waste water pond at its factory. Of these costs $20,120 or 58 per cent was spent on environmental consultants.

Mount Romance Australia, sub. 27, p. 1

The [local government] audit requirement imposes high costs on the Shire, as we have to find extra resources and staff to prepare these reports annually. The Shire employed consultants to prepare [an audit] and it cost us between $20,000 and $30,000 each year.

Shire of Carnarvon, Consultation, 24 February 2009

This increase in regulation and general environmental legislation has had the effect of increasing administration, auditing and reporting for companies in the packaging industry while at times also creating uncertainty and confusion. The bottom-line impact has resulted in increased cost without a commensurate improvement in environmental standards or business performance."

Packaging Council of Australia, sub. 11, p. 2

Having spent $1 million on design and planning approvals for the re-modelling of the site, the project is now in jeopardy because the holding costs on the property are approaching $150,000 per month. The delay proposed by [the Department for Planning and Infrastructure] will add an additional $2 million to the project costs on a $50 million project.

Stzrelecki Group Pty Ltd, sub. 17, p. 12

Swimming pool regulations are costly. It costs approximately $3,000-5,000 to send 3 to 4 people to Perth for accreditation.

King Sound Resort, Consultation, 22 April 2009

Currently there are 14 licensed charter boat operators who offer whale shark interaction tours within Ningaloo Marine Park. A recurring theme was the burden imposed on operators through a complex application process. For example, applicants are required to complete an application document containing over 60 pages, which needs certification of expert consultants and/or their assistance, imposing additional costs to businesses.

Whale Sharks Western Australia, sub. 12, pp. 1-4

Obtaining a new liquor licence took over 8 months and the cost was almost enough to push the business under…The overall cost associated with obtaining the licence was approximately $34,000 … A large proportion of this cost was spent engaging a legal professional to assist in preparing the [licence application].

Kethrine Spence, Consultation, 12 February 2009

The impact of red tape is not limited to businesses. Consumers are also affected through higher prices and reduced choice and availability of products and services. Through taxation, the community also supports the often costly administration of regulation by government.

Where possible, the RTRG has estimated the potential benefits from implementing proposed reforms. Using a business cost calculator model, the RTRG identified reforms that have the potential to deliver approximately $44 million to Western Australian businesses in a single year. It is important to note that this figure represents only the 'tip of the iceberg' of the total potential benefits from the reforms. This is because:

- for a number of recommendations provided in the following chapters it has not been possible to quantify the benefits associated with the reform. In some cases the information requirements necessary to obtain an estimate of reform benefits were excessive. In these instances, the RTRG has used qualitative analysis to highlight these benefits.
- The benefits from reform reported attempt to capture reductions in the direct costs to businesses (such as time, paperwork, training and fees and charges). Other indirect benefits from reducing the regulatory burden are much more difficult to measure and have not been included in the figures reported. These include lower barriers to entry for potential new businesses, increased competition and efficiency, and consumer benefits.

While it has not always been possible to estimate the cost savings (or cost impost) to government from adopting reforms, the RTRG has recommended only those reforms considered to have the potential to deliver net benefits to the community: that is, where the benefits of introducing reforms outweigh the costs. The RTRG avoided recommending reforms which simply result in costs being shifted from business to government or other sections of the community.

Improving the performance of government agencies

The consultation process revealed a large number of issues relating to the 'culture' of government in Western Australia. These cultural issues are not limited to any single department but were identified across a wide range of public sector agencies and the three tiers of government.

Throughout the consultation process the RTRG was given examples of the frustration experienced by business and the community in dealing with government agencies and processes. The way in which regulation was administered was often perceived as being more problematic than the regulation itself.

Participants' concerns with the performance of government agencies

- An attitude of strict compliance rather than assistance.
- A risk-averse culture.
- Lack of coordination between agencies.
- Lack of clarity about the government's objectives, processes and timeframes.
- Lack of transparency in decision-making processes.
- Inconsistent interpretation of rules.
- Disconnect between the regulator and business.
- Lack of clear accountability and 'ownership' of decision-making.

One of the most fundamental findings from the RTRG consultations was the recognition that the majority of the regulatory burden on business in Western Australia does not come from the Acts or regulations passed by the Parliament. The main source of the current regulatory burden on Western Australian business comes from quasi-regulations and government administration of them.

Quasi-regulations are policies, administrative procedures and business rules developed by government agencies. These are created under powers given to government agencies to achieve the principles stated in the Act and regulations for that specific area.

The worrying thing about quasi-regulations is that there is very little transparency about how they are created, administered and reviewed. There is often little or no parliamentary scrutiny of quasi-regulations. They are therefore not assessed by those who have created the laws as to whether they are consistent with the intent of the legislation.

The RTRG has developed a number of recommendations aimed at improving the performance of government agencies in administering regulation. These recommendations are intended to improve the transparency and accountability of agencies' operations and, in doing so, create incentives for improved performance by government agencies. Recommendations for improving the performance of government agencies are contained in chapter 4.

Maintaining momentum for red tape reduction

A major issue for the Western Australian Government is to maintain the momentum for regulatory reform generated by the RTRG process. The key to ensuring that this momentum is not lost is to ensure an on-going regulatory reform process in Western Australia.

The State Government's recent introduction of a Regulatory Impact Assessment process for new and amending regulatory instruments, will play a key role in improving the quality of regulation making and preventing a major increase in the regulatory burden. However, this system is not designed to review and reduce existing regulations.

The RTRG considers the most effective mechanism to achieve on-going reduction of red tape is to introduce incentives encouraging regulating agencies to have a key role in developing and introducing reform. These types of initiatives have been used successfully in other Australian jurisdictions in recent years. For example, a number of state governments have set individual agency targets to reduce the regulatory burden in their jurisdictions.

State targets in other Australian jurisdictions

- South Australia – Initial target of $150 million over two years (from 2006-08). A new target of a further $150 million over three years (2009-11 inclusive).
- New South Wales – Reduction in red tape burden by $500 million by June 2011.
- Victoria – Cutting the existing administrative burden of regulation by $154 million over three years (2006-09) and $500 million over six years (by 2012).
- Queensland – Reduction in the compliance burden to business and administrative burden to government by $150 million by end 2012-13.

In chapter 5, the RTRG provides recommendations, based on experience internationally and in other Australian jurisdictions, that aim to achieve on-going red tape reduction across Government.

Red Tape Reduction Group Recommendations

Following is a summary of the RTRG's recommendations.

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Recommendation 4.6 *All new and amended quasi-regulations should be subject to a Regulatory Impact Assessment process and the results of this process should be made publicly available.*	49
Recommendation 4.7 *Require government agencies to develop target timeframes for decision-making processes and report against them publicly. This report should include:* • *calendar days taken to make a decision and calendar days taken during 'stop the clock' periods;* • *calendar days taken by other departments to deal with referrals under the assessment process;* • *calendar days taken by proponents to respond to information requests; and* • *the reasons as to why 'stop the clock' provisions were utilised (e.g. information being requested from the proponent).*	50

Medium-term reforms

Long-term reform

Chapter 6 – Liquor licensing

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Recommendation 6.14 *Where no decision has been made with regards to an application to grant or remove a licence within six months of being received by the Department of Racing, Gaming and Liquor, the application will be deemed approved.*	72
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Short-term reforms

Medium-term reforms

Chapter 8 – Marine and caravan licensing

Medium-term reforms

Chapter 9 – Motor vehicle repairers and dealers licensing

Motor vehicle repairers licensing

Medium-term reform

Motor vehicle dealers licensing

Medium-term reforms

Chapter 10 – Planning and development process

Short-term reforms

Medium-term reforms

	PAGE
Recommendation 10.6 *Local government authorities and state government agencies involved in the planning process should be required to use consistent electronic assessment processes for a variety of purposes, including for:* • *lodgement and receiving of applications;* • *communicating with developers and applicants;* • *requesting and providing further information;* • *reviewing the progress of an application;* • *tracking and reporting development decisions;* • *tracking and reporting Schemes and amendments;* • *referral;* • *approval processing;* • *payment of fees; and* • *other purposes.*	111
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Recommendation 10.8 *Streamlined processes for minor local planning scheme amendments should be implemented, including:* • *delegation of decision-making power to an independent decision-making body; and* • *reduced advertising timeframes.*	112
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Chapter 1
Background

Overview

Western Australian society would not be able to function effectively without some forms of regulation. Laws that exist to ensure public safety, protect children from exploitation, protect the environment, and facilitate everyday economic transactions are all examples of regulations that are essential in a modern society. Well designed regulation can deliver great benefit.

Problems arise when governments start to view regulation as the principal way to protect its citizens from the risks of everyday life. Governments develop a risk-averse culture that often results in the introduction of unnecessary, excessive and poorly designed regulation that can:

- impose excessive compliance costs on business;
- negatively impact on markets by restricting competition;
- reduce innovation and entrepreneurship;
- impose direct costs on government;
- fail to achieve its objectives; and
- increase the living costs of the broader community by restricting consumers' choices and lifestyles.

Red tape is a term that is commonly used to refer to the compliance burden associated with government regulations. It has been described as "regulatory or administrative requirements that are unwarranted, ineffective or not the most efficient option for delivering the required outcome."[1]

The challenge for governments is to ensure that the benefits of regulation exceed its costs.

Regulation in Western Australia

In Western Australia it is estimated that there are currently 844 Acts and 761 statutory rules in force, amounting to approximately 63,500 pages of regulation.[2] Adding to the regulatory burden is the enormous amount of departmental policies, rulings, explanatory memoranda, advisory notes and so on, which is commonly called 'quasi-regulation'.

Historically, Western Australia has a poor record in reducing regulation. It was the worst performing jurisdiction in implementing National Competition Reforms and until 2009 had no formal Regulatory Impact Assessment process.

1 Report of the Commonwealth Government Task Force on Reducing the Regulatory Burden on Business, *Rethinking Regulation*, January 2006.

2 *Performance Benchmarking of Australian Business Regulation: Quantity and Quality*, The Productivity Commission, December 2008.

A number of recent reports by organisations such as the Business Council of Australia, the Chamber of Commerce and Industry (Western Australia) and the Institute of Public Affairs have revealed that Western Australia is still highly regulated and has poor regulation-making processes.

> *Western Australia has developed an international reputation as the most over-regulated Australian state.*
>
> Institute of Public Affairs, Over-ruled: *How excessive regulation and legislation is holding back Western Australia*, Discussion Paper, June 2009.
>
> *Western Australia – which has to date, failed to put in place basic regulation making and monitoring procedures – achieved an overall 'poor' rating.*
>
> Business Council of Australia, *A Scorecard of State Red Tape Reform Report*, May 2007.
>
> *Extrapolating these costs over the entire WA business community yields a total cost of compliance of approximately $2.1 billion in the past year in Western Australia. This accounts for almost 3.5 per cent of WA business income, or around two per cent of gross state product.*
>
> Chamber of Commerce and Industry (WA), *Regulation and Compliance: A Discussion Paper*, November 2006.

New initiatives to reduce the regulatory burden

In December 2008, the Western Australian Cabinet approved a range of initiatives aimed at reducing the regulatory burden in Western Australia. These are:

- establishing a Red Tape Reduction Group (RTRG) consisting of two Members of Parliament to identify and report back to the Economic and Expenditure Reform Committee (EERC) on opportunities to reduce the burden of existing regulation on business and consumers;
- providing Ministers with the ability to refer specific regulation (via the Treasurer) to the Regulation Review Unit within the Department of Treasury and Finance for targeted review and reporting back to the EERC; and
- the development and implementation of a best practice system of review of new and amending regulatory instruments.

The first two initiatives are aimed at reducing the regulatory burden on business and consumers by removing, reducing or improving the administration of the existing stock of regulation.

The Treasurer publicly announced these initiatives on 30 January 2009.[3]

3 Treasurer's Media Release: "Government crackdown to reduce excessive regulation and red tape." Released 30 January 2009.

The Red Tape Reduction Group

The RTRG was created to provide an opportunity for the State Government to hear directly from those affected by regulation and red tape, including business, local government, not-for-profit groups and the wider community.

The Treasurer appointed two Government members with extensive experience in business to chair the RTRG. The Chairs are:

- Liza Harvey MLA, Member for Scarborough; and
- Hon Ken Baston MLC, Member for Mining and Pastoral Region.

The Regulatory Reform Unit (RRU) from the Department of Treasury and Finance provided the secretariat for the RTRG with support from the Small Business Development Corporation (SBDC).

Terms of Reference

The terms of reference for the RTRG are:

> *The RTRG has been established to identify and report on opportunities to reduce the burden of existing State regulation and red tape on business and consumers.*
>
> *The RTRG will:*
>
> - *identify specific areas of existing regulations and red tape which are unnecessarily burdensome, complex or redundant;*
> - *identify regulations and red tape that should be removed or significantly reduced as a matter of priority; and*
> - *recommend practical measures to alleviate the compliance costs of red tape on business, government and the community.*
>
> *In undertaking its functions, the RTRG will consult widely around the State with business (including small and medium sized businesses), industry groups and local governments. The RTRG will be required to: deliver a final report to the Treasurer for submission to the Economic and Expenditure Reform Committee within nine months of its establishment.*

Over the period February to June 2009 the RTRG engaged in a comprehensive consultation process throughout Western Australia to listen to the community's views on the impact of regulation and red tape. A summary of this consultation process is outlined in the next chapter of this report.

Chapter 2
Consultation process

Overview

Under its terms of reference the RTRG was required to "consult widely around the State with business (including small and medium sized businesses), industry groups and local government."[4]

The consultation process developed by the RTRG had two elements:
1. face-to-face consultations; and
2. a written submissions process.

This chapter will outline the consultation undertaken and provide a brief overview of the issues raised with the RTRG.

Face-to-face consultations

Starting in February 2009 the RTRG organised and conducted 62 face-to-face consultations with a wide variety of stakeholders in 12 regional centres and 6 metropolitan regions.[5]

4 Red Tape Reduction Group terms of reference. Released 30 January 2009.

5 A complete list of the face-to-face consultations can be found in Appendix 1.

The face-to-face consultations carried out by the RTRG included the following:

- one-on-one consultations with individual businesses;
- business roundtables;
- local government meetings;
- community forums;
- site visits to businesses; and
- meetings with industry and non-government sector peak bodies.

The RTRG utilised the Small Business Centre network in regional areas, local chambers of commerce and regional development commissions to assist in organising some of the face-to-face consultations. The remaining consultations were organised by DTF and the SBDC.

The RTRG consultation process generated a number of media stories in local and regional media. To promote the consultations, advertisements were placed in the local media, flyers were circulated and existing business networks were also utilised.

Consultation summaries were prepared after each of the face-to-face consultations. These summaries outlined the issues raised, identified responsible agencies, the type of regulatory instrument, potential for case study and availability of cost estimates.

575 red tape issues were raised during the face-to-face consultations. In some cases participants were encouraged to provide the RTRG with a written submission outlining their experiences.

Written submission process

The RTRG also conducted a written submission process. Stakeholders were able to provide written submissions until the end of May 2009 via a special email address (redtape@dtf.wa.gov.au) or by mail.

A letter inviting key stakeholders to submit a written submission was also sent out by the RTRG.

The RTRG received 64 written submissions containing over 140 red tape issues.[6] The submissions ranged in format from letters or emails sent in by members of the public to comprehensive documents provided by industry peak bodies and individual businesses.

A number of follow up meetings were held in June and July 2009 with stakeholders who provided formal submissions.

Since the formal submission process closed the RTRG has received numerous emails at redtape@dtf.wa.gov.au providing further examples of red tape.

6 A complete list of the formal submissions can be found in Appendix 2.

Summary of the consultation findings

Once the data had been collected from the consultations it was entered into a database to assist in further analysis. The database was created to count the frequency of issues, aggregate data, provide a reference point back to the original information and to allow cross tabulation of the results.

Analysis of the consultation data resulted in 720 red tape issues being identified.[7]

To provide an overall picture of the consultation results this chapter will briefly examine:

- the top ten issues raised;
- the top ten responsible agencies; and
- a comparison of the issues raised through both consultation mechanisms.

Top ten issues raised

The top ten issue areas contain over 70 per cent of the issues raised during the consultation process. The top ten red tape issue areas revealed by the consultations are set out below.

Rank	Issue type	Percentage of issues	Frequency
1	Planning	20.4%	147
2	Environmental licences and approvals	10.7%	77
3	Agency coordination	6.8%	49
4	Occupational licensing and training	6.7%	48
5	Liquor licensing	6.4%	46
6	Business licensing	5.0%	36
7	Government land release	4.6%	33
7	Local government operations	4.6%	33
9	Building	3.2%	23
10	Commonwealth jurisdiction	3.1%	22

Participants in the consultation process were scathing in their comments about the operation of Western Australia's planning system. Over 20 per cent of the red tape issues raised during the consultation process were in relation to planning red tape. Both business and local government were highly critical about the structure, complexity and onerous requirements of the current planning system.

Environmental licensing and approvals was another area raised by a significant number of participants in the consultation process. A recurring feature was the significant impact of these environmental restrictions on the viability of business operations.

The RTRG was provided with a number of examples where lengthy delays in approvals decisions and changing information requirements were placing an enormous constraint on the ability of businesses to operate successfully.

7 A detailed breakdown of the consultation data can be seen in Appendix 3.

These environmental issues do not include those primarily affecting the mining sector. The RTRG generally referred complaints about the impact of red tape on mining approvals to the Industry Working Group reviewing approval processes in Western Australia, chaired by the Hon Peter Jones AM.

The lack of coordination and dysfunction between government agencies and the three tiers of government was a major theme raised during the consultation. The lack of communication between government agencies in processes that require more than one agency's input was seen to have a considerable impact on the red tape burden on business. This issue is examined in detail in chapter 4 of this report.

Concerns about the structure and administration of Western Australia's liquor licensing regime were raised at all the face-to-face consultations throughout the state. Chapter 6 of this report contains an in depth analysis of these issues.

Top ten responsible agencies

A large number of the issues raised during the consultation process involved more than one government agency. For the purposes of this section the RTRG has identified the agency primarily responsible for the red tape issue/incident.

Rank	Department	Percentage of all issues	Frequency
1	Planning and Infrastructure	21.7%	156
2	Commerce	11.0%	79
3	Environment and Conservation	10.4%	75
4	Local Government and Regional Development	8.5%	61
5	Racing, Gaming and Liquor	5.6%	40
6	Western Australian Planning Commission	4.4%	32
7	Health	4.2%	30
8	Western Australian Local governments	3.8%	27
9	Education and Training	3.1%	22
10	LandCorp	2.9%	21

The agency with the most red tape issues was the then Department for Planning and Infrastructure, which had responsibility for the planning system, transport, and maritime licensing. This department was split into two separate departments in July 2009.

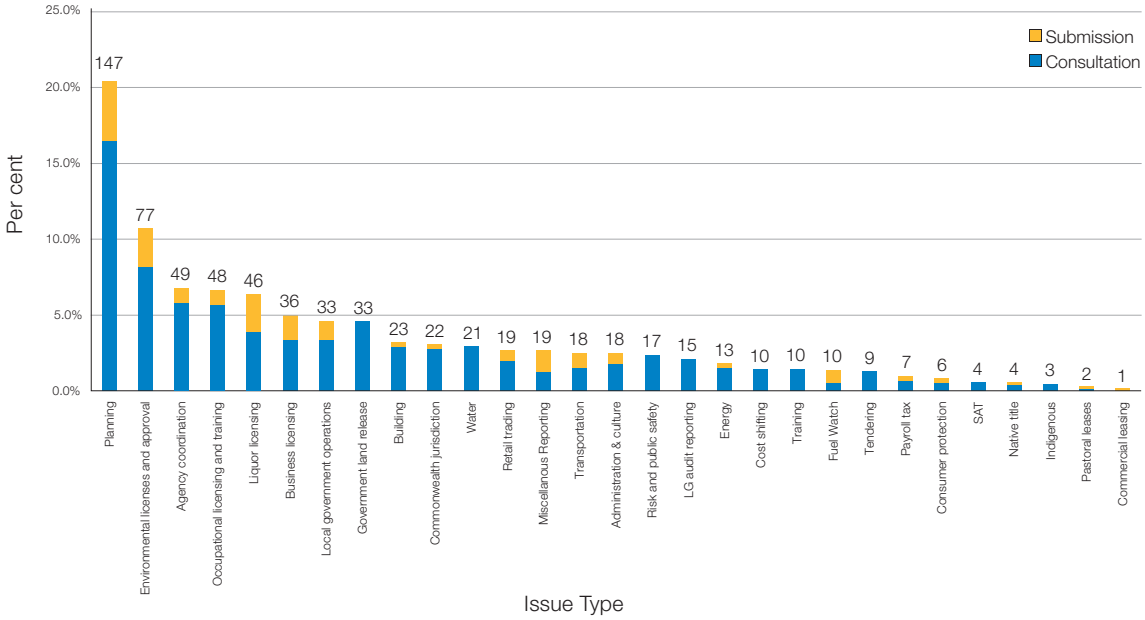
The Department of Commerce was ranked second. This is not surprising due to the Department's role as primary regulator for business licensing, consumer protection, fuel watch, retail trading and occupational health and safety. The only issue category regulated by the Department of Commerce ranked in the top ten issues was business licensing. A number of regulatory regimes administered by the Department of Commerce are covered in later chapters of this report.

On the whole the ranking of responsible agencies had a close correlation with the ranking of the type of issues raised.

Comparison of the issues raised through both consultation mechanisms

A comparison of the types of issues raised through both consultation mechanisms revealed that they were relatively consistent. The RTRG had been concerned that the type of consultation mechanism would result in a bias in the type of issue raised.

720 submissions and consultation issues by issue type



Issues that were raised through the face-to-face consultation but not in any formal submissions were:

- government land release;
- water;
- risk and public safety; and
- local government audit reporting.

The first two issues were raised during regional consultations and the other two issues were raised in face-to-face meetings with local governments.

Grouping the issues

Prior to undertaking the ranking and analysis process outlined in chapter 3 it was necessary to split the larger issues such as planning and environmental licensing and approvals into sub-categories.

For example planning was split into:

- administration and culture;
- heritage issues;
- inadequacy/delay/complexity of process;
- interagency coordination;
- local government planning approval;
- Residential design codes (R-codes);
- regional planning issues;

- impact of shopping centres policy;
- tourism planning and approval;
- local planning scheme approvals; and
- Western Australian Planning Commission (WAPC) approvals.

The creation of these sub-categories assisted in calculating an accurate count of the frequency of specific issues raised in the consultations.

Chapter 3
Approach used in this report

Overview

The challenge facing the RTRG was the need to sift through the large number of issues to identify areas where reforms are likely to be worthwhile and achievable.

This chapter briefly explains the process used for identifying and prioritising red tape issues.

Once the priority areas had been identified, the RTRG sought to develop meaningful reform options. These reform options have the potential to result in a substantial reduction in the regulatory burden facing businesses, government and the wider community.

Valuing the benefits of red tape reform has been a key feature of successful reform processes in other jurisdictions.

Where possible, the RTRG has attempted to value the benefits of implementing reform options. These values give an indication of the relative benefits of different reform options, and provide an indication of the magnitude of the regulatory burden. The methodology for valuing reform options is also explained in this chapter.

In most cases, the estimated benefits of reform identified in the following chapters will **understate** the total benefits available to the community.

The RTRG has estimated the potential direct benefits of reform to existing businesses and industries. Other indirect benefits from reducing the regulatory burden are much more difficult to measure and have not been included in the figures reported. These include:

- lower barriers to entry for potential new businesses;
- increased competition and efficiency; and
- consumer benefits.

Indirect benefits are often substantial. Therefore, the figures reported in the following chapters can be considered to represent only the 'tip of the iceberg' of the total potential benefits of reform.

A two stage process was used

The consultation process identified 720 red tape issues as potential candidates for reform.

Not all of the issues raised lead to worthwhile reform options. Often issues raised were based on inaccurate or out-of-date information or an area of Commonwealth responsibility.

The RTRG undertook a two stage process in completing this report:

- Stage 1 – an initial priority ranking of identified red tape issues for further analysis; and
- Stage 2 – an in depth analysis of identified regulation/red tape issues and generation of reform options to be included in the RTRG's final report.

Stage 1 – Prioritising the red tape issues

In prioritising the red tape issues, the RTRG adopted a ranking process similar to that used by the Council of Australian Governments (COAG) Business Regulation and Competition Working Group (BRCWG) reforms.

The ranking of the issues/incidents is based on two broad criteria: economic impact and feasibility.

Economic impact

Issues were ranked to get an idea of the size (scope) of the problem and its significance (or impact). Issues with a high ranking, were considered as potentially worthwhile reform areas. To assess the potential economic impact, the following criteria were used:

- width of reach – this was intended to reflect the 'popularity' of the issue, that is the number of businesses and organisations that nominated the issue through the consultation process;
- depth of reach – this was intended to capture the size and significance of the businesses, or sections of government, affected by the regulation. Businesses were assessed using measures such as contribution to Gross State Product (GSP), size of businesses and employment;
- compliance costs – this reflects the direct impact of the regulation on the businesses, government and the community, the 'red tape' costs. Compliance costs include fees and charges associated with complying with regulation, labour costs required to meet regulatory costs, and costs associated with delays and regulatory uncertainty. High rankings were attributed to issues where the compliance costs of regulation appear unnecessarily high and are more than likely an avoidable regulatory burden; and
- competition and incentive effects – this criterion was designed to capture some of the more dynamic aspects of the regulatory burden, such as the potential for red tape to distort resource allocation and entrepreneurial behaviour in the economy.

Feasibility

The economic impact criteria provided an indication of the size and significance of a red tape issue. The other important factor the RTRG considered was how difficult it would be to identify and successfully implement reform options to address a red tape issue: the feasibility of reform.

Reform options were ranked based on the length of time it might be expected to take to implement the reforms:

- short-term reforms – which would be expected to take less than 6 months to implement were given a high rating;
- medium-term reforms – which would be expected to take between 6 and 12 months to implement were given a medium rating; and
- long-term reforms – which would be expected to take longer than 12 months to implement were given a low rating.

The time required to implement a reform will be influenced by a number of factors, including whether:

- regulation is the responsibility of the State or local Government – although there are mechanisms available for addressing Commonwealth legislation, such as through the COAG BRCWG process, these tend to be time consuming and are not as amenable to quick reform;
- practical reform options are evident or expected to be identified relatively easily;
- the reform would require new legislation, or could be achieved through changes to policies, guidelines and/or procedures; and
- the reforms raise any fundamental policy issues.

While the RTRG obviously favoured those issues that ranked highly both against economic impact and feasibility, it did not necessarily limit its analysis to these issues. The RTRG identified 93 red tape issues for further analysis. The majority of these red tape issues, and associated reforms are discussed in chapters 6-21 of this report.

Stage 2 – Identifying and valuing red tape reforms

Following the identification of red tape issues, the RTRG has undertaken extensive research to identify and evaluate red tape reform options. This included:

- desk-top research into the short-listed red tape issues, including research into reform options implemented in other jurisdictions;
- targeted consultation with the relevant Western Australian agencies responsible for administering the regulation/red tape issue identified through the consultation process; and
- targeted consultation with industry and members of the community subject to regulation. Although a significant amount of information had already been provided through the consultation process, in some cases further information was sought to clarify the impact of regulation and to assist in measuring the benefits of reform.

Valuing the benefits

To value the benefits of red tape reform, the RTRG used a business cost calculator (BCC) model based on the approach used in the South Australian Department of Trade and Economic Development's *Guidelines for Quantifying Savings for Red Tape Reduction Initiatives* (SA Guidelines).

The SA Guidelines were developed as part of the South Australian Government's red tape reform program. Initially, the South Australian Government directed government agencies to develop and implement red tape reform initiatives capable of delivering $150 million in cost savings. Agencies were given two years to introduce the reforms. The reform program delivered over $170 million in savings, with the savings valued using the BCC detailed in the SA Guidelines.

The BCC model focuses on estimating the costs to the organisations and or individuals directly affected by the regulation. Red tape costs are split into four categories:

- paperwork compliance costs – the costs imposed on the administrative structures of a business. This includes filling out forms, providing government with information, record keeping and obtaining external advice;
- non-paperwork compliance costs – the costs associated with any non-paperwork activities undertaken in order to comply with regulations. This includes changes to production processes, additional investment, capital holding costs and costs arising from inconsistent and duplicative regulation;

- financial costs – which arise from a direct obligation to transfer a sum of money to the government or relevant authority. Such costs include government fees and charges (such as permit and licence fees), but not taxes and levies; and
- the costs of other government processes – which includes costs arising from compliance with government's administrative processes. Specifically, government procurement processes, grant applications and payments systems.

The Business Cost Calculator model does not measure the total benefits and costs of red tape reduction

The BCC model provides a straightforward and tested approach to estimating the benefits to business of reductions in red tape. There are, however, aspects of the regulatory burden that will not be captured using the BCC model. In a number of instances the BCC model will underestimate the total value of benefits available from red tape reduction.

For example, the BCC does not include the savings to government from any reductions in the costs associated with administering the regulations (nor does the model capture any increases in costs associated with introducing red tape reduction reform).

Importantly, the approach does not capture the savings that might be achieved through reducing the indirect costs associated with the regulatory burden, such as reducing the costs that result from regulation affecting market structures or consumption patterns. Regulations can create barriers to entry, limit competition, and impose significant opportunity costs, as well as barriers to innovation, decreased choice and quality for consumers, and higher prices.

Although difficult to measure, the indirect costs of regulation can be significant. This was highlighted in the many examples provided by participants in the RTRG's process. A number of these have been highlighted in the case studies reported in the following chapters.

Valuing the benefits of reform was not always possible

For a number of recommendations provided in the following chapters it has not been possible to quantify the benefits associated with the reform. In some cases the information requirements necessary to obtain an estimate of benefits of reform were excessive. In these instances, the RTRG has used qualitative analysis to highlight the benefits of reform.

Format for presenting recommendations

The recommendations reported through the following chapters are grouped in three classifications:

- short-term reforms – would be expected to take less than 6 months to implement;
- medium-term reforms – would be expected to take between 6 and 12 months to implement; and
- long-term reforms – would be expected to take longer than 12 months to implement.

Chapter 4
Themes

Overview

The RTRG consultations revealed a large number of issues relating to the 'culture' of government in Western Australia. These cultural issues are not limited to any single department but were identified across a wide range of public sector agencies and the three tiers of government. This chapter outlines a set of common themes prevalent in the consultations and recommends a number of measures to reduce their incidence.

Common themes

Throughout the consultation process the RTRG was given examples of the frustration experienced by business and members of the community in dealing with government agencies and processes.

Some of the major themes raised were:

- an attitude of strict compliance rather than assistance;
- a risk-averse culture;
- lack of coordination between agencies;
- lack of clarity about the government's objectives, processes and timeframes;
- lack of transparency in decision-making processes;
- inconsistent interpretation of rules;
- disconnect between the regulator and business; and
- lack of clear accountability and 'ownership' of decision-making.

This chapter will examine each of these common themes and look at case studies from the RTRG consultations.

Compliance vs assistance – The role of the regulator

Government agencies perform a dual role in carrying out their everyday business. These roles are providing customer service to members of the community and performing a regulatory role.

The consultations revealed that government agencies tend to concentrate on their role as a regulator, often to the detriment of their customer service function. It was revealed that many government agencies are unable to balance these two important roles and as a result have developed an attitude of strict compliance rather than assistance.

> *"I am unfortunately drawn to the belief that the DPI's adherence to red tape in the form of official procedures, formalities, rules and regulations is reminiscent of a third world or command economy."*
>
> Strzelecki Group, sub. 17, p. 12

In other cases the government agency developed internal procedures that were strictly adhered to and these often do not take the impact on the end user into account.

> *The* Residential Tenancies Act *requires the lodgement of bond monies 'as soon as practicable' after receipt of those monies. This is interpreted by the Department of Commerce as the next business day. In other words, when a tenant signs a lease and pays the bond to the property manager it is expected that the property manager will bank that money the next day or on a Monday if the lease is signed over a weekend. The requirement for property managers to bank bond money so frequently is very inconvenient, adds to bureaucracy, and should not be necessary as all agents are required to maintain a separate trust account for the depositing of bond money.*
>
> Real Estate Institute of Western Australia, Consultation, 23 March 2009

Examples were given where officers in government agencies refused to give assistance about a process they administer. This reluctance to provide advice or assistance about a process is sometimes due to a perceived conflict of interest between the regulatory and customer service functions. Anecdotal evidence from the RTRG consultations revealed that a reluctance to assist the public has become stronger since the Corruption and Crime Commission's (CCC) investigations into lobbying activities. Maintaining the integrity of public sector decision-making is important, however government needs to respond to the perception that it is not providing adequate customer service.

The structure of decision-making processes within a government agency can contribute towards this perceived conflict of interest. Government agencies are often structured so that the officer making the decision also is expected to provide advice to customers and conduct the initial appeal into the decision. This structure contributes towards departmental officers taking a highly risk-averse approach to providing advice to customers.

Risk-averse Culture

One of the major concerns raised by business during the consultations was the risk-averse culture of the Western Australian public sector. A common complaint was that government agencies applied a 'worst case scenario' approach to its decision-making processes even when the risk associated with the decision was low.

> *"Regulatory culture has moved from an interpretation of appropriate standards for an activity or business, to every activity to have a 'tick in every box' regardless of appropriateness. 25 per cent of the cost of building a new house would be related to compliance with red tape."*
>
> Rod Harris, Albany Consultation, 17 February 2009

"We are having a function at SciTech next week for probably 30 people and because we are serving liquor (not selling) Liquor Licensing asked us to get a licence. Effort was quite out of whack with the risk.

(We) had to get the admin assistant involved in the application. A $35 fee is charged which is no real drama but the application was very detailed. They also had to get a personal signoff from the local police department."

Eugene Browne, sub. 29

The consultations revealed a tendency for government agencies to continually seek further information during a decision-making process rather than make a decision. This was viewed by business as unnecessary and in some cases a deliberate strategy by the decision maker to avoid making a decision. Businesses told the RTRG that they were happy to provide information to assist in making an informed decision but called for some measure of 'reasonableness' to ensure that information costs did not spiral out of control.

Another common theme from the consultations was the need to introduce a risk-based approach to decision-making which balances risk against the level of regulation. Business and community groups in regional areas were the most vocal about the impact of this risk-averse culture on local communities.

The impact of a risk-averse culture on regional communities

"Operators are required to fulfil a number of basic requirements, such as displaying licence, qualification of the service manager, safety requirements, which leads to numerous paper work, unproductive time and cost to operators. For example, [it] cost the not for profit Tarcoola Tennis Club around $24,000 with new liquor licensing requirements, especially the Responsible Service of Alcohol requirements which cost $3,000-4,000. All service managers need to get a licence before they are allowed to work. At a staff turnover of 80 per cent, it is impossible to run the business as the application and approval process takes a long time. A licensee spends 25 per cent of their time on compliance."

Bob Ramage, Geraldton Consultation, 23 February 2009

The cumulative impact of this risk-averse culture can be seen in the non government sector where the requirements of numerous government agencies are threatening the existence of volunteer organisations.

> *"We are living in a risk-averse culture. The perceived risk of insurance liability is ruling the sport and recreation industry. Many of the regulatory decisions are not evidence based. There should be a requirement for real evidence before regulations are developed so that the real risk is measured.*
>
> *The capacity and willingness of communities to comply with new legislation, as well as local government policies (which are largely driven by perceived risk), is becoming increasingly limited. For example in country communities, community group access to halls is limited by insurance requirements, imposed by the insurers. The number of meetings or events small interest groups can hold each year is often limited by their own public liability insurance. This is frequently beyond a groups' financial capacity to pay."*
>
> Department of Sport and Recreation, sub. 47 p. 3

Lack of coordination between agencies

The lack of coordination between government agencies is one of the major contributors to red tape. This lack of coordination can take a number of forms including:

- inconsistencies in policies which create tensions between departments;
- duplication of information required; and
- incompatibility of IT systems.

A common theme raised throughout the consultations was a perception that government departments 'don't talk to each other' and that in cases where more than one agency is involved in a decision-making process there was a lack of 'ownership' of the process.

> *"We have dealt with the Department of Indigenous Affairs, Aboriginal Lands Trust, Indigenous Pastoral Enterprise Unit and Pastoral Lands Board of the Department of Planning and Infrastructure. Two years have passed in respect to one site and eighteen months the other, with out any progress. The current process does not allow this to go ahead in a timely fashion."*
>
> Tourism Council of Western Australia, sub. 14, p. 3

Inconsistent policies

Inconsistency between the policies of government agencies will always occur. For example, the Department of Environment and Conservation will have a different philosophy and policy objectives to the Department of Mines and Petroleum. This policy tension is important to ensure that government makes a balanced decision that is in the best interests of the State. However, it becomes a serious problem in cases where this inconsistency causes dysfunction and creates impasses that can't be resolved.

Problems may arise in situations where:

- there is no clear articulation of a 'whole-of-government' policy direction; and
- poor design of approvals processes or legislative framework creates a standoff situation with no resolution.

Businesses also expressed frustration about lack of policy coordination and consistency across the tiers of government and the tendency to collect information that has little benefit.

> *"Of fundamental concern, however is the lack of coordination and policy consistency across Federal, State and local governments. This has given rise to overly complex regulation and the sense that data collection and reporting requirements are sometimes established for the 'sake of it' without the information being used in any coherent policy way."*
>
> Packaging Council of Australia, sub. 11, p. 2

Duplication of information required

Government agencies require businesses and non-government organisations to provide them with a wide range of information. Often this information is provided to more than one government agency or tier of government.

> *"There are many other areas of duplication in relation to state and commonwealth requirements that impact on small business in the areas of taxations, reporting, completion of surveys and statistical returns. A comprehensive review of the different requirements of the three levels of government on small business would be certainly welcomed by the industry and small business in particular."*
>
> Motor Traders Association, sub. 44, p. 2

Excessive Reporting Requirements (WACOSS)

The information costs faced by the non-government sector are huge as reports and tender documents provided to the various State and Commonwealth government departments all require similar information over and over again. We measure the size of our documents by the kilogram. One tender document sent to the Commonwealth government weighed 60 kg. We estimate that each tender would cost our member organisations approximately $6,000-$7,000 to prepare.

To solve this we suggest a process of pre-qualification at a central repository for all government tenders. This could take the form of a database which holds all the generic information required for tenders so that duplication is removed. Reporting requirements and data sets that are provided to funding agencies are inconsistent requiring the not-for-profit agency to set up parallel reporting mechanisms which are essentially duplicating each other. We suggest that the Office of e-Government look at introducing whole-of-government consistency in online reporting.

WACOSS Consultation, 30 April 2009

A common complaint from the consultations was the cost involved with collecting and providing information to government. This was highlighted in the non-government sector where tendering and reporting requirements for government funding were found to be overly prescriptive and took resources away from their core business.

> *"The complicated process for community level organisations to access funding with different requirements across different government agencies has driven some organisations to employ staff whose sole job is to ensure compliance."*
>
> Department of Sport and Recreation, sub. 47, p. 4

South Australia has introduced a number of measures to reduce the amount of duplication of information that needs to be provided to government by consumers and businesses.

Whole-of-government address change facility

South Australia is introducing a whole-of-government address change facility to reduce the number of forms to be filled out by citizens when changing address, to a single one which will inform all relevant agencies.

This will take the form of a web service which allows all participating agencies to be notified of a citizen's change of address based on the results of a single online transaction. Red Tape Savings $94,300.

Government of South Australia (2008), *Reducing Red Tape for Business in SA 2006-2008*, Appendix 2, p. v

Incompatibility of IT systems

There is a strong perception in the business community that information sharing between government agencies is almost non-existent. The major cause of this is the incompatibility of IT systems used. For too long government agencies have not taken a whole-of-government approach to the sharing of information and compatibility of IT systems.

> *Landgate describes the major challenge facing users is that the Western Australian State Government information technology environment "is an environment within which digitized geographic data exists – but there is not the compatibility between data, systems or processes across different custodial agencies."*
>
> ACIL Tasman (2009), *The Value of the Western Australian Land Information System*, A report prepared for the WA Land Information System.

The Commonwealth Government has sophisticated data matching protocols in place that allow government agencies to share information used for decision-making. This architecture has other applications such as reducing fraud and checking that the information provided by businesses and consumers to agencies is consistent.

An example of a Western Australian government agency taking a proactive approach to information sharing is Landgate's initiative to create a single portal for business to access a range of information held by government agencies about land without the need for changing existing IT systems in participating agencies.

> *"While the report refers to WALIS, it is applicable to the Shared Land Information Platform (SLIP) and Interest Enquiry with their one point of access to data used by the property industry and other industry users that require spatial information.*
>
> *Within government, WALIS provides a basis for more efficient government, for better government decisions, and for improved government processes.*
>
> *The wider community derives benefit from all of the above. It also gains direct benefit from an enhanced capacity to inform itself on a huge range of matters ranging from occasional items of personal interest, assistance with business decisions, and matters of an on-going educational nature. Overall, the community is better informed and equipped because of ready access to reliable spatial data within an interactive user environment.*
>
> *The annual costs of integrating land information were estimated at $1.8 million and the potential annual benefits at $10.7 million."*
>
> ACIL Tasman (2009), *The Value of the Western Australian Land Information System*, A report prepared for the WA Land Information System.

This project has the potential to deliver significant benefits to the user of information. A wider application of this type of model across government would lower information costs for business and facilitate the sharing of information between government agencies.

Lack of clarity about government's objectives, processes and timeframes

Business found dealing with government agencies difficult because of a lack of clarity about government's objectives, processes and timeframes. It was argued that this lack of clarity results in high information costs, especially for small businesses.

> *"Possibly as significant as the direct compliance costs are the information costs associated with regulation. Information costs involve the time and effort required to find out appropriate regulation and to understand its requirements. Based on CCI's survey, information costs are, typically, more significant for smaller businesses as they represent a greater proportion of the cost of complying with regulation for them."*
>
> Chamber of Commerce and Industry (WA), sub. 50, p. 6

The RTRG found that in many cases businesses were forced to engage consultants to navigate their way through government processes. The proliferation of consultants in key areas such as planning, environment and liquor licensing has seen compliance costs soar in these sectors. There is no argument that business may be required to engage expert advice in some complex cases but engaging consultants has become standard business practice.

Internal staff costs also make up a large proportion of the information costs faced by business. Participants in the RTRG consultations identified that these internal costs can be quite high. A number of the industry peak bodies attempted to quantify these costs through surveys of their membership.

> *"To provide relatively accurate information regarding the cost to business, for regulatory compliance, the AHA (WA) conducted a brief survey to establish how many businesses have a dedicated person responsible for compliance, and if not, how many hours per week was spent by other staff to meet compliance.*
>
> *Approximately 52 per cent of members who responded to the survey indicated they had a dedicated person responsible for regulatory compliance. The other 48 per cent indicated that the business spent on average 9 hours per week on regulatory compliance. The survey revealed that the cost to business for regulatory compliance was variable by size of operation.*
>
> *Larger businesses, such as, accommodation properties and the larger hotel/taverns who indicated they had a dedicated staff member estimated a weekly cost to business of $1,250, whereas smaller hospitality businesses estimated the weekly cost to business to be on average $325."*
>
> Australian Hotels Association (WA), sub. 52, p. 4

> *"Overall, the sheer number of regulations that businesses are required to comply with appears to be the biggest concern for the WA business community as it creates significant information costs.*
>
> *…In aggregating the time spent by respondents on complying with existing regulations, researching new or amended laws and/or changing internal systems to cope with new or changed laws it was found that small businesses spent up to 18.5 hours per week in the past year dealing with these three aspects of compliance. Medium sized businesses spent up to 26.4 hours every week in the past year on these issues, while large firms spent an average of 70.3 hours on regulation issues in a working week."*
>
> Chamber of Commerce and Industry (WA), sub. 50, p. 7

It is clear that there is scope for government to reduce information costs to business by making its processes clearer and less onerous; this can also be achieved by making government decision-making processes more transparent.

Lack of transparency in decision-making processes

- A lack of transparency in decision-making processes was a major source of frustration for businesses applying for a wide range of government approvals and permits.
- Business expressed concerns that it was difficult to get information about:
  - how the decision-making process operates;
  - how to achieve a successful application;
  - the progress of individual applications;
  - the estimated time to make a decision; and
  - the reasons behind the approval/rejection of the application.

Transparency strengthens government decision-making processes. Government agencies should not be scared to have full public scrutiny of the way they operate.

Transparency is a key driver of accountability. The issue of transparency in decision-making processes was raised during the RTRG consultations across a broad cross section of portfolio areas.

Improvements in information technology should be embraced by governments to increase transparency. Applicants should be able to track the progress of their application online and the time taken to assess and make decisions should be made available for scrutiny.

Business concerns about the lack of transparency of decision-making processes also extends to the results of government reviews and inquiries.

> *"It is very frustrating from an industry perspective when a government decides to have a Review or Inquiry and then not publicise the findings and recommendations. Master Builders is often invited to contribute to these Reviews and Inquiries and, in the process, consults broadly with our members and relevant stakeholders. This can be a time consuming and resource intensive process. When the outcomes of the exercise is not publicised by the Reviewer or Inquirer, for whatever reason, generally political, it is very frustrating and not a good use of resources from the various organisations that contributed. Governments should have an obligation to report the outcome of all these Reviews and Inquiries."*
>
> Master Builders Association of WA, sub. 48, p. 5

Inconsistent interpretation of rules

Inconsistent interpretation of legislation, policies and rules by officers across the three tiers of government was raised at many of the RTRG consultations. Business was frustrated by getting different interpretations from officers from the same organisation.

> *"Planning requirements are unclear and cause unnecessary delays, blocking up good planning proposals. One developer spent more than $140,000 to satisfy one planner at the DPI, and took 4 years to get the approval. Building applications and codes are interpreted differently by different people/agencies. There are 'grey areas', which then necessitate additional costs for consultants to prepare/modify plans."*
>
> Bob Ramage, Geraldton Consultation, 23 February 2009

Business and local government also complained about inconsistencies in interpretation by government agencies in multi-agency processes.

> *"Occasionally there is a lack of consistency in approach between local governments and state government in the Environmental Health and other aspects of local government. This provides administrative burdens to businesses that have to reconsider required actions for compliance with every local government body they work with."*
>
> City of Swan, sub. 30, p. 1

> *"We have to deal with a number of different government agencies in Perth. Agencies have different expectations and interpret rules differently which makes the planning processes more difficult. There is then a lack of decision-making and cost shifting between departments, for example handballing the management of the Carnarvon fascine back to the Shire."*
>
> Shire of Carnarvon, Consultation, 24 February 2009

The major causes of this inconsistency in interpretation were identified as:

- rules are not written in 'plain English' and are difficult to understand;
- rules are often ambiguous and allow significant latitude for individual interpretation;
- staff are not provided with clear guidelines on how to interpret the legislation/regulation; and
- guidelines which clearly state examples of how the rules are applied aren't provided to applicants.

The general consensus amongst participants in the consultation process was that this problem could be fixed by making the rules clearer and publishing a guide on how the rules should be applied.

> *"A critical component of effective regulation is to provide guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear."*
>
> Chamber of Commerce and Industry (WA), sub. 50, p. 12

Disconnect between the regulator and business

It was evident from the RTRG consultations and submissions that there is a real disconnect between regulators and business. The impact of new regulations or administrative procedures on business has not been properly assessed by many government agencies.

The new Regulatory Impact Assessment process run by the Regulatory Gatekeeping Unit will ensure that government agencies undertake an assessment of the potential impact of new regulation. This new process will examine the impact of proposed regulation and more importantly publish the analysis in the form of a Regulatory Impact Statement (RIS).

Publishing this information is extremely important. In the past government agencies have not had to justify why they have introduced new regulations, policies or administrative procedures. There has been little opportunity for business to make comment on, or be made aware of, the rationale behind changes to laws and policies.

Business supports the new initiatives as a positive first step in designing better regulation and reducing the regulatory burden through a Regulatory Impact Assessment process.

> *"Proposed new or amended regulation should always be accompanied by a Regulatory Impact Statement (RIS). This will serve to discipline governments to assess the cost impacts of their proposed legislation on the economy, stakeholders and the community/ taxpayers. It is in the public interest for this process to be mandatory. The effects could well be less onerous new legislation and red tape!"*
>
> Master Builders Association of WA, sub. 48, p. 5

One of the most fundamental findings from the RTRG consultations was the recognition that the majority of the regulatory burden on business in Western Australia does not come from the Acts or regulations passed by the Parliament. The main source of the current regulatory burden on Western Australian business comes from quasi-regulations and government administration of them.

Quasi-regulations are policies, administrative procedures and business rules developed by government agencies. These are created under powers given to government agencies to achieve the principles stated in the Act and regulations for that specific area.

The worrying thing about quasi-regulations is that there is very little transparency about how they are created, administered and reviewed. There is often little or no parliamentary scrutiny of quasi-regulations. They are therefore not assessed by those who have created the laws as to whether they are consistent with the intent of the legislation.

> *"The administration of the regulations for accreditation of non-vet pregnancy testers… prohibit these pregnancy testers performing the role they are competent and experienced in performing. The VSB…guidelines…act as a hindrance to the task of pregnancy testing cattle for live export… (as) the level of on-going communication as required by the guidelines has created an unworkable situation through the interpretation of the details."*
>
> Alex Burbury, Pastoralists and Grazier's Association sub. 63, p. 1

The new Regulatory Impact Assessment process introduced by the Government will eventually examine quasi-regulations as part of regulatory gatekeeping. This is an extremely positive step as it will ensure that the intention of the Parliament is actually reflected in the quasi-regulations that apply to business and members of the community.

> *"ACWA supports the formation of the Regulatory Gatekeeping Unit. This unit needs to have the additional remit to reduce complexity or create simplicity in government regulation(s). Ultimately a business culture needs to be developed in government of reducing complexity to create the minimum effective regulation or effect co-management arrangements with industry."*
>
> Aquaculture Council of Western Australia, sub. 32, p. 12

Lack of clear accountability and 'ownership' of decision-making

The final theme raised during the consultation process was a lack of clear accountability and 'ownership' of decision-making.

Business expressed frustration with the lack of a clear lead agency framework for multi-agency approval processes. The RTRG was given examples where decision-making processes dragged on for years as referrals were sought from other agencies and a 'stop the clock' situation occurred.

The RTRG consultations revealed that business wants more accountable decision-making processes.

> *"Greater transparency and accountability should occur in the process. All agencies involved in the planning approval process should be subject to published key performance indicators (KPI). We endorse a 'whole-of-government' approach to the planning approval reform process with all relevant agencies being subject to the agreed KPI's."*
>
> Master Builders Association of WA, sub. 48, p. 1

This includes imposing timelines on government agencies that are consulted or referred information in a decision-making process.

> *"There is need for all government agencies involved in the planning process to have measureable timeframes for the achievement of outcomes. Many government agencies which are consulted as part of the planning approval process do not have time lines imposed on them for consideration of the merits of the proposal."*
>
> Master Builders Association of WA, sub. 48, p. 2

> *"Performance benchmarks should be established for agencies involved in the approvals process and these should be reported on by government agencies in a transparent manner through the annual budget process."*
>
> Chamber of Commerce and Industry (WA), sub. 50, p. 17

'Stop the clock' situations tend to distort reporting of the actual time taken to reach a decision or grant an approval. A number of participants in the RTRG consultations also called for reporting of the actual time taken make a decision. This would include identifying the party responsible for the 'stop the clock' situation.

Medium-term reforms

The following recommendations have been developed to address the whole-of-government cultural issues identified in this chapter.

Recommendation 4.1
The RTRG supports the introduction of 'deemed approval' mechanisms in government decision-making processes to provide certainty about decision-making timeframes.

Recommendation 4.2
The RTRG supports the introduction of 'risk-based' assessment in government decision-making processes to remove unnecessary regulation.

Recommendation 4.3
Western Australian government agencies should be encouraged to create single portals for information required in multi-agency approval processes.

Recommendation 4.4
The RTRG supports the introduction of a 'lead agency' framework for multi-agency decision-making processes.

Recommendation 4.5
Western Australian government agencies should be required to publish internal policies and guidelines used in decision-making processes.

Recommendation 4.6
All new and amended quasi-regulations should be subject to a Regulatory Impact Assessment process and the results of this process should be made publicly available.

Recommendation 4.7

Require government agencies to develop target timeframes for decision-making processes and report against them publicly. This report should include:

- *calendar days taken to make a decision and calendar days taken during 'stop the clock' periods;*
- *calendar days taken by other departments to deal with referrals under the assessment process;*
- *calendar days taken by proponents to respond to information requests; and*
- *the reasons as to why 'stop the clock' provisions were utilised (e.g. information being requested from the proponent).*

Long-term reforms

Recommendation 4.8

The RTRG supports the introduction of whole-of-government initiatives to reduce the amount of duplication of information required by government agencies.

Recommendation 4.9

The RTRG supports the separation of customer service and decision-making functions in government agencies responsible for the regulation of business activities.

Chapter 5
Recommendations for future regulatory reform in Western Australia

Overview

A major issue for the Western Australian Government is to maintain the momentum for regulatory reform generated by the RTRG process. The key to ensuring that this momentum is not lost is to ensure an on-going regulatory reform process in Western Australia.

The recent formation of a Regulatory Gatekeeping Unit will play a key role in improving the quality of regulation making and preventing a major increase in the regulatory burden. However, Western Australia has been rated as the worst performing state on implementing red tape reform.[8] The Regulatory Gatekeeping Unit is **not** designed to review and reduce existing regulations.

This chapter presents reform options for an on-going process of reducing the regulatory burden. It draws upon successful policy initiatives from other Australian jurisdictions and from international experience.

Changing the culture of regulation making

Changing the regulatory culture of government agencies is the biggest challenge facing the Government in implementing its reform agenda to reduce the regulatory burden on our community.

The most effective mechanism to encourage culture change is to introduce incentives. Commonly used incentives to change the culture of agencies are transparency and accountability.

The reform options outlined in this chapter aim to introduce incentives to achieve regulatory reform across government including:

- whole-of-government targets for reducing the regulatory burden;
- Ministerial responsibility for agency targets;
- Chief Executive Officer (CEO) responsibility for agency targets; and
- senior management ownership within agencies through 'executive champion' roles and responsibilities.

8 Business Council of Australia 2007, *A Scorecard of Red Tape Reform*, May.

Short-term reforms

The following recommendations provide low cost reform options that can be introduced within a six-month period.

State and agency targets for reducing the regulatory burden

It is recommended that Cabinet set a State target to reduce the compliance burden on business and the administrative burden on government.

State targets in other Australian jurisdictions

- South Australia – Initial target of $150 million over two years (from 2006-08). A new target of a further $150 million over three years (2009-11 inclusive).[9]
- New South Wales – Reduction in red tape burden by $500 million by June 2011.[10]
- Victoria – Cutting the existing administrative burden of regulation by $154 million over three years (2006-09) and $500 million over six years (by 2012).[11]
- Queensland – Reduction in the compliance burden to business and administrative burden to government by $150 million by end 2012-13.[12]

The Western Australian State target should be translated into individual targets for all Government agencies. Ministers would be responsible to Cabinet for their agency's performance in achieving its targets.

These targets should be publicly announced and a six monthly report card of progress should be made available on the Western Australian Government website.

Recommendation 5.1
Introduce State and individual agency targets to reduce the existing regulatory burden in Western Australia.

Simplification and modernisation of existing regulations and processes

To achieve the targets listed in recommendation 5.1 all government agencies should stock take all forms of regulation including quasi regulations and develop and implement a simplification plan (or a rolling program) to identify regulations and processes that can be simplified, repealed, reformed or consolidated, in consultation with stakeholders.

9 Competitiveness Council South Australia 2008, *Reducing Red Tape for Business in SA 2006-2008*, Economic Development Board, Government of South Australia.

10 Retrieved from http://www.betterregulation.nsw.gov.au/reporting_on_progress/$500_million_red_tape_target

11 Retrieved from http://www.dtf.vic.gov.au/CA25713E0002EF43/pages/reducing-the-regulatory-burden

12 Queensland Office for Regulatory Efficiency, *Smart Regulation Annual Report 2007-08: A Queensland Government Initiative in the Smart Regulation Reform Agenda*, Queensland Treasury.

Examples of simplification plans in other jurisdictions

- South Australian Government agencies are required to develop and implement a plan to reduce red tape to meet the State's targets. A scorecard outlining the cost savings to business from red tape reduction initiatives is published on the Government website bi-annually. South Australia also has a requirement for a rolling five year review of all business regulation and the list of regulations that are due to expire in the upcoming year is published on the Attorney General's Department website.[13]
- The *Queensland Regulatory Simplification Plan 2009-16* outlines a phased program of reviews by agencies. Agencies will develop their own three-year plan to reduce regulatory burden from the existing stock of regulation (including primary and subordinate legislation and quasi-regulation). Agency targets will generally be achieved by regulatory requirements reviews and regulatory process improvement projects.[14] Each agency's progress on achieving relative 'net' regulatory savings targets will be provided to Cabinet bi-annually, as well as annually through the Smart Regulation Annual Report.[15]

These plans, including the stock of regulations and quasi-regulations should be made available to the public on the website of the Government agency.

Specific reform examples from other jurisdictions

- The New South Wales Food Authority has introduced a risk profiling framework which means that cold store and milk vendor businesses with good track records no longer need a food safety plan and are no longer subject to yearly audits. This enables food safety outcomes to be achieved while reducing requirements for audit schedules for businesses with a good audit and compliance history.[16]
- The Victorian Department of Justice achieved a $7.5 million per annum reduction in administrative burden by removing the requirement for motor car traders to keep a paper copy of their electronic dealings book used to track their acquisitions and disposals. This enables car dealers to operate more efficiently.[17]
- The Victorian Environment Protection Authority amended the regulations that prescribe the licensing of premises. The amended regulations reduced the number of premises requiring EPA licensing by about 17 per cent (171 premises no longer need licences) and achieved a reduction of $2.9 million per annum in administrative burden.

Recommendation 5.2
Introduce agency plans to simplify and modernise existing regulations and processes.

13 Retrieved from http://www.southaustralia.biz

14 Queensland Office for Regulatory Efficiency, *Smart Regulation Annual Report 2007-08: A Queensland Government Initiative in the Smart Regulation Reform Agenda*, Queensland Treasury.

15 Retrieved from http://www.treasury.qld.gov.au

16 The Better Regulation Office New South Wales 2008, *Annual Update: Removing Red Tape in NSW*, Government of New South Wales, October.

17 Department of Treasury and Finance Victoria, 2009, *Reducing the Regulatory Burden: the Victorian Government's Initiative to Reduce Red Tape*, 2008-09 Progress Report, Government of Victoria.

Chief Executive Officers' accountability for reform implementation

To support delivery of agreed targets and the development and implementation of a rolling reform program, CEOs of Government agencies should have red tape reduction targets included as a condition in their performance contracts.

CEOs would have to report to their Minister twice a year on their agency's achievements in cutting red tape over the previous six months, as well as on their plans for red tape reduction over the next six months. The report will be made available publicly. These accountability mechanisms have been successfully introduced in a number of Australian jurisdictions. They play a key role in ensuring agency commitment to the implementation of reforms.

Chief Executive Officers' regulatory reform responsibilities in other Australian jurisdictions

- New South Wales Government agency CEOs are required to report to the Better Regulation Office twice a year on what red tape cuts they have achieved over the previous six months in addition to what red tape cuts they intend to achieve over the next six months. This requirement is formalised as a performance condition in CEOs' employment contracts.[18]
- The South Australian State target is broken down into individual targets for agencies and these are included in CEOs' performance agreements.[19]
- Commitments under Queensland's Smart Regulation Reform Agenda are recognised in Ministerial Charter of Goals letters as a whole-of-government priority and are anticipated to form part of the CEO performance agreements.[20]

Recommendation 5.3

Introduce Chief Executive Officer accountability for regulatory reform through conditions introduced to their performance contracts.

18 Retrieved from http://www.betterregulation.nsw.gov.au/red_tape_unwrap/issue_1_july_2009/stories/new_ $500_million_red_tape_target
19 Retrieved from http://www.southaustralia.biz
20 Retrieved from http://www.treasury.qld.gov.au/office/branches/qore.shtml

Senior Executive regulatory reform champions within each agency

State Government agencies may elect to appoint a Regulatory Reform Champion or Best Practice Regulation Coordinator from within their Executive, to assist in achieving a consistent level of regulatory gatekeeping compliance, and to ensure that red tape reduction initiatives are clearly understood and properly implemented within the agency.

This accountability mechanism has been successfully used in South Australia and provides a link between the CEO of the organisation and the operational units of the organisation.

Senior executive champions – experience in other jurisdictions

- The Australian Government example: Each Australian Government department and agency has appointed a senior executive officer to champion sound policy development processes. These Best Practice Regulation Coordinators are responsible for administering the Government's regulatory gatekeeping framework at a departmental or agency level. The Office of Best Practice Regulation works closely with Best Practice Regulation Coordinators to facilitate compliance with the Government's regulatory assessment and consultation requirements.[21]
- The South Australian Government example: The Competitiveness Council, through the Minister, requested that all State Government agencies develop and implement a plan to demonstrably reduce red tape to meet the target. Plans were expected to clearly identify objectives, timeframes and measurable outcomes, including the cost savings to business in terms of reductions in time or cost, for each initiative within the plan. This process was led by senior executive 'red tape champions' in each agency, who made sure the program was given high priority.[22]
- The Queensland Government example: A Senior Officers' Network for Regulatory Reform has been established to provide a network of regulatory reform 'champions' and coordinate regulatory reform activities at a whole-of-government level.[23]

Recommendation 5.4

Appoint senior executive champions within each agency to implement regulatory reforms.

21 Retrieved on 1 October 2009 from http://www.finance.gov.au/obpr/faq.html

22 Retrieved on 1 October 2009 from http://www.competitivesa.biz/insideGovernment.htm

23 Office of Best Practice Regulation 2008, *Best Practice Regulation Report 2007-08*, Department of Finance and Deregulation, Commonwealth Government, Canberra.

Incentives for identification of red tape reduction opportunities

This red tape reduction mechanism has been successfully used in Singapore, where it gave public officers greater flexibility at the operational level by focusing on the principles behind the rules.

Public sector reward program: an example from Singapore

The Public Officers Working to Eliminate Red-tape (POWER) Suggestion Award, a component of Singapore's Smart Regulation Movement Strategy, was set up as a channel for public officers to suggest changes to internal and external rules. The POWER mechanism included web-based online feedback, POWER sessions and the $1,000 POWER Suggestion Award for public officers who suggest ways to cut red tape. Since the launch of the website in 2000, over 300 suggestions have been received, of which 75 per cent were accepted or clarified. One quarter of the suggestions have resulted in the amendments of rules.[24]

The POWER Award also recognises Ministries that have demonstrated a high degree of activism in their efforts to remove and amend rules. Ministries were judged on their responsiveness to feedback and proactiveness in cutting bureaucracy and streamlining processes.

Public sector reward program: an example from the European Commission

The European Commission's Action Program for reducing administrative burdens (2007-2012) provided a number of opportunities for stakeholder involvement. One of the programs, the High Level Group of Independent Stakeholders on Administrative Burdens, initiated a competition called 'Best Idea for Red Tape Reduction Award' to identify new suggestions for particular bureaucracy problems. The best idea award rewards ideas for their originality, feasibility and overall potential to reduce red tape, notably for small and medium sized enterprises. It keeps up the speed of reducing administrative burdens, in line with the European Commission's goal of 25 per cent less red tape in the European Union by 2012.[25]

Recommendation 5.5

Establish an incentive program to reward public sector employees for identifying areas of regulation and processes for reform.

Medium-term reforms

The following recommendations provide medium-term reform options that are compatible with the recommendations already outlined in this chapter. These reform options would require at least six months to implement and involve legislative action.

24 Retrieved on 20 September 2009 from http://www.ps21.gov.sg/Challenge/2005_11/system/sys01.html

25 Retrieved on 10 September 2009 from http://www.aer.eu/events/standing-committee-on-institutional-affairs/2009/best-idea-for-red-tape-reduction-award.html

Mandatory review or repeal clause for all new Acts and regulations

A five-year review or repeal clause should be introduced for all new Acts and regulations. This would involve automatic repeal of all new Acts and regulations unless a five-yearly statutory review recommended the Act or regulation be retained or amended.

The proposed reviews should consider the costs imposed by the legislation or regulation in its current form, and consider less costly means of achieving the legislative objective. Reviews should include public and stakeholder consultation.

A list of Acts and regulations that are due to expire in the upcoming year would be published on the State Government website.

This recommendation would require additional resourcing of the Parliamentary Counsel's Office.

Recommendation 5.6
Introduce a mandatory review or repeal clause for all new Acts and regulations.

One-stop shop for facilitating interagency coordination on regulatory issues

A key to ensuring whole-of-government implementation of the Government's regulatory reform agenda is to create a one-stop shop within government to coordinate regulatory issues. This one-stop shop would ideally be in a central agency. It would report on the progress of implementation to the Cabinet, and would also be responsible for coordination of the six-monthly reporting process. The one-stop shop would provide a central portal for business and the community to raise on-going red tape and regulation issues.

This reform is a much cheaper option than setting up an independent regulatory reform body. It could be run in a similar way to the current approval review process in the Department of the Premier and Cabinet.

Overseas example of a one-stop shop: Singapore

Singapore's Zero-In-Process (ZIP) initiative makes its agencies aware that the public sees Government as one entity and ensures that the different government agencies work together in the public interest. ZIP aims to reduce the number of instances when the public has to go separately to various agencies for related services. It also seeks to identify and appoint the agencies responsible for various issues that impact the public. A group of public officers (from various ministries) form the ZIP secretariat, which proactively looks for ways to cut red tape. In particular, the ZIP secretariat looks for: cross-agencies issues that cannot be resolved; unresolved cases that are beyond the responsibility of any agency; recurring, unresolved cases that indicate the presence of a systemic problem; cases and issues that point to a need for policies review. Since its beginning in October 2000, ZIP has successfully made changes to a number of areas within Singapore's Public Service.[26]

26 Retrieved on 20 September 2009 from http://www.ps21.gov.sg

Recommendation 5.7

Create a one-stop shop with appropriate decision-making authority within the Department of Treasury and Finance or the Department of the Premier and Cabinet to facilitate interagency coordination on regulatory issues.

Long-term reform

Subsidiary Legislation Act for Western Australia

This reform would see the introduction of a Subsidiary Legislation Act, which would introduce mandatory reviews of all existing Acts and regulations.

Regulatory burden on Western Australian businesses

- Since 1959 the Parliament of Western Australia has passed 75,505 pages of new legislation, an average of 1510 new pages a year. Since 1998, the number of new pages of legislation passed per year has increased on average by 158 pages each year, significantly higher than all other states.[27]
- A survey by the Chamber of Commerce and Industry (WA) found the number of applicable regulations as the most concerning aspect of regulation for Western Australian firms.[28]
- It is estimated that there are currently 844 Acts and 761 statutory rules in force in Western Australia, amounting to approximately 63,500 pages of regulation.[29] Adding to the regulatory burden is the enormous amount of departmental policies, rulings, explanatory memoranda, and advisory notes.

Under the proposed Subsidiary Legislation Act, all existing Acts and regulations would be subject to automatic repeal after five years, subject to a 12-month postponement in exceptional circumstances, unless a review recommended the Act or regulation be retained. Only a small number of regulations would be exempt from this requirement.

The proposed reviews should consider the costs imposed by the legislation or regulation in its current form, and consider less costly means of achieving the legislative objective. Reviews should include public and stakeholder consultation.

A list of Acts and regulations that are due to expire in the upcoming year would be published on the State Government website.

27 Berg C and Murn C 2009, *Over-ruled: how excessive regulation and legislation is holding back Western Australia*, Institute of Public Affairs and Mannkal Economic Education Foundation Discussion Paper, June.

28 Chamber of Commerce and Industry (WA) 2006, *Regulation and Compliance: A Discussion Paper*, Business Leader Series, November.

29 Productivity Commission 2008, *Performance Benchmarking of Australian Business Regulation: Quantity and Quality*, Research Report, Canberra, November.

The introduction of this reform would require additional resourcing of the Parliamentary Counsel's Office. It should be noted that transitional arrangements such as a staggering of the initial reviews through identifying priorities would need to be arranged to assist with the successful implementation of this recommendation.

Impact of mandatory reviews

The *New South Wales Subordinate Legislation Act 1989* requires mandatory review of all Acts and regulations. There are two processes with regard to Acts and regulations: a statutory review of all Acts every five years; and a staged repeal program of all regulation. The outcome of the staged repeal process was a 25 per cent reduction in the number of subordinate instruments and an 8 per cent reduction in the number of pages since 2000 (from 502 instruments comprising around 8,486 pages at 1 July 2000 to 376 instruments comprising around 7,798 pages at 1 September 2008).[30]

This reform would bring Western Australia into line with most other Australian jurisdictions. One of the key reasons why Western Australia is rated so badly with respect to its regulatory burden is that it has no mechanism to review and remove obsolete regulation. Recommendation 5.6 introduces this reform, for new Acts and regulations only.

Subsidiary legislation Acts in other Australian jurisdictions

- South Australia – under the *Subordinate Legislation Act 1978*, regulations automatically expire, unless reviewed, in the year of their 10th anniversary, but they can be extended for a further four years.
- New South Wales – under the *Subordinate Legislation Act 1989*, most regulations are subject to automatic repeal, unless reviewed, after five years.
- Victoria – under the *Subordinate Legislation Act 1994*, regulations automatically expire, unless reviewed, after their 10th anniversary.
- Queensland – under section 54 of the *Statutory Instruments Act 1992*, subordinate legislation expires, unless reviewed, on 1 September first occurring after the 10th anniversary of the day of its making.

Recommendation 5.8
Introduce a Subsidiary Legislation Act for Western Australia.

30 Retrieved from http://www.betterregulation.nsw.gov.au

Chapter 6
Liquor licensing

In this chapter reforms are identified that have the potential to result in over $7,753,000 in cost savings to businesses in a single year.

A reduction in the red tape burden is expected to encourage the entry of new market participants, enhancing competition and providing customers with greater choice and diversity. The use of a risk-based approach will encourage smaller, lower risk premises and contribute to the development of the industry.

Overview

The State's liquor licensing regulations, and their administration, were one of the most commonly cited areas of 'red tape' in the consultation process.

That liquor licensing should figure so prominently is not surprising. Liquor licensing is a complex area. It involves interaction between agencies (the Department of Racing, Gaming and Liquor, Department of Health, WA Police Service) and with local government. The requirements and processes associated with obtaining a licence, and running a licensed establishment, appear complex and onerous.

The performance of the Department of Racing, Gaming and Liquor (DRGL) was also raised by a number of participants. The length of time taken to process an application, and the lack of assistance and consistency from the DRGL were common complaints from business.
In administrating the liquor licensing regime, the DRGL notes that its primary objective is to minimise the impact of harm and ill health on the community from alcohol.

Compliance structure

The liquor industry in Western Australia is regulated by the *Liquor Control Act 1988* (LC Act), and Liquor Control Regulations 1989. The primary objectives of the LC Act are:

- to regulate the sale, supply and consumption of liquor;
- to minimise the harm or ill-health caused to people, or any group of people, due to the use of liquor; and
- to cater for the requirements of consumers of liquor and related services, with regard to the proper development of the liquor industry, the tourism industry and other hospitality industries in the State.

The regulation also sets out the following secondary objectives:

- to facilitate the use and development of licensed facilities;
- to provide adequate controls over, and over the persons directly or indirectly involved in, the sale, disposal and consumption of liquor; and
- to provide a flexible system, with as little formality or technicality as may be practicable, for the administration of the LC Act.

In addition to the LC Act and related regulations, the liquor industry is also regulated by approximately 46 pieces of quasi-regulation, known as Director's Policy Guidelines. These Director's Policy Guidelines and conditions tend to be prescriptive in nature, and in some cases impose a considerable compliance burden.

Director's Policy – Overly prescriptive quasi-regulation

The Director's Policy Guidelines are available on the DRGL's website and regulate a diverse range of topics such as 'Approval for off-site storage of liquor', 'Security at licensed premises' and 'Information to be included on Internet websites'.

The policy 'Extended Trading Permits for restaurants to sell and supply liquor without a meal' provides an example of the prescriptive nature of these guidelines. The policy sets out the conditions that will be imposed on these Extended Trading Permits "so as to ensure restaurants do not become de-facto bars". These include:

> "The kitchen situated on the licensed premises, together with kitchen and food service staff, must be open and operating with the restaurant's regular full menu being available at all times liquor is sold and supplied to patrons."
>
> "Liquor may only be consumed by patrons while seated at a table, or a fixed structure used as a table for the eating of food, and not elsewhere. Therefore, the sale and supply of liquor to patrons is restricted to table service by staff of the licensee."
>
> "The premises must always be set up and presented for dining and tables can not be removed or shifted in order to create dance floors or function areas."

In the policy 'Extended Trading Hours – Sunday Trading on Long Weekends' – the Director states that "in or around October each year the licensing authority will give notice of the long weekends in the following year that will be considered for one additional hour of trading on the Sunday night. […] Licensees wishing to apply for extended trading on those dates will be required to lodge an application for each long weekend for the following year by 30 November."

This policy also sets out conditions which are generally imposed where applications for extended trading hours are approved, including that "liquor sold and supplied at this function must only be supplied in unsealed containers" and "liquor sold and supplied at this function is restricted to no more than four drinks per person at any one time." These conditions impose a burden on the licensee, yet seem to have minimal harm minimisation impacts.

Overview of the regulatory process

Prospective licensees first need to obtain approval from their local government and the Department of Health. Licensees can then begin preparation of their application.

The particular requirements will depend on the category of licence. An important feature of all applications is the requirement for the applicant to submit a public interest assessment (PIA). PIAs are required for a new licence, the removal of a licence,[31] and for certain permits. The PIA is intended to ensure applicants have thought out their application and worked to minimise the possibility of harm being caused.

The DRGL hold seminars to provide prospective licensees and other stakeholders with an explanation of the licensing application process, what documents need to be lodged and the assessment process, including the public interest test. However, the DRGL emphasise that the specific nature of the documentation and evidence to be submitted will depend on the circumstances in each case.

The category of licence determines the opening hours and some of the constraints placed upon the sale of liquor. Licensees can obtain an Extended Trading Permit (ETP) enabling them to operate outside the normal constraints of their licence conditions on a once-off or on-going basis.

Occasional licences authorise the sale or supply of alcohol to people attending an event. The requirements placed on occasional licence applicants vary according to the expected size of the event and may include a responsible server practices submission detailing the practices that will be used to manage the sale and supply of liquor.

All licensees must comply with the mandatory training requirements set out in the regulations. Specifically, a licensee or approved manager must have successfully completed the Short Course in Liquor Licensing and must be present at all times business is being conducted on the premises. In addition, any person engaged in the sale, supply or service of liquor on licensed premises is required to have successfully completed a course in Responsible Service of Alcohol.

Licensees must also maintain an incident register and crowd control register recording every incident that occurs on the premises.

31 The Liquor Control Act specifies that an application for the removal of a licence means an application seeking the variation of the licence so that it takes effect in relation to different premises.

The consultation process

Liquor licensing was one of the most commonly raised issues during the consultation process (raised on 46 occasions) with most of the submissions relating to:

- the overly prescriptive nature of the regulation;
- a general lack of clarity and guidance; and
- duplication in the requirements of agencies.

A number of parties also expressed concerns regarding the general approach taken by the DRGL in administering the regulation. In particular, the Department was described as being uncooperative and obstructionist, rather than facilitative and helpful. This appears to have added to the considerable compliance burden faced by business.

A recurring theme was the additional burden imposed on applicants and licensees operating in regional areas. For example, licensees have been forced to fly in security staff to comply with conditions imposed on their licence by the DRGL. Compliance with Responsible Service of Alcohol training and certification requirements can also be particularly difficult and expensive for regional licensees as many rely on a transient workforce.

Another commonly raised issue was the lack of a risk-based approach to regulation. Several participants noted that the DRGL tends to regulate on a worst-case scenario basis, meaning that the level of compliance often completely outweighs the potential for harm.

The following case studies illustrate a number of these red tape issues.

Ms Kethrine Spence, licensee of Birdwood Park Fruit Winery, Balingup – Disproportionate nature of regulation

Birdwood Park Fruit Winery is a producer of fruit wines, ports and liqueurs. The winery has held a producers licence for 17 years. Apart from one change of partner in 2006, the winery has had the same owners, licensees and managers for that period. Since the winery's opening, there have been approximately six inspections with no incidents.

The approved owners decided to convert fruit packing sheds into a retail outlet where their products could be sold to the public. This involved moving the winery 500m along the same road to new premises. Ms Spence took a proactive approach in order to facilitate a quick and easy process.

Obtaining a new liquor licence took over eight months and the cost was almost enough to push the business under. Ms Spence was required to lodge over 100 pieces of documentation with DRGL, including a lengthy PIA. Ms Spence initially requested that the requirement for a PIA be waived, because of the low risk and minimal changes taking place. However, this request was refused by DRGL. The overall cost associated with obtaining the licence was approximately $34,000, placing a huge burden on the business as well as the owners as individuals who were forced to personally subsidise this amount.

A large proportion of this cost was spent engaging a legal professional to assist in preparing the PIA. Although DRGL claim that no consultant is needed, the complexity of the process and the fact that the licensee's livelihoods depended on the outcome of the application meant that Ms Spence considered that she had no other choice.

Ms Spence also encountered difficulties regarding the requirement that the applicant have secure tenure of the premises. Ms Spence provided DRGL with letters from the other investors stating that the winery would have tenure for the remainder of the lease, but this was not accepted and a new lease document was required. This also involved considerable expense as the winery was forced to lease two properties simultaneously, with no guarantee that a licence would be granted.

Ms Spence noted that during the process, the licence application was not allocated to a particular officer, making queries and communication extremely difficult. There was no time frame within which the application must have been approved or rejected, and no consideration of the substantial costs being borne by Ms Spence and her colleagues.

The red-tape faced by Ms Spence was not limited to dealing with the DRGL. In addition, the winery was required to deal with the local shire in order to obtain section 39 and section 40 certificates, without which the DRGL would not consider the application. Obtaining these certificates also involved great expense. In particular, Ms Spence was required to produce five amended plans of the premises, each of which was prepared by an architect and had to be submitted in triplicate and on A3 paper. Ironically, the final approved plan was identical to the first plan submitted.

Small bar application[32] – Onerous nature of regulation

The small bar applicant (SBA) sought to establish a small bar within the Perth central business district. The SBA developed a concept and business plan that they considered was consistent with the Director's Policy on Small Bar Licences available on the DRGL website. Although no formal objections were made by DGRL, the SBA encountered several difficulties whilst engaged in the application process, particularly with respect to the PIA. The SBA noted that little guidance was available or forthcoming from DRGL as to what information would be required in the PIA.

The SBA developed the submission by reference to a previous submission viewed at DRGL's premises, rather than hiring a consultant. The final document was 39 pages long and contained detailed statistical information which was difficult to come upon, and could probably be accessed relatively easily by DRGL itself.

The SBA was also required to undertake a letter drop to businesses and residents within a 200m radius of the proposed premises to provide notice of the application. The SBA found this requirement particularly onerous, given the premises is located in the Perth central business district (CBD) and letters had to be provided to every occupant of the surrounding buildings.

32 Participant requested that the business name not be published.

The SBA also observed that DRGL failed to take advantage of its proactive approach. Instead DRGL seemed 'quite unwilling to help or be accountable' and required 'chasing up'. DRGL also refused to contact the SBA by email or phone, preferring to contact applicants by mail, resulting in unnecessary delays in correspondence.

The application was lodged in early 2009. Several months later, after no feedback from the DRGL, the SBA enquired as to how much longer the assessment process would take. A DRGL employee told the applicant that approval would take at least another 13 weeks. As there had already been an extensive delay, the SBA was concerned that a further wait of 13 weeks would blow out their costs and detract from the viability of the project. As a result, the SBA wrote a letter of concern to the Director of Liquor Licensing and to the Minister for Racing, Gaming and Liquor and the application was subsequently approved in three days.

Another area of concern raised during the consultation is the enforcement of the LC Act, particularly in relation to relatively minor offences.

"In the 12-month period 2006-07 there were 523 infringements issued against licensees (licensees – include approved managers).

In the 12-month period from 2007-08 there were 781 infringements issued against licensees.

In the 6-month period 2008-09 there were 739 infringements issued to licensees. An approximate cost estimate of this six month period would be $739,000 if each infringement were for the minimum penalty."

Australian Hotels Association (WA), sub. 52, p. 3

The Australian Hotels Association (WA) stated in its submission that its members have indicated that there is a need for consistency in the attitudes and operational objectives of both DRGL and the WA Police in enforcement of the regulatory regime.

Short-term reforms

Public Interest Assessment Processes

All applications for the grant or removal of liquor licences and applications for certain Extended Trading Permits must be accompanied by a PIA submission satisfying the Licensing Authority that the granting of the application is in the public interest.

The current guidelines provided by the Licensing Authority emphasise that the specific nature of the documentation and evidence required to support applications will vary on a case by case basis. Essentially, the Licensing Authority is instilled with wide discretion as to what information will be required and the weighting to be attached to certain matters.

The consultation process illustrated the extreme complexity and cost involved in the preparation of a PIA submission. Although the DRGL emphasise that a consultant is not required, a significant number of applicants hire a lawyer or industry consultant, as they are unable to prepare the document themselves. This is partly due to a lack of guidance as to what is required.

> *"The estimated costs associated for these assessments can be anything from $10,000-$50,000 on licence applications."*
>
> Australian Hotels Association (WA), sub. 52, p. 4

Recommendation 6.1

The Department of Racing, Gaming and Liquor should publish comprehensive guidelines or a template to assist in preparing the Public Interest Assessment submission.

Red tape benefits/savings – this recommendation has the potential to result in savings of $2,111,000.

Recommendation 6.2

The Department of Racing, Gaming and Liquor should implement a tiered system for Public Interest Assessment submission requirements which differ depending on the level of risk associated with the application. For example, requiring a standard Public Interest Assessment submission for the granting of a licence, but less stringent requirements for removal of a licence.

Red tape benefits/savings – this recommendation has the potential to result in savings of $1,196,000.

Relationship between local government and liquor licensing

Applicants for the grant or removal of a licence, or for a change in the use of premises, are required to submit a section 40 certificate. This certificate must state whether the proposed use of the premises will comply with local planning laws and must be signed by the relevant local government authority. The Licensing Authority cannot approve an application for the granting or removal of a licence if local government planning approval has not already been provided.

The Licensing Authority has discretion to process applications without the production of a section 40 certificate at the point of lodging, however, this discretion is generally only exercised with respect to small bar licences. The Director of Liquor Licensing recently issued a message stating that from 1 July 2009, applications for a small bar licence must be accompanied by a section 40 certificate at the time of lodgement and applications will no longer be accepted without the certificate.

Recommendation 6.3

The Department of Racing, Gaming and Liquor should accept and process small bar/low risk licence applications without the requirement to have completed section 40 certificates.

Red tape benefits/savings – the approach taken by the Licensing Authority and local governments can significantly delay the assessment of applications, resulting in lost revenue and substantial capital holding costs. Failure to grant, or delay in granting a section 40 certificate can present a significant barrier to entry issue for potential new entrants to the liquor industry, particularly small bars. No dollar savings provided.

Occasional licences

An occasional licence authorises the licensee to supply and sell liquor to people attending an event. This type of licence can only be granted for an event that cannot be covered under another type of licence.

As part of the application, the applicant is required to detail where they will be purchasing the liquor for the function. They are also required to detail how much liquor is being purchased and what prices are being charged. These requirements are outdated and unnecessarily constrain the licensee from taking advantage of fluctuations in price.

Recommendation 6.4

The requirement that licensees must detail where they will be purchasing the liquor and what prices are being charged should be removed.

Red tape benefits/savings – this recommendation would allow licensees to minimise costs by taking advantage of price fluctuations and competition. No dollar savings provided.

Duplication of incident and crowd control registers

Under section 116A of the Act, licensees are required to maintain a register of certain prescribed incidents that take place at the premises. The number of prescribed 'incidents' is extensive and includes, among other things, refusal of entry. This places an unnecessary burden on licensees. The incident register is to be maintained in a form acceptable to the Director.

Licensees must also maintain a crowd control register keeping a record of incidents involving physical contact between the crowd controller and a person being removed/prevented from entering the premises pursuant to section 78 of the *Security and Related Activities (Control) Act 1996* and regulation 40 of the Security and Related Activities (Control) Regulations 1997. This register duplicates some of the information entered into the incident register.

Recommendation 6.5

Refusal of entry should be removed from the list of incidents prescribed by regulation 18EB of the Liquor Control Regulations 1989, which must be recorded on the incident register.

Red tape benefits/savings – this recommendation has the potential to result in savings of $552,000.

Recommendation 6.6

The incident register and crowd control register should be amalgamated into a single register recording all relevant incidents. This would reduce the duplication arising from maintaining two registers with overlapping requirements.

Red tape benefits/savings – this recommendation has the potential to result in savings of $1,214,000.

In order to achieve this, the Director's Policy Guideline 'Incident Register Approved Form' should be replaced with a guideline specifying that the Licensing Authority will accept a register fulfilling obligations under both Acts. The guideline should clarify that this combined register must contain the information prescribed by both the Liquor Control Regulations 1989 and the Security and Related Activities (Control) Regulations 1997.

Extended Trading Permits

Extended Trading Permits (ETP) enable licensed premises to operate outside the normal constraints of their licence conditions. An ETP may be short term, one-off, on an on-going basis or indefinite.

Each application for an ETP must be approved by the Director of Liquor Licensing and is subject to local government and WA Police support and approval.

Applications for an ETP must be submitted separately from the initial licence application. In addition, an application for an on-going hours ETP, or an ETP to serve liquor without a meal must include a Public Interest Assessment (PIA) submission.

This policy is duplicative and unnecessary, resulting in extra costs for licensees and an unnecessary drain on government resources.

Recommendation 6.7

Applications for Extended Trading Permits should be accepted along with the initial liquor licence application (i.e. remove the requirement that applications for Extended Trading Permits can only be made subsequent to the initial licence application being granted).

Red tape benefits/savings – this recommendation has the potential to result in savings of $1,160,000.

Recommendation 6.8

The requirement that all Extended Trading Permit applications must be accompanied by a Public Interest Assessment submission should be removed. Instead there should be a risk-based assessment of the need for a Public Interest Assessment submission for Extended Trading Permit renewals.

Red tape benefits/savings – this recommendation has the potential to result in savings of $1,076,000.

Medium-term reforms

Certification for alcohol service

Currently, a licensee or approved manager must have successfully completed the Short Course in Liquor Licensing. The course takes around seven hours to complete and costs approximately $300.

An approved manager must be present on the licensed premises at any time that business is being conducted, meaning that a particular premises may need several approved managers to complete the course.

The current legislative framework does not allow approved managers to transfer from venue to venue. If an approved manager ceases employment and moves to another venue, a new application must be submitted along with an $80 application fee. According to the Australian Hotels Association (WA) the approval process often takes 8-12 months and results in an unnecessary use of DRGL time.

The DRGL advised that they support administrative changes being made to streamline the application process, reducing the cost to business as well as the cost to government of processing these applications. Changing the current certification system will reduce the compliance cost on business, particularly for large organisations that hire a number of approved managers across a number of premises.

Recommendation 6.9

Individuals should be licensed as approved managers in their own right and allowed to move between premises without having to apply to the Department of Racing, Gaming and Liquor.

Red tape benefits/savings – this recommendation has the potential to result in savings of $444,000.

Liquor licensing approval processes

The overall accessibility, transparency and accountability of the DRGL needs to be addressed in order to facilitate a shift towards best practice.

Under the LC Act, the DRGL is granted considerable discretion with regards to the administration and enforcement of the liquor licensing process. At present, no formal guidance is provided to Department staff on how to balance the competing objectives of preventing harm from alcohol consumption and facilitating the proper development of the industry in the assessment process. The Department seems to employ an excessively risk-averse approach, failing to give adequate regard to 'the proper development of licensed facilities', one of the primary objectives of the LC Act.

Recommendation 6.10

Section 5(1)(c) of the Liquor Control Act 1988 should be amended to read "to cater for the requirements of consumers for liquor and related services and to facilitate the proper development of the liquor industry, the tourism industry and other hospitality industries in the State."

Recommendation 6.11

The Department of Racing, Gaming and Liquor should provide staff with guidelines regarding how the primary objectives of the Liquor Control Act 1988 should be balanced during the assessment process. These guidelines should be made publicly available.

Several submissions also raised concerns regarding the delay associated with the processing of applications. Applications should be assessed and a decision made in a timely manner whilst noting the constraints upon the Department.

There are currently no prescribed timeframes and no attempt is made to measure the time taken to either grant or deny an application. Publishing the decision times as a performance indicator would contribute to more transparent and accountable administration of the regulation.

Recommendation 6.12

The Department of Racing, Gaming and Liquor be required to measure and publicly report:

- ***calendar days taken to make a decision and calendar days taken during 'stop the clock' periods;***
- ***calendar days taken by other departments to deal with referrals under the assessment process;***
- ***calendar days taken by proponents to respond to information requests; and***
- ***the reasons as to why 'stop the clock' provisions were utilised (e.g. information being requested from the proponent).***

Red tape benefits/savings – this recommendation is expected to improve stakeholder understanding of the actual time taken for decisions on applications, and improve the DRGL's accountability.

Recommendation 6.13

The Department of Racing, Gaming and Liquor should measure and benchmark the effectiveness of liquor regulation in Western Australia against international best practice.

Recommendation 6.14

Where no decision has been made with regards to an application to grant or remove a licence within six months of being received by the Department of Racing, Gaming and Liquor, the application will be deemed approved.

In 2007-08 there were approximately 205 applications received by the DRGL for the grant and removal of licences other than occasional licences or extended trading permits. A deemed approval mechanism would ensure the timely processing of general liquor licence applications. A common complaint from the consultations was that the whole system of liquor regulation is overly complex and burdensome and that the benefits are difficult to gauge.

Previous reviews into the administration of liquor licensing have not delivered a lower regulatory burden. A potential solution to this is to change the focus of reviewing the sector; the following recommendation provides a path to achieve this.

Recommendation 6.15

That a comprehensive independent review of the State's regulatory regime in the liquor industry be commenced. The Economic Regulation Authority is well placed to undertake this review.

The terms of reference of this report could include:

- *evaluating the effectiveness and costs of compliance of the current regulatory regime;*
- *recommending potential legislative reform; and*
- *recommending mechanisms to measure the effectiveness of liquor regulation*

Chapter 7
Heavy vehicle transport

In this chapter reforms are identified that have the potential to result in over $16,272,000 in cost savings to businesses in a single year.

Overview

The heavy vehicle transport industry in Western Australia is subject to a range of regulatory processes. Regulations exist to achieve a number of objectives, including to ensure community safety, achieve and maintain adequate driver competence, and to limit unnecessary wear and tear on road infrastructure.

A number of red tape issues were identified with the current heavy (restricted access) vehicle accreditation/permit system. These include transport operators:

- being required to carry excessive amounts of compliance information; and
- experiencing lengthy delays in receiving permits.

Other red tape issues included the requirement for and the administration of escort services by traffic pilots and power line lifting services.

Compliance structure

Heavy vehicle operators in Western Australia are regulated by the *Road Traffic Act 1974* with subsidiary legislation such as the Road Traffic (Licensing) Regulations 1975 and the Road Traffic (Vehicle Standards) Regulations 2002. These regulations are administered by Main Roads WA.

The specific benefits to regulating heavy vehicles include:

- improvements in safety and community confidence;
- quality assured compliance and consistent industry standards;
- transparency and accountability;
- preservation of the road infrastructure; and
- increases in the productivity of the transport industry through adoption of sound management practices.

The Road Traffic (Licensing) Regulations 1975 require all heavy vehicles and their trailers be licensed to operate on Western Australian roads, a service provided by the Department of Transport which also issues personal drivers licences.

Overview of the regulatory process

Heavy vehicle transport operators have to satisfy and comply with a number of regulatory requirements. Transport operators must be accredited by Main Roads WA, and in order to maintain accreditation they must comply with two assessment modules: Fatigue and Vehicle Maintenance.

- To comply with the Fatigue Module, transport operators must be able to provide sufficient information relating to driver hours, rest times and driver fatigue training. In addition, individual drivers are required to demonstrate fitness to operate a heavy vehicle, which they do by providing a medical certificate.

- The Vehicle Maintenance Module comprises two accreditation components – an initial inspection which assesses vehicle roadworthiness, and once accredited, drivers are required to undertake a daily vehicle check and maintain accurate records.

Transport operators are also required to:
- licence heavy vehicles and their trailers; and
- adhere to the restricted roads on which they can operate.

Once a transport operator is accredited, they need to be issued with a Main Roads WA heavy vehicle permit, which specifies transport conditions such as allowable routes, load size and vehicle dimensions. An example of the information requirements for the permit system is provided below.

Single journey permit approval process

Should an accredited transport operator require a single trip permit for the transportation of an indivisible-over size load, the operator is required to complete and send an application form to Main Roads WA, either by facsimile or post.

The application form requires the following information:
- business details;
- required travel time period; and
- in depth vehicle, trailer and dolly information such as load description and dimensions, vehicle weight, size and mass.

Applicants are to also required to provide specific route information, which Main Roads WA assesses against its database which is categorised into 10 individual road networks.
If the heavy vehicle exceeds 4.3 metres in height and depending on the route provided by Main Roads WA, the transport operator may be required to obtain the services of Western Power to lift any low hanging power lines. The transport operator may also be required to be escorted by a transport pilot, a service provided by three agencies: Main Roads WA, Western Power and WA Police.

Vehicle accreditation, licensing and the permit system were the main issues raised in the RTRG consultation process. However, as evidenced by the following example, these are only one component of the overarching regulatory requirements facing transport operators.

> *"Our livestock transporter deals with OHS, Road Law, Road Transport, WorkSafe, Local Council for access, Local Council for facility, DEC, Main Roads, RSPCA, Dept. of Local Government – Animal Welfare Unit, Agricultural Department – Animal Welfare & Biosecurity and NLIS, Dept of Transport for licensing of vehicles and drivers, and the list goes on. Often these rules are conflicting in nature."*
>
> Janet Thompson, Narrogin Beef Producers, sub. 3, p. 1

The consultation process

The regulation of heavy vehicles was raised 8 times during the face-to-face consultations and a further 4 times in written submissions. In general, participants noted the cumulative impact of the large number of transport regulations was affecting the overall viability of their operations.

Of those issues raised, the majority focused on the permit system, rather than the initial accreditation system. The accreditation system was identified as having a moderate level of paperwork requirements.

Specific issues related to the permit system included:
- excessive paperwork requirements;
- lengthy delays in getting permits;
- inconsistency in the permit system; and
- time consuming and onerous application process.

Transport operators identified that the amount of paper work required to demonstrate compliance for permit conditions can often be measured in the thousands of pieces of paper. Such information includes:
- documentation that records all trips;
- start and finish times (trip sheets) for each trip with details of any alterations;
- scheduling of trips;
- rosters (including name of driver and expected start and finish times);
- confidential personal records, including evidence of drivers' medical assessments and training records; and
- documents detailing any reportable accidents or incidents.

According to transport operators, the burden from the permit system exists as they are required to complete often identical permits, which vary based on a small, insignificant detail. These may include the need to use different, but identical trailers or vehicle combinations, or a slight adjustment to a normal route to account for a short notice deviation.

Transport operators also noted that the Main Roads WA application process assesses each permit on an individual basis, regardless of the fact the transport operator had been issued with a similar permit a day before. Once a permit is issued, transport operators identified further red tape, as they are required to carry the raft of accompanying paperwork in their cab, to be used in the event of a roadside inspection.

Esperance Freight Lines – Complexity of permit system

Esperance Freight Lines is an accredited heavy vehicle operator, and has a fleet of over 50 prime movers and 200 trailers. The company provides freezer/chiller freight, bulk commodities, container sales, container shipment, general freight and machinery movement.

In their submission, they highlight "the [Main Roads WA] RAV system is broken into 10 networks and some of our Prime Movers, depending on the trailer being towed at the time can operate on 8 Networks. The total paper work for these specific network is as follows:

- *Network 3 - 455 pages in total*
- *Network 4 - 368 pages*
- *Network 5 - 224 pages*
- *Network 6 - 198 pages*
- *Network 7 - 189 pages*
- *Network 8 - 147 pages*
- *Network 9 - 36 pages*
- *Network 10 - 35 pages.*

In total 1652 pages, plus the actual permits and operating conditions. But added to this are the changes being made to road tables on a near daily basis, which we are supposed to update as they are made.

The previous system had basically one permit per vehicle and it consisted up to 50 pages."

Esperance Freight Lines, sub. 38, p. 1

Other issues raised as particularly burdensome include the requirement that accredited businesses maintain a record for every employee, which demonstrates they are fit to operate a heavy vehicle. Transport operators are also required to complete daily vehicle maintenance checks and record driver hours, and face lengthy delays in obtaining approval for single journey permits.

Although Western Power is not the lead agency in the management of heavy vehicle transport, the agency featured as prominently in the face-to-face consultations as Main Roads WA. Where low hanging power lines cross roads, Western Power provides traffic escort services and the lifting of power lines for heavy vehicles to pass under. These services are often imposed as mandatory conditions on heavy vehicle transport operators.

Comments about Western Power

"[Western Power] is totally inefficient when dealing with business. The co-ordination of the traffic escort (pilot) services is poor."

Transport Forum WA, sub. 60, p. 1

"We never get a definitive cost for line lifting and escort services from Western Power. We were quoted at $1,700, and the invoice came in at over $8,000."

S.G Coxal Relocators, sub. 61, p. 2

"[Permits requiring Western Power approval] can be delayed up to 4 weeks where a survey of the route needs to be conducted. Our company experienced such a delay... and it had a significant impact on business planning. These requirements are applied indiscriminately."

B&J Catalano Pty Ltd, sub. 62, p. 1

Some regulatory requirements were identified as being dangerous and placing transport drivers and commuters at risk. It was raised through the consultations that transport operators are often required to demonstrate that their transport movements have not damaged road infrastructure, such as bridges. The penalty of failing to do so may include a repair cost, or the loss of accreditation.

Transport operators have resorted to video-taping bridge crossings using hand held cameras, which records the time of the crossing and gives an indication of vehicle speed. The dangers were raised as drivers remove one hand from the steering wheel to operate the video camera, filming whilst their vehicle travels over the bridge.

Transport operators also raised an inconsistency in the existing regulatory framework, which allows the provision of height exemptions for livestock carriers. Livestock carriers are permitted to operate to a height of 4.6 metres, however other heavy vehicle transporters are required to seek approval to exceed 4.3 metres.

"The real hypocrisy of this system is that a livestock vehicle or car carrier are licensed to operate at 4.6 metres high, but every one else has to get a permit if they exceed 4.3 metres."

Esperance Freight Lines, sub. 38, p. 2

Short-term reforms

Main Roads WA Permits

Currently there are more than 20 individual but similar, Main Roads WA heavy vehicle permits. These permits are issued to accredited transport operators, for particular and periodical journeys, based on vehicle combination, mass, size, configuration and item transported. Due to a lack of updated road information, Main Roads WA can request an application for a permit be delayed, so the organisation can survey the route. Main Roads WA supports reforming the number and complexity of existing permits. They have also advised a potential 20 per cent efficiency gain from amalgamating specific permits.

Main Roads WA Accreditation and Permit System

"Introduce an approval process that has allowance for repeat equipment on repeat routes. Single trip permits can take up to two days to approve. [The approval process is] bureaucratic, time wasting."

B&J Catalano Pty Ltd, sub. 53, p. 1

Recommendation 7.1

Simplify and combine existing single journey permits for restricted access vehicles into a single application process.

Red tape benefits/savings – this recommendation has the potential to result in savings of $183,000.

Medium-term reforms

Vehicle licensing inspections ('over the pits' registration)

This service is currently operated by the Department of Transport, and administered on a first-come-first-serve basis, which can result in extended waiting times for operators.

Currently the Department of Transport provides booking services for non commercial vehicles such as personal passenger cars and small trailers, which could be extended to heavy vehicle licenses.

Recommendation 7.2

Introduce a booking system for heavy vehicle licensing inspections.

Red tape benefits/savings – this recommendation has the potential to result in savings of $318,000.

Electronic lodgement of single journey permits

Transport operators are currently required to lodge all permit applications via facsimile or by post. It was recognised that there is no regulatory impediment, which restricts Main Roads WA from accepting permits through email or through an electronic, web-based lodgement system. Transport operators, who submit a number of identical permits over a period of a year, often require these permits within a short period of time, for example within 24 hours.

Significant time savings could be achieved by providing an automated permit approval system. Simple or repeat single journey permit applications may benefit the most from an automated permit approval system, as applicants' details and application approvals may be stored by the system. Regulators could easily access past approvals and permit conditions, therefore reducing application-processing time.

Main Roads WA have advised that by implementing an electronic lodgement system, there is the potential to reduce the average approval time for single journey permits by approximately four hours per permit.

Recommendation 7.3

Introduce an email or web-based, electronic lodgement and approval system for heavy vehicle permits.

Red tape benefits/savings – this recommendation has the potential to result in savings of $120,000.

Traffic escort (piloting) services

Main Roads WA can issue restrictions on some of its heavy vehicle permits, imposing conditions such as requiring transport operators to be escorted by a transport pilot. Three agencies provide these services, and the administration and coordination between each entity has been described as poor.

Recommendation 7.4

Amend the Road Traffic Code 2000 and the Electricity Corporations Act 1994 to permit accredited businesses to provide traffic escort and line lifting services.

Red tape benefits/savings – through the introduction of competition, consumers may benefit from increased access to services and cheaper prices.

In-vehicle telematic machines

Telematic systems are automated systems, which record standard vehicle performance information using an interface with a vehicle engine management system. This information can be sent electronically to a business or auditor, and through a driver/console interface, live information such as driving and rest times, kilometres travelled and route taken can be provided to a driver as these systems also provide global positioning functionalities.

In order to demonstrate compliance under the Main Roads WA heavy vehicle accreditation and permit system, transport operators are currently required to carry and provide an excessive amount of auditable paperwork in their vehicles. Such information includes route maps, a record of driving hours and vehicle maintenance information.

Telematic machines represent a technological tool, which could address the requirement for transport operators to manually record vehicle and driver information. These machines are currently used by individual businesses in the transport industry to reduce fuel consumption and driver fatigue as the information is accurate, secure and automatically sent directly to their head office.

Currently Main Roads WA regulators do not accept the information provided by telematic machines, requiring manual information from transport operators. Reforming the current process would require integrating telematic machine data into the Main Roads WA computing system, in addition to training regulators on its application. By integrating and improving the existing Main Roads WA computer system, transport operators would no longer need to manually record vehicle information or driving hours on a day-to-day basis. Drivers would also be able to access up to date route information from Main Roads WA.

The potential time saving to the transport operators has been identified as significant, reducing both the daily accreditation regulatory requirements, and the time taken to collate information for reaccreditation every three years.

Recommendation 7.5

Legislate to allow transport operators to demonstrate compliance under the Main Roads WA accreditation and permit system, through the use of telematic data.

Red tape benefits/savings – this recommendation has the potential to result in savings of $15,651,000.

Chapter 8
Marine and caravan licensing

In this chapter reforms are identified that have the potential to result in over $1,843,000 in cost savings to businesses in a single year.

Overview

The caravan, motor home and marine industries in Western Australia are subject to a range of regulatory processes. The majority of issues identified by participants involved the registration process, and dealer access to bulk licensing arrangements.

Compliance structure

The Department of Transport (DoT) is the lead agency responsible for licensing caravans, motor homes, trailers and marine vessels.

All caravans, motor homes and trailers are required to be registered under the *Road Traffic Act 1974*. The Road Traffic (Vehicle Standards) Regulations 2002 require that all vehicles and trailers comply with a number of design and safety standards.

The *Western Australian Marine Act 1982* requires all commercial or recreational marine vessels be registered and covers all classes of commercial and pleasure (recreational) vessels.

Overview of regulatory process

Caravans, motor homes and trailers are subject to a number of requirements, including that each vehicle:

- is registered;
- be fitted with a compliance plate, which records their Vehicle Identification Number (VIN); and
- conforms with vehicle design and size dimensions.

Marine vessels are required to be:

- registered;
- marked with a unique hull identification number (HIN); and
- fitted with an Australian Boat Builders Plate (ABBP) which is riveted inside the vessel and outlines a number of mandatory safety standards, including those relating to buoyancy, engine rating and the maximum amount of weight, or number of people, a vessel can carry.

Marine vessel dealers can be subject to two registration processes, one for the marine vessel and another for the trailer used to transport it over land.

The consultation process

The red tape involved in the processes for registering caravans, motor homes and marine vessels was raised on a number of occasions by businesses. Specific issues relating to the registration process included:

- that dealers were unable to submit registration papers electronically; and
- the bulk licensing scheme requirements were described as restrictive, applied inconsistently by licensing officers and as failing to capture efficiencies from modern technology.

> *"Currently caravan dealers must have a minimum of 50 of an identical type, brand, model and tare weight of caravan/camper trailer to be able to apply for a bulk license. There are often minor cosmetic variations to each type of caravan/camper trailer which do not affect the tare weight or length of the vehicle, resulting in the caravan/camper trailer being assessed as a non identical vehicle, which means they can't get bulk licensing. Therefore as a result of this, every single caravan/camper trailer has to be taken to a licensing centre and individually taken over the pits and registered. Reducing the minimum number to say 10 of an individual type is more realistic. This would achieve time and cost savings for the dealer and consumer, and have no effect on the licensing process."*
>
> Caravan Industry Association Western Australia, sub. 49, p. 5

Representatives from both the caravan and boating industries suggested potential areas to cut red tape could include streamlining the licensing process, reducing the bulk licensing scheme requirements and permitting dealers to electronically lodge registration papers.

> *"There is no online facility for registering boats as there is in the motor vehicle/motor cycle industry. Selected marine dealers may telephone the Department of Transport to request a number which is then attached to the paperwork and posted with a cheque. Most, however, must register the boat with DPI in person.*
>
> *On average, a marine dealer would register 150 Boats and Trailers per year. Driving between licensing centres and the wait in queues can take up to 2-3 hours per boat/trailer package."*
>
> Boating Industry Association of Western Australia, sub. 42, p. 1

Medium-term reforms

Vehicle Licensing

Significant savings can be achieved by permitting caravan, motor home and marine dealers to lodge and pay for vehicle registrations electronically. Currently dealers for other vehicle classes, such as motorcycles and passenger cars have these systems in place.

Recommendation 8.1

Introduce a facility for caravan and marine dealers to electronically lodge and pay for vehicle registration.

Red tape benefits/savings – this recommendation has the potential to result in savings of $1,843,000.

Recommendation 8.2

Introduce a bulk licensing scheme for caravans, marine vessels and trailers, allowing bulk licensing of 5 vehicles or more.

Red tape benefits/savings – this recommendation has the potential to result in a substantial time saving to the caravan and marine industry.

Chapter 9
Motor vehicle repairers and dealers licensing

In this chapter reforms are identified that have the potential to result in over $10,910,000 in cost savings to businesses in a single year.

Reducing the red tape burden is expected to significantly benefit businesses and consumers by reducing the costs of complying with regulations having little benefit, encouraging the entry of new market participants and lowering costs.

Motor vehicle repairers licensing

Overview

This chapter deals with the licensing arrangements for both:
- motor vehicle repairers; and
- motor vehicle dealers.

The Western Australian motor vehicle sales and repairs industry is one of the most regulated of all Australian jurisdictions.

Western Australia and New South Wales are the only jurisdictions that regulate motor vehicle repairers and Western Australia is the only Australian jurisdiction that regulates salespersons and yard managers.

These areas of red tape which face the industry were commonly cited during the consultation process.

Compliance structure

The introduction of the *Motor Vehicle Repairers Act 2003* (the MVR Act) was the result of strong lobbying by the Motor Traders Association over a number of years. It was intended to limit the growth in backyard repairers and to reduce risk to customers.

The Motor Vehicle Industry Board (MVI Board) regulates the motor vehicle repair industry and administers the MVR Act and the Motor Vehicle Repairers Regulations 2007 (MVR Regulations).

The MVR Act requires both the licensing of motor vehicle repair businesses and the certification of individual repairers. The MVR Act applies to repair work carried out on motor vehicles (including motor cycles) designed to carry passengers or goods on public roads.

There are exemptions from licensing requirements for work carried out on agricultural machinery, rail and tramway vehicles, box trailers without brakes, vintage vehicles, motorised wheelchairs and pedal cycles, and plant equipment such as bobcats and cranes.

Overview of the regulatory process

Since July 2008, individual motor vehicle repairers and repair businesses in Western Australia must hold a repairer's certificate and repairer's business licence to carry out repair work. There are 29 classes of repair category for which a business licence and separate repairer's certificate may be granted.

To qualify for a repairer's certificate, an applicant must hold a qualification in each class of repair category and produce a current National Police Clearance Certificate and photographic identification.

Repair businesses are also required to demonstrate sufficient resources to carry on the business (they must undergo a credit history check and possess any prescribed tools or equipment). All new businesses must obtain a planning certificate for their business premises from the relevant local government authority. The requirement for existing businesses to obtain a planning certificate for their business premises was removed during the RTRG consultation process.

The Department of Commerce, through the MVI Board, carries out the certification of individual repairers and the licensing of repair businesses.

The consultation process

The MVR Act was raised 14 times during the consultation process with most of the submissions relating to:

- high compliance costs and burdensome paper work requirements;
- duplication of existing safeguards;
- the time consuming and onerous application process; and
- mandatory training requirements.

The new licensing requirements have increased costs by increasing paper work and adding an administrative process. Delays are also being experienced in the processing of applications each time a business adds a class of work, or a new worker is employed.

Leon Pitt, Mt Barker Auto Electrics – Time consuming and superfluous requirements

"To go through this, if you stopped work and dedicated everything to do it, it would probably take you three days, once you had filled out the entire form and went around and got everything you needed to do. Plus then you've got to go to Council and get a written letter from them stating the fact that you are allowed to operate from your current premises. I've been at my premises for six years; most businesses in Mt Barker have been there for 20-25 years."

Leon Pitt, Mt Barker Auto Electrics, Albany Roundtable Consultation, 17 February 2009

A number of repairers and repair businesses expressed concern that the regulation imposed heavy cost on genuine repairers without having any impact on 'backyard' operators.

Leon Pitt, Mt Barker Auto Electrics – Ineffectiveness of the regulatory regime

"The reason they [the Board] said they were introducing it [the new regulatory requirements] was to get the backyarders out of the business…Like Graham said, no one is checking on them anyway they are still out there doing it. You can go to Coventrys, Veale Auto Parts, Repco, Auto One, any number of retail stores where you can buy tools, parts over the counter with no business, qualifications, nothing. So no one can stop anyone from doing it at all apart from if they are doing it as a backyard business. And so I said to the Board "I'm supposed to dob the backyarder in Mt Barker who is doing this without paying the $750 fee?" and he said "yep and we'll come down and sort them out". I said, "what are you going to do? You go and knock on his door and say we've been told you've been operating a business from here in repairing cars" and he says "oh no I just fix a few friends cars on the weekend." The inspector then says "Oh, sorry to trouble you" and they get back in the car and go back to Perth. There is nothing they can do and there is no one out there actively seeking them. The Board are relying on people to phone in and dob in a 'friend' if you like. They are hurting the people who are doing the right thing."

Leon Pitt, Mt Barker Auto Electrics, Albany Roundtable Consultation, 17 February 2009

Medium-term reforms

Motor vehicle repairers licensing

The onerous nature of the application process, the significant costs involved in the certification of motor vehicle repairers and the licensing of businesses was revealed during the RTRG consultations. A recent survey by the MVI Board also found that many repair businesses are reluctant to apply because of the time and cost involved in obtaining proof of local council approval for their premises.[33]

As the licensing of this industry has only just commenced it is possible to stop the program through legislative amendment. Indeed it may be more appropriate for the motor vehicle repairers industry to self regulate.

Western Australia's general consumer protection laws have provisions to safeguard consumers from dishonest businesses. The Department of Commerce can use these provisions to take legal action to ban or impose fines on unscrupulous repairers. There may be a need to amend the general consumer protection laws to allow the Department of Commerce to pursue unscrupulous motor vehicle repairers through negative licensing. This would remove unnecessary compliance costs and allow targeted policing.

33 Motor Vehicle Industry Board 2009, *Annual Report 2008-09*, Department of Commerce, Government of Western Australia.

Recommendation 9.1

Repeal the Motor Vehicle Repairers Act 2003 then introduce a negative licensing arrangement and a punitive framework for motor vehicle repairers.

Red tape benefits/savings – this recommendation has the potential to result in savings of $4,828,000. In addition, repealing the MVR Act would save around $4,165,000 in one-off costs associated with implementing the regime. A negative licensing arrangement can achieve the objects of the MVR Act through banning and/or punishing unscrupulous repairers and repair businesses, without the imposition of significant compliance costs.

Motor vehicle dealers licensing

Overview

The *Motor Vehicle Dealers Act 1973* (the MVD Act) requires that a person or company engaged in the business of buying or selling motor vehicles must hold a dealer's licence. Sellers of buses, tractors, farm machinery and earthmoving-type machinery are generally not considered motor vehicle dealers under the MVD Act.

The licensing of the motor vehicle sales industry is fairly consistent across Australia – the main difference in Western Australia is the level and scope of regulation imposed upon persons working in the industry. Western Australia is the only jurisdiction that regulates salespersons and yard managers. This was a commonly cited area of red tape in the consultation process.

Currently, there are approximately 950 authorised dealer's premises, of which 720 are located within the metropolitan area and 230 throughout regional Western Australia.

Compliance structure

The MVD Act provides for the licensing of motor vehicle dealers, yard managers, salespersons and car market operators. The MVD Act also applies to anyone who:

- buys vehicles for wrecking;
- acts as an agent for others in buying or selling vehicles;
- finances the buying of vehicles;
- engages in the business of auctioning vehicles;
- is a hire car operator; or
- operates a car market.

The MVD Act aims to improve dealer standards and reduce the number of unqualified backyard dealers. The Motor Vehicle Dealers Amendment Bill 2001 was introduced in 2002 to, among other things, raise the penalty for unlicensed backyard motor vehicle dealing from $20,000 to $50,000.

Overview of the regulatory process

The Motor Vehicle Industry Board (MVI Board) administers the licensing scheme and approves licence applications for motor vehicle dealers, yard managers, salespersons and car market operators. However, the MVI Board may exempt financiers, auctioneers and car hire operators from holding a licence in certain circumstances.

There are four types of licences under the MVD Act, with the 'dealer' type having seven further categories. To qualify for any type of licence, an applicant must be over 18 years old, successfully complete a course offered by the Motor Trade Association of Western Australia in the licence type, and provide certificates for national police clearance, WA traffic convictions and traffic infringements and demerit points. Dealers and car market operators are also required to demonstrate proof of local government approval for their business premises. Dealers are required to submit financial information and obtain a credit history check. Car market operators are required to provide three photographs and a detailed plan of the premises and the buildings, indicating the surrounding road system. All licences are valid for three years.

The consultation process

Issues relating to the licensing arrangements for the motor vehicle sales industry were raised five times during the consultation process, with most of the submissions relating to:

- high compliance cost and paperwork requirements;
- unnecessary licensing categories and associated requirements;
- costly and time-consuming application requirements; and
- excessive state taxation requirements.

A recurring theme was the unnecessary burden imposed on salespeople and yard managers. Individuals and dealerships also raised concerns with respect to the duplication of reporting requirements and mandatory training requirements. In addition, businesses operating in regional areas found it difficult to access licensed employees in smaller country towns. Finally businesses, irrespective of their size or volume of operations, are required to pay a set fee with each licence application, to cover administration.

Another commonly raised area included the compliance requirements of the minor incidental purpose test. Under section 245 of the *Duties Act 2008*, dealers must satisfy a number of requirements in order to access stamp duty exemptions for the stock of vehicles held at their premise. Stamp duty exemptions are denied if a vehicle has been:

- loaned to a customer for more than two days;
- used by dealership staff for a period of 24 hours or more; or
- not immediately available for demonstration or sale from authorised premises during business hours.

Dealers are required to record the movement of every vehicle within their dealership. This requirement not only imposes an unnecessary burden on dealers, but also denies a stamp duty exemption on cars that are out on loan or used outside of the restrictive parameters.

Medium-term reforms

Categories of licences

A National Competition Policy (NCP) review undertaken in 1999 recommended abolishing the licensing of motor vehicle salespersons, yard managers and car market operators. The current licensing structure should be altered and the licensing of individuals should be abolished. However, this will require an alternative method for banning individuals who breach the rules, which may include negative licensing arrangements.

Recommendation 9.2

Abolish the licensing categories for individuals as motor vehicle salespersons, motor vehicle yard managers and car market operators.

Red tape benefits/savings – this recommendation has the potential to result in savings of $1,213,000.

Principal Motor Vehicle Dealer Licence

Currently there is no criterion to consider whether a person dealing on an individual basis should be registered as a dealer. Evidence was provided that there are a number of people in the industry, mainly those dealing in smaller numbers, without a dealer licence.

It was also noted that in practice, the owner of a dealership is ultimately responsible if any disputes arise, irrespective of whether the sales were conducted by licensed employees. This illustrates that the current motor vehicle dealer licensing arrangement are not effective, as it does not capture dealer businesses, nor adequately address dealer responsibility issues. Introducing a business-level licence based on the number of vehicles sold each year would effectively resolve these issues.

Recommendation 9.3

Classify a 'motor vehicle dealer business' as an entity which sells three or more motor vehicles in a financial year.

Red tape benefits/savings – this recommendation imposes no additional costs on businesses.

Recommendation 9.4

Replace the existing motor vehicle dealer licensing regime with a single Principal Dealer licence, for each business.

Red tape benefits/savings – this recommendation has the potential to result in savings of $704,000.

Cost Recovery

Motor vehicle dealers are currently charged a licensing fee which is used to fund the licensing regime. Fees are calculated on a sliding scale, but also based on:

- the number of vehicles sold; and
- the number of premises operated by a dealer.

Though this licensing arrangement was established on a cost recovery basis, only one-third of the total costs are recovered directly from dealers per year, leaving the Western Australian Government to fund the financial shortfall. Also the sliding fee scale favours larger dealerships which experience higher sales turnovers.

The Department of Commerce has recommended that licensing fees be restructured and based on a set fee per vehicle sold.

Recommendation 9.5

Simplify the motor vehicle dealers licensing fee structure, basing it on a set fee per vehicle sold.

Application or renewal process for dealer and repairer businesses

Currently, motor vehicle dealers who want to run a service facility as part of their business are also required to obtain both motor vehicle dealers and repairers licences. At present the licences are being issued separately with similar requirements to be met i.e. police clearances, planning permits, credit checks etc.

Dealerships are required to go through a similar procedure to obtain a repair business licence. The separation of these two processes increases the regulatory burden and costs to business in addition to delaying recruitment. Repealing the *Motor Vehicle Repairers Act 2003* (Recommendation 9.1) will remove duplication and streamline the licensing processes for repairers and dealers, which will make this recommendation invalid.

Recommendation 9.6

Introduce a single application or renewal process for both dealer and repairer businesses (if recommendation 9.1 is not implemented).

Red tape benefits/savings – this recommendation has the potential to result in savings of $87,000, if motor vehicle repairers licensing is retained.

Minor incidental purpose test requirement

Under section 245 of the *Duties Act 2008*, in order to access stamp duty exemptions, dealers are required to comply with a number of requirements set out in a minor incidental purpose test. This includes recording the movements of every individual vehicle held in stock.

A Working Group was recently appointed by the Treasurer to look into the use of trading stock vehicles by dealers for minor incidental purposes. The working group is expected to report its finding by the end of December 2009.

Recommendation 9.7

The State taxation requirements on motor vehicle dealers should be reviewed and burdensome reporting requirements be removed.

Red tape benefits/savings – this recommendation has the potential to result in savings to businesses.

Chapter 10
Planning and development process

Red tape in the planning and development process imposes an extremely onerous burden on Western Australian businesses. These costs are primarily attributable to lengthy delays and the complexity of the system.

The cost savings of the reforms in this chapter have not been estimated due to the large number of assumptions that would need to be made. However, reducing the level of red tape associated with the planning and development process is expected to decrease delays, and capital and land holding costs. This has the potential to dramatically reduce the red tape burden imposed on business.

Overview

The planning and development process was the most commonly cited area of red tape during the consultation process, accounting for over 20 per cent of issues raised. Business and local government participants were scathing in their comments about the operation of WA's planning system.

A large number of problems were identified with the planning system. These included individual policies and processes, such as the Residential Design Codes (R-Codes) and local government approvals processes, as well as serious concerns with the overall effectiveness of the State's planning system, with problems such as a lack of coordination between agencies, inconsistency and duplication commonly identified.

While planning fulfils a complex function in coordinating a broad range of often conflicting public and private interests, it is clear that the current system is not operating at an optimal level and imposes an onerous burden on Western Australian businesses. Recently there have been a number of State Government sponsored reviews and reports into the effectiveness of the planning system and related issues, including *Planning Makes It Happen* by the Department of Planning.[34]

34 Department of Planning 2009, *Planning Makes it Happen – A blueprint for planning reform*, Western Australian Planning Commission, Perth.

Compliance Structure

The Western Australian planning system is comprised of a large amount of regulation. The *Planning and Development Act 2005* (PD Act) is the principal piece of planning legislation in Western Australia which consolidated and modernised three previous Acts – the *Western Australian Planning Commission Act 1995*, the *Metropolitan Region Town Planning Scheme Act 1959* and the *Town Planning and Development Act 1928*. Associated Acts assist in the implementation and operation of the PD Act, specifically the *Planning and Development (Consequential and Transactional Provisions) Act 2005* and the *Metropolitan Region Improvement Tax Amendment Act 2005*. The legislation is supported by the Planning and Development Regulations 2009, as well as a number of other pieces of state legislation.

There are also a large number of operational policies, regulations and guidelines used by State agencies and local government to guide the assessment and determination of applications. There are approximately 30 State Planning Policies, 24 Development Control Policies and 93 planning bulletins, as well as a range of strategic plans and operational policies which have standing in decision-making. Added to this is a number of Environmental Protection Policies, guidelines and operational policies applied by the Environmental Protection Authority and the Department of Environment and Conservation. Local government authorities also have a range of development policies. In addition, some planning proposals may trigger Commonwealth involvement under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

Overview of the regulatory process

The planning system encompasses decision-making at all tiers and levels of government, spanning from Cabinet decisions regarding major regional development to development control by local government authorities regarding simple and small scale projects.

The State planning framework sets out the general principles for planning and development and brings together existing state and regional policies, strategies and guidelines into a comprehensive framework.

The Regional planning framework administered by the Western Australian Planning Commission (WAPC) consists of regional strategies, structure plans, and region schemes. Regional strategies and structure plans provide the broad framework for planning at the regional level and the strategic context for local planning schemes. Region schemes provide the statutory mechanism to implement regional strategies, coordinate the provision of major infrastructure and set aside areas for regional open space and other community purposes.

The Local planning framework administered by local government comprises local planning strategies and local planning schemes. Local planning strategies set out the general aims and directions of local governments for planning in their areas, and provide a mechanism for interpreting state and regional policies at the local level and providing the rationale for the zones, reservations and planning controls in the local scheme. Local planning schemes provide the statutory mechanisms for local governments to implement local planning strategies through zonings, reservations and planning controls.

Costs

Red tape in the planning and development approvals process imposes considerable compliance costs on business. These costs can be divided into a number of categories.

Administrative costs

The complexity of the planning system means that time and money must be spent by businesses to understand and comply with the relevant regulations and to undertake the correct processes.

This problem is exacerbated by duplication and inconsistencies in the regulation itself, and the administration of the regulation by the relevant bodies. For example, the Chamber of Commerce and Industry (WA) raised concerns with the information costs associated with navigating around the system and becoming familiar with the processes employed by different local authorities.

Businesses often engage external consultants to assist them in navigating the process and complying with their obligations.

Delay and capital holding costs

Delay is a key contributor to red tape costs borne by business. In particular, delays may create significant capital holding costs.

Capital holding costs arise where businesses have made large capital investments and must pay interest on borrowed funds.

> *"Having spent $1 million on design and planning approvals for the re-modelling of the site, the project is now in jeopardy because the holding costs on the property are approaching $150,000 per month. The delay proposed by DPI will add an additional $2 million to the project costs on a $50 million project."*
>
> Stzrelecki Group Pty Ltd, sub. 17, p. 11

Businesses may also be faced with considerable land holding costs. In addition, long delays contribute to uncertainty and lenders may charge a higher interest rate on borrowed funds as compensation.

Delay in obtaining approval may also lead to revenue being foregone for an extended period of time. This creates uncertainty, which often leads to higher interest rates, especially for 'riskier' developments. This is particularly a problem for tourism developers, as the interest rates levied by financial institutions often significantly detract from the viability of a project.

The consultation process

The following table sets out the split of planning issues raised during face-to-face consultations and in written submissions received by the RTRG.

Rank	Issue	Percentage of all issues	Frequency
1	Inadequacy/delay/complexity of process	27	40
2	Town Planning Schemes	12	18
3	Local government approval	12	17
4	Administration and culture	10	15
5	Tourism approval	10	15
6	WAPC process	7	10
7	Interagency coordination	6	9
8	R-Codes	5	8
9	Shopping Centre Policy	3	4
10	Heritage	3	4

General issues

Inadequacy/delay/complexity of process

Several participants suggested that it is often the speed at which the regulation is administered that is the key contributor to the delay experienced, rather than the regulation itself.

> *"…a distinction needs to be made between the regulation on the one hand, and the efficiency with which the regulation is administered on the other. Many of the complaints of our members relate to the latter category – the need for regulation is acknowledged, but the speed at which it is administered is the major area of dissatisfaction."*
>
> Master Builders Western Australia, sub. 48, p. 1

The process that applies in a particular situation will depend on the proposed location and the relevant local and region planning schemes. Generally, local governments have a statutory timeline of 60 days in which to determine a development application. Under region schemes, the WAPC has 60 days in which to determine an application for development approval. In both cases, after this period has passed, the application is deemed refused and the applicant can lodge an application for review with the State Administrative Tribunal (SAT).

This process provides no incentive to progress proposals quickly as the cost is borne by the applicant and not the decision-maker. This practice also places a considerable strain on the SAT.

The following case study illustrates the frustration experienced by applicants attempting to navigate the system.

The process began with a public meeting in June of 2005. The first application was refused in September 2005, resulting in the preparation of revised plans by January 2006. This second application was approved, also in January 2006. A public meeting and Special Council Meeting were held, but the second application was refused on a rescission motion in February 2006.

This led to a series of SAT mediations and hearings, and a third application was approved on mediation in August 2006, but rescinded in October. A fourth application was made in December 2006, and a fifth advertised in November 2008. In February 2009 the status of the application was unknown.

Smithson Planning, sub. 6, p. 1

Many participants were concerned with the lack of a streamlined process, particularly where applications required approval by multiple agencies. For example, a single development may require approval under the local planning scheme by local government as well as approval under the relevant region planning scheme by the WAPC.

Participants supported a one-stop shop approach, whereby one body would act as the lead agency and coordinate the approvals process.

Several participants noted that the time taken to process applications is not accurately measured or reported. In some cases an agency may measure the time an application is being assessed by themselves, but 'stop the clock' when the proposal is referred to another agency. This should be addressed to improve the transparency and accountability of the process and to reduce the delays experienced by applicants.

Many participants also voiced concern with the high degree of duplication and repetition inherent in the process. For example, one document (or very similar documents) may need to be submitted to a number of agencies for use in a number of different processes. Similarly, obtaining approval for a single development may require approval from a number of agencies, each with diverging and sometimes inconsistent requirements.

Participants were also concerned with the lack of transparency and accountability, believing decision-makers were generally unwilling to take responsibility for their decisions.

"At no stage was the builder given any indication as to why the delays were being encountered, rather he was only able to limit the time from growing by constantly chasing the planning department."

Housing Industry Association (WA), sub. 51, p. 8

Another issue raised was the possibility that personal opinions and biases may be affecting the approval process, leading to considerable cost and frustration for the various participants involved.

Interagency coordination

Participants were concerned with the lack of integration and coordination between government agencies, stating that the various government authorities and agencies often displayed an overly narrow focus, with requirements and criteria often diverging, and even conflicting. Tourism WA questioned this lack of a 'big picture' approach and advocated a greater level of cohesion and cooperation between agencies.

In addition, participants found delays to be more pronounced where the process involves coordination between various agencies. Where delay is encountered at one stage of the process, this holds up other agencies, and the cumulative delay over a multiple stage process may be significant.

> *"The City attempts to expedite development applications well within the 60 day approval period established under its town planning scheme. […] However, where referral to other agencies is required the City encounters the following issues:*
> - *Swan River Trust – Minor developments can take months for the SRT to determine […];*
> - *DEC – The slowest of all referrals and their response is very generic requiring local government to assess against DEC policies…"*
>
> City of Armadale, sub. 15, p. 3
>
> *"Under certain state legislation the City is required to refer development proposals, structure plans and scheme amendments to government agencies for comment. Referral response times from agencies can be extended and in some cases no response is forthcoming. The responses often are generic and lack commitment, simply referring the City to policy only. The response is not site or application specific. If the City is required under legislation to refer to government agencies then the response should be more timely and effective."*
>
> City of Swan, sub. 30, p. 4

The lack of coordinated policy development within and across agencies is reflected in the introduction of new policies without updating or superseding existing policies.

Lack of clear guidelines

Obtaining planning approval can be extremely complicated and the requirements may vary considerably from project to project. Many participants highlighted a lack of clear, user-friendly guidelines as a key contributor to the time and money expended navigating the process.

Many applicants feel out of their depth and resort to hiring external consultants to assist them with obtaining planning approval and dealing with the various agencies, often at considerable expense. The complexity and divergence of the system mean that consultants also spend a large amount of time navigating the process.

As well as adding to the cost of projects, these costs may dissuade and prevent people from even contemplating developments.

Public comment requirements

Many planning processes require that a proposal is advertised and a certain amount of time set aside for public comment. For example, amendment of a local planning scheme, preparation of district structure plans and individual development proposals may all entail advertising and public comment periods.

Several participants suggested that these public comment requirements are overly generous, and result in significant delays in the assessment of applications. This is particularly the case where a single approval process includes multiple public comment periods, adding substantially to the time taken to obtain approval, and therefore to the cost of the project.

If the public comment period were reduced, this would decrease the time taken to obtain approval and therefore the red tape burden on business. The City of Bunbury estimated that public comment requirements account for approximately half of the time taken on approvals and that reducing public comment requirements could be very beneficial, particularly for lower risk and less contentious applications.

It was also suggested that the quality of consultation could be improved by creating an electronic advertising/public comment process, ensuring widespread publicising of proposals.

Electronic assessment processes

Currently, processing systems are predominantly paper-based. However, some local governments in Western Australia offer e-facilities as an option throughout the planning and development process. These e-facilities include online applications and lodging of documents, provision of information, communication between the applicant and authority and options for payment.

A number of participants supported expanding the use of electronic processes.

Local government issues

Inconsistencies between local governments

Local governments play an important role in ensuring local interests and circumstances are accounted for in planning and development processes.

There are currently 139 local government authorities in Western Australia, and planning and development approval processes often vary considerably between them. These inconsistencies add to the time taken to obtain an approval and contribute to information costs.

> *"HIA compared the City of Rockingham and the City of Stirling, which are areas in which a range and number of HIA members undertake extensive construction activity, and whose processes for building licences are widely commented on.*
>
> *For the City of Rockingham […] (t)he planning approval application is also limited to two pages and again lists the fees and supporting documentation that is required.*
>
> *By contrast, the City of Stirling […] is one of the fourteen Local Government authorities that also require a development application for every construction activity, irrespective of R-Code or BCA compliance, there is an additional planning checklist and application document to complete.*
>
> *The most fundamental outcome of this comparison of red tape requirements demonstrates that for two Local Government Authorities to carry out the same process for the same construction in the same zoning is substantially different, in time and cost to the consumer."*
>
> Housing Industry Association (WA), sub. 51, p. 7

These variations may distort the allocation of resources, as development decisions will be affected by the requirements and efficiency of local governments. Some developers may avoid projects in certain areas where they have experienced delay or difficulties in the past and others may choose not to enter the market at all.

While some variation in planning requirements is dictated by the different preferences and characteristics of the local government authority, participants considered that substantial variations in processes and lodgement requirements are generally not warranted or justifiable and lengthen delays.

The role of local government

At present, local government is responsible for development of policy as well as the assessment of proposals against that policy. Participants suggested that these roles should be separated to ensure independence and to remove any conflict of interest.

> *"Local government in town planning should be focused on strategic issues and completely removed from individual determinations."*
>
> Chamber of Commerce and Industry (WA), sub. 50, p. 20

Several local governments submitted that they are under-resourced to fulfil their various roles under the current planning system. Redefinition of local governments' role in the process would reduce its workload and allow it to focus on strategic policy matters.

A suggestion put forward by the Real Estate Institute of Western Australia was the private certification of building licences. This is addressed in more detail in chapter 11 of this report.

Review and amendment of local planning schemes

Local governments are responsible for the preparation and administration of local planning schemes. These schemes provide the statutory mechanisms for local governments to implement local planning strategies through zonings, reservations and planning controls.

Local governments are required to review and consolidate their local planning scheme every five years pursuant to the PD Act. The consultation process revealed that many local planning schemes are outdated and have not been reviewed as required by the Act.

> *"Nedlands has a town plan that is well past its use-by date (adopted in 1982), but it still remains the only planning document available to guide developers. It is an absolute dereliction of their duty for councillors to allow this situation to continue. I suggest they stop complaining about the designs their outdated planning policies produce, and do the hard work of developing a new town plan. This would enable the community to move forward with a modern town planning scheme that gives clarity to the city's vision and hopefully encourages design innovation and appropriate responses to the changing environment."*
>
> "Outdated town plan is to blame", Richard Harris, Nedlands Resident & Taxpayer Article: Mosman Cottesloe Post, p. 26, 7 March 2009, submitted by Smithson Planning

Several local government authorities raised concerns regarding the complexity and time-consuming nature of the review and amendment process. According to the Shire of Esperance, even minor amendments to their local planning scheme take 12-18 months to get approval from the Department of Planning.

As discussed above, several local government authorities submitted that their current workload exceeds their available resources, and this is the primary reason for their failure to review and consolidate their local planning scheme.

Several local government authorities also cited slow response times from other government agencies as a significant contributor to this problem.

> *"Under certain state legislation the City is required to refer […] scheme amendments to government agencies for comment. Referral response times from agencies can be extended and in some cases no response is forthcoming."*
>
> City of Swan, sub. 30, p. 4

Participants noted that further problems arise where schemes must be amalgamated. For example, the City of Geraldton-Greenough stated that it has taken over 10 years to consolidate the City of Geraldton and Shire of Greenough schemes.

It was suggested that amendment of local planning schemes is also held up by other factors, including review of planning policies.

> *"On December 5 2008, DPI advised us that they would not proceed to advertise our scheme amendment because the Metropolitan Centres Policy was under review. […]*
>
> *At a meeting between the City of Bayswater, Strzelecki and DPI on March 13 2009 we were advised that the release of the draft policy for public comment had been again delayed until late April or May.*
>
> *Meanwhile, our project cannot be advertised or the necessary Town Planning Scheme Amendment progressed."*
>
> Stzrelecki Group Pty Ltd, sub. 17, p. 2

Similar issues were raised with regards to local planning strategies.

> *"The Council's new draft Local Planning Strategy has been with DPI for approval to advertise since 11 June 2008 (now eight months) with no report being presented to the WAPC. […] This LPS will allow for new and continued growth over the Shire but the DPI have effectively stopped future strategic planning."*
>
> Shire of Plantagenet, sub. 4, p. 1

Several participants also expressed concerns that the inflexibility of local planning schemes is detracting from innovation and entrepreneurial activity.

Other issues

Residential Design Codes

The Residential Design Codes, State Planning Policy 3.1 (R-Codes) sets out criteria relating to the development of residential land and provides a certain and uniform set of standards. The R-Codes were intended to make applications for single dwellings compliant with the 'acceptable development' provisions exempt from planning approval, and subject only to a building licence.

However, there has been a trend among local governments to require all new dwellings to be subject to the issue of planning approval. In addition, the SAT has taken the view that local government authorities retain discretion to approve or refuse development notwithstanding compliance with the R-Codes.

> *"In a planning assessment, the onus remains firmly on an applicant to satisfy the Tribunal that the approval which it seeks should be granted, even where the application conforms to all relevant provisions of the R-Codes."*
>
> Dumbleton and Town of Bassendean [2005] WASAT 145 at 22

This potentially adds significant cost and delay to the approval process for relatively small and low-risk developments, with what appears to be no clear justification for doing so.

> *"All of these additional approval mechanisms add time and cost to a construction and these are borne by the end consumer."*
>
> Housing Industry Association (WA), sub. 51, p. 6

Local government's ability to adopt standards at variance with state policies is exacerbated by the level of flexibility provided by the current system with regard to local government adoption of state planning policies.

The HIA's submission advocates "the removal of all local planning policies that usurp the R-Codes and their application and the installation of legislation that prevents further local policies that have the same effect." (Sub. 51, p. 9)

The City of Fremantle estimated that 80 per cent of residential areas within the city could be governed by the R-Codes, meaning reform has the potential to significantly reduce the number of applications requiring planning approval, as well as the associated delay and strain on local governments.

The Shire of Broome expressed their concern that the R-Codes are designed for Perth-style developments, and are not sufficiently flexible for local building requirements. The Shire of Broome provided two specific examples. First, to be compliant with the R-Codes, stormwater must be contained within the site whenever possible. This essentially means that all houses must have gutters. Although this is undoubtedly necessary in the Perth metropolitan area, in Broome this is inappropriate due to the possibility of cyclones. Second, the R-Codes require that 'an outdoor area takes the best advantage of the northern aspect of the site'. Again, this requirement is inappropriate in Broome as the houses need to be built facing south due to the local weather conditions.

Tourism planning and approvals process

Several participants expressed concerns with the tourism planning and approval process. Issues that were considered particularly problematic included:

- inflexibility created by tourism zones and definitions;
- restrictions on the tourism-residential mix; and
- inflexibility created by length of stay provisions.

Tourism Zones and Definitions

At present there are a considerable number of tourism definitions and separate zones to differentiate between the types of tourist accommodation permitted in certain areas. The underlying intent of these restrictions appears to be to encourage or preclude certain land uses in favour of others.

It appears to be accepted that certain tourist accommodation types, such as caravan parks, should be protected through zoning. This is reflected in the recently released Economics and Industry Standing Committee report 'Provision, use and regulation of caravan parks (and camping grounds) in Western Australia'.[35] However, participants suggested that the current system is overly prescriptive.

According to the Tourism Council of Western Australia, the regulation restricts the ability of property owners to respond to changing market demand, stifling innovation. This in turn impacts on the financial viability of property owners in Western Australia.

Currently, there is no standard set of definitions and there is a considerable degree of divergence between the various local government requirements. Participants suggested that the number of definitions and zones should be consolidated to provide greater consistency for developers of tourist accommodation.

Tourism Accommodation

Regulation of 'dwelling mix' was another area where red tape was considered excessive and burdensome. Many local planning schemes contain a requirement that residential accommodation must not account for greater than 25 per cent of accommodation on tourism zoned sites.

> *"Local governments frequently place highly complex requirements on development approvals in order to achieve numerous policy outcomes. For example, 'the Scarborough Redevelopment Zone Guidelines' from the City of Stirling contain onerous requirements regarding 'dwelling mix' and short-term accommodation in the Scarborough region in order to achieve multiple economic and social outcomes that the local government considers desirable. Some of the restrictions include:*
>
> - *10 per cent of units must be single bedroom dwellings of less than 60 metres square;*
> - *10 per cent of units must be less than 85 metres square; and*
> - *25 per cent of units are to be serviced apartments/short term accommodation requiring an operator.*
>
> *These requirements detract considerably from the flexibility available to developers to achieve positive commercial outcomes.*
>
> *Source: City of Stirling, June 2006, District Planning Scheme No. 2, Policy Manual – Scarborough Redevelopment Zone Guidelines, page 20."*
>
> Chamber of Commerce and Industry (WA), sub. 50, p. 19

35 Economics and Industry Standing Committee Report No. 2 in the 38th Parliament 2009, *Provision, use and regulation of caravan parks (and camping grounds) in Western Australia*, Legislative Assembly, Perth, Western Australia.

According to the Town of Port Hedland, these ratio requirements adversely impact on the viability of developments by limiting the owners' usage of their property. As a result, financial institutions often place tight restrictions on lending to tourism operators. Several participants expressed concerns with the lack of evidence supporting this 25 per cent restriction, suggesting it is arbitrary and undesirable.

Participants suggested that the amount of tourism accommodation should be flexible and able to adapt to changing market conditions over time, advocating a case-by-case approach to the appropriate mix of residential and tourist accommodation.

Length of stay

Length of stay provisions are often included in local planning policies, and restrict the maximum length of stay to a specified period. For example, the Scarborough Redevelopment Zone Design Guidelines specify that 'Dwellings allocated for short-stay accommodation shall: […] be available for tenancy on a short-term basis, not exceeding a period of more than six weeks at any one time by the occupier or occupiers.' The object of these provisions is to ensure tourism developments are made available for tourism, and not taken up by permanent or semi-permanent residents.

Short-stay accommodation is viewed as higher risk and participants suggested that these provisions often have a negative impact on the financing, profitability and therefore viability of projects.

Although these provisions are designed to protect the tourism industry, they place a considerable red tape burden on land owners and detract from tourism development in Western Australia.

> *"Tourism Council WA is seeking […] the understanding and appreciation from government that valuable and passionate tourism developers will gradually switch into residential and commercial developments as delays, regulations and restrictions in tourism approvals render the developments unprofitable."*
>
> Tourism Council of Western Australia, sub. 41, p. 3

WAPC and subdivision processes

Some participants suggested that they had been required to get approval from WAPC for items that should be approved under the local planning scheme.

Several local government authorities expressed concern with the approach taken by WAPC where subdivision approvals are delegated to local government stating that WAPC attempts to influence the local government's decision and seeks assurances that certain conditions will be complied with. According to the City of Armadale, this approach proves time consuming for local governments.

The Shire of Broome noted that significant time delays can result from even simple projects estimating it may take 8-10 months to gain approval to sub-divide a residential block in a residential zone into three blocks.

Several participants also expressed concern with the onerous administrative tasks entailed in subdivision applications. Kingston Survey Pty Ltd noted that a subdivision requires an A4 file worth of material, and the average household would pay approximately $22,000 in fees. Possible reform options suggested included:

- adoption of a risk-based approach to subdivision assessment;
- delegation of subdivision applications to representative local governments; and
- simplification of standard subdivision conditions.

Regional planning issues

The consultation process highlighted a widespread concern with regional planning processes.

For example, the Great Southern Development Commission queried the lack of regional input into the planning process. This issue was also raised by the Shire of Carnarvon, the Goldfields-Esperance Economic Development Commission and the Shire of Esperance.

Several participants raised concerns that metropolitan land and housing restrictions are being applied to regional areas, resulting in major blockages in supply and distorting prices.

Some participants also suggested that regional bodies do not meet as often as they should, causing a bottleneck in planning across the relevant region.

Metropolitan Centres Policy

The Metropolitan Centres Policy State Planning Policy 4.2 (MCP) defines a hierarchy of shopping centres throughout the Perth Metropolitan Region, comprising the Perth Central Area, Strategic Regional Centres, Regional Centres, District Centres, Neighbourhood and Local Centres and the traditional 'Main Street' Centres.

The primary aim of the policy since 1991 has been to promote and ensure that the Perth CBD is the dominant retail centre and the primary focus for retail, commercial, cultural, entertainment and tourist facilities. A number of participants suggested that the policy is unfavourable and imposes an unjustifiable burden on development.

> *"The Metropolitan Centres Policy is anti-competitive because it favours and protects existing businesses over the creation of new ones."*
>
> Strzelecki Group Pty Ltd, sub. 17, p. 12

Participants suggested that the policy is acting as a barrier to entry constraining competition and innovation in Western Australia. According to the Retail Traders Association of Western Australia, this cap has contributed to significant rent increases, as well as limiting construction and investment.

Although the MCP contains guidelines and is therefore not legally enforceable, the relevant departments treat the policy 'as laws written in stone'.

"In 2008, the Planning Commission's position on retail expansion saw it refuse applications to expand and upgrade Garden City Shopping Centre and retail centres in the City of Stirling. These expansions would have seen $200 million invested in the Western Australian economy in 2009-10. As a consequence major retail centre owners are contemplating pulling out of Western Australia."

Stzrelecki Group Pty Ltd, sub. 17, p. 12

Short-term reforms

Metropolitan Centres Policy

The Metropolitan Centres Policy State Planning Policy No. 4.2 (MCP) appears to be an unjustifiable constraint on competition in the Perth metropolitan area. The policy, which is not subject to parliamentary scrutiny, creates a significant barrier to entry.

Abolishing the policy would encourage development in Western Australia and facilitate a greater degree of competition, particularly in the retail industry. This would also allow the assessment of proposals which have been held up by review of the policy.

Recommendation 10.1
The Metropolitan Centres Policy should be abolished.

Development assessment panels

It is clear from the consultation process that the planning and development system is in need of broad structural reforms. The RTRG advocates an on-going concerted effort to streamline the planning and development process. This should include further attempts to reduce duplication as well as to reduce the complexity inherent in the process. There is also evidence from many contributors to suggest that there has been a significant loss of confidence in many councils around planning.

Development Assessment Panels were suggested in the 'Building a Better Planning System' report to determine significant land and housing projects, as part of the effort to simplify planning approvals. These panels will be the decision-maker for applications of a prescribed class and value, overcoming the duplication in the current system. The panels will also be a 'one-stop-shop' thereby reducing delay and uncertainty arising from a multi-staged approval process, and will be accountable for their decisions. In future, consideration should be given to allow developers who are not within the prescribed class and value to apply to have their application assessed by a DAP.

Recommendation 10.2
The RTRG supports the formation of Development Assessment Panels (DAPs) with the following features and characteristics:

- ***the DAP is the responsible authority for determining applications of a prescribed class and value;***
- ***a decision of the DAP is regarded as, and given effect as, a decision of the relevant local government and/or the Western Australian Planning Commission as applicable;***

- ***the DAP is a single point of assessment for applications and limits referrals to agencies with a relevant role for advice only – rather than requiring multiple approvals under local and regional planning schemes;***
- ***the DAP consists of a mixture of independent technical experts and local government representatives;***
- ***the Minister for Planning has the power to call in development applications of State or regional significance; and***
- ***applications not approved or refused within the statutory time period will be deemed approved.***

Medium-term reforms

Deemed approval for decision-making processes

At present, when a local government authority or government agency exceeds the prescribed time frame for approval, the application is deemed to be refused and an application for review can be lodged with the SAT.

This process creates no incentive for the decision-maker to progress the application within the required time as there are no negative consequences arising from failure to make a decision. As a result, applicants face further delays and must foot the cost of the review.

In addition, where a decision is deemed refused, the SAT must make the decision fresh, rather than looking at the specified grounds for review. This is clearly not an efficient use of the SAT's time.

In addition, the time taken to process applications is not accurately measured or reported. In some cases an agency may measure the time an application is being assessed by themselves, but 'stop the clock' when the proposal is referred to another agency. This should be addressed to improve the transparency and accountability of the process and to reduce the delays experienced by applicants.

Recommendation 10.3

Local governments and government agencies involved in the planning and development process be required to measure and publicly report:

- ***calendar days taken to make a decision and calendar days taken during 'stop the clock' periods;***
- ***calendar days taken by other departments to deal with referrals under the assessment process;***
- ***calendar days taken by proponents to respond to information requests; and***
- ***the reasons as to why 'stop the clock' provisions were utilised (e.g. information being requested from the proponent.***

Red tape benefits/savings – this recommendation has the potential to improve stakeholder understanding of the actual time taken for decisions on applications, and improve decision-maker accountability.

Recommendation 10.4
Applications not approved or refused within the prescribed time period will be deemed approved.

These measures create a strong incentive for local government and government agencies to process and assess applications in a timely and efficient manner. In addition, these reforms will improve transparency and accountability, as well as reducing the red tape burden on business.

Regional planning issues

The RTRG supports the creation and/or the empowerment of existing regional bodies with decision-making power regarding development approvals. This has the potential to reduce duplication and streamline the process whilst ensuring that local and regional interests are protected.

Recommendation 10.5
The Western Australian Planning Commission's decision-making power should be decentralised and the regions should be given more autonomy and control in the decision-making process.

Electronic assessment processes

The consultation process illustrated that there is strong support within the industry for the use of electronic assessment processes. Several local governments have trialled the use of electronic assessment processes, and these have been warmly received by businesses. These processes have the potential to reduce the red tape burden by facilitating communication between the applicant and the various agencies and authorities, as well as improving transparency and accountability.

Recommendation 10.6
Local government authorities and state government agencies involved in the planning process should be required to use consistent electronic assessment processes for a variety of purposes, including for:

- ***lodgement and receiving of applications;***
- ***communicating with developers and applicants;***
- ***requesting and providing further information;***
- ***reviewing the progress of an application;***
- ***tracking and reporting development decisions;***
- ***tracking and reporting Schemes and amendments;***
- ***referral;***
- ***approval processing;***
- ***payment of fees; and***
- ***other purposes.***

The role of local government

Separation of policy-making and decision-making powers would ease local governments' workload, whilst ensuring they retain the power to determine policy in their local area. This reform would reduce the time taken to assess applications, thereby reducing the delay experienced by applicants, as well as associated costs.

Recommendation 10.7

Local government's role should be to develop objective criteria against which planning and development applications will be assessed. A separate body should carry out the decision-making role.

This recommendation is consistent with the creation of Development Assessment Panels.

Local planning schemes

Local governments are responsible for the preparation and administration of local planning schemes. Under the PD Act, local governments are required to review and consolidate their local planning scheme every five years. A large number of Western Australia's local governments have failed to comply with this requirement.

The key reasons appear to be the complexity of the amendment process and the considerable workload created by local governments' decision-making function.

Recommendation 10.8

Streamlined processes for minor local planning scheme amendments should be implemented, including:

- ***delegation of decision-making power to an independent decision-making body; and***
- ***reduced advertising timeframes.***

As set out above, this change would ensure local government retained its strategic policy-making power, whilst addressing strains created by under-resourcing.

Another problem raised during the consultation process was the ability of local governments to choose not to implement State Planning Policies (SPP), and to enforce local planning schemes inconsistent with SPPs.

This leads to inconsistencies and duplication, adding to the frustration and expense borne by applicants. There is a strong case for standardisation of local government development processes and requirements, whilst maintaining sufficient flexibility to accommodate local conditions and circumstances.

The '*Planning Makes it Happen*' report recommends a mechanism to prevent this problem, which it anticipates will be substantially progressed by June 2010.

Recommendation 10.9

The Planning and Development Act 2005 should be amended to provide the Minister with power, on the recommendation of the Western Australian Planning Commission, to direct local government(s) affected by a particular State Planning Policy to amend its local planning scheme to give effect to that State Planning Policy.

It is anticipated that the Minister's direction 'will advise exactly what is required in terms of implementing the SPPs' and will 'provide a timeframe within which the amendment is to be initiated.'

This will ensure that important State policies are reflected in local planning schemes, and will help reduce inconsistencies in the system.

Residential Design Codes

The R-Codes set out criteria for the development of residential land and aim to provide a uniform set of standards for developers. The R-Codes were intended to make applications for single dwellings compliant with the 'acceptable development' provisions exempt from planning approval, and subject only to a building licence. However, many local governments dictate that all development proposals require approval, even those consistent with the R-codes. This entails further delay and expense for low-risk applications.

Use of the R-Codes as intended promotes transparent and consistent decision-making, streamlines approvals and frees up decision-makers' time to deal with higher risk applications.

Recommendation 10.10

Single residences which comply with the 'acceptable development' provisions of the Residential Design Codes should be exempt from planning approval.

Planning approval should still be required for single houses in heritage precincts as identified in local planning schemes, as currently provided for by the Model Scheme Text.

Recommendation 10.11

Local planning policies that usurp the Residential Design Codes and their application should be removed.

Red tape benefits/savings – These measures will reduce the delay experienced by compliant applications, as well as the strain on local governments who can focus on strategic matters and more 'risky' proposals.

Recommendation 10.12

Regional areas should have the opportunity to apply for exemptions from the Residential Design Codes where local planning concerns are not adequately addressed, and should be assessed against specific regional building criteria.

Tourism zones and definitions

Western Australia has a range of tourism zones which dictate the allowable types of tourism land uses. Although this protects certain land uses, it also severely constrains the flexibility of the land owner, with little justification for doing so.

The use of a piece of land zoned tourism is also often restricted by definitions set out in the relevant local planning scheme. Reducing these restrictions would give land owners flexibility, allowing them to respond to market demand and innovate.

There is also very little consistency in the definitions across the various planning jurisdictions. Most Australian states currently use a standardised set of definitions, or are moving towards standardised definitions.

Recommendation 10.13
A uniform set of tourist definitions and zones should be created using Model Scheme Text, and applied across Western Australia.

Tourism percentage residential

Many local planning schemes contain an inflexible requirement that there should be 25 per cent residential allowed on tourism zoned sites. This blanket rule impedes the land owners' ability to respond to market demand and is often strictly enforced by local government.

There is little evidence as to why this percentage has been chosen, and it is an example of unnecessary red tape.

A case-by-case approach would allow the market to adapt to changing market conditions, leading to a more efficient and dynamic tourism industry.

Recommendation 10.14
The percentage residential requirements should be removed and replaced with a more flexible requirement that land zoned to tourism should be predominantly used for tourism purposes.

Length of stay provisions

Length of stay provisions are included in definitions in local planning schemes to ensure tourism zoned land is used for tourism.

These provisions prevent accommodation for longer than a specified period of time, thereby preventing use as permanent or semi-permanent accommodation.

However, these regulations restrict the land owner's flexibility and impact on the availability of finance, as well as the end value of tourism projects.

Recommendation 10.15

Length of stay provisions should be removed and replaced with a requirement that the accommodation be used predominantly for tourism purposes.

Red tape benefits/savings – This would allow the land owner to adapt more readily to changes in the market, whilst ensuring that tourism sites remain available for tourist accommodation.

WAPC and subdivision processes

'Short-track' is an online subdivision referral and approvals system used by the WAPC to assess and determine certain low-risk, urban subdivisions fewer than five lots. Agencies can receive new applications and related notifications via email with a direct link to the application online. Suitable applications assume an expedited 15 day referral and 30 day assessment period.

The short-track system facilitates a more collaborative and centralised approach to the management of subdivision referrals.

The system is currently being trialled by several local governments and State government agencies.

Recommendation 10.16

Use of the short-track subdivision system should be extended.

Red tape benefits/savings – extension of the short-track system has the potential to reduce referral times for applications, reducing the delay experienced by applicants.

Model subdivision conditions are used by the WAPC and are intended to provide clarity and consistency in the granting of conditional subdivision approval by the WAPC.

However, these conditions require standardisation and simplification to avoid imposing an unnecessary burden on applicants.

Recommendation 10.17

The model subdivision conditions should be reduced and simplified.

Chapter 11
Building approvals

Reforms described in this chapter have the potential to improve the efficiency of the building licence approvals process.

Reforms that reduce the time taken to approve building licence applications have the potential to result in significant benefits to the building industry and the broader community.

Overview

Building licences or building approval certificates are required to undertake most construction work in Western Australia. Applicants are usually required to submit applications to local government for approval. Participants from the building industry have called for reform of the application process given the often lengthy delays in obtaining approval, and inconsistencies in information required by local governments to certify applications.

Compliance structure

In Western Australia, the legislative provisions for building licences or building approval certificates are separate from general planning legislation. Building licences for proposed building work and building approval certificates for existing (unauthorised) building work are provided for under the *Local Government (Miscellaneous Provisions) Act 1960* (the Act), and the Building Regulations 1989 (the Building Regulations).

The State Government is currently developing a Building Bill to replace the current regulatory framework. A Building Occupations Registration Bill is also being developed, which will provide for registration of building surveyors and other specialist certifying practitioners for the purpose of certifying compliance under the Building Bill provisions.

The new legislation will take into consideration national regulatory reforms by confirming the Building Code of Australia (BCA) as the primary building standard, formalising private sector participation in the building certification process, and providing a registration system for building surveyors and other building professionals who may be required to certify compliance.

Overview of the regulatory process

The Building Regulations detail the requirements for obtaining a building licence and building approval certificate in local government districts. The Building Regulations require:

- *Every builder intending to construct a building or alter, add to, repair or underpin, demolish or remove an existing building shall before commencing – make written application to the local government for a licence to commence that work (r. 10 (1))*

The Building Regulations require that an application for building licence or building approval certificate (respectively) be submitted to a local government along with the plans, specifications, performance requirements, and the estimated cost of the building. There are also requirements that the builder provide the necessary notices and obtain all other statutory approvals for the proposed works as well as liaise with the Fire Brigades Board for certain classes of buildings.

The local government examines that the proposal conforms with statutory provisions and requirements, and complies with the BCA and any relevant Australian standard. A local government may refuse an application, or return an application within 15 days if it considers it doesn't conform with the requirements. Otherwise the local government is required to issue a building licence or building approval certificate within 35 days. The building licence or building approval certificate may include certain conditions – it is not uncommon for a local government to require, as a condition, certain inspections or independent 'as constructed' compliance certificates.

The consultation process

The process for obtaining building licences was raised on several occasions in the consultation process. In many cases the impact on participants of delays and inconsistencies in the building licence process were exacerbated by having followed the often long and drawn out process obtaining planning approval (planning issues are discussed in chapter 10).

The main concern raised in the consultation process was the length of time taken to obtain a building licence. Participants acknowledged that some local governments were very efficient in processing building licence applications. In others, delays in processing applications were substantial. In addition, some participants were frustrated by the disparity in the information required to be submitted with applications across local government areas. Participants considered that local governments which allowed for the electronic lodgement of building licence applications tended to process applications in a more timely manner.

Participants were not so much concerned with the direct compliance requirements involved with obtaining a building licence (such as the information required to be submitted with an application or the application fees), but with the delays in obtaining approval.

Celebration Homes is a large building company which operates throughout the metropolitan area and the south west. Celebration Homes noted that that the length of time taken to obtain a building licence for a similar building project can vary significantly across local governments. Indicative time taken by local governments were:

- *City of Swan 1-2 weeks;*
- *City of Armadale 3-4 weeks;*
- *City of Rockingham 1-2 weeks;*
- *Shire of Kalamunda 8 weeks (one application took 8 weeks); and*
- *East Fremantle 3-4 weeks (6-12 weeks not uncommon).*

In addition, local governments can often require significantly different information as part of the building licence application. Celebration Homes provided the example of two similar houses being built in close proximity to one another but in different local government jurisdictions. One local government required a soil test as part of the application process, while the other local government didn't require the test.

There was strong support for reform of the building licence process from organisations such as the Property Council of Western Australia, the Real Estate Institute of Western Australia and the Master Builders Association. Reform options suggested included:

- the introduction of competition in the certification of building licences;
- mandate a specified time for local governments to complete the approvals process; and
- the use of electronic tracking systems by local governments to monitor the building licence process and the wider adoption of electronic lodgement options for building approval applications.

> *"I am currently building extensions to my home. I am experiencing excessive 'red tape' and delays in getting any form of feedback from the council. I applied for a building licence some years ago with no problems.*
>
> *However, the building licence has expired and I have resubmitted plans (signed by a structural engineer) for building compliance and a subsequent building licence to finish the project off.*
>
> *Initial correspondence with the council started five months ago, with council requests to re-submit drawings for building compliance only. After this was done, fees paid, I was then asked to submit to planning also. This was done followed by more fees.*
>
> *And there it sits with council…*
>
> *I initially assumed a 2 to 3 week turn around would suffice, but when I call to check on the progress I am repeatedly told the council is short staffed and will get to it asap. As a rate payer and fee payer, I find this disturbing.*
>
> *A cut in red tape would benefit me greatly should I be stupid enough to go through this again."*
>
> Saleeba Adams Architects, sub. 58, p. 1

Medium-term reforms

Private certification of building licences

Unlike most other jurisdictions, Western Australia currently does not allow private certification of building licences. In other jurisdictions, applicants can engage an appropriately qualified (and usually registered) person, such as a building surveyor, to certify that the building proposal complies with the BCA and any other relevant standards. The applicant then can submit the 'certified application' to the designated licence issuing authority, usually the local government, for final approval. Local governments often still retain the certification function, giving the applicant the choice of using the local government or any number of appropriately qualified private certifiers.

The above system has a number of potential advantages. By opening up the process to competition, processing the building licence can occur much faster as applicants do not rely solely on the local government surveyor to check and certify the building licence applications.

In addition to increasing the number of potential certifiers, private certification of building licence can also reduce the local government resources required for the approvals process. In some instances, the recognition that a business could compete with them may be enough to improve the timeliness of the approval agency's service.

There are also potential advantages for applicants in terms of increased quality and lower prices from competition.

Research into the effectiveness of private certifiers in other jurisdictions has found that "greater involvement of private sector certifiers and surveyors has led to greater efficiency in the approvals process".[36]

Recommendation 11.1

Private certification of building licence applications by appropriately qualified (and registered) professionals should be introduced. Professionals would certify whether the building proposal complies with the required approvals and standards. Local government should remain the primary authority for issuing building licences.

Mandating approval times for building licence applications

The time taken to assess building licence applications, and the large variance in time taken to assess applications across local governments, was a major concern raised by participants. Mandating the time that local governments take to assess building licence applications has the potential to reduce approval times and reduce uncertainty and inconsistency in the approvals process.

In New South Wales, it is mandated that local governments take a maximum of 7 days to approve building licences. Since its introduction, the mandated approval period has "significantly reduced the time taken for building licences and development standards to be approved. It has reduced delay costs for builders and therefore consumers."[37]

The ability of local governments to process the applications more quickly should be assisted by the introduction of private certifiers of licence applications, which should reduce the workload for local governments.

Recommendation 11.2

Local governments should be required to take no longer than seven days to assess building licence applications.

Red tape benefits/savings – this reform would reduce costs to businesses caused by delays in the building approvals process.

36 ACIL Tasman 2006, *Economic analysis of a new Building Act for Western Australia*, p. 34.

37 ACIL Tasman 2006, *Economic analysis of a new Building Act for Western Australia*, p. 8.

Electronic lodgement of building licence applications

Electronic lodgement of building licence applications has the potential to speed up the building licence approvals process.

Recommendation 11.3

Local governments should offer electronic lodgement of building licence applications.

Red tape benefits/savings – this reform would reduce costs to businesses caused by delays in the building approvals process. It would also increase the transparency of the decision-making process making local governments more accountable for the time taken to assess licence applications.

Chapter 12
Environmental approvals and licensing

In this chapter reforms are identified that have the potential to reduce paper work requirements and costs to applicants, through the introduction of streamlined and transparent processes.

Overview

The environmental approvals and licensing regime in Western Australia is a complex mix of legislation, regulations and quasi-regulations. This chapter provides an overview of regulatory process and provides examples of red tape issues raised during the consultation process.

This chapter does not provide an in depth analysis of the functions and performance of the environmental approvals and licensing processes of the Western Australian Government. A number of other reviews and mechanisms are already undertaking this work and have proposed reforms. The focus of this chapter is to provide a snapshot of the views of business about the current regime and provide recommendations that address the broad issues raised.

Compliance structure

The main legislative instrument that deals with environmental approval processes is the *Environmental Protection Act 1986* (EP Act).

The EP Act provides for the:
- prevention, control and abatement of pollution and environmental harm; and
- the conservation, preservation, protection, enhancement and management of the environment.

The EP Act has 20 pieces of subsidiary legislation including regulations governing the clearing of native vegetation, noise levels, rural landfill and atmospheric wastes in Kwinana.

Other legislation in place to protect the environment includes the:
- *Conservation and Land Management Act 1984*;
- *Contaminated Sites Act 2003*;
- *Environmental Protection (Landfill) Levy Act 1998*;
- *Litter Act 1979*;
- *Swan and Canning Rivers Management Act 2006*;
- *Waste Avoidance and Resource Recovery Act 2007*;
- *Wildlife Conservation Act 1950*;
- *Reserves (National Parks, Conservation Parkes, Nature Reserves and Other Reserves) Act 2004.*

These are all important pieces of legislation that play an integral role in protecting Western Australia's fragile natural environment.

Overview of the regulatory process

The Department of Environment and Conservation (DEC) administers all the Acts and regulations listed above. DEC is also responsible for the management of national parks and nature reserves.

The EP Act also outlines the role of the Environmental Protection Authority (EPA). The EPA is a statutory authority and is the primary provider of independent environmental advice to Government.

The EPA's objectives are to protect the environment and to prevent, control and abate pollution. The EPA advises the Minister on the environmental acceptability of new development proposals (including planning schemes and scheme amendments), formulates environmental protection policies to protect specific parts of the environment, and advises the Minister on environmental issues generally.

Both the EPA and DEC have a large number of operational policies, guidelines and position statements.

Consultation

Issues relating to environmental licensing and approvals were raised 77 times during the RTRG consultations. To assist in the analysis of these issues they were split into three broad categories. The following table illustrates the split of environmental approvals issues raised during the consultations.

Rank	Category	Percentage of issues	Frequency
1	Inadequacy/delay/complexity of process	45	35
2	Administration and Culture	29	22
3	Licensing Approval requirements	26	20

General Issues

Inadequacy/delay/complexity of process

The most common complaint about environmental approval and licensing processes was about the delays caused by the complexity or inadequacy of the process.

The RTRG was provided with examples where a failure to implement review recommendations has created uncertainty and has a negative impact on business and the community. The first written submission received by the RTRG provides a powerful example of the failure of government to implement review findings in a timely manner.

The EP Act deals with noise emissions from premises and public places. The Environmental Protection (Noise) Regulations 1997 (the Noise Regulations) prescribes standards for noise under the EP Act. The following case study outlines the frustrations experienced by the Kwinana Industry Council's members over the review process for the Noise Regulations.

Kwinana Industry Council – Review of Noise Regulations

"The issue of noise regulation is one of Kwinana Industries Council's (KIC's) longest standing concerns. The current regulation requires that a measurement of noise level be taken at the industry property boundary rather than at the residential property boundary.

Industry in Kwinana operates in a defined area which is segregated from residential areas. The measurement and administration of the regulation makes planning increasingly difficult for Kwinana Industrial Area companies seeking planning approvals for site developments and creates planning approval problems for the Town of Kwinana.

Anticipation of a revision has been a long standing cause for growing concern for industry and a source of conflict with the community. The issue highlights how Government agencies failing to carry out review processes in a timely manner can have a negative impact on business and the community.

The current regulation was reviewed in 1999. The review recognised that a measurement of noise levels at the residential property boundary is more appropriate than a measurement at the industry property boundary, especially given that a significant industrial buffer zone separates the industrial area from the residential area.

Amendments to the regulation have been awaiting gazettal since 2001. The gazettal process was also delayed as the current procedure is for all noise matters to be amended at the same time, that is, industrial as well as residential and entertainment venues. The DEC advises that the draft new Regulation is now ready to go out for public comment in October 2009.

The length of time taken for the Regulation to be reviewed and amended highlights how Government agencies failing to carry out review processes in a timely manner can have a negative impact on business and the community."

Kwinana Industries Council, sub. 1, pp. 1-2.

This case study is an indictment on the speed of government processes. Introducing mandatory review/repeal clauses for all Acts and regulations would provide an incentive for government agencies to complete their review processes in a timely manner or face having their regulation repealed. This mechanism would reduce the incidence of long protracted review processes as seen in the Kwinana Industries Council submission.

The environmental approval processes in Western Australia were described as time consuming and complex by business. The RTRG was provided with a submission by CSR Lightweight Systems who manufacture plasterboard in Welshpool which highlights the cost and length of the process to get an extension of a current mining operation. The following case study also illustrates the flow on effects of these types of delays on the company's manufacturing operation.

CSR – The impact of a lengthy environmental approvals process.

"There has been a long history of mining activity at Gypsum Lake. Mining tenement, M70/750 was granted to Peter J Woods and Associates in 1993 and transferred to CSR in 2002.

In 2002 CSR sought to extend the mining operation by a further 25 years. Following an extremely lengthy and costly process, the EPA recommended against allowing the proposal to mine a further 53 hectares and recommended only 12.7 ha should be mined, limiting the mine life to six years. The EPA's recommendation was adopted by the Environment Minister. Following the limited approval, significant additional work was required by the EPA, further delaying the approvals period to 2008 and incurring massive additional costs. In the end, it took six years to be granted the right to mine for another six years.

The six year mine extension (instead of the 25 year extension sought) may only delay the closure of CSR's Welshpool facility. If CSR is forced to quit WA it will create a monopoly in the WA market for plasterboard production (the other manufacturer is BGC) and will result in the loss of 40 jobs at the Welshpool production facility. With the commissioning of CSR's new facility in Melbourne, it will be cheaper to freight plasterboard into WA than manufacture in WA once the right to gypsum sourced from WA is ended. The full extension of mining rights would all but guarantee manufacturing at the Welshpool site for another 25 years.

In summary, the six year process to seek environmental approval for a mining operation that had been occurring since 1993 and involved mining for between two to four weeks every two years cost CSR $380,000 in environmental consultants' fees and nearly $63,000 in legal fees. In addition, because of the six year timeframe from application to approval to mine, CSR was forced to obtain gypsum from other sources, costing it millions of dollars to maintain its manufacturing capability in WA.

It's CSR's view that the protracted, uncertain and expensive approvals process applied to this proposal has disadvantaged the State and the company, as well as Western Australian homeowners, who are the ultimate consumers of our product.

The level of red tape in this instance was an unjustified impost on CSR. If the environmental regulator and associated government agencies deal with other businesses in the same manner as CSR has been dealt with it will not be long before companies look to operate in jurisdictions that are more professional."

CSR Lightweight Systems, sub. 40, pp. 1-2

This case study also illustrates the perception of business that Western Australia's environmental approvals system requires an overhaul to provide certainty, reduce complexity and improve its administration. This view is echoed by the Aquaculture Council of Western Australia.

> *"There is a strong market signal for aquaculture in Western Australia, the EPA and DEC needs, as a matter of public interest, to prepare systems that will allow decision-making over a reasonable period of time and create certainty.*
>
> *The current delays place aquaculture projects at risk, as the capitalisation of aquaculture businesses are geared for assessments being made over a reasonable period, but not the lengthy delays being experienced.*
>
> *Historically, the regulation and policy that has governed aquaculture has not been the only impediment to development, but rather the speed in which they are administered. These time delays do not serve the applicant, or the public good. It is on this basis, there is a need for the implementation of mechanism(s) that improve government's project management and accountability."*
>
> Aquaculture Council of Western Australia, sub. 32, p. 7

Administration and culture

During the RTRG consultations business was scathing in its assessment of the administration and culture in DEC and other agencies involved in environmental approvals and licensing.

Some of the issues raised by business during the consultations included:

- no full upfront disclosure of requirements;
- changing goalposts;
- agencies unaccountable for the time they take to assess applications;
- one size fits all approach (inflexible application of processes);
- punitive enforcement regime; and
- centralised decision-making.

The RTRG consultations revealed that business relies heavily on consultants to assist in dealing with DEC, the EPA and other agencies involved in these decision-making processes.

Case Study – Mount Romance Australia Pond Project

Mt Romance Australia is a Sandalwood producer based near Albany. The company recently spent $34,420 in building a new waste water pond at its factory. Of these costs $20,120 or 58 per cent was spent on environmental consultants. David Brocklehurst, General Manager of Mount Romance Australia described this experience in the company's submission:

> *"I have attached a spreadsheet from our accounts department showing a breakdown of the costs associated with the pond and you can see that well over half are admin charges or application costs. What concerns me most about projects like this is the public sector has removed itself from any real decision-making and made it all private sector. Normally you would expect a capitalist like myself to say that is a good option as it should be cheaper and more efficient – well it is definitely not cheaper and far from efficient. The EPA and Council have, by making us use Coffey or Opus (in Albany they are the only accredited choices) appear that the two of them can charge what they like and we have no choice but to pay if we want to complete the project."*
>
> Mount Romance Australia, sub. 27, p. 1

Some businesses in regional areas expressed concerns that decision-making was too centralised and that problems occurred when decision needed to be referred to Perth. These concerns are not limited to environmental approvals and licensing.

Licensing approval requirements

A number of businesses consulted outlined the trouble they experienced in applying for environmental licences. A set of common themes emerged from these discussions:

- high compliance cost and paper work requirements;
- lack of clarity and guidance;
- time consuming and onerous application process;
- lack of transparency and appeal process; and
- excessive regulation and interference.

Environmental licensing and approvals processes impose high paperwork and compliance costs on business.

> *"I realise that this sounds simplistic. But with regard to regulations – requiring people to report more, fill out more paperwork, jump through more hoops there is a very real cost, and the benefits are not only sometimes negligible, but actually 'negative'. That is, they cause harm rather than advance good.*
>
> *Original [feedlot] approval took over 12 months. Unofficially, it took almost 18 months. This was all after a complete, professional, development plan had been submitted. The requirements were not clear, and the goal posts have changed constantly and considerably in the 7 ½ years since we began.*
>
> *…Being forced to hire consultants, conduct more impact studies, etc., generally helps only the consultants, who get paid exorbitant fees."*
>
> Janet Thompson, sub. 3, p. 1

The businesses consulted by the RTRG all professed a willingness to abide by environmental licensing regimes and to play their part in ensuring the protection of valuable natural resources. However, there was a general observation that the level of regulation had increased over the past five years increasing costs to business without delivering tangible benefits.

"This increase in regulation and general environmental legislation has had the effect of increasing administration, auditing and reporting for companies in the packaging industry while at times also creating uncertainty and confusion. The bottom-line impact has resulted in increased cost without a commensurate improvement in environmental standards or business performance."

Packaging Council of Australia, sub. 11, p. 2

The RTRG were provided with examples of onerous licensing approval processes and monitoring. The majority of these dealt with operations in marine parks.

Whale Sharks Western Australia – Onerous approval process for Whale Shark licensing

Whale sharks are fully protected under the Wildlife Conservation Act 1950 *and the* Conservation and Land Management Act 1984 (CALM Act)*. Their appearance in Ningaloo Reef between March/April and June/July each year has resulted in the development of a seasonal ecotourism industry.*

The current licences were allocated after a publicly advertised call for expressions of interest on 1 August 2007. The licences entail specific conditions that govern the tours and operators will be independently audited every year. As part of the licensing process, operators are required to achieve a National Tourism Accreditation Program with the advanced environmental module and an Eco Certification provided by the Ecotourism Australia within three months of gaining their licence. Operators are also required to install a GPS based electronic logbook, which would allow DEC to monitor their activities.

Currently there are 14 licensed charter boat operators who offer whale shark interaction tours within Ningaloo Marine Park.

A recurring theme was the burden imposed on operators through a complex application process. For example, applicants are required to complete an application document containing over 60 pages, which needs certification of expert consultants and/or their assistance, imposing additional costs to businesses.

In addition the application process requires all whale shark tour operators to install an Electronic Monitoring System/Electronic Log Book (EMS) for 'data collection' to track their movements at their own cost. This GPS based equipment allows DEC to monitor boat movements even on non-operational days. The annual sustainability audit is another requirement imposed upon on operators and again the costs are passed on to the operators.

Whale Sharks Western Australia, sub. 12, pp. 1-4

Businesses had serious problems with DEC requiring them to install an EMS to track their movements. Whilst there were no problems with having the EMS operational during the Whale Shark season, the licence holders questioned why they had to be operational 365 days per year. North Star Cruises, which is based in Broome also raised this issue as they were required to install the EMS on all their boats at significant cost ($5000 per annum to lease the equipment, plus the cost of monitoring) and be continually monitored even when they were operating outside the marine parks and Australian waters. There was a real sense that DEC was employing a 'big brother' mentality.

Medium-term reforms

This chapter will apply some of the broad recommendations from chapter 4 dealing with the types of issues listed above to environmental approvals and licensing processes.

Inadequacy/delay/complexity of process

The following recommendations are designed to assist in reducing delays in environmental approvals and licensing processes.

Recommendation 12.1
The RTRG supports the introduction of clear statutory timeframes for environmental approval and licensing processes.

Recommendation 12.2
The RTRG supports the introduction of 'deemed approval' mechanisms in environmental approval and licensing processes to provide incentives for government agencies to make decisions within statutory timeframes.

Recommendation 12.3
The RTRG supports the introduction of a 'lead agency' framework for multi-agency decision-making processes involving environmental assessments.

Administration and culture

The following recommendations are designed to address some of the issues raised about the administration and culture within government agencies involved in environmental approvals and licensing.

Recommendation 12.4

Require the Department of Environment and Conservation and the Environmental Protection Authority to develop target timeframes for decision-making processes and report against them publicly. This report should include:

- ***calendar days taken to make a decision and calendar days taken during 'stop the clock' periods;***
- ***calendar days taken by other departments to deal with referrals under the assessment process;***
- ***calendar days taken by proponents to respond to information requests; and***
- ***the reasons as to why 'stop the clock' provisions were utilised (e.g. information being requested from the proponent).***

Recommendation 12.5

The RTRG supports the introduction of risk-based assessment in environmental approval and licensing processes to remove unnecessary regulation.

Recommendation 12.6

All new and amended quasi-regulations introduced by the Department of Environment and Conservation and the Environmental Protection Authority should be subject to a Regulatory Impact Assessment process and the results of this process should be made publicly available.

Recommendation 12.7

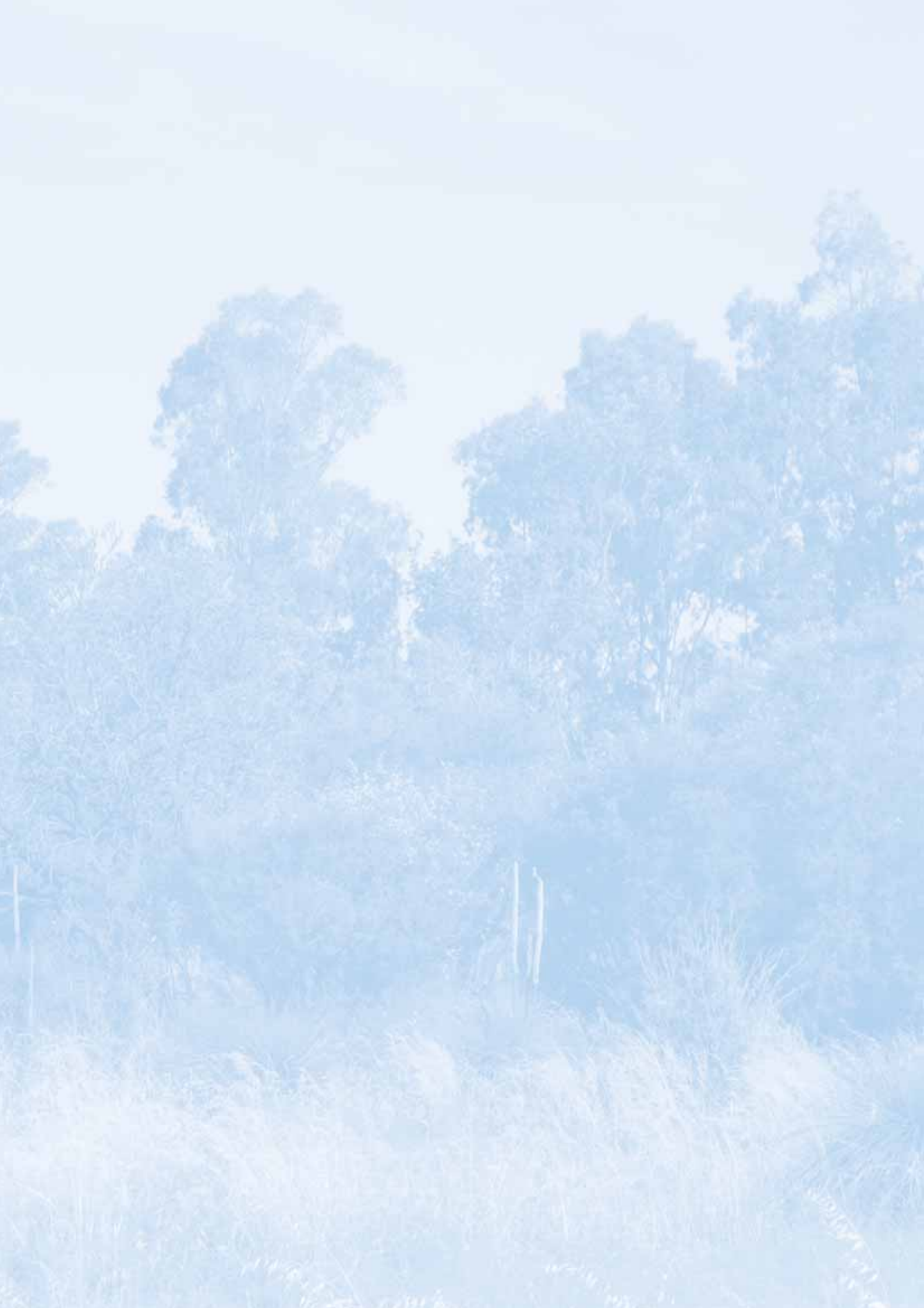
The Department of Environment and Conservation should provide greater decision-making powers to regional officers.

Licensing approval requirements

The following recommendation is designed to assist in streamlining licensing approval requirements through the provision of better information about the decision-making process.

Recommendation 12.8

The Department of Environment and Conservation and the Environmental Protection Authority publish their internal guidelines outlining the criteria for decision-making in the environmental approval and licensing areas.



Chapter 13
Clearing of native vegetation

Reforms identified in this chapter have the potential to significantly reduce costs imposed by the native vegetation clearing permits system. Reducing regulatory complexity and streamlining the assessment process will reduce time taken in applying for permits and decision-making. This will reduce the substantial capital holding costs and opportunity costs currently incurred by businesses and local governments.

Overview

Regulations governing the clearing of native vegetation significantly impact various industry sectors, including mining and petroleum, property development, agriculture, local government, and private and public utility providers such as Alinta Gas, Telstra, Main Roads Western Australia, Water Corporation, Western Power, Horizon Power, and the Public Transport Authority.

The regulatory process is time consuming and onerous, with high paper work and information requirements and compliance costs. Lack of clarity in decision-making criteria compounds these issues.

In April 2009 the *Regulation Review: Clearing of Native Vegetation, Report to the Minister for the Environment by the Expert Committee* (the Expert Report),[38] made 17 key recommendations for improving the regulatory framework and administrative processes for native vegetation clearing. The recommendations in this chapter are consistent with the findings of the Expert Report.

Compliance structure

Clearing of native vegetation in Western Australia is regulated by the *Environmental Protection Act 1986* (EP Act) and the Environmental Protection (Clearing of Native Vegetation) Regulations 2004 (NV Regulations).

The EP Act provides that causing or allowing clearing of native vegetation is an offence unless a clearing permit is obtained or an exemption applies.

- Under the EP Act, 'clearing' includes draining or flooding of land, burning of vegetation, and grazing of stock.
- Land occupiers are generally regarded as having 'carried out' the clearing, while land owners are regarded as having 'allowed' the clearing. Where public authorities have care, control or management of land, they are regarded as the land owners for the purposes of the EP Act.

38 Expert Committee 2009, *Regulation Review: Clearing of Native Vegetation, Report to the Minister for the Environment by the Expert Committee* (Gary Middle, Chair), April. The Minister for Environment has convened the Environmental Stakeholder Advisory Group to consider the outcomes of the Expert Report.

The primary objective of the EP Act is to protect the environment of the State. In the case of any inconsistencies between the EP Act or its approved policies, and any other Act or written law, the EP Act prevails.

The Department of Environment and Conservation (DEC) administers the EP Act and NV Regulations. The Department of Mines and Petroleum (DMP) administers, assesses and approves applications for clearing permits for mineral and petroleum production and exploration activities, and clearing subject to Government Agreements (State Agreement Acts).[39]

Significant proposals for clearing are required by the EP Act to be referred to the Environmental Protection Authority (EPA) for assessment.

The maximum penalty for unlawful clearing is $250,000 for an individual, and $500,000 for a body corporate.

Overview of the regulatory process

The EP Act stipulates principles for clearing native vegetation, which the Chief Executive Officer (CEO) of DEC is to have regard to in making decisions on clearing applications. The EP Act also provides that clearing permits are only to be granted in accordance with approved Environmental Protection Policies, which have the force of law.

The Minister or the EPA may with the approval of the Governor declare that the provisions of the EP Act or its approved policies do not apply to specific areas or premises.

The CEO has the discretion to grant clearing permits with standards more stringent than those required by the approved policies. Permits may be issued with conditions, including requirements to:

- establish and maintain vegetation on other land, to offset the loss of the cleared vegetation;
- monitor operations, conduct environmental risk assessments, and provide reports on audits, assessments and analysis of monitoring data to DEC; and
- prepare, implement and adhere to environmental management systems and plans.

Clearing permits may be issued 'seriously at variance' with the clearing principles. This means the CEO of DEC can approve clearing that is not consistent with the principles of the EP Act.

The EP Act also requires DEC to have regard to planning instruments including State planning policies and local planning strategies, and any other matters the CEO considers relevant when making a decision.

The Minister for Environment may declare an area of the State or a class of area, as an environmentally sensitive area.

39 In accordance with the 2005 *Administrative Agreement between the Department of Environment and Department of Industry and Resources*, signed in July.

Exemptions from the clearing provisions

Exemptions from the clearing provisions of the EP Act are prescribed by the NV Regulations. The exemptions allow owners or occupiers of property to clear without a permit in areas that are not environmentally sensitive. These exemptions include constructing a building, vehicle track or walking track, providing firewood, maintaining cleared areas for pasture and fire prevention. A one hectare limit per year applies to a number of these exemptions.

Further exemptions in the NV Regulations allow for clearing without a permit in areas that are not environmentally sensitive by mining operations, oil and gas exploration, and by bodies responsible for maintaining transport corridors. These exemptions are subject to certain conditions.

The EP Act also stipulates clearing for which a permit is not required. This includes clearing in accordance with a subdivision approval given by the responsible authority, clearing required by other laws such as the *Bush Fires Act 1954*, Fire and Emergency Services Authority operations, forestry operations under the *Forest Products Act 2005* and sandalwood harvesting under the *Sandalwood Act 1929*.

The application process

Two types of clearing permit may be applied for:

- an area permit, for clearing of a particular area. These are generally approved for a default period of two years. Application fees for area permits range from $50 (for areas less than 1 ha), through $100 (for areas between 1 ha and 10 ha), to $200 (for areas more than 10 ha); or
- a purpose permit, for clearing of different areas from time to time for a specific purpose. Aimed at programs of works such as on-going road works and mining exploration programs, these are generally approved for a default period of five years. Application fees for purpose permits are $200.

Applications are supported by management plans, maps and other information required by the CEO.

The regulatory framework is fragmented and complex. Around 150 pages of guides and information accompany the 300 page EP Act and NV Regulations.

In May 2009, DEC released a new Guide setting out DEC's approach to assessing applications to clear native vegetation.[40] This new Guide consolidates and summarises the assessment process to a degree. However the new Guide highlights the complexity and detail of the information required under the EP Act and the difficulty of assessing applications consistently against the clearance principles.

The current confusion about when permits are needed, and in which circumstances permits will be granted, needs to be addressed.

40 Department of Environment and Conservation 2009, *A Guide to the Assessment of Applications to Clear Native Vegetation Under Part IV of the Environmental Protection Act 1986*, May.

Of applications for area and purpose permits made in the year to 30 June 2009, around 18 per cent were either withdrawn (due to their being exempt or for other reasons), or did not comply with the Act's requirements for applications.[41]

The assessment process

The assessment process of applications for area permits and purpose permits is the same. Following receipt of an application, DEC:[42]

- invites comment from public authorities or other persons having a direct interest in the application, and advertises the application for public comment, generally for 1 to 3 weeks;
- undertakes an initial assessment, which includes a review of all current and relevant literature sources, databases and Geographic Information Systems information. In most circumstances a site visit is required to verify information, delineate key flora, fauna, soil, and groundwater and surface water values and their potential sensitivity to impact, and conduct broad-scale vegetation and vegetation condition mapping. A site visit may involve more than one government agency, and could include DEC, DMP, Department of Agriculture and Food and Department of Water; and
- may require a survey and additional information, where the scale and nature of the clearing proposal is likely to have a moderate or high impact – this might include flora and fauna surveys or detailed investigations of land or water issues. Such studies must be carried out by suitably qualified persons, using methodologies consistent with the EPA's standards and policies as outlined in Position Statements and Guidance Statements.

There is **no** provision for a test of reasonableness for the information requested by DEC to support a permit application.

In addition to being released for public comment, permits are subject to appeal periods following decision. These appeals can be made by applicants and third parties and are considered by the Minister for Environment.

Consultation

Native vegetation clearance laws were raised repeatedly during the RTRG's face to face consultations. Major concerns were raised by both the agricultural and local government sectors.

In its submission the Western Australian Farmers Federation (WAFarmers) argued that despite the clearing principles stipulated in the EP Act, decisions on clearing permits are instead assessed against an EPA Position Statement document, *Environmental Protection of Native Vegetation in Western Australia*.[43]

41 Drawn from the Department of Environment and Conservation's internet database, *Clearing Permits Reporting System*, data retrieved on 13 October 2009 from https://secure.dec.wa.gov.au/cps_reports/index.cfm

42 Department of Environment and Conservation 2009, *A Guide to the Assessment of Applications to Clear Native Vegetation Under Part IV of the Environmental Protection Act 1986*, May.

43 Environmental Protection Authority 2000, *Environmental Protection of Native Vegetation in Western Australia – clearing of native vegetation, with particular reference to the agricultural area, Position Statement No. 2*, December.

WAFarmers – assessment of clearing permit applications

"WAFarmers experience has been that this Position Statement is referred to in assessment by the Department of Conservation and Environment. Recent advice provided to a WAFarmers member was that 'the proposed clearing is also within the agricultural area as defined by the EPA Position Statement No. 2. The EPA does not support any further reduction in native vegetation through clearing for agriculture within this area.'
Despite the criteria listed in the Environmental Protection Act 1986, interpretation of the EPA statement overrides this and is effectively a blanket ban on the development of farm businesses in Western Australia."

WAFarmers, sub. 57, p. 2

The vast majority of permit applications in cropping, grazing and pasture are refused.[44]

The Western Australian Local Government Association (WALGA) maintains that the NV Regulations are a significant cost and functional burden on local governments.

During face to face and written consultations, WALGA voiced specific concerns around the lack of any defined policy or direction, lack of legislative clarity, lack of interagency cooperation, lack of resourcing for the local government sector in implementing State Government environmental objectives on Crown land, costs in preparing supporting documents for applications, and the significant delays in program delivery that may result from the NV Regulations.

Graham Lantzke, Policy Manager Roads and Transport, WALGA – The impact of clearing regulations on local governments

"The native vegetation clearing regulations have been a significant cost and functional burden on Western Australian local governments…The legislation impacts on an estimated 80 local government management activities applicable to some 170,000 km of public road and thousands of reserves and green title lands managed by local government…The legislation most affects rural local governments who have the least financial capacity to bear the burden, and the least access to qualified staff and support…

WALGA supports triple bottom line decision-making, including consideration of environmental impact, and therefore recognises that environmental assessments and protection are required and (will have) a cost burden…Western Australian Local Governments have spent in the order of some $4–$6 million of officer time and resources over the last eight years simply in attempting to understand the legislation, obtaining legal opinions, clarification, review of some of the more onerous and prescriptive elements, lobbying for legislative change…

44 Based on data from the Department of Environment and Conservation's *2008-09 Annual Report, 2007 08 Annual Report*, and *2006-07 Annual Report*.

Environmental assessments need to be performed by appropriately qualified personnel…the typical cost to engage a specialist…in a remote area (is) in the order of $4,000 to $10,000 for a simple task. The application process presumes access to…aerial photographs, GPS units and the like…A simple application can be completed by most local governments within approximately eight hours...The Shire of Manjimup expended some $80,000 of a $285,000 budget…to prepare and lodge a single (clearing application) for one location, noting this was in a significant environmental area…WALGA guesstimates that the cost of preparing and lodging clearing applications including supporting documentation in aggregate for the sector would be in the order of some $1 million to $2 million per annum…

The regulatory burden in program delay is…greater that the DEC processing time, and could be significantly greater…failure to deliver projects within the established timetable can result in (i) potential loss of…grant funds, (ii) opportunity costs, (iii) additional administrations costs and (iv) additional price index costs."

Graham Lantzke, sub. 64, pp. 1-4

Local road expansion and clearing of roadsides are complicated by requirements for a Flora Study, Fauna Study and Revegetation Study. These processes add significantly to costs and delays. On the Cooraminning Rd expansion, these added more than 10 per cent (around $10,000) to the cost of the ($70,000) project. Delays in getting responses from DEC and DPI also result in unnecessary delays in responding to residents and project developers.

Janet Thompson, sub. 3, p. 2

The following issues were raised during the consultation process:

- the EP Act and NV Regulations are complex and difficult to understand;
- current processes and requirements are overly prescriptive, cumbersome, impractical and costly with long delays;
- the one-size fits all approach is highly resource intensive, and may not achieve the strategic vegetation goals intended in the legislation;
- there is a significant lack of interagency coordination and agreement; and
- the regulatory framework is at times at cross purposes with other government strategies including the draft State Natural Resource Management Plan, draft new State Road Safety Strategy, intended new Commonwealth Road Safety Strategy, Land Use planning framework and objectives, Commonwealth Transport Policy, State Transport Policy, Commonwealth and State agricultural, mining and industry objectives and State Sustainability Strategy.

Medium-term reforms

Risk-based assessment process

Streaming of clearing applications according to their environmental significance and risk of environmental damage would:

- reduce informational requirements in applying for – and unreasonable delays in assessing – routine and environmentally insignificant clearing proposals; and
- continue to subject significant clearing proposals to rigorous assessment.

A risk-based system could be designed based on that proposed by the Expert Report, that contained in the EPA's *Review of the Environmental Impact Assessment Process in Western Australia*,[45] or that recently implemented in South Australia for assessing risks for individual sites, habitats and ecosystems.

A risk-based assessment process for clearing applications would link processes and requirements to the likelihood and severity of the application's impacts. The current application process is initially the same for all risk profiles, requiring the same considerable amount of detail in the application forms and information, and a public advertising and comment period as well as a third party appeal period.

The information required to accompany a clearing application should be in proportion to the likelihood and consequences of its impact. Impacts would relate to the scale of the proposed clearing, to the environmental quality and relative value of the impacted areas, and the degree to which the proposal is at variance with the clearing principles.

An initial risk assessment form as a precursor to further assessment is recommended, to determine the appropriate assessment track for the proposal. Risk-based assessment processes would improve application and assessment efficiency, provide better customer satisfaction and reduce DEC's and applicants' resource requirements.

Recommendation 13.1

The Government introduce a risk-based assessment process for determining native vegetation clearing applications.

Red tape benefits/savings – Current assessment methods can significantly delay assessment of applications, resulting in lost revenue and substantial capital holding costs for businesses and local government. Land holding costs as a result of delays in the permit applications process are by far the largest component of compliance costs. These are currently unquantifiable.

45 Environmental Protection Authority, 2009, *Review of the Environmental Impact Assessment Process in Western Australia*, March.

Clear Government policy on clearing

A clear policy articulating the Government's position would provide the platform for a consistent approach to applying the EP Act and NV Regulations, and approval and compliance policies. Such a statement would also allow meaningful assessment of whether the regulatory framework meets the Government's desired outcomes for native vegetation protection.

Recommendation 13.2
A policy statement be released articulating the Government's position and outcomes sought on native vegetation clearing.

Red tape benefits/savings – this would provide important overall guidance to the community, DEC, local governments and businesses on the application of the EP Act and NV Regulations, and assist proponents and decision-makers.

Improved monitoring and auditing of land clearing

Data on the extent and condition of native vegetation, and the rate of its loss from all sources (including through permits to clear), should be collected and made available to the general public. The information could then be used as a basis for decision-making on clearing permit applications, and would further decrease the costs and time incurred in preparing information for individual clearing applications and in making assessments.

The database could also be a means of consolidating the work of various government agencies into a single repository (eg it could include WALGA's work in identifying and mapping areas of significant biodiversity, and the Roadside Conservation Commission's work in mapping roadside vegetation).

Recommendation 13.3
Create a publicly available database for improved monitoring and auditing of land clearing.

Red tape benefits/savings – publicly available information would reduce time taken and costs incurred in preparing clearing applications, and would assist in assessing applications.

A lead agency framework for proposals involving multiple agencies

A lead agency framework is required for proposals requiring approvals from multiple agencies. This framework would include clear reporting arrangements, well defined areas of responsibility and a mechanism for reporting the actual time taken to carry out each agency's approval process.

Recommendation 13.4
All proposals involving multiple agencies follow a lead agency framework.

Red tape benefits/savings – this would address the issue of interagency duplications and delay.

Improved information about the application and assessment process

The following information should be made clear, concise and accessible to the public:

- clearance principles and how they are applied and interpreted; and
- how to formulate proposals.

The EP Act and NV Regulations are needlessly complex and fragmented. DEC's release of its May 2009 Guide, following the RTRG's consultation period ending April 2009, goes some way towards meeting this recommendation. However, the Guide continues to refer to numerous detailed documents and databases and understanding the application and assessment process remains time consuming.

Recommendation 13.5

Improved information to be provided to applicants clarifying the operational assessment policies of the Department of Environment and Conservation, the Environmental Protection Authority and the Department of Mines and Petroleum.

Red tape benefits/savings – this would reduce the burden of interpretation and costs incurred by local governments and businesses in preparing applications, particularly those with little chance of approval or those that are exempt.

Target timeframes

Target timeframes should be developed for each assessment track and regularly reported on publicly. Public reporting should include the actual time taken for decisions on clearing applications. This should include information about 'stop the clock' periods caused by other parties or government agencies.

DEC has recently introduced target timeframes for decisions on clearing applications received since 1 January 2009: 80 per cent of decisions within 60 calendar days from the date of application, and 100 per cent of decisions within 90 calendar days. These timeframes include the time taken for advertising the clearing proposal under the EP Act's public consultation requirements, and the time taken in referring the proposal to other agencies for advice.

However, 'stop the clock' provisions apply when further information has been requested from the applicant, when DEC or the DMP has been notified by the EPA that a proposal has been referred to it, or when the applicant requests the assessment process be put on hold. Greater clarity in the reporting the reasons for stopping the clock, and the time taken in 'stop the clock', would benefit applicants, DEC and DMP.

Recommendation 13.6

The Department of Environment and Conservation be required to develop target timeframes for each assessment stream, and track and report against them publicly. This report should include:

- ***calendar days taken to make a decision and calendar days taken during 'stop the clock' periods;***
- ***calendar days taken by other departments to deal with referrals under the assessment process;***

- ***calendar days taken by proponents to respond to information requests; and***
- ***the reasons as to why 'stop the clock' provisions were utilised (e.g. information being requested from the proponent).***

Red tape benefits/savings – this would improve stakeholder understanding of actual time taken for decisions on applications, and provide accountability on decision-makers.

Clearing applications having no environmental impact should not require a clearing permit

The EP Act currently requires:

- all clearing to have a permit, unless the clearing is exempt; and
- the CEO of DEC to assess and determine all properly submitted applications for permits.

Irrespective of the environmental significance of the proposed clearing, applications must:

- be submitted in a in a valid form;
- undertake an advertising and public comment process;
- be assessed by DEC and a decision made; and
- be subject to a further advertising and a potential third party appeal.

There is no avenue for the CEO of DEC to determine that the environmental impact of the application is insignificant, and that therefore no permit is required.

Non-exempt trivial clearing could be better dealt with if applicants could write to the CEO describing the proposed clearing and the CEO could make a decision within a prescribed time period as to whether a clearing permit was required. A set of criteria guiding such CEO decisions, or a committee to which such decisions could be referred for endorsement prior to notification of applicants, could be used as added safeguards to such decisions.

Where CEO notice was given that no clearing permit was required, the proponent could proceed subject to complying with other legislation. Where a clearing permit was required, the usual permit application process would apply.

It is recommended the CEO be required to publish these decisions, and that they not be subject to appeal.

Recommendation 13.7

Amend the Environmental Protection Act 1986 to make provision for the Chief Executive Officer of the Department of Environment and Conservation to determine that a clearing application has 'no environmental impact' and that therefore there is 'no permit required'.

Chapter 14
Government land supply

Land supply is a vital ingredient for economic growth and an important determinant of housing affordability. Reforms identified in this chapter have the potential to increase the efficiency and responsiveness of land supply processes in regional areas.

Overview

The effectiveness of current government land supply arrangements was a contentious issue in regional areas. Most of the criticism centred on the operational arrangements which provide for LandCorp to effectively be the monopoly provider of land in regional areas.

Compliance structure

LandCorp is the State Government's primary developer of Crown land. LandCorp's objectives and functions are set out in the *Western Australian Land Authority Act 1992* (WALA Act).[46] The objectives of the WALA Act include:

- the provision and development of industrial, commercial, residential and other land in a range of localities to meet the social and economic needs of the State while taking account of environmental outcomes (s.3(a) WALA Act).

In undertaking its functions, LandCorp is required to:

- endeavour to achieve or surpass the long term financial targets specified in its strategic development plan as existing from time to time; and
- ensure that no individual project undertaken has an expected internal rate of return that is less than the minimum rate of return specified in its strategic development plan as existing from time to time (s.19(1) WALA Act).

Crown land is administered by State Land Services (SLS) in accordance with the *Land Administration Act 1997*. SLS is located within the Department of Regional Development and Lands.

A Memorandum of Understanding (MOU) between LandCorp and SLS contains the principles and processes that are to apply to the sale of Crown land by SLS to LandCorp. LandCorp and SLS are currently reviewing the MOU.

46 LandCorp is the trading name of the Western Australian Land Authority.

Overview of the regulatory process

LandCorp can develop land in its own right, or in a joint venture with private sector developers.

As well as being the State's primary developer of Crown land, LandCorp is often the only significant developer of land in many regional areas. The opportunities for private sector land development are often restricted due to a lack of suitable freehold land, or because there is insufficient return to attract private investors (as a result of the high cost and low demand characteristics of land in some regional areas).[47]

In metropolitan areas LandCorp's share of the land development supply tends to be much smaller as private developers are able to access alternative sources of land supply.

While LandCorp is the preferred developer of Crown land, there are limited options for alternative developers to access Crown land.

Key points from the MOU relevant to LandCorp's preferential access to Crown land include:

- local governments or any other party requesting the State to develop and sell Crown land are required to first approach LandCorp in accordance with LandCorp's Expression of Interest process;
- SLS will generally not sell single stand-alone lots either through private treaty or on the open market. Private customers seeking to purchase residential, industrial or commercial lots in a town site, may be referred to LandCorp when there is known LandCorp activity within that town site;
- any public requests for identified lots should be investigated by SLS and if such lots are suitable for sale, then an appropriate referral should be made to LandCorp to gauge its interest in purchasing and on-selling;
- when referring a proposed sale to LandCorp, LandCorp should then be requested to provide an indication within 90 days as to whether or not it would be interested in purchasing the land;
- if LandCorp is not interested in purchasing the land, or has not advised SLS within 90 days, any constraints to the sale will be addressed, a valuation will be obtained for the land and the land will be dealt with by SLS;
- SLS may sell or lease individual lots to local government and government agencies (other than superlots) without referral to LandCorp. However, SLS undertakes to inform LandCorp to ensure there is no impact that SLS may be unaware of; and
- the decision to sell land to parties other than LandCorp must be made by an SLS Manager. The SLS Manager's decision will be in line with the principles contained within this protocol.

47 LandCorp also receives a Community Service Obligation (CSO) payment from the Government to undertake developments in areas where there is insufficient interest from private sector developers, or where LandCorp can not achieve its required rate of return on the development.

The consultation process

Government land release was a contentious issue in many regional areas, particularly the north-west of the State, where participants considered that land supply had not kept pace with demand during the recent period of strong economic growth.

Participants acknowledged that land supply was one just one part of the property development process that was under pressure during the recent boom. The construction industry, for example, also found it difficult to respond to the high levels of demand in many parts of the State.

It was also noted that LandCorp was subject to many of the constraints faced by private sector developers, which have had an impact on the rate at which land can be developed and released. This includes issues such as the effectiveness of the planning system, difficulty in obtaining native title clearance and environmental approvals.

Despite these caveats, participants considered that LandCorp's role and performance in the land release process warranted examination and review. Regional local governments, such as the Town of Port Hedland and the Shire of Exmouth, were the most critical of the process and considered that land release in many areas was unnecessarily constrained by current arrangements. Specific issues raised included:

- the lack of opportunity for private sector involvement in the development of Crown land in high demand areas. It was considered that LandCorp didn't have the resources to develop the land required and that options should be investigated to facilitate alternative developers' participation in the land development process;
- LandCorp's current balloting practices, which tend to be attractive only to small to medium sized builders. For example, the Town of Port Hedland observed that larger builders tend not to participate as it is difficult to access sufficiently large enough parcels of development-ready land. It was suggested that LandCorp should be encouraged to develop more 'super lots' to attract large builders; and
- a perceived conflict between LandCorp's objective to deliver a profit to Government and to deliver affordable land.

Medium-term reform

Government land release processes make it very difficult for potential developers, other than LandCorp, to access Crown land. LandCorp's role as the primary developer of Crown land has led to frustration in many regional areas. The lack of private sector developers of land with which to compare LandCorp's performance may have exacerbated the criticism of LandCorp.

In areas where there is strong demand for land, the current regulatory processes which entrench LandCorp's position as the preferred developer of Crown land appear to be unnecessarily restrictive. The current processes are preventing an often willing private sector from participating in the land development sector. Easing some of these restrictions to facilitate greater private sector or local government access to Crown land has the potential to increase the supply of land, and improve its responsiveness, in a number of regional areas.

Recommendation 14.1
Amend the current arrangements to allow for private sector and other government agencies to have greater opportunities to develop Crown land.

Chapter 15
Local Government

In this chapter reforms are identified that have the potential to result in over $4,834,000 in cost savings to local governments and business in a single year.

The removal of excessive compliance requirements, streamlining the regulatory process, introduction of model local laws, and increasing the minimum value of land transactions will contribute to the reduction of the regulatory burden on business and local governments.

Overview

This chapter examines a number of areas of local government operations raised during the consultations and presents reform options in the following areas:

- Local Government Compliance Audit Return processes;
- local law making processes;
- land purchases over $1 million;
- administration of the *Dog Act 1976*; and
- distribution of rates notices.

The *Local Government Act 1995* (LG Act) was introduced as a legislative response to a number of local government scandals in the early 1990s. The LG Act limits the activities of, and places a strict compliance/reporting burden on local governments.

Since the introduction of the LG Act, a number of transparency and accountability measures such as the formation of the Corruption and Crime Commission and the introduction of a Code of Conduct for Councillors have increased oversight of the sector. The local government sector is rapidly evolving and the RTRG found that the LG Act requires amendments to reflect the dynamic nature of the sector.

Local government compliance audit return process

Overview

Local governments are required to complete a Compliance Audit Return (CAR) report each year, to indicate that they have complied with all regulatory requirements.

> *"The audit requirement imposes high costs on the Shire, as we have to find extra resources and staff to prepare these reports annually. The Shire employed consultants to prepare CAR and it cost us between $20,000 and $30,000 each year."*
>
> Shire of Carnarvon, Consultation, 24 February 2009

Compliance structure

The LG Act requires that all local governments must carry out (in the prescribed manner and in a form approved by the Minister) "an audit of compliance with such statutory requirements as are prescribed" [s. 7.13 LG Act]. The statutory requirements are prescribed by the Local Government (Audit) Regulations 1996, and administered by the Department of Local Government.

Overview of the regulatory process

The Audit Regulations require the completion of the CAR (for the period 1 January to 31 December) and its submission by 31 March of every year.

The Department of Local Government uses the report as a means to assess local governments' level of compliance with the large number of Acts and associated regulations affecting them. The CAR can be submitted on-line.

Currently Western Australian local governments are required to report on their compliance with over 200 regulations and legislative clauses. All local governments are required to complete the same CAR regardless of their size or location.

The consultation process

Issues relating to CARs were raised by 17 of the 19 local governments consulted during the consultation process.

A recurring theme throughout the consultations was the significant burden CARs imposed on local governments. Smaller councils in regional areas with limited resources found the CAR process particularly onerous.

A number of local councils expressed concern that the annual CAR is a time consuming reporting requirement. Local governments also expressed concerns that the CARs are only used to identify non-compliance and are not used for improving local government activities.

> *"The Annual Compliance Audit is a time consuming reporting requirement for Local Government. It measures compliance rather than performance. It began as a 40-question form and is now over 300 questions."*
>
> City of Fremantle, Consultation, 28 April 2009

> *"The annual local government compliance audit measures 'compliance' rather than 'performance' which is its major design flaw. Compliance is only a part of overall performance of local government. It is a tick a box process and feedback from the department is minimal. The audit is on top of other compliance required such as the 10 year financial plan, 5 year business plan and on-going due diligence on projects."*
>
> City of Rockingham, Consultation, 26 March 2009

Local governments claim that the audit requirement is costly, as they have to find extra resources and staff to prepare these reports annually. Some local governments choose to prepare their CAR in-house, whilst others opt to employ consultants.

> *"The Annual Compliance Audit costs the Council approximately $10,000 per year in consultant's fees to complete the report. This does not include the officer's time. The external consultants are used as the audit is one of the KPIs for the CEO and as a result he is required to get it externally assessed."*
>
> City of Fremantle, Consultation, 28 April 2009

Medium-term reform

Recommendation 15.1

Replace the current Compliance Audit Return requirement on local governments with a targeted regulatory process that audits specific problem areas.

Red tape benefits/savings – this recommendation has the potential to result in savings of $2,177,000.

Local laws process

Overview

A local law is a law adopted by a local government that is intended to reflect community needs and ensure the good rule and government of the area. Through local laws, local governments can establish permit or licence regimes for activities they want to regulate, create offences for unacceptable behaviour and allow for the issue of compliance or abatement notices.

Compliance structure

The LG Act provides Western Australian local governments with the power to make any local laws, although a local law is invalid to the extent that it is inconsistent with the LG Act or any other written law [ss. 3.5 and 3.7 LG Act].

The Department of Local Government's *Local Government Operational Guidelines No. 16 – Local Laws* provides comprehensive information on the local law process. It includes examples of public notices and outlines common local law problems.

Overview of the regulatory process

Local governments must follow a number of mandatory steps when making local laws [s. 3.12 LG Act]. These are set out below:

- presiding person to give notice to the council meeting of the purpose and effect of the proposed local law;
- give state-wide and local public notice of the proposed local law and invite submissions from the public (minimum 42 days);

- make copies available to the public;
- send copies of the proposed local law to the Minister(s) together with the public notice and National Competition Policy form;
- consider submissions and proceed with the local law as proposed or make alterations that are not significantly different from what was first proposed;
- publish in the *Government Gazette* and provide copy to the Minister(s);
- law operates 14 days after gazettal;
- give another local public notice: stating the title of the local law; summarising its purpose and effect; specifying the date on which it comes into operation; and advising that copies of the local law may be inspected or obtained from the office of the local government; and
- send documents to the Parliamentary Joint Standing Committee on Delegated Legislation.

While the LG Act allows local governments to enact their own local laws, the legislation requires that copies of the proposed laws be forwarded to the Minister for Local Government and other relevant State Ministers for consideration.

The Department of Local Government examines the proposed local laws on behalf of the Minister and records details of each local law in its Local Laws Register. Soon after the gazettal of the local law, a copy must be sent to the Joint Standing Committee on Delegated Legislation of Western Australian Parliament. The Committee recommends to Parliament that a local law be allowed or disallowed. If the law is disallowed, the local government must restart the entire process from the beginning.

The consultation process

The Western Australian Local Government Association and a number of local governments expressed the following concerns:

- that the local law making process is time consuming, inefficient and costly;
- that there are too many local laws, many of which are outdated; and
- that businesses operating in multiple council areas need to be aware of different requirements or abide by conflicting local laws.

Short-term reform

Local Law Process

The current local law process has many steps and requires the local government to consult with the community, the Minister and the Parliament. The current process has little flexibility and if an amendment is suggested to the proposed local law, the entire process must start all over again.

Recommendation 15.2

The local laws process should be streamlined so that minor amendments to proposed local laws do not result in the process having to restart from the beginning.

Red tape benefits/savings – this recommendation has the potential to result in savings of $288,000.

Medium-term reforms

Model local laws

Another commonly raised issue was the requirement of scrutiny by the Legislative Standing Committee. Participants noted that the documents are only sent to the Committee after gazettal of the local law, and if it is disallowed or modified, the process must start all over again. Local governments also expressed concerned with the cost of preparing and publishing a local law.

Businesses operating in multiple council areas must be aware of and abide by all local laws, which may be conflicting in some cases. The information cost to businesses can be avoided or reduced by the adoption of model laws by local governments.

Recommendation 15.3

Model local laws should be prepared for issues that are consistent across the State, and local governments should be allowed to introduce these model laws solely by a council decision.

Red tape benefits/savings – this recommendation has the potential to result in savings of $1,712,000.

Recommendation 15.4

Model local laws should be adopted by metropolitan local governments as a matter of priority. Any metropolitan local government seeking variation to model laws should require Ministerial approval.

Long-term reform

Mandatory review and reform

Each local government has its own local laws, the details of which will differ from the local laws adopted by other local governments. Currently there are over 5,335 local laws. Many of these laws have not been reviewed for a considerable number of years.

Recommendation 15.5

All local laws should be reviewed and consolidated. Amend the Local Government Act 1995 to require local governments to list all local laws that are outside the proposed model laws in their annual report.

Red tape benefits/savings – this recommendation will reduce inconsistencies between local governments, reducing the considerable information costs currently borne by business.

Purchase property over $1 million

Overview

The ways in which local governments can enter into a major trading undertaking or a major land transaction are limited by regulation. The LG Act requires that all local governments must comply with provisions in the Local Government (Functions and General) Regulations 1996 (LGFG Regulations) in dealing with land transactions.

Compliance structure

The LG Act requires that all local governments must comply with the LGFG Regulations. The LGFG Regulations specify that local governments must comply with a number of requirements if the value of a land transaction exceeds $1 million.

Local governments argue that this threshold is too low and does not reflect commercial reality. This process also makes the offer price known to the vendor, thereby destroying the negotiating advantage available to any commercial entity making an offer.

Overview of the regulatory process

The LG Act prescribes minimum values for land transactions that require a business plan and public consultation. Currently, any land transaction exceeding $1 million is considered a 'major' undertaking and local governments must:

- prepare a business plan before it enters into a major land transaction or a land transaction that is preparatory to a major land transaction. The business plan must include details of the expected impact on services and facilities and on persons;
- give Statewide public notice (stating its proposal to enter into a major land transaction or a land transaction that is preparatory to a major land transaction, where the plan may be inspected or obtained, and call for submissions on the plan within six weeks). Any variation requires the start of a new process; and
- consider submissions and make a decision as to whether to proceed with the major land transaction or land transaction that is preparatory to a major land transaction.

The consultation process

WALGA and local governments expressed concern that:

- the legislation restricts local governments' ability to undertake commercial property activities;
- processes are too lengthy and make local governments uncompetitive; and
- the regulation imposes an unnecessary burden on local governments in property dealings.

The Minister for Local Government's Steering Committee is currently looking into regulations impacting on local governments' commercial property activities.

WALGA's Sustainability Report suggests that there is a need for local government intervention in land development beyond its role in governing land use and development. The report concludes that the LG Act is too prescriptive to allow local governments to undertake commercial property activities and requires amendment.

The Department of Local Government has also recently written to the State Solicitor's Office seeking advice on possible proposals to amend the LGFG Regulations 1996, to facilitate local government activities in the commercial development of land.

Medium-term reform

The restriction limits local governments' ability to participate in property development. Due to the restriction and the cost involved there were only six transactions over $1 million in the last financial year. Red tape costs for these individual transactions were estimated to be $40,000 each.

Recommendation 15.6

The Local Government (Functions and General) Regulations 1996 should be amended to increase the minimum value defining a land transaction to $10 million for metropolitan areas. The minimum value defining a land transaction in regional areas should be increased based on advice from the Valuer General's Office.

Red tape benefits/savings – this recommendation has the potential to improve local government's flexibility with regards to property dealing and trading activities. This recommendation has the potential to result in savings of $240,000 based on the current number of land transactions.

Administration of the *Dog Act 1976*

Overview

The purpose of the *Dog Act 1976* (Dog Act) is to ensure community safety through the registration of dogs and control of their behaviour, in addition to limiting the dog population in suburban areas, ensuring adequate ownership and accountability.

Western Australia is one of the least progressive States in its approach to dog control. Other Australian jurisdictions such as New South Wales have introduced lifetime registration and compulsory micro chipping, which has reduced the red tape burden on the community of dog owners and local government.

Compliance structure

Local governments are responsible for administering the regulatory framework, which includes the Dog Act, the Dog Regulations 1976 and the Dog (Restricted Breed) Regulations (No 2) 2002. In addition, the LG Act enables Western Australian local governments to create local laws to support the functions of dog control.

Overview of the regulatory process

A key component of the Dog Act is the requirement that local governments maintain and annually review a local dog register. The register must outline the following information:

- the particulars of each dog which is the subject of an application for registration;
- the particulars of the person by or on behalf of whom an application for the registration of a dog is made as the owner of the dog, and the premises stated as the place at which the dog is intended to be ordinarily kept;
- any notification of an alleged change of ownership;

- the period of any registration effected, the registration number given, and the particulars of the registration tag relevant to each dog;
- the particulars of any conviction recorded, or offence in respect of which a modified penalty is paid, relevant to any dog or person to which an application or registration relates;
- the number of dogs currently registered in the name of each person; and
- the particulars of the cancellation of any registration.

Owners are charged a licence fee, which is collected by their local government and used to offset the costs of operating the register. The relevant fee is prescribed under the Act, and varies according to whether a dog is neutered, and registered annually or triennially. Concession holders are offered discounted rates.

The consultation process

The former Department of Local Government and Regional Development (DLGRD) undertook a review of the Dog Act between 2002 and 2008. During that time, over 1000 submissions were received from the community, which led to the recommendation of 44 proposed amendments to the Dog Act.

The administration of the Dog Act was raised by local governments during the face-to-face consultations, and the RTRG received a single written submission. The specific issues raised during the consultations related to the cost to local government of maintaining a register of dogs and the red tape involved in prosecuting nuisance dogs.

The RTRG will be costing the savings associated with lifetime dog registration, which was identified in both the DLGRD review and the RTRG consultations.

> *"It would easier if we just had to register a dog once. It should be up to the owner to inform [local governments] if their details change."*
>
> Shire of Serpentine-Jarrahdale, Consultation, 29 April 2009

Medium-term reform

Lifetime dog registration

In their report, the DLGRD identified the need to provide dog owners with the option to register their dogs for the lifetime of the animal, an arrangement currently adopted in a number of other Australian jurisdictions.

Recommendation 15.7

Legislate to introduce the option of lifetime dog registration.

Red tape benefits/savings – this recommendation has the potential to result in savings of $87,000.

Long-term reform

Maintenance of a dog register

The local government sector could benefit from centralising the registration of dogs.

Recommendation 15.8
Prioritise/Centralise dog registrations.

Red tape benefits/savings – this recommendation has the potential to result in increased efficiency to the local government sector and a potential saving of $151,000.

Distribution of rates notices

Overview

Local governments are required to deliver rates to property addresses, which is currently interpreted by the sector as being delivered in a hard copy format. This requirement was raised by local governments as archaic, compared to the modern forms of instant and more cost effective methods of electronic communication.

Compliance structure

Section 6.4 of the LG Act requires local governments to distribute rates notices to every property within their jurisdiction.

Despite improvements in technology and requests from ratepayers for their rates notices to be delivered electronically, the LG Act restricts the delivery options which can be used by local governments.

Overview of the regulatory process

Ratepayers are entitled to pay their rates using a number of alternative payment methods, including paying rates in a single lump sum, two half yearly payments, or four quarterly payments. For every ratepayer who chooses to pay their rates in instalments, the local government is also required to deliver subsequent instalment notices to their postal address, 28 days prior to each instalment falling due.

Local governments can use their authority to provide discounts under the LG Act or charge an additional fee per instalment to those ratepayers who opt for instalment payment arrangements. These fees vary across local governments and are often used to recover administration costs.

The consultation process

During the face-to-face RTRG consultation period, the issues associated with distributing rates notices were raised by two separate local governments.

> *"We are required to send rates out to over 6,500 residents through the post. Each mail-out costs the shire between $6,000 to $7,000. Local Governments in South Australia are able to electronically email notices, a much cheaper and faster option."*
>
> Shire of Serpentine-Jarrahdale, Consultation, 29 April 2009

WALGA has previously consulted local governments about this issue.

In 2008, WALGA undertook a review of the local government sector costs associated with the distribution of rates notices. Twenty-four local governments were surveyed in depth, and asked to provide costing information.

> *"A centralised rating facility, non-mandated, can supply the sector with a competent, efficient, and independent service to oversee the back-end administrative functions associated with the issuance and collection of rates assessments. Currently the overall cost for Local Government to manage the collection of ratings… is $32 million per year. [Centralisation] would represent a sector level saving of an estimated $12 million."*
>
> Western Australian Local Government Association (2008). *The Journey: Sustainability into the Future.*

In their report, WALGA identified a potential saving of $12 million to the sector by centralising the rates functions of local government.

Medium-term reform

Allow electronic distribution of rates

Local governments are not able to offer ratepayers the opportunity to receive rates electronically.

Recommendation 15.9

Amend the Local Government Act 1995 to permit the distribution of rates notices through electronic communication such as email.

Red tape benefits/savings – this recommendation has the potential to result in savings of $179,000.

Long-term reform

Centralise the distribution of rates notices

The local government sector could gain significant benefits from centralising the distribution of rates notices.

Recommendation 15.10

Centralise the distribution of rates notices

Red tape benefits/savings – this recommendation has the potential to result in increased efficiency to the local government sector.

Chapter 16
Aquatic facilities

In this chapter reforms are identified that have the potential to result in time and compliance cost savings to a number of aquatic facilities.

Overview

The regulatory requirements for staff training, on site staff availability and the requirements for monthly water testing at aquatic facilities featured prominently in the RTRG consultations. A great deal of the criticism focused on aspects of the regulatory regime that were introduced in May 2007. A common complaint was that regulatory requirements were excessive and did not result in a cost-effective mechanism for dealing with health and safety concerns.

Compliance structure

Aquatic facilities are regulated under the:

- *Health Act 1911*;
- Health (Aquatic Facilities) Regulations 2007; and
- Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities (the Code).

The purpose of the regulatory framework is to minimise the occurrence of death, injury, disease and other health-related complaints associated with the use of aquatic facilities. The Department of Health (DoH) is the lead agency involved in the regulation of aquatic facilities. Aquatic operators are also required to comply with local government laws with regard to the operation of aquatic facilities.

The current regulatory arrangements have been subject to considerable criticism from aquatic facility operators (see overleaf). As a result of a review, a number of changes were made to the Code in September 2009. Some of these changes appear to go some way to addressing the issues raised during the RTRG consultation process.

Overview of regulatory process

The Health (Aquatic Facilities) Regulations 2007 require operators to obtain a Certificate of Compliance to operate an aquatic facility in Western Australia.

The Code consolidates and explains all the regulations applying to aquatic facilities.

Under the Code, aquatic facilities are classed into four groups according to a number of criteria such as patron access and the activities hosted at the facility. Safety, hygiene testing, and a number of other requirements vary depending on the classification. The groups are:

- Group 1 – includes facilities typically available to the general public for payment of an entry fee, for example aquatic centres, waterslides and water-parks;
- Group 2 – includes facilities restricted to discrete users and user groups, such as learn-to-swim centres, hospital, nursing home and physiotherapy use pools;
- Group 3 – includes facilities restricted to discrete users, located primarily at commercial developments, tourism facilities and accommodation complexes; and
- Group 4 – facilities which do not permit non-residential based club/member access.

In addition, there are a number of generic provisions which all operators must comply with, including those relating to facility hygiene.

The Code covers every aquatic facility regardless of size, including those located at:

- local government recreation centres;
- theme parks;
- schools;
- learn-to-swim centres;
- tourism venues such as resorts and hotels;
- retirement/lifestyle villages; and
- residential development with more than 30 units or apartments.

Operators are accredited under the relevant classification and an annual compliance audit is carried out which ensures compliance with hygiene and operating conditions. Local government has the responsibility to the conduct compliance audits which also includes monthly water quality testing (unless an exemption is granted). The approval process is managed by the DoH who maintains a list of accredited operators.

The Executive Director of Public Health may grant legislative exemptions if satisfied an aquatic facility operator can ensure that water samples are taken at least once per month and that these tests meet the requirements as listed in the regulations.

The DoH commenced drafting amendments to the Code in September 2009, which aimed to reduce the regulatory burden on aquatic facility operators.

Based on a number of amendments, the red tape involved in the management of aquatic facilities classed in Group 3 will be significantly reduced. Amendments to the Code include removing such requirements for emergency care staff to be onsite at all times.

The consultation process

Aquatic facilities regulation was raised throughout the consultation process and was a particular issue of concern in regional areas. Major areas of concern were:

- staff training requirements;
- on-site staffing requirements; and
- water testing.

Staff training

Aquatic facility operators are required to ensure staff have the appropriate training qualifications. The required courses are mostly provided by the private sector. During the consultation process regional local governments such as the Shire of Wyndham and regional hotel operators identified that the number of providers and scheduled training events in regional areas is severely limited.

A lack of mutual recognition of training qualifications was another issue raised by aquatic facility operators. Staff accredited to comply with the Western Australian requirements are permitted to work in other Australian states without additional training. However, staff members who travel to Western Australia from interstate are required to seek further training as their existing qualifications are not recognised.

Most courses are available online through internet-based training facilities. However, key components of some courses are not available online, such as those requiring students to demonstrate competence in areas such as performing resuscitation.

> *"Swimming pool regulations are costly. It costs approximately $3,000-5,000 to send three to four people to Perth for accreditation."*
>
> King Sound Resort, Consultation, 22 April 2009

Courses which require face-to-face competency testing are offered infrequently at regional centres and in some circumstances, regional towns may only be serviced once over a course of a year. Regional aquatic operators are often forced to incur considerable costs in sending staff to metropolitan areas for final accreditation. This places a large cost burden on an industry which experiences a high turnover of staff.

On-site staffing requirements

Group 3 aquatic facility operators, which mainly include small tourism facilities with communal pools, are currently required to provide on-site emergency care personnel. In practice, the regulations require operators to ensure that at least one staff member with lifesaving and first aid qualifications is on site at all times.

These requirements were raised as particularly onerous for smaller tourist facility operators and strata properties, which may often only employ one person to manage the facility.

Technical operating requirements – water testing requirements

Under the regulations, local governments are required to ensure that two water quality samples are taken from an aquatic facility per month, and tested for microbial levels and general water quality. All categories of aquatic facilities are subject to monthly water testing. Local governments collect these samples on a fee-for-service basis.

Participants expressed frustration with the inflexibility and cost of the water testing requirements, and suggested that cost savings could be achieved by allowing third parties, or the operators themselves, to undertake the sampling and provide the samples to the DoH for testing. Some regional local governments supported the introduction of this type of arrangement.

Shire of Broome – cost of water testing

There are approximately 70 aquatic facility operators in the Shire of Broome (the Shire), and each is required to conduct monthly water sampling. The Shire charges aquatic facility operators based on a yearly fee of $480, which entitles each facility to a maximum of 12 water samples. Additional water sample tests are charged at $50.

The majority of aquatic operators have established contracts with swimming pool companies, which could provide this service during their normal scheduled cleaning and maintenance service.

Although the aquatic facility regulations list local government authorities as the responsible entity for collecting water samples, regulation 21(4) allows for exemptions for local governments from collecting samples when it is not feasible, or when an operator can provide satisfactory evidence that testing has occurred.

The aquatic facility regulations permit aquatic facility operators to arrange for their own water sample testing. This can be granted on the condition that the relevant local government agrees to this action, and the tests adhere with the standards as described under the regulations. The majority of aquatic facility operators employ swimming pool professionals to provide cleaning and pool maintenance services, however many are unaware that an opportunity exists to combine these services with a monthly water sampling service.

Medium-term reforms

Onsite staff requirements

Remove the onsite staff requirement for Group 3 aquatic facility operators. Group 3 aquatic facility operators would now be able to demonstrate compliance with the Code by listing the measures in place which restrict public access. This could include outlining the specifications of pool fencing, signage and the guidelines which patrons agree to prior to using the facility.

Recommendation 16.1

Amend the Code of Practice for the Design, Construction, Operation, Management and Maintenance of Aquatic Facilities to remove the requirement for Group 3 aquatic facility operators to provide emergency care personnel.

Technical operating requirements – water testing requirements

The costs associated with water testing could be reduced by removing the requirement that local government be the primary entity responsible for water testing, and making it easier for third parties (including operators) to undertake the sampling.

Recommendation 16.2

Amend the Health (Aquatic Facilities) Regulations 2007 to remove local government authorities as being the primary entity responsible for conducting water sampling services. Allow operators the choice of testers and permit them to send water samples directly to a laboratory by courier, and keep a record of the results. The Department of Health can enter into a more rigorous negative compliance regime with operators who upon audit are found to be non-compliant with their record keeping.

Chapter 17
Hairdressers registration

In this chapter reforms are identified that have the potential to result in over $881,000 in cost savings to businesses in a single year.

Removal of registration requirements for hairdressers is expected to significantly decrease the compliance costs of entering the industry, increase the number of skilled hairdressers and provide consumers with greater choice and lower prices.

Overview

Western Australia is the only Australian jurisdiction requiring compulsory registration of hairdressers with a statutory authority.

Since the registration regime was originally introduced in 1946, a range of consumer protection, education and training and occupational health and safety laws have been put in place that provide a sufficient regulatory framework for the hairdressing industry.[48]

Compliance structure

The *Hairdressers Registration Act 1946* (the HR Act) requires that any person practicing hairdressing within the HR Act's area of application be either:

- registered with the Hairdressers Registration Board of Western Australia (HR Board);
- a student at Technical and Further Education (TAFE); or
- an indentured apprentice.[49]

The HR Act's application only to prescribed geographic areas of the State is inequitable and disadvantages businesses and practitioners who operate within the HR Board's jurisdiction. It also imposes time consuming and costly processes for interstate and overseas hairdressers seeking to work in Western Australia, and for the businesses wishing to employ them.

The HR Act provides for the registration of hairdressers. It applies to all forms of hairdressing but has no primary objective.

The HR Act applies within 40 kilometres of Perth's General Post Office, throughout the South West Land Division (from Kalbarri in the north, to Hopetoun in the south, and east to just beyond Merredin), and within eight kilometres of the Kalgoorlie Post Office.

48 Department of Commerce, retrieved on 4 September 2009 from http://www.commerce.wa.gov.au/ConsumerProtection/Content/Business/Hairdressers/Consumers_FAQ.html

49 The HR Act does not apply to medical practitioners, nurses or masseurs who are all allowed to cut hair as part of their normal business activities.

The HR Act makes it unlawful within these areas for unregistered people to use the title of hairdresser or to practise hairdressing, and for registered people to practise hairdressing of a prescribed class for which they are not registered.

The HR Board administers the HR Act and Hairdressers Registration Regulations 1965 (HR Regulations) to ensure that only registered hairdressers practise hairdressing within its jurisdiction. The HR Board is a statutory authority funded from annual registration fees paid by individual hairdressers and interest earned on residual funds. Operational since 1948, the HR Board comprises a chairperson and four board members, and employs seven full time employees.

The HR Board carries out the following functions:

- maintaining a register of hairdressers over several prescribed classes;
- issuing and cancelling certificates and badges of registration;
- conducting inspections, investigating complaints and prosecuting offences under the HR Act;
- scheduling and holding theory exams, and practical exams for each class of hairdressing; and
- making recommendations to the Commissioner of Health on hygiene and sanitation standards for hairdressing premises.

Since 2004 the HR Board's decisions to refuse or suspend registration, or to grant registration on conditions, have been reviewable by the State Administrative Tribunal.

Overview of the regulatory process

Applications to practise hairdressing within the HR Board's jurisdiction must be in the appropriate form, verified by a statutory declaration and supported by two written character references. Full details must be given of relevant training and experience, and the HR Board may require further information or evidence in assessing the application. A fee is payable.

Applicants from Western Australian must satisfy the HR Board that they are of good character and have completed a prescribed course of training, and are generally registered after providing proof of their qualification. Applicants from outside Western Australia must have completed training of a like standard and pass any theory or practical exams required by the HR Board.

To enable the hairdresser to work in a particular salon while their registration is being assessed, an additional Authority to Work request is submitted to the HR Board after the application for registration.

The Board may refuse to examine or to register candidates who have commenced but failed to complete an apprenticeship, who have not been actively engaged as hairdressers for five years, or who have not completed an approved course of training.

The HR Regulations provide for five prescribed classes of hairdressing registration – applications to add a class of hairdressing are considered by the HR Board. Theory and practical exams may be required to demonstrate skills in the new class. A fee is payable for each exam, and photocopies of relevant education or training required with each application.

The HR Regulations require every class of hairdressing to be supervised by a principal hairdresser registered in those classes. The nominated principal for each class must be present in the salon at all times while hairdressing is being practised, and a person may not be a principal of more than one premises. Registered employee hairdressers may only work under the direction of a principal and are prosecuted if found working unsupervised.

Applications to be registered as an employee or a principal have to be performed separately, each with an application fee. Hairdressers who change their registration from principal to employee or vice versa are required to notify the HR Board and apply for a new registration certificate. If a hairdresser ceases to act as a principal the business owner must also notify the HR Board within seven days.

The HR Board conducts inspections to ensure that hairdressers are registered and qualified in the classes of hairdressing they are performing, and to monitor compliance with other relevant legislation.

Annual registration fees are payable by registered hairdressers. Failure to pay these fees results in compulsory suspension and a small fine. Registered hairdressers are required to notify the HR Board of change of name or address.

The consultation process

A 2006 review of the HR Act by the then Department of Consumer and Employment Protection received fifty submissions. Forty three submissions either explicitly requested abolition of the HR Board or supported a model involving abolition of the HR Board.

Hairdressers' registration was raised during the RTRG's face-to-face consultation process, and was the subject of one written submission.

The submission to the RTRG:[50]

- reported that, as Western Australia is the only State requiring registration of hairdressers, the Act increases the difficulty for businesses to employ qualified and experienced hairdressers from the other States, in an already difficult labour market; and
- queried the HR Board's use of registration funds, in light of the HR Board's provision of limited support for hairdressers and businesses.

The following case study illustrates an example of unnecessary red tape.

City Beach Breach

A City Beach hairdresser in 2008 was found guilty of breaching r.11(3) – the hairdresser failed to produce a certificate of registration upon request by an inspector of the HR Board.

The hairdresser was fined the maximum sum of $20.00, and $2,199.20 in costs were awarded to the Prosecution. The prosecuted hairdresser will still be required to register and to pay any associated costs and back fees if applicable.[51]

50 Alan Angwin, Chairman, Small Business Centre Goldfields. Sub. 29, p. 2

51 Hairdressers Registration Board of Western Australia (2008). *Annual Report and Financial Statements 2008*. Also sourced from Newsletter, Issue One – 1st Quarter 2008 retrieved on 4 September 2009 from http://www.hrb.org.au/content.php?page=31

Medium-term reforms

Repeal of the *Hairdressers Registration Act 1946*

The HR Act should be repealed and the hairdressers' registration scheme removed. The HR Board should be abolished.

Repeal of the HR Act will significantly decrease the compliance costs of entering the hairdressing industry in Western Australia and, by improving the interstate and international mobility of skilled hairdressers, will increase the pool of prospective employees that a hairdressing salon may hire.

Hairdressers will not be required to be registered to operate in any area of the State. Annual registration fees, classes of hairdressing, nomination of principals and HR Board exams for interstate and overseas applicants will no longer be required.

Repeal of the HR Act will bring Western Australia into line with all other Australian jurisdictions and New Zealand, which have no legal requirements for licensing or registration of hairdressers. General consumer protection, health, training and fair trading legislation would remain to adequately govern the industry.

National standards remain for hairdressing training. Hairdressing businesses would be directly responsible for ensuring that they employ appropriately trained and qualified staff, by the sighting of qualifications. Hairdressing apprenticeships would not be affected by the repeal of the HR Act.

Recommendation 17.1

Repeal the* Hairdressers Registration Act 1946*.

Red tape benefits/savings – this recommendation has the potential to result in savings to businesses of $881,000.

Chapter 18
Employment agents

In this chapter reforms are identified that have the potential to result in over $1,071,000 in cost savings to business in a single year.

Removal of mandatory licensing requirements for employment agents will significantly decrease compliance costs for industry and administrative costs for Government, while maintaining standards for consumers.

Overview

The licensing scheme prescribed by the *Employment Agents Act 1976* (EA Act) imposes unnecessary time and financial costs on businesses. The current licensing arrangements can be replaced with a negative licensing scheme to penalise bad behaviour by employment agents while maintaining protection for consumers.

A National Competition Policy (NCP) review of the EA Act commenced in February 1998 and its recommendations for reform were finalised and endorsed by the then Government in October 2003. The recommendations in this chapter accord with the findings of the NCP review.

Compliance structure

The EA Act requires individuals, partnerships and bodies corporate acting as employment agents to be licensed. The EA Act covers traditional employment agencies and employment brokers, and extends to booking agencies, babysitting agencies, house-sitting agencies and cleaning agencies.

The EA Act was introduced to reduce the risks to consumers of overcharging, deceptive conduct and disclosure of confidential information. But since 1986 employment agents have been subject to Western Australia's general consumer protection laws prohibiting deceptive conduct, false representation and misleading advertising, and other practices that seek to exploit or misinform the community.[52]

Some exclusions from the EA Act apply, including for employers who provide their own staff to other businesses temporarily.

The EA Act and Employment Agents Regulations 1976 (EA Regulations) are administered by the Department of Commerce.

52 National Competition Council 2001, *Assessment of Governments progress In implementing the National Competition Policy and related reforms*, AusInfo, Canberra, June.

Overview of the regulatory process

Applications for grant and renewal of licences

EA licences are granted to fit and proper people over the age of 18 years. Licences are generally granted and renewed for three years.

As part of applying for a licence, the EA Act requires applicants to:

- provide the full names and addresses of two Western Australians who are not relatives as character referees; and
- advertise in a newspaper circulating in every locality in which business will be conducted under the licence, between 14 and 28 days before applying for the licence. Applicants must re-advertise if their application is received by the Commissioner for Consumer Protection (the Commissioner) more than 28 days after the initial advertising date. Any person may object to the grant or renewal of a licence.

If an employment agent is to operate in more than place, or under more than one trade name, the Commissioner may require separate licence applications for each business place or trade name, and may also impose licence conditions requiring any part of the business be run as a separate entity.

Employment agents' quasi-regulation in practise imposes increased costs, beyond legislative requirements

The EA Act requires that *"full names and … address of two persons resident in the State willing to act as character referees … shall be stated on the application."* [s. 18(2)]. In administering the EA Act, the Department of Commerce requires applications be accompanied by *"original letters from the two character references nominated…stating the reasons why, in their opinion, (the applicant) is a suitable person to be granted an employment agents licence."*[53]

Similarly the Act provides that in determining licence applications, the Commissioner may request records and information from the Commissioner of Police [s. 18(3)]. In practise, licence applications are required to be accompanied by an original National Police Certificate under six months old.

A current resumé and a draft Notice of Employment Offered are also additionally required with the application, in practise. Incomplete applications lodged without the required documents are returned unprocessed.[54]

Applications for grant of a licence to a person on behalf of a business also require:

- a certificate of incorporation and a certificate of company registration if the business is a body corporate; and
- a certificate of registration of the business name under the *Business Names Act 1962* if the business trades under a business name.

53 Department of Commerce, *Application for a General Licence by an Individual form*, retrieved on 28 October 2009 from http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Forms/EA_Lic_Applic_Ind_Jul09.pdf

54 Department of Commerce, *"Employment Agent licensing requirements – your questions answered"*, Government of Western Australia.

In granting a licence to a person on behalf of a firm or body corporate, the Commissioner also has regard to the fitness and repute of the firm or body corporate.

Before granting or renewing a licence, the Commissioner must be satisfied that adequate management and supervision will be provided for prospective employees.

The Commissioner's decisions are reviewable by the State Administrative Tribunal (SAT).

Regulated scale of fees

The EA Act prohibits licensed employment agents charging any fee to employees (job seekers) and generally limits charging of employers to a scale of fees approved by the Commissioner. The approved scale of fees sets out:

- the maximum amounts chargeable (or the formula on which they're calculated) for the various classes of person or employment, or places or circumstances of employment;
- the basis on which expenses are assessed, including the ancillary or administrative services to be charged for in each transaction; and
- the timing of payments for service.

Any fees paid greater than the approved scale of fees are recoverable with costs, and the related contract for the employment agent's services is voidable.

Where an employer pays fees or expenses to an employment agent and does not engage an employee within one month, the employment agent on demand within the next month must repay the money paid after deducting expenses.

Other requirements under the *Employment Agents Act 1976*

Upon referring an employee to an employer, employment agents are required to send a 'Notice of Employment Offered' to the employee, detailing:

- the name and address of the employment agent, proposed employer and proposed employee;
- the particulars of the employment being offered including its nature, salary and conditions; and
- a statement that the terms of employment are to be negotiated between the employer and the employee, with the particulars in the notice for guidance only.

Employment agents are required to keep prescribed records for at least three years,[55] including records of:

- every 'Notice of Employment Offered' in consecutive number order, noting the date employment commenced or that no engagement was made;
- every proposed employee and employer that the employment agent agrees to act for, their full names and addresses, the nature of, conditions and salary of employment sought or offered, and other prescribed particulars; and
- financial records of accounts, including details of each transaction for money received, and withdrawals and payments made, to allow proper auditing. The Minister for Consumer Protection may appoint an auditor at the expense of the employment agent.

55 Unless otherwise directed by the Commissioner.

All records required under the EA Act must be kept open for inspection by the Commissioner at all reasonable times.

The Commissioner keeps a register of all licenses and their particulars, and makes it available for inspection for a fee. Employment agents must notify the Commissioner of change of business address, and change of name or trade name.

Licence fees and revenues and the costs of administering the EA Act have increased markedly in recent years, as shown in Table 1.

Table 1: Costs of administering, and revenue received under, the EA Act.

	Fee for applying for initial grant of 3 year licence	Fee for 3 year licence renewal	Annual revenue received from EA licensing	Estimated annual cost of administering EA licensing
2003[56]	$572	$166	$43,000	$107,000
2009[57]	$1,379	$1,028	$258,000	$420,426

The consultation process

Regulation of employment agents and allied professions was the subject of one submission to the RTRG. The issue was also raised during the face-to-face consultations by employment agents.

> *"The Employment Agents Act in its current form continues to overburden the WA recruitment and allied industries with unnecessary red tape….registration is not dependent on any professional qualification, in fact…no qualification is necessary…The only real requirement for registration is a working knowledge of how to register."*
>
> Recruitment and Consulting Services Association, sub. 19, p. 4

Medium-term reforms

Recommendation 18.1

Relax the requirement for employment agents to provide a 'Notice of Employment Offered', subject to the consent of the employee.

Red tape benefits/savings – this recommendation has the potential to result in savings to businesses of $443,000.

56 Department of Commerce 2003, *National Competition Policy review of the Employment Agents Act 1976*, Government of Western Australia, September.

57 Fee amounts drawn from the EA Regulations. Annual revenue from the Department of Commerce 2009, *Annual Report 2008-09*, Government of Western Australia. Estimated annual cost from the Department of Commerce 2009, *Fees and Charges Review*, unpublished, provided to the Department of Treasury and Finance in 2008.

Recommendation 18.2

Remove the need for employment agents to seek approval of a scale of fees. Allow fees to be negotiated between employment agents and employers

Red tape benefits/savings – this recommendation has the potential to result in savings to businesses of $25,000.

Replacement of the licensing requirement with negative licensing

Western Australia and South Australia are the only jurisdictions requiring employment agents to be licensed.

Victoria, New South Wales, the Northern Territory, the Australian Capital Territory and Tasmania don't regulate employment agents.

Queensland uses a Code of Conduct to regulate the profession.

If the licensing provisions of the EA Act were repealed and replaced with negative licensing provisions,[58] the Government would not regulate industry entry but would reserve the right to exclude those who breach standards for work or conduct.

The Australian Competition and Consumer Commission has authorised the Recruitment and Consulting Services Association's (RCSA's) Code for Professional Practice (the Code) to apply to RCSA members.[59] The Code includes provision for confidentiality, honesty in dealings and advertising, and ethical behaviour.

Recommendation 18.3

Repeal the licensing and record-keeping requirements of the Employment Agents Act 1976 and replace them with a negative licensing scheme, so that people may be excluded from the employment agents industry if they breach regulated standards. Regulated standards would be limited to not charging employees, the maintenance of financial records and the provision of statements of account.

Red tape benefits/savings – this recommendation has the potential to result in savings to businesses of $603,000.

Recommendation 18.4

These regulated standards should be subject to rigorous Regulatory Impact Assessment with particular emphasis on the level of government subsidisation of the administration of this Act.

58 As recommended by the NCP review of the EA Act.

59 Retrieved on 26 October 2009 from http://www.chartercommerce.com.au/RCSA.htm The RCSA is the peak body for the traditional employment services industry in Australia and New Zealand.

Chapter 19
Retail sector

The reforms identified in this chapter have the potential to result in estimated savings of over $750,000 for business and local government in a single year.

Reform options are also identified to remove restrictions and requirements that currently deliver little in the way of benefits to the community, but result in a considerable compliance burden for retail operators.

Overview

The current retail trading hour system attracted significant interest from participants throughout the RTRG consultation process. RTRG participants provided a range of views on this issue, from supporting full deregulation of the current trading hour regime, to simplifying and modifying current processes. Specific concerns with the existing regime included the cost to local governments of applying for exemptions, and the overly prescriptive legislation with respect to goods available for sale.

Compliance structure

The *Retail Trading Hours Act 1987* (RTH Act) provides the framework for Western Australia's retail trading hours regime. The RTH Act outlines the retail shop categories and applicable trading hours, as well as certain enforcement and administrative requirements, for all retail shops located south of the 26th parallel.

The Retail Trading Hours Regulations 1988 (RTH Regulations) prescribe the relevant range of goods allowed for sale in small retail shops, special retail shops and filling stations.

The Department of Commerce is responsible for the assessment and approval of applications made under the RTH Act and the RTH Regulations and associated compliance and enforcement activities.

Overview of the regulatory process

The RTH Act provides for four categories of retail shops, with different exemptions and requirements applying to the different categories. The categories are:

- general retail shops;
- small retail shops;
- special retail shops; and
- filling stations.

The RTH Act outlines the standard operating hours during which general retail shops are allowed to trade. Under the RTH Act, qualified small shops and special retail shops can apply to operate outside of general trading hours where certain conditions with respect to ownership structure and range of goods are met.

Retail shops seeking extensions to trading hours under the small shop or special retail shop provisions are required to make application to the Department of Commerce.

Filling stations may sell fuel at any time however, there are restrictions on the sale of certain non-petroleum products from filling stations outside general trading hours. The RTH Regulations prescribe the goods available for sale at filling stations. These include garden and landscaping supplies, replacement sporting equipment and works of local artists, while excluding more commonly found goods such as canned fruit and vegetables and canned seafood.

There are also opportunities for local governments to seek occasional exemptions from trading hours restrictions for traders in their jurisdictions. Under Metropolitan Local Government Empowerment Policy (MLGEP), metropolitan local governments can apply for two short-term or temporary changes to existing arrangements per calendar year, while non-metropolitan local governments can apply for both temporary or permanent change to trading hours within municipal boundaries.

The RTH Act allows for varying hours of operation for retail shops located within the designated tourism precincts of Perth and Fremantle and for retail shops operating as motor vehicle shops.

Restrictions applying to motor vehicle dealerships and the sale of motor homes

Under the RTH Act, a motor vehicle dealership is required to close at 1.00 pm on Saturdays. The sale of motor homes is subject to the same restrictions. As a consequence, caravan dealerships, that sell both caravans and motor homes, are subject to the trading hours applicable for motor vehicle shops.

This means that caravan dealers operating within standard hours (including 8.00am to 5.00pm on a Saturday) are required to close their premises at 1.00pm, or remove motor homes from the yard between the hours of 1.00pm and 5.00pm.

The consultation process

The Chamber of Commerce and Industry (WA) and the Retail Traders' Association both advocated deregulation of shopping hours in Western Australia, although the issue of deregulation has not been addressed by the RTRG as it is a policy decision of government rather than an issue of red tape.

Other participants raised issues about the specific aspects of the regulation. The City of Fremantle considered the process local governments are required to follow when seeking to modify trading hours within local government boundaries as time consuming and costly.

City of Fremantle – High costs associated with applying for local government exemptions

The City of Fremantle estimated the costs associated with applying for two public holiday trading extensions for local retailers under MLGEP are approximately $50,000 per year. The costs are associated with requirements for local government to demonstrate community and trader support for applications.

City of Fremantle, Consultation, 27 April 2009

The Caravan Industry Association Western Australia argued that restrictions on trading hours applying to motor vehicle traders caused particular problems for caravan dealers.

"The sale of motor homes is captured by motor vehicle dealer trading hours which restrict the sale of motor vehicles after 1.00pm on a Saturday. As a consequence, caravan dealers who sell both caravans and motor homes are required to either close at 1.00pm or remove motor homes from their sale yards between 1.00pm and 5.00pm on a Saturday."

Caravan Industry Association Western Australia, sub. 49, p. 5

Another issue raised in consultations was the restrictions placed on the sale of certain goods from shops trading for extended hours as filling stations. For example, British Petroleum (sub. 16) identified significant compliance costs associated with restrictions on the sale of certain goods (such as some canned grocery lines) during specified periods from filling stations. These costs relate to ensuring that goods not prescribed by regulation are identified and, if sold during normal trading hours, are restricted for sale outside general retail trading hours.

Short-term reforms

Local Government Empowerment Policy for Metropolitan Local Governments

The MLGEP guidelines for occasional trading hour extensions require local governments to provide demonstrated support for proposed changes. This requires local councils to invest significant time and financial resources into canvassing the views of the local community. Often the proposed changes are in support of local community events held regularly by local governments for which previous exemptions have been provided by Department of Commerce consistently over a number of years.

Recommendation 19.1

Remove the need for metropolitan local governments to provide demonstrated support for occasional trading hour exemptions.

Red tape benefits/savings – this recommendation has the potential to result in savings of over $750,000.

Restriction on the sale of motor homes after 1.00 pm on Saturday

The current arrangements, which prohibit the sale of motor homes after 1.00 pm on a Saturday, imposes a significant compliance burden on business operators who are required to move motor homes off-site, or have the motor homes placed in a secured area of the yard where customers are restricted access after 1.00 pm. It also results in a significant loss of opportunity for dealers who are unable to maximise potential earnings during what is often one of the busiest periods of the day.

As motor homes are essentially providing accommodation to travellers in the same way as caravans and camper trailers, the sale of motor homes falls more appropriately within the scope of caravan dealerships, rather than within the broader motor vehicle industry.

Recommendation 19.2
Remove the restriction placed on the sale of motor homes after 1.00 pm on a Saturday.

Medium-term reform

Restrictions on sale of certain goods from filling stations

While the goods allowed for sale from filling stations are relatively broad, the RTH Regulations exclude products commonly sold during general retail trading hours. This can create significant confusion for filling station operators and customers alike, as goods previously sold without restriction are required to be excluded from sale at specified times. In circumstances where goods remain exposed from sale but unable to be sold, filling station staff can be subject to pressure from customers not to comply with the RTH regulations.

The manner in which filling station operators comply with these requirements is not specified by the RTH Regulations, however to minimise the risks associated with non-compliance, operators may choose to section off certain areas within the shop, remove goods from display outside general retail trading hours or maintain prescribed stock lines at all times.

Recommendation 19.3
Reform the range of goods prescribed for sale from filling stations.

Chapter 20
FuelWatch (administrative)

The reforms identified in this chapter have the potential to result in over $57,000 in cost savings to businesses in a single year.

Although the cost savings to business are relatively small, these changes remove an unnecessary red tape burden.

Overview

FuelWatch is an initiative of the Western Australian Government which monitors and reports on Western Australian wholesale and retail fuel prices, and provides consumers with information via its website and phone service. The FuelWatch scheme, which was introduced in 2001, allows consumers to access fuel price information and make informed purchasing decisions. This involves the imposition of certain administrative obligations on both retail and wholesale suppliers of fuel. The cumulative effect of these obligations is quite large, particularly for fuel companies with many outlets, and in some cases these obligations are not justified by the benefit they create.

FuelWatch is intended to be a consumer protection mechanism, administered by the Department of Commerce, which aims to improve price transparency, reduce fluctuations in the price of fuel and reduce the city-country price differential.

Compliance structure

The *Petroleum Products Pricing Act 1983* provides the Western Australian Government with price monitoring and control powers in relation to wholesale and retail fuel prices.

In particular, the Act enables the Government to make regulations and authorises the Prices Commissioner to publish orders, which direct the way in which the Act is enforced.

Overview of the regulatory process

FuelWatch imposes a number of obligations on retailers and wholesalers.

Wholesale suppliers' obligations under the Act include:

- to notify the Prices Commissioner of their next day's spot price or Terminal Gate Price (TGP) for each type of fuel sold;
- to display the previous month's Weighted Average Price, spot price and TGP for each type of fuel sold;
- not to refuse to supply fuel to a spot purchaser without reasonable grounds;
- to provide itemised invoices clearly listing the TGP and any post terminal gate charges such as freight, branding and credit; and

- not to require the spot purchaser to purchase other goods and services in order to purchase fuel from the terminal.

Wholesale suppliers who fail to comply with these obligations face a range of enforcement measures including formal warnings, infringement notices and prosecution.

Retailers' obligations under the Act include:
- to notify the Prices Commissioner by 2.00 pm of each day, of the next day's prices for each type of fuel sold;
- to maintain the notified prices for 24 hours from 6.00 am each day;
- not to sell or offer to sell fuel at a price other than the price notified (whether higher or lower); and
- to ensure any prices displayed on a price board match those notified and displayed at the bowser and cash register.

Retailers who fail to comply with these obligations also risk fines and prosecution.

The consultation process

A submission from British Petroleum Australia (BP) raised concerns with several of the obligations imposed on fuel wholesalers and retailers. The submission proposed changes that would reduce the compliance burden on wholesale business.

The proposed reforms regarding the wholesale fuel market included:
- a proposal to relax the time-of-day when fuel wholesalers may change their TGPs;
- a proposal to remove the obligation on terminal gate operators to physically display TGPs at the terminal; and
- a proposal to remove the obligation on terminal gate operators to calculate and provide monthly Weighted Average Prices.

The Consumer Protection Division of the Department of Commerce articulated their support for these three changes to the wholesale fuel market.

BP also advocated altering the time at which fuel retailers are allowed to change their fuel prices under the FuelWatch system. However, an initial assessment of this proposal by the Department of Commerce raised concerns that this may not be in the best interests of consumers.

Another area of concern raised during the consultation was the enforcement of the Act, particularly in relation to relatively minor offences. According to BP, the potential fine for not displaying a sign is $25,000 per sign, per fuel type. One offence cost BP $8,000, when a fuel operator left the counter to assist a customer, placing the sign just out of sight of the Compliance Officer.

Medium-term reforms

The following recommendations would require changes to the *Petroleum Products Pricing Act 1983* and the Petroleum Products Pricing Regulations 2000.

Terminal Gate Prices

The TGP is the price a purchaser is required to pay if they purchase a tanker load of petrol (30,000 litres) on the spot, at the wholesaler's terminal gate.

Wholesale suppliers can set their own price as long as it complies with the TGP formula [set out in the Petroleum Products Pricing (Maximum Terminal Gate Price Order) 2002], which aims to ensure that the price of fuel in Australia is competitive with the price that could be earned if the wholesale supplier exported the fuel. This system aims to improve transparency in the wholesale fuel market as retailers and distributors can compare the prices offered by wholesale suppliers and make informed decisions about their fuel purchases.

Terminal operators must notify a TGP for each fuel type they sell and each component of that price in accordance with the TGP formula. This notified price is fixed for a minimum of 24 hours and becomes the maximum price that a spot purchaser can be charged for a spot purchase where delivery is taken at the terminal gate. At present, TGP changes are mandated to take place at 6.00 am. This may cause problems where a wholesaler's system changes prices at a different time.

> *"In a rising market, this creates a problem […] because any change of such scale at 0200 could place BP in breach of its posted TGP until the FuelWatch change comes into effect at 0600. To prevent this, BP has to hold a greater 'buffer' between the spot TGP posted with FuelWatch and the actual TGP. This masks part of the intended transparency of the FuelWatch TGP."*
>
> British Petroleum Australia, sub. 16b, p. 2

Section 22C of the *Petroleum Products Pricing Act 1983* also requires that the supplier must clearly display the TGP for each kind of fuel supplied at the place of sale.

Wholesale TGPs are available on the FuelWatch website, by subscribing to the FuelWatch email service and by telephone.

There is no evidence of a spot purchase being made at a terminal gate since the TGP requirements were introduced in 2002. As such, the administrative and compliance costs incurred are not justified, and this red-tape should be removed.

Recommendation 20.1

Wholesalers should be allowed to change their Terminal Gate Prices at any time, provided they maintain that changeover at a constant time and the changeover does not take place within 24 hours of the previous one.

Recommendation 20.2

The requirement that wholesale suppliers physically post Terminal Gate Prices at their terminal should be removed.

Red tape benefits/savings – this recommendation has the potential to result in savings of $20,000.

Weighted Average Prices

Section 22C of the *Petroleum Products Pricing Act 1983* requires that each wholesaler must calculate the previous month's Weighted Average Price (WAP). The WAP must be calculated in accordance with the formula set out in regulation 8 the Petroleum Products Pricing 2000. The WAP for each type of fuel sold must be clearly displayed at the terminal. Little, if any use is made of this WAP and the cost of complying with this requirement is unnecessary and unjustified.

Recommendation 20.3

The requirement that wholesale suppliers calculate and display a Weighted Average Price for fuel supplied from the terminal during the previous month should be removed.

Red tape benefits/savings – this recommendation has the potential to result in savings of $37,000.

Chapter 21
Public notices

In this chapter reforms have been identified that have the potential to reduce administrative and financial costs associated with advertising public notices, for applicants for business and occupational licences.

Overview

Licence application processes for a range of occupations and businesses require a public notice to be advertised. For some licences, the mandatory public notice requirement may no longer be warranted. Costs involved in publishing public notices could also be reduced by allowing greater choice of advertising options (such as agency internet sites).

Compliance structure

A large number of legislative instruments contain the requirement to publish notices, often in a state-wide newspaper, to inform the community of a person's intention to operate a particular business or carry out activities of a particular occupation. The objective of this is to provide an opportunity for members of the public to lodge objections relating to the issuing of the relevant licence.

Legislative instruments that contain the requirement for public notices include the:

- *Child Care Services Act 2007*;
- *Companies (Co-operative) Act 1943*;
- *Credit (Administration) Act 1984*;
- *Employment Agents Act 1976*;
- Finance Brokers Control (General) Regulations 2005;
- *Liquor Control Act 1988*;
- *Real Estate and Business Agents Act 1978*;
- *Settlement Agents Act 1981*; and
- *Travel Agents Act 1985*.

Overview of the regulatory process

While the requirements and processes for licences contained in the Acts and regulations listed above are varied, they all contain the requirement for applicants, or government agencies, to publish notices in a state-wide circulated newspaper. Where the advertising cost is met by the department, it is generally recouped in the application fee charged to the applicant.

The consultation process

The Small Business Development Corporation raised the issue of the often unnecessary costs associated with the requirements to advertise public notices.

Three case studies are provided below that illustrate the considerable time and financial costs involved for the applicant or government agency responsible for publishing the notice. In many instances, the benefit to the community is questionable given the very small number of objections that have resulted from advertising public notices. The case studies are presented in terms of the government agency responsible for administering the licences.

Department of Commerce

The Department of Commerce is responsible for administering several business and occupational licensing regimes (see table below) that require publication of a public notice. On average, across all business and occupational licensing categories 867 applications are received each year. In recent years, objections from the public have been raised on only two occasions. The average cost of placing a public notice in *The West Australian* newspaper for these licence applications is estimated to be $132,675 per year.

Department of Commerce: public notices categories and advertisements

Licence type	Cost of public notice	Average number of applications received per year	Total cost
Real Estate Agent	$62.50	350 (no objections)	$21,875
Business Agent	$62.50	0 (no objections)	Nil
Real Estate Settlement Agent	Approx $60	75 (no objections)	$4,500
Business Settlement Agent	Approx $60	1 – specialist category for businesses only (no objections)	$60
Employment Agent	Approx $250-$300	100 (2 objections received in 2009)	$25,000
Travel Agent	Average $150	25 (no objections)	$3,750
Registration of auditor for co-operatives	Approx $200	3 (actual in 2008-09) (no objections)	$600
Finance Broker	$250	296 (actual in 2008-09) (no objections)	$74,000
Credit Provider	$170	17 (actual in 2008-09) (no objections)	$2,890

The Department of Commerce has also indicated that legislation governing the registration of associations requires public notice to be given. While this is not directly related to business regulation, these public notices cost on average $131,600 per year and may warrant consideration as part of the proposed reforms.

Department of Communities

The Department of Communities has responsibility for the licensing of child care centres under the Child Care Services (Child Care) Regulations 2006. These regulations state that "an applicant for a licence must arrange for notice of the application to be published in an edition of The West Australian newspaper". A total of 319 new licence applications were received in 2008, the estimated total annual cost of advertising notice for these applications was $57,420.

Department of Racing, Gaming and Liquor

Under the *Liquor Control Act 1988*, "an application in respect of any matter must, if the Director so requires, be advertised in the manner specified by the Director." Public notices are generally required for the following types of applications:

- grants (approval of liquor licences);
- removals (relocating a liquor licence to another premises);
- extended trading permits (ETP) for on-going hours where a licence holder seeks to trade an extra hour indefinitely or for a liquor store to trade on a Sunday in the metropolitan area;
- ETPs for restaurants to serve liquor without a meal;
- adding, varying or cancelling a condition of an existing liquor licence; and
- altering or redefining the licensed premises.

Most applications are advertised for public comment in *The West Australian* and the *Government Gazette*. In 2008, the DRGL received 736 applications for the various licence types. The cost to business was estimated to be $201,590.

Category of public notices advertised

Licence type	Number of applications in 2008
Add, vary or cancel conditions	212
Alter or redefine licensed premises	174
ETP	100
Grants	224
Removals	26

Medium-term reforms

Providing the community with the opportunity to comment on new licences is an important safety check on the suitability of applicants for many licence categories. However, there are questions as to whether the public notice requirements are justified for a number of licence applications.

The case studies reveal that the number of objections received in response to licence applications have been extremely low in some areas. As such, agencies should be required to review the need for public notices to be advertised under the legislation they are responsible for administering. Where the form of advertising is specified in the legislation (eg in *The West Australian* newspaper), agencies should also consider whether these requirements are still appropriate.

Where it is identified that a public notice is generally required, an option may be to follow the precedent set by the *Liquor Control Act 1988*, which provides discretion to the Director of the DRGL to determine in what form it should be advertised. This would allow agencies flexibility to utilise other methods of displaying public notices, such as the internet, to reduce advertising costs for applicants.

Recommendation 21.1
Agencies review their legislation and report on whether a requirement to publicly advertise licence applications remains necessary or could be removed.

Recommendation 21.2
Agencies that have identified a continued need for public notices should be provided with the discretion to determine the means by which notices are to be made public.

Chapter 22
Reform areas not addressed

A number of issues raised during the consultations were not addressed in this report because they:

- are being addressed by another reform process;
- are areas of Commonwealth responsibility;
- were researched, and no reform options were identified; or
- fell outside the scope of the RTRG terms of reference.

A brief outline of these issues is provided in this chapter. It should be noted that individual issues raised during the consultations have been addressed by reforms outlined in the preceding chapters. In some cases the proposed reform will address a large number of the issues raised; these individual issues have not been identified in this report.

Other reform processes

The State government is currently involved in a number of reform processes that are addressing red tape. These other reform processes include the:

- Council of Australian Governments (COAG) Business Regulation and Competition Working Group (BRCWG) agenda incorporating the *National Partnership to Deliver a Seamless National Economy*;
- Economic Audit Committee (EAC) which has recently conducted a review into the operational and financial performance of the Western Australian public sector; and
- Ministerial taskforce on Approvals, Development and Sustainability.

Issue	Issue Frequency	Reform priority
Licensing of business names	Twice	*BRCWG Registering Business Names – Reform 17*
Restrictive label and packaging laws	4 times	BRCWG Trade Measurement – *Reform 6*
The annual review process for the charitable organisation licenses	Once	*BRCWG Not for Profit Sector Reform*
Occupational licensing and training requirements. These included: • the process of obtaining nationally recognised police and working with children clearances; • mutual recognition of interstate and overseas qualifications, and • restrictive licensing requirements.	18 times	*BRCWG Rationalisation of Occupational Licenses – Competition Reform 6* *BRCWG National Licensing system – Reform 4*

Issue	Issue Frequency	Reform priority
The classification criteria and taxation status of charitable organisations.	3 times	The Australia's Future Tax System Review Panel is currently reviewing the classification criteria for charitable organisations.
Tendering processes for government contracts.	8 times	The Department of Treasury and Finance
Utility pricing and supply arrangements.	4 times	Economic Regulatory Authority
Caravan and camping grounds regulations.	3 times	Economics and Industry Standing Committee of the Western Australian Parliament.

Areas of commonwealth responsibility

Issue	Issue Frequency	Responsible Commonwealth agency
Restrictive compliance requirements for bio-security research and development.	Once	Australian Quarantine Inspection Services (AQIS)
Clearing requirements for land potentially affected by unexploded ordinances.	Twice	Department of Defence
Industrial relations.	3 times	Workplace Authority
Lengthy time delays in approving intellectual property applications.	Once	Intellectual Property Australia
Chemical and Plastics regulation (import and export requirements).	4 times	AQIS
Restrictive visa requirements for migrant workers.	Twice	Department of Immigration and Citizenship
The time taken to complete quarterly business activity statements.	Once	Australian Taxation Office
The requirements for businesses to provide statistical, performance and other industry based information to government authorities.	Twice	Australian Bureau of Statistics

No identified reform options

Issue	Issue Frequency	Rationale
Solar hot water rebate application process, administered by the Sustainable Energy Development Office.	Twice	This issue was investigated. The rebate is scheduled to finalise in the next two years. Short term reform benefits could not be realised for this particular issue and timeframe.

Fell outside the scope of the RTRG's terms of reference

Issue	Issue Frequency	Rationale
Native Title arrangements, specifically those titled land parcels proposed for mining or agriculture.	4 times	Native Title issues fell outside the scope of the RTRG terms of reference.
Firearm registration.	Once	The issue was investigated. No red tape was evident in the registration process.
Payroll and other tax requirements.	7 times	Taxation levels were not considered.

Appendices

Appendix 1 – Consultations

No	Date (2009)	Individual/Organisation
1	12 February	Bunbury Small Business Roundtable
2	12 February	City of Bunbury
3	12 February	Bunbury-Wellington Economic Alliance
4	17 February	Albany Small Business Roundtable
5	17 February	City of Albany
6	17 February	Community forum – Albany
7	17 February	Great Southern Development Commission
8	18 February	Town of Narrogin
9	18 February	RetraVision
10	18 February	Ballard Seeds
11	18 February	Narrogin Beef Producers
12	23 February	Geraldton Small Business Roundtable
13	23 February	City of Geraldton-Greenough
14	23 February	Community forum – Geraldton
15	24 February	Shire of Carnarvon
16	24 February	Carnarvon Small Business Roundtable
17	24 February	Community forum – Carnarvon
18	25 February	Shire of Exmouth
19	25 February	Community forum – Exmouth
20	25 February	Exmouth Small Business Roundtable
21	4 March	Town of Port Hedland
22	4 March	Pilbara Development Commission
23	4 March	Port Hedland Small Business Roundtable
24	23 March	Tourism Council of Western Australia
25	23 March	Real Estate Institute of Western Australia
26	25 March	City of Armadale
27	25 March	Armadale-Gosnells Small Business Roundtable
28	25 March	British Petroleum
29	26 March	Rockingham Small Business Roundtable
30	26 March	City of Rockingham
31	26 March	Retail Traders Association and Chamber of Commerce Western Australia
32	30 March	Shire of Roebourne
33	30 March	Karratha Small Business Roundtable
34	3 April	Goldfields Esperance Economic Development Commission and Regional Heads of Departments (Kalgoorlie)

No	Date (2009)	Individual/Organisation
35	3 April	City of Kalgoorlie-Boulder
36	3 April	Kalgoorlie Small Business Roundtable
37	6 April	Esperance Small Business Roundtable
38	6 April	Shire of Esperance
39	20 April	Kununurra Small Business Roundtable
40	20 April	Shire of Wyndham, East Kimberley
41	21 April	Broome Small Business Roundtable
42	22 April	Shire of Derby
43	22 April	Derby Small Business Roundtable
44	23 April	Shire of Broome
45	23 April	North Star Cruises (Broome)
46	28 April	Fremantle Small Business Roundtable
47	28 April	City of Fremantle
48	28 April	Swan Chamber of Commerce
49	28 April	Pastoralists and Graziers Association of Western Australia
50	29 April	Peel Development Commission, Shire of Murray and Shire of Serpentine Jarrahdale
51	29 April	Mandurah Small Business Roundtable
52	29 April	Master Builders Association of Western Australia
53	30 April	City of Swan
54	30 April	Property Council of Australia (Western Australia)
55	30 April	Western Australian Local Government Association
56	30 April	Western Australian Council of Social Services (Inc)
57	7 May	Western Australian Farmers Federation Inc
58	15 June	CSR Gyprock, Perth
59	23 June	Aquaculture Council of Western Australia Inc.
60	7 August	Transport Forum Western Australia Inc.
61	29 August	Australian Hotels Association (Western Australia)
62	14 October	Boating Industry Association of Western Australia Inc.

Appendix 2 – List of submissions received by the RTRG

No	Individual/Organisation
1	Kwinana Industries Council
2	Old Coast Road Brewery
3	Janet Thompson
4	Shire of Plantagenet
5	Sweeter Banana Co-operative
6	Smithson Planning
7	Red Baron, Carnarvon
8	Quobba Station
9	Carnarvon Motor Group
10	Western Australian Property Rights Association
11	The Packaging Council of Australia Inc.
12	Whale Sharks Western Australia Inc.
13	APT Kimberley Wilderness Adventures
14	Tourism Council Western Australia
15	City of Armadale
16	BP Australia
17	Strzelecki Group Pty Ltd.
18	Southern Cross Water & Infrastructure Corporation Pty Ltd.
19	Recruitment and Consulting Services Association Ltd.
20	Rydges Kalgoorlie
21	Goldfields Esperance Development Commission
22	Philip St John
23	Bob Thompson
24	Phillip Hams
25	Kimberly Professional Fisherman's Association
26	June Harrison
27	Mt Romance Australia
28	Small Business Council, Goldfields
29	Eugene Browne
30	City of Swan
31	Community Employers Western Australia
32	Aquaculture Council of Western Australia Inc.
33	Retail Traders Association of Western Australia
34	Jurien Charters
35	Small Bar
36	Submission withdrawn
37	Carriage Café, Fremantle
38	Esperance Freight Lines
39	Hon Wendy Duncan MLC
40	CSR Lightweight Systems
41	Tourism Council of Western Australia
42	Boating Industry Association of Western Australia
43	Small Bar Association of Western Australia Inc.
44	Motor Trade Association of Western Australia Inc.

45	Jason Horton
46	Richmond Fellowship of Western Australia
47	Department of Sports and Recreation
48	Master Builders Association of Western Australia
49	Caravan Industry Association Western Australia
50	Chamber of Commerce and Industry Western Australia
51	Housing Industry Association Ltd.
52	Australian Hotels Association (Western Australia)
53	Anne Le Fevre, Ravenswood
54	Broome Port Authority
55	Jennifer Haynes
56	Digby Corker, Red Hill Station
57	Western Australian Farmers Federation Inc.
58	Saleeba Adams Architects
59	Pilbara Development Commission
60	Transport Forum WA Inc.
61	S G Coxal Relocators
62	B J Catalano
63	Alex Burbury, Pastoralists and Graziers Association of Western Australia (Inc)
64	Western Australian Local Government Association

Appendix 3 – Breakdown of issues raised in the consultation period

Breakdown of issues by type

Rank	Issue type	Percentage of total issues raised (%)	Issue frequency
1	Planning	20.4%	147
2	Environmental licenses and approval	10.7%	77
3	Agency coordination	6.8%	49
4	Occupational licensing and training	6.7%	48
5	Liquor licensing	6.4%	46
6	Business licensing	5.0%	36
7	Local government operations	4.6%	33
8	Government land release	4.6%	33
9	Building	3.2%	23
10	Commonwealth jurisdiction	3.1%	22
11	Water	2.9%	21
12	Retail trading	2.6%	19
12	Miscellaneous reporting	2.6%	19
14	Transportation	2.5%	18
15	Administration and culture	2.5%	18
16	Risk and public safety	2.4%	17
17	Local government audit reporting	2.1%	15
18	Energy	1.8%	13
19	Cost shifting	1.4%	10
19	Training	1.4%	10
19	Fuel Watch	1.4%	10
22	Tendering	1.3%	9
23	Payroll tax	1.0%	7
24	Consumer protection	0.8%	6
25	State Administrative Tribunal	0.6%	4
25	Native title	0.6%	4
27	Indigenous	0.4%	3
28	Pastoral leases	0.3%	2
29	Commercial leasing	0.1%	1
		100.0%	720

Breakdown of issues by Western Australian Government Department

Rank	Department	Percentage of all issues	Frequency
1	Department for Planning and Infrastructure	21.7%	156
2	Department of Commerce	11.0%	79
3	Department of Environment and Conservation	10.4%	75
4	Department of Local Government and Regional Development	8.5%	61
5	Department of Racing, Gaming and Liquor	5.6%	40
6	Western Australian Planning Commission	4.4%	32
7	Department of Health	4.2%	30
8	Western Australian Local governments	3.8%	27
9	Department of Education and Trading	3.1%	22
10	LandCorp	2.9%	21
11	Department of Fisheries	2.5%	18
12	Tourism Western Australia	2.1%	15
13	Department of Water	1.9%	14
14	Main Roads WA	1.7%	12
15	Western Power	1.4%	10
16	Department of Communities	1.3%	9
16	Worksafe	1.3%	9
18	Department of Treasury and Finance	1.1%	8
19	Various	1.0%	7
19	Water Corporation	1.0%	7
21	Fire and Emergency Services	0.8%	6
22	Australian Taxation Office	0.7%	5
22	Department of Agriculture and Food	0.7%	5
22	Native Title	0.7%	5
22	Sustainable Energy Development Office	0.7%	5
22	WA Police	0.7%	5
27	Department of Housing and Works	0.6%	4
28	Builders Registration Board	0.4%	3
28	Department of Education, Employment and Workplace Relations (Comm)	0.4%	3
28	Department of Indigenous Affairs	0.4%	3
28	Department of the Premier and Cabinet	0.4%	3
28	Department of Sport and Recreation	0.4%	3
33	Australian Bureau of Statistics (Comm)	0.3%	2
33	Commonwealth	0.3%	2
33	Disability Services Commission	0.3%	2
33	Landgate	0.3%	2
33	State Administrative Tribunal	0.3%	2
38	Department of State Development	0.1%	1
38	Environmental Protection Authority	0.1%	1
38	Heritage Council	0.1%	1
38	Immigration	0.1%	1
38	IPAustralia	0.1%	1
38	Plumbers Licensing	0.1%	1
38	Potato Marketing Board	0.1%	1
38	Swan River Trust	0.1%	1
		100.0%	720

Appendix 4 – Abbreviations

ABBP	Australian Boat Builders Plate
AHA (WA)	Australian Hotels Association (Western Australia)
AQIS	Australian Quarantine Inspection Service
BCA	Building Code of Australia
BCC	Business Cost Calculator
BP	British Petroleum
BRCWG	Business Regulation and Competition Working Group
CAR	Compliance Audit Return
CCC	Corruption and Crime Commission
CCIWA	Chamber of Commerce and Industry (Western Australia)
CEO	Chief Executive Officer
COAG	Council of Australian Governments
DAP	Development Assessment Panel
DEC	Department of Environment and Conservation
DLGRD	Department of Local Government and Regional Development
DMP	Department of Mines and Petroleum
DoT	Department of Transport
DPI	Department for Planning and Infrastructure
DRGL	Department of Racing, Gaming and Liquor
EAC	Economic Audit Committee
EERC	Economic and Expenditure Review Committee
EPA	Environmental Protection Authority
ETP	Extended Trading Permit
HR	Hairdressers Registration
LG	Local Government
MBA	Master Builders Association of Western Australia
MCP	Metropolitan Centres Policy (State Planning Policy 4.2)
MOU	Memorandum of Understanding
MVI	Motor Vehicle Industry
NCP	National Competition Policy
NSW	New South Wales
OHS	Occupational Health and Safety
PIA	Public Interest Assessment
POWER	Public Officers Working to Eliminate Red Tape (Group)
RAV	Restricted Access Vehicles
RIS	Regulatory Impact Statement
RSPCA	Royal Society for the Prevention of Cruelty to Animals
RTRG	Red Tape Reduction Group
SAT	State Administrative Tribunal
SBA	Small Bar Applicant
SBDC	Small Business Development Corporation
SLS	State Land Services
TAFE	Technical and Further Education
TGP	Terminal Gate Price
VIN	Vehicle Identification Number
WACOSS	Western Australian Council of Social Services

WAFarmers	Western Australian Farmers Federation Inc
WALGA	Western Australian Local Government Association
WAP	Weighted Average Price
WAPC	Western Australian Planning Commission
ZIP	Zero in Progress (Initiative)