



Cost of Red Tape in Western Australia

A report for the Economic Regulation Authority

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Executive Summary

The Treasurer of the State of Western Australia has asked the Economic Regulation Authority ('the Authority') to conduct an Inquiry into Microeconomic reform in Western Australia with the aim to improve efficiency and performance of the Western Australian economy. The cost of inefficient regulations and policies, commonly referred to as 'red tape', is one of the key issues being considered by the Authority.

Some regulation is necessary for an economy to function efficiently and to safeguard consumers against unacceptably high health, safety and environmental risks that may arise in the absence of any controls. However, red tape is a subset of regulation that imposes undue, excessive compliance costs and distortion to the market economy. These regulations are classed as unnecessarily burdensome, complex, redundant, poorly designed to meet policy objectives or duplicate regulations in other jurisdictions. Red tape has been described as "regulatory or administrative requirements that are unwarranted, ineffective or not the most efficient option for delivering the required outcome."¹

Project objective

The objective of this project is to identify the three to four areas of the Western Australian economy most impacted by regulatory burden, supported by quantitative and qualitative evidence of the costs imposed. It is beyond scope of the project to recommend regulatory reform actions to address the identified problems. Nor is it within scope to estimate the net benefit of reforms.

The project builds on an earlier report by the Red Tape Reduction Group (RTRG), which was established in 2009 by the State Government to identify and report on opportunities to reduce the burden of regulation.² This report identified \$40.3 million of potential cost savings each year if red tape was addressed through implementing the RTRG report's recommendations.

Methods

The study was undertaken in two stages. First, a rapid scan was performed which involved short-listing regulatory compliance issues that could potentially be regarded as 'red tape'. Each issue was grouped into a regulatory category (thematic groupings)

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

² Government of Western Australia (2009) Reducing the Burden - Report of the Red Tape Reduction Group

and for each issue a summary was made of the industries and consumer groups affected, the processes through which costs arise and a qualitative ranking of the likely materiality of the issue – using a criteria-based approach. The scan was informed by a literature review, an analysis of submissions to the Authority’s Issue Paper and Discussion Paper, and consultations with industry bodies and government authorities. It was beyond scope of the project to undertake a comprehensive scoping of all issues.

Several areas were excluded from our assessment from the outset, on advice from the Authority, and included:

- Liquor licensing
- Retail trading hours
- Taxi licensing
- Product market regulations

These are matters that are either being examined separately by the Authority in other sections of the Microeconomic Reform Inquiry or that are the subject of current Government reviews.

Our consultations were designed to seek further insight to issues raised in submissions and this guided our choice of organisations to consult. Synergies convened face-to-face meetings with the following organisations:

- The Chamber of Commerce and Industry;
- The Chamber of Mines and Energy;
- The Small Business Development Corporation;
- The Master Builders Association;
- The Western Australian Local Government Association; and
- The Forest Industries Federation of Western Australia.

The initial scan of issues was followed by a second stage, involving a more detailed assessment of costs, issues and processes associated with several categories of regulation identified as priority areas regulatory burden. A number of case studies were developed to demonstrate the types and magnitude of costs imposed by red tape in selected areas of the economy.

Key findings

A total of 31 issues were identified in the initial scan as being possible cases of inefficient regulation and/or administrative processes. The areas assessed as having the highest level of red tape are environmental approvals, planning and development approvals, building design approvals, local government administration and local laws, and food safety.

In our consultations, various examples of regulatory burden were brought to our attention and included:

- Evidence of overly-complex administrative processes, lack of electronic lodgment, multiple forms, excessive information requirements
- Duplication of functions across authorising agencies
- Inconsistency across agencies/authorities in interpretation of laws/rules/policies
- Lack of transparency in process giving rise to the possibility of subjective decision making and lack of certainty for businesses
- Overly restrictive occupational licensing
- Legislation that is spread across multiple Acts, with potentially conflicting objectives
- Cultural issues in some regulatory agencies, where there is an unwillingness to embrace a risk-based assessment process or to help businesses navigate regulatory requirements at least cost.
- Lack of harmonisation of state laws with national laws, which can in some circumstances impose costs on businesses that operate in multiple states.

Upon examining the root cause of these inefficiencies, the red tape issues can be grouped into one of four broad categories: Inefficient, outdated or poorly conceived legislation; inefficient administrative processes; insufficient information or poor quality guidance about the regulatory process; and inappropriate culture within authorising agencies.

Some examples of red tape are individually quite minor, but collectively add up to a significant burden – particularly for the small business sector, which has limited resources to dedicate time to address compliance requirements. At the other extreme, Synergies was provided with examples of regulatory processes that singularly represent a large burden because they affect many sectors of the economy, involve protracted and complex negotiations with government authorities and/or delay potentially high value economic activities from progressing in a timely manner.

Costs imposed

Regulatory burden pervades across many sectors of the economy. This study examined several sectors in some detail:

- Tourism sector – primarily small business
- Food industry sector – a mix of small to medium businesses, including food processors, primary producers, food preparation business (cafes, delicatessens, suppliers of meals to hospitals and so on)
- Mining and resources sector – which comprises a cohort of large corporations and a mix of mid-size companies
- Land and infrastructure development sector – comprising the full range of small to medium sized businesses and large corporates

These sectors were chosen as case studies because of their significance to the Western Australian economy and their high degree of exposure to the regulatory areas deemed to have the greatest component of red tape – as referred to above.

There is clear evidence that there are cost savings to be made from improved efficiencies in administering regulation in these industry sectors. For example, a recent study by the Department of Mines and Petroleum has identified cost savings to the mining industry in the order of tens of millions from a suite of improvements to project assessment and approval processes.

However, a general finding is that while the direct regulatory compliance costs are substantial, the indirect, ‘opportunity costs’ of red tape are possibly more significant. In the land development sector this includes the capital holding costs incurred by businesses through delays in receiving development approval (interest on capital and foregone revenue from development), reduced investment and business confidence, and distorted development patterns due to developers avoiding certain local government areas because of high regulatory burden. This not only imposes costs on developers but also building owners and the wider community – through, for example, delays in building public infrastructure and related service amenities.

In the tourism sector, opportunity costs include reduced offerings to domestic and overseas consumers due to high barriers to entry to new, innovative tourism projects. Similarly in the food sector, examples were provided to Synergies that demonstrate the difficulties encountered by small primary producers wishing to enter the retail market and to supply their farm products directly to the public.

Evidence of progress

Notwithstanding these problems, it is evident that there has been progress in reducing red tape since the 2009 RTRG report. Notable areas of progress are in planning reforms and changes to building regulations, environmental approval processes administered by Department of Mines and Petroleum, and environmental licencing administered by the Department of Environmental Regulation.

Western Australia's progress in mining sector reforms has been reflected in the 2013 survey results produced by the Fraser Institute, which measure mining companies' perceptions about regulatory certainty/stability across international jurisdictions. Western Australia scored the highest ranking of all Australian states and was ranked sixth overall out of 112 jurisdictions, up from 15th place last year.³ Similarly, in the area of planning and development, Western Australia has demonstrated positive progress. In 2012 the Property Council of Australia's *Development Assessment Report Card* gave Western Australia a score of 7.1 out of 10, up from 5.3 in 2010, which places this State second in the country after Northern Territory.⁴

Red tape associated with heavy vehicle licensing is being addressed by the Department of Transport and the Department of Commerce has commenced a review of laws governing motor vehicle dealers and repairers with the aim of reducing compliance burden on these businesses.

Conclusion

In reviewing the costs of red tape to the economy, it is difficult to be definitive about what proportion of compliance costs represents inefficiency and what proportion of costs are justifiable and efficient in terms of meeting policy objectives. Accurate dollar measures of 'inefficient burden' call for a deep understanding of the regulatory arrangements governing a particular sector, the market failures that the regulation is designed to address, and a degree of subjective judgement about what constitutes an avoidable cost as opposed to a necessary cost.

The next steps in reducing red tape in Western Australia call for a thorough examination of the options available for addressing each issue, be that administrative reform or legislative reform or both, and an assessment of the net benefits of taking action.

³ Wilson A, McMahon F and Cervantes M. (2013) *Fraser Institute Annual Survey of Mining Companies 2012-13*

⁴ Property Council of Australia (2012) *Development Assessment Report Card 2012*, published by Residential Development Council, a division of the Property Council of Australia, March 2012

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1 Introduction

The Treasurer of the State of Western Australia has asked the Economic Regulation Authority ('the Authority') to conduct an Inquiry into Microeconomic reform in Western Australia with the aim to improve efficiency and performance of the Western Australian economy. The cost of inefficient regulations and policies, commonly referred to as 'red tape', is one of the key issues being considered by the Authority.

Synergies Economic Consulting (Synergies) has been engaged by the Authority to prepare an evidence-based assessment of three to four areas of the Western Australian economy most affected by regulatory burden.

1.1 Types of costs imposed by red tape

The path to successful reform lies firstly in identifying the priority areas where regulation could be simplified or removed altogether. A sensible course of action is to concentrate initially on easy to achieve reforms before progressing to more complex reforms. Sometimes the full scale of costs imposed by particular regulations is not transparent or easily quantified. This can make it difficult to mount a compelling case for reform and build sufficient momentum to address the inefficiencies that exist.

Various schema have been used in the past to classify regulatory costs. This report adopts a framework based on the Productivity Commission's *Performance Benchmarking of Australian Business Regulation*,⁵ which is set out below:

Direct costs

- Government charges, licence fees, and fines
- Cost to taxpayers in administering and enforcing the regulation

Compliance costs

- Paperwork compliance including record keeping, auditing and provision of information
- Training and accreditation costs
- Installation of plant, equipment and information technology (IT) systems
- Capital holding costs

⁵ Productivity Commission (2007) *Performance Benchmarking of Australian Business Regulation*, Research Report, 19, February 2007

- Time spent meeting regulatory requirements
- Changes to production processes
- Procurement and contracts

Indirect costs

- Restrictions to competition
- Reduced innovation and entrepreneurship
- Reduced business flexibility
- Limiting choice of products and services to consumers
- Delays to development
- Business uncertainty
- Transition costs of people moving from one industry to another (e.g. imposed through occupational licensing, for example)

1.2 Organisation of this report

This report is set out as follows:

- Chapter 2: A review of previous assessments of regulatory burden in Western Australia and the wider, national context in which these reviews have been undertaken
- Chapter 3: Results of the rapid scan of key issues and themes
- Chapter 4: Regulatory burden in priority areas of the economy
- Chapter 5: Conclusion.

2 Previous assessments

This chapter reviews a number of previous studies that have assessed regulatory burden on the Western Australian economy and summarises the national context in which these reviews have been undertaken. It is not intended to be a comprehensive review of all the literature. The aim is to provide context to the current study, noting areas where positive reforms have been implemented to reduce red tape and where red tape reduction initiatives are currently underway.

2.1 National context

The Council of Australian Governments (COAG) has been pursuing a reform agenda that includes reducing regulatory burdens for some time. A chronological history of recent developments is presented below:

- In February 2006, COAG agreed that all governments would aim to adopt a common framework for benchmarking, measuring and reporting the regulatory burden on business. The Productivity Commission was requested to examine the feasibility of developing quantitative and qualitative performance indicators and reporting framework options.
- In April 2007, COAG agreed to a number of principles for national red tape reform and additional timelines for individual jurisdictions to reform their individual red tape making processes. An agreement was reached to ask the Productivity Commission to benchmark compliance costs of regulations in targeted areas, including:
 - Measures of the quality and quantity of regulation
 - The cost of business registration
 - Occupational health and safety
 - Food safety
 - Planning, zoning and development assessment
 - Role of local government as regulator
 - Benchmarking the efficiency and quality of regulatory impact analysis performed by Commonwealth, state and territory governments
 - Regulator engagement with small business

These studies have now been completed, with the last report being handed down in October 2013. Some of these reports refer to regulatory arrangements and compliance costs in Western Australia.

- In a separate undertaking, the Productivity Commission has published a series of five annual reviews in the period 2007 to 2011 that evaluated the burdens on business from the stock of Commonwealth regulation. Each review examined a particular industry sector. The review process was designed to ensure that all Australian Government regulations are efficient and effective, by recommending improvements that lead to net benefits to business and the community, without compromising underlying policy goals.
- In 2008, COAG agreed to implement regulation and competition reforms under the National Partnership Agreement to Deliver a Seamless National Economy. Thirty-six separate reforms are covered by this National Partnership, comprising 27 deregulation priorities, eight areas of competition reform and a reform to regulation making and review processes. As of July 2012, 17 of the deregulation priorities and three of the competition reforms are complete.
- The COAG Business Regulation and Competition Working Group (BRCWG) is the body responsible for monitoring and reporting each jurisdiction's progress with agreed reforms. The BRCWG produces a Report Card on the progress of 27 deregulation priorities. Western Australia currently co-chairs the BRCWG, through the Western Australian Under Treasurer.

2.1.1 Current national agenda

In 2013 the incoming federal coalition government affirmed its support for ongoing reform in reducing regulatory burden. In July 2013 the coalition released its policy to '*Boost Productivity and Reduce Regulation*'.⁶ The policy aims to reduce the regulatory burden for individuals, businesses and community organisations by establishing and meeting a red and green tape reduction target of at least \$1 billion a year. The policy has the following elements:

- Incentives to drive the public service to cut red and green tape, such as linking remuneration of Senior Executive Service public servants (including future pay increases and bonuses) to quantified and proven reductions in regulation.
- The setting aside of at least two parliamentary sitting days each year for the express purpose of repealing counterproductive, unnecessary or redundant legislation and consequently removing associated regulations.
- The deregulation function of the Department of Finance is to be relocated to a new unit within the Department of the Prime Minister and Cabinet, for the purposes of

⁶ The Coalition's Policy to Boost Productivity and Reduce Regulation, July 2013

making it clear that reducing red and green tape will be part of a whole of government approach.

- All Cabinet submissions will require a Regulatory Impact Statement.
- Deregulation and red tape reduction is to be made a standing agenda item at COAG meetings.
- The Minister Assisting the Prime Minister for Deregulation will table an annual red tape reduction report in Parliament.

The Parliamentary Secretary to the Prime Minister has been assigned responsibility for leading the Coalition's policy agenda on deregulation and red tape reduction.

2.2 Overarching reviews of red tape in WA

Western Australia has historically been assessed as lagging behind other Australian jurisdictions in identifying and addressing inefficient regulations. In 2007, for example, the Business Council of Australia published a scorecard of State red tape reform, which assessed Western Australia as 'poor' – the lowest ranking of jurisdictions. Since that time several red tape reviews have been undertaken for Western Australia.

- The most systematic and comprehensive review is the report of the Red Tape Reduction Group (RTRG). On 30 January 2009, the Treasurer announced the establishment of the RTRG who was given the task of identifying and reporting on opportunities to reduce the burden of existing State regulation and red tape on businesses and consumers.
- In 2009 the Economic Audit Committee (EAC) conducted a wide-ranging review of the operational and financial performance of the Western Australian public sector. Part of its remit was to examine cultural aspects of public sector management that were causing excessive 'red tape'.
- In the same year the Institute of Public Affairs (IPA) and Mannkal Economic Education Foundation published '*Over-ruled: How excessive regulation and legislation is holding back Western Australia*'. This report presented a range of arguments to demonstrate how the regulatory burden in Western Australia is significantly greater than that of other States.
- In 2011, the Western Australian Chamber of Commerce and Industry (CCI) conducted a survey of 160 businesses operating in a range of sectors. The results of the survey are published in the CCI report '*The cost of doing business*'. One of the objectives of the report was to examine the direct and indirect impact of red tape regulation on businesses.

Further details of the findings of these investigations are presented below.

2.2.1 Red Tape Reduction Group findings

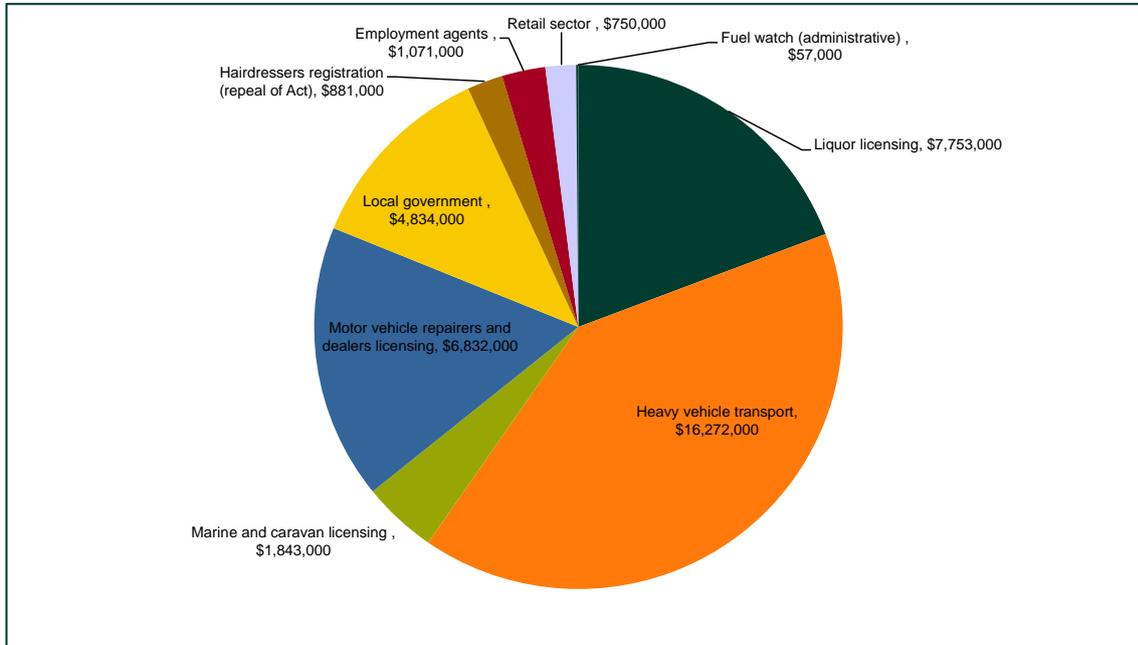
The RTRG handed down its findings in a report published in 2009. Key findings are as follows:

- The review identified \$40.3 million per annum in cost savings – which would be realized if all the report’s 107 recommendations were implemented.
- The cost savings only relate to reductions in direct costs, including: paperwork compliance costs, non-paperwork compliance costs, financial costs (fees and charges paid) and the costs of complying with other government processes - e.g. grant applications, government procurement. Other potential costs such as deadweight losses imposed on the economy were not estimated.
- Reforms in the areas of heavy vehicle transport, licensing of motor vehicle repairers and dealers, and liquor licensing were the three areas estimated to produce the greatest cost savings - out of those reforms for which dollar cost savings were estimated. Figure 1 below provides a breakdown of the identified red tape cost savings for particular areas and industries.
- The RTRG did not estimate costs for all types of regulatory burden. Many of the red tape issues identified by the report as priorities for reform were assessed in qualitative terms as opposed to producing estimates of costs (or cost savings through reform).
- Planning and environmental approvals/licensing were the two most frequently raised issues in the RTRG’s consultations (accounting for 20% and 11%, respectively, of issues raised). However, the RTRG report did not quantify the costs imposed by these regulations and administrative processes.
- According to some sources, about half of RTRG’s 107 recommendations have been implemented.⁷

Notwithstanding the important contribution of this report to highlighting the costs of red tape, the analysis of costs was incomplete in that several issues identified as having a ‘high impact’ were not evaluated in quantitative terms and for those issues where cost estimates were made, only the direct costs of regulatory burden on businesses were estimated.

⁷ Small Business Development Corporation submission to the Authority’s Microeconomic Reform Inquiry Discussion Paper.

Figure 1: Estimated costs of red tape in Western Australia (RTRG Report, 2010)



2.2.2 Economic Audit Committee

In 2009 the State Government published a report by the Economic Audit Committee (EAC) titled *‘Putting the Public First: Partnering with the Community and Business to Deliver Outcomes – Final Report’*. The EAC was a six-member panel of senior economic and public sector management specialists supported by a secretariat from the Department of Treasury and Finance.

One of the key findings of the panel was the need to remove barriers and red tape within the public service that “duplicate and confuse accountability, prevent flexibility, stifle innovation and provide excuses for poor outcomes.” The EAC found that a cultural change is needed within the public sector:

At present, the potential of the public sector is constrained by a multiplicity of regulatory scrutiny. The resulting public sector management culture is excessively process-driven and risk averse. This culture of compliance has been exacerbated by a series of high profile reports into the conduct of a small number of public sector officers. Intended to guarantee transparency and accountability, this regime can have

the opposite effect by disempowering agencies, thwarting responsiveness and valuing procedural compliance over the exercise of sound judgment. (p. 136)

The report recommended that State regulators refocus their efforts on delivering 'minimum effective regulation', a term that was used by the EAC to capture the insight that regulation that is good in principle can be detrimental when implemented in a way that imposes unnecessary direct and indirect costs on both the private and public sectors.

2.2.3 Institute of Public Affairs report

The IPA report titled *'Over-ruled: How excessive regulation and legislation is holding back Western Australia'* is critical of the comparatively high regulatory burden experienced by businesses and consumers in Western Australia. The report draws on secondary sources of information to demonstrate the cost and inefficiencies of regulation across a number of industry sectors. Principal observations and findings are as follows:

- The report cites a 2006 Chamber of Commerce and Industry study that estimated the compliance cost of regulation in Western Australia to be equivalent to two per cent of gross state product, or \$2.1 billion a year.
- Data are presented to demonstrate that the volume of legislation passed each year is significantly higher than all other states, even after correcting for differential population growth and changes in gross state product.
- In the mining and resources sector, the report presents survey evidence to suggest that businesses identify Western Australia as an increasingly 'high risk' jurisdiction for project investment.
 - Data from ResourceStocks 2008 World Risk Survey is used to show that Western Australia is ranked the most risky investment destination in Australia; and
 - Data from The Fraser Institute's annual survey of mining regulatory policy is used to advance the case that relative to other Australian states, Western Australia has declined in reputation amongst resource firms for its policy settings covering metal mining and exploration over the period 2004-05 to 2008-09 (It is important to note that since the IPA report was published, this trend has reversed. The latest Fraser Institute survey (2013) finds that Western Australia is now the top-ranked jurisdiction in Australia and sixth internationally).
- The report highlights how the planning and environmental approval process for building developments has become more complex in Western Australia since the early 1990s as a result of these processes being merged.

- The report explores the principle of ‘embedded regulatory compliance costs’, which are defined as the regulatory costs incurred by businesses that are passed onto consumers in the form of higher prices.
- The report cites a study by the Urban Development Institute of Western Australia (UIDA), which quantified the cost of planning delays on average home lots, and found that a six month delay increased the price of an average lot by 13 per cent, and a four year delay increased the price by 68 per cent.
- The report points to Western Australia’s comparatively restrictive and centralised system of land use regulation (relative to other Australian states) which is said to be having the effect of restricting the supply of land and reducing housing affordability.

2.2.4 Chamber of Commerce and Industry ‘Cost of Doing Business’ Report

The CCI report, which was published in August 2011, found that despite the necessary red tape reforms having been identified in Western Australia (through for example the RTRG and the EAC reports), implementation has been slow or non-existent. The CCI presents results of its business survey to demonstrate the materiality of regulatory compliance costs relative to other business costs:

- 63 per cent of survey respondents reported an increase in their cost of compliance over the past five years;
- 40 per cent of survey respondents report that dealing with red tape and regulation is a key driver of cost pressures;
- 23 per cent identified compliance costs related to local government planning/approvals processes as a major burden; and
- just over half of respondents said that regulatory burden also reduced their ability to expand capacity, suggesting that the compliance burden is having both a direct cost impact as well as an opportunity cost in terms of lost potential investment and output growth.

The CCI also raises concerns that Western Australia is lagging behind other states in implementing red tape reduction initiatives and points out that this will increasingly place the State at a competitive disadvantage to other jurisdictions (interstate and international) in competing for investment.

2.3 Recent WA policy developments and initiatives

Since 2009 there have been a number of developments and initiatives that are designed to reduce regulatory burden in Western Australia. These are summarised as follows.

2.3.1 Environmental approval and licensing processes

Two reform initiatives have been implemented in the area of environmental approvals and licensing since the RTRG Report was published:

- In April 2009, the Industry Working Group delivered its review of approval processes in Western Australia. This involved a comprehensive review of the Environmental Impact Assessment (EIA) process administered under Part IV of the *Environmental Protection Act 1986* (WA) and recommended significant changes to the process. The Environmental Protection Authority (EPA) is proceeding to implement these reforms.
- In 2012 the Department of Environment Regulation commenced its 'REFIRE project' (Re-Engineering for Industry Regulation and Environment). This project aims to improve the Department's licensing and works approvals system. The Department commenced a program to convert all current licences into the REFIRE format in 2013. Elements of this project include:
 - all works approvals and licences to be created from generic templates of standard conditions with specific conditions for individual premises added as necessary
 - development of a new guide to licensing
 - greater clarity and consistency of assessment frameworks
 - a new Licensed Premises Risk Appraisal (LPRA) procedure for rating risk associated with every individual premises across the State

2.3.2 Reforming Environmental Regulation Program

In May 2012 the Department of Petroleum and Mines (DPM) commenced a program of reforming environmental regulation in the Western Australian resources industry. The key aims of the reforms are:

- To revise timelines and efficiency performance indicators, in line with risk-based regulation
- To work with other agencies to improve efficiency and eliminate duplication

- To improve cross-agency policies, such as the Lead Agency Framework, which will be addressed in appropriate inter-government forums.

A major reform outcome to date has been the introduction of IT solutions within DMP to streamline and improve transparency for the assessment process. This has included online lodgement functionality for exploration applications, mining proposals, mine closure plans and environment plans. In addition, online tracking of applications has also been implemented and being expanded. Since 2009, DMP has also been reporting its performance against assessment target timelines

In May 2013 the Minister for Mines and Petroleum commissioned a review of all policies and guidelines administered by DMP that have, or potentially can have, an impact on the costs of doing business in Western Australia. In commissioning the review, it was acknowledged that while efficiencies have been realised through DMP's significant reforms in electronic application and approval systems for land tenure, mines safety and environmental management, there remains scope for further cost savings to industry and government through reducing duplication and consolidating policy guidelines. The review has now been completed and results are discussed in section 4.2 of this report.

On 30 October 2013, the *Mining Legislation Amendment Bill 2013* was introduced into the WA State Parliament, representing the beginning of a major overhaul of environmental approval processes for WA mining projects. The Bill is the first tranche of reform to be undertaken as part of the Reforming Environmental Regulation program and will make key amendments to the *Mining Act 1978* and the *Mining Rehabilitation Fund Act 2012*. The amendments are intended to facilitate the release of environmental data and streamline environmental approval processes, with the aim of reducing red tape and generating foreign investment in large scale mining projects.

2.3.3 Building regulation reforms

In 2010-11 extensive review and reform of building regulations was undertaken, culminating in the new *Building Act 2011*. These reforms represent the most significant changes to the State's building regulations in over 50 years. The *Building Act 2011*, passed on 23 June 2011, allows applicants to obtain building certification from private registered building surveyors before submitting a building application to local Government. The Act requires all certified applications to be processed within 14 days. The reforms are designed to provide greater certainty and improve efficiencies in the building approval process in Western Australia and bring the regulations into line with approval processes in the rest of Australia.

2.3.4 Planning reforms

Reforms to the State's planning system. The reforms are being implemented in two phases:

- Phase one was launched in September 2009 and included amendments to the *Planning and Development Act 2005*, undertaken in 2010, as well as the delivery of several other non-legislative reforms. Key reforms as part of this package that are targeted to reduce regulatory burden were the introduction of Development Assessment Panels (DAPs) in 2011 for the purposes of including professionals in the determination of applications for substantial developments (as opposed to having elected Councils assess the applications) and a revision of R-Codes gazetted, including changes to ancillary housing provisions (granny flats), reducing requirements for planning approval for single houses, and amendments and improvements to specific design requirements.
- Phase two of the reform process commenced with a discussion paper released by the Department of Planning in September 2013. The primary focus of phase two is on improved statutory decision making processes and land use planning and supply.

2.3.5 Other legislative reviews

Two key areas of regulatory burden highlighted by RTRG Report - heavy vehicle transport and motor vehicle dealers/repairers licensing - have subsequently been the subject of review by the agencies responsible for administering the legislation underpinning these licensing and regulatory arrangements.

- In August 2013 the Department of Commerce commenced a review of laws and regulations affecting the motor vehicle industry. The laws under review include two Acts that licence motor vehicle dealers, sales representatives and repairers (*Motor Vehicle Dealers Act 1973* and the *Motor Vehicle Repairers Act 2003*). A primary focus of the review is to assess the potential to reform these laws and regulations in order to reduce red tape experienced by motor vehicle dealers and repairers, many of whom are small businesses. The Department is currently considering submissions raised in response to a public discussion paper.
- The Department of Transport, in its submission to the Authority's Discussion Paper, advises that the transport portfolio has implemented most of the recommendations under the heavy vehicle chapter of the RTRG report. Most of the seven recommendations made in that report concerning heavy vehicle transport have been implemented, while two are currently in progress (the streamlining of traffic

escort functions and progressing the use of telematics data for accreditation and permits).

2.3.6 Annual legislation repeal day

In November 2012, the State government instigated an annual 'repeal day' to remove pieces of out dated legislation. In 2013, a total of 43 superseded or obsolete Acts of Parliament were repealed during State Parliament's 'Repeal Week'.

3 Scan of red tape issues

This section presents the results of our rapid scan of regulatory burdens in the Western Australian economy. The scan was informed by submissions received by the Authority in response to its Issues Paper and Discussion Paper, consultations with industry bodies and government authorities, and issues identified in the RTRG report.

This initial assessment identifies:

- Categories of regulation affecting particular industries and consumer groups;
- The processes through which costs are imposed;
- A qualitative ranking of the materiality of each issue in terms of costs imposed; and
- A shortlist of priority areas for further, more detailed analysis in the second stage of this study.

It was beyond scope of the project to undertake a comprehensive scoping of all issues. Further, several areas were excluded from our assessment from the outset, on advice from the Authority, and included:

- Liquor licensing
- Retail trading hours
- Taxi licensing
- Product market regulations

These are matters that are either being examined separately by the Authority in other sections of the Microeconomic Reform Inquiry or that are the subject of current Government reviews.

3.1.1 Consultations

Our consultations were designed to seek further insight to issues raised in submissions and this guided our choice of organisations to consult. Synergies convened face-to-face meetings with the following organisations:

- The Chamber of Commerce and Industry;
- The Chamber of Mines and Energy;
- The Small Business Development Corporation;
- The Master Builders Association;

- The Western Australian Local Government Association; and
- The Forest Industries Federation of Western Australia.

3.2 Issues identified

The scan revealed many examples of regulation that are producing a range of cost burdens, as follows:

- Overly-complex administrative processes, lack of electronic lodgment, multiple forms, excessive information requirements
- Duplication of functions across authorising agencies
- Inconsistency across agencies/authorities in interpretation of laws/rules/policies
- Lack of transparency in process giving rise to the possibility of subjective decision making and lack of certainty for businesses
- Overly restrictive occupational licensing
- Legislation that is spread across multiple Acts, with potentially conflicting objectives.
- Cultural issues in some regulatory agencies - not willing to embrace a risk-based assessment process. All businesses/projects go through same level of assessment, regardless of risk
- Lack of harmonisation of state laws with national laws - which can in some circumstances imposes costs on businesses that operate in multiple states.

A high level summary of these issues and how they map to particular areas of regulation is provided in Table 1. The issues identified are not dissimilar to those that have been found in other jurisdictions, where formal assessments of red tape have been made. While Western Australia has some unique circumstances, which give rise to particular issues that are not prevalent in other jurisdictions, there are also many commonalities. This is a consequence of competitive federalism, whereby over time competition between jurisdictions has produced a similar approach to regulation.

Table 1 Scan of regulatory burden issues in Western Australia^a

	Summary of issue in Western Australia	Nature of costs	Reported relevance of regulatory burden across other jurisdictions				
			NSW	VIC	QLD	SA	TAS
ENVIRONMENTAL APPROVALS			✓	✓	✓	✓	✓
Major resources project approvals <i>Approvals relate to environment, indigenous, social, water, urban planning</i>	Regulatory overlap Duplication Inconsistency across government agencies and approval authorities Timeliness Procedural fairness	Time delays Capital holding costs Planning uncertainty Direct costs (legal fees, paperwork) Reduced investment in exploration					
Clearing of native vegetation and offsets <i>Lack of clarity around responsibilities across different authorities</i>	Undefined responsibilities of authorities Procedural complexity in acquiring offsets Lack of risk-based assessment of clearing regulations Unavailability of information on operational assessment policies	Time delays Reduced flexibility to manage agricultural land		✓	✓	✓	
Forest industry regulations <i>Interdepartmental duplication of forestry environmental assessments</i>	Duplication of compliance and monitoring Regulatory uncertainty around logging contracts	Inefficient assessment process Uncertainty – long term planning Reduced investment in industry					
Tourism projects <i>Lengthy process to obtain approvals</i>	Timeliness of approvals for projects in protected or environmentally sensitive areas Protracted regulatory processes	Barriers to entry – entry costs Disincentive to innovation Reduced visitor choice and experience Reduced opportunity for co-contributions to environmental management from private sector Ongoing licence compliance costs			✓		
PLANNING AND APPROVALS			✓	✓	✓	✓	✓
Local government interpretation of Residential Design Codes (R Codes) <i>Planning and building approvals</i>	Poor turnaround times in some localities Inconsistent application of codes Lack of risk-based assessment	Capital holding costs Compliance costs to developers, builders and designers					

	Summary of issue in Western Australia	Nature of costs	Reported relevance of regulatory burden across other jurisdictions				
			NSW	VIC	QLD	SA	TAS
		Higher building costs Reduced scope for innovation					
Local government statutory planning <i>Aesthetic changes and adjustments to compliant projects</i>	Additional aesthetic obligations that are outside regulatory parameters	Administrative costs Time delays					
Local government planning approvals <i>Evaluation of planning applications</i>	Only local government authorised to evaluate applications (other than those classed as 'significant', which are assessed by Development Assessment Panels) Under-resourced councils Lack of risk-based assessment	Administrative costs Time delays Barrier to entry – no opportunity for private assessors to enter the market			✓		✓
Land use planning - Local government <i>Administration of planning regulation</i>	Industrial land development Inconsistent local government zoning laws with State planning strategies Delays in planning approvals	Administration costs Capital holding costs Increased operating costs for sub-optimally located businesses Redundant proposal costs Suboptimal outcomes for the community Increased building costs for buyers			✓		✓
Developer contributions - local government <i>Retrospective application of developer charges</i>	Levying additional developer charges after developer contribution has already been applied	Direct costs to developers Increased costs to buyers if costs are passed on Risk of inefficient use of revenue Lack of transparency of total costs of project up front					
LOCAL GOVERNMENT ADMINISTRATION					✓		✓
Dog registrations, rates notices, Compliance Audit Returns <i>Administration</i>	Excessive administration costs to local government	Administration costs					
Development of local laws <i>Periodic review of legislation</i>	5,335 local laws Infrequent review of legislative obligations Inefficient local law-making process	Administration costs for business and local government Information costs					✓

	Summary of issue in Western Australia	Nature of costs	Reported relevance of regulatory burden across other jurisdictions				
			NSW	VIC	QLD	SA	TAS
	Inconsistent local laws across the State	Compliance costs businesses and households					
Heritage rules and regulations <i>Lack of clarity on obligations</i>	Poor clarity of responsibilities in administering heritage rules Lack of policy guidance	Over-prescriptive legislation Inconsistent obligations Administration costs			✓		
Requirement to collect data <i>Building Commission requests to local government</i>	Increased compliance cost for local government due to Building Commission increasing its data requirements from 6 to 72 lines data items relating to building approvals.	Compliance costs Opportunity cost (use of council resources)					
BUILDING APPROVALS				✓	✓		
Fire safety assessments for buildings <i>Duplication of assessments</i>	Duplication of fire safety assessments by Department of Fire and Emergency Services and private contractors Inconsistent certification standards Unnecessary delays	Administrative costs Time delays					
Building Code of Australia (BCA) <i>Variations to minimum standards based on provisions in Appendix A</i>	BCA requirements in WA are more costly and onerous than those applied interstate	Higher building, material and labour costs Reduced housing affordability Delays delivery of additional housing solutions					
Building permit approvals <i>Streamlining processes</i>	Building permits are issued by local government More widespread use of Councils On-line tool for application and permitting is needed to improve efficiency	Administrative costs Time delays	✓	✓			

FOOD SAFETY COMPLIANCE

	Summary of issue in Western Australia	Nature of costs	Reported relevance of regulatory burden across other jurisdictions				
			NSW	VIC	QLD	SA	TAS
Regulated by all levels of government <i>Regulatory complexity and duplication</i>	Regulatory complexity Lack of consistency Poor assignment of responsibilities to different authorities Duplication of reporting/compliance obligations (i.e. audits) Lack of risk-based auditing Poor/inconsistent application of regulation by local government	Administrative cost Compliance costs Barriers to entry Time delays Loss of export markets Business uncertainty Higher prices to consumers Less choice of food products			✓		
GOVERNMENT PROCUREMENT							
Contracting processes <i>Administrative burden</i>	Excessively complex tender documents and contracts that are not well understood by small business sector	Costs of preparing bids Legal advice on contracts Administrative cost to government		✓	✓	✓	✓
OCCUPATIONAL LICENSING							
Motor vehicle repairers and dealers <i>Licensing</i>	Complex licensing scheme Burdensome reporting requirements on dealers and repairers	Reduced competition Administrative costs Compliance costs to licensees			✓		✓
Hairdressers <i>Registration</i>	Mandatory licencing scheme is unwarranted given low consumer risk	Reduced competition Administrative costs Compliance costs					
Employment agents <i>Licensing</i>	Excessive regulatory burden	Reduced competition Administrative costs Compliance costs					
Auctioneers <i>Licensing</i>	Excessive regulatory burden - five license categories	Reduced competition Administrative costs Compliance costs					
Plumbers <i>Tasks requiring a licensed person</i>	Licensing regime is too restrictive; not based on a risk assessment	Higher costs to consumers					

	Summary of issue in Western Australia	Nature of costs	Reported relevance of regulatory burden across other jurisdictions					
			NSW	VIC	QLD	SA	TAS	
Trades licensing in building industry <i>National Occupational Licensing scheme</i>	Scope to save costs by harmonising occupational licensing	Administrative costs Compliance costs Barriers to entry for businesses wanting to operate in multiple states						
TRANSPORT						✓		✓
Heavy vehicle transport regulations <i>Administration</i>	Administrative inefficiencies (but significant reforms have been undertaken in this area)	Administrative costs			✓		✓	
Marine and caravan <i>Licensing</i>	No online lodgement available No capacity to register multiple craft under a bulk license	Administrative costs						
WASTE MANAGEMENT REGULATIONS						✓		
Planning approvals for infrastructure <i>Recycling</i>	Recycling constrained by difficulty of getting approvals for infrastructure, land and facilities	Administration costs Compliance costs						
Landfill levy <i>Hypothecation</i>	Revenue from waste levy is no longer fully hypothecated to managing waste or investing in recycling facilities	Administrative costs – collection by local governments Potential for inefficient spending of levy (i.e. not meet policy objectives)			✓			
OCCUPATIONAL HEALTH AND SAFETY					✓	✓	✓	✓
State laws and requirements <i>Inter-jurisdictional inconsistency</i> <i>Lack of risk-based assessment</i>	Potential cost savings from national harmonisation of laws	Administration costs Excessive compliance costs for low risk businesses	✓	✓	✓			
OTHER							✓	✓
Renewable Energy Buyback Scheme <i>Operation of scheme</i>	Lengthy timeframes for approval of the retailer's buyback terms and conditions Duplication between Western Power and Synergy obligations	Administration costs Time delays						
Disposal of Uncollected Goods Act 1970 <i>Administrative obligations</i>	Unnecessary administration incurred due to issuance of public notices	Administration costs Time delays						

Summary of issue in Western Australia	Nature of costs	Reported relevance of regulatory burden across other jurisdictions				
		NSW	VIC	QLD	SA	TAS
	Lengthy timeframes for disposal of uncollected goods Regulation is outdated due to technological advances					

^a Regulatory compliance issues raised in consultations and identified in the RTRG report.

Sources for comparative review across jurisdictions: IPART (2006) *Investigation into Investigation into the burden of regulation in NSW and improving regulatory efficiency*; Victorian Competition and Efficiency Commission (2011) *Part 2 – Priorities for Regulatory Reform - An Inquiry into Victoria’s regulatory framework*; Office of Best Practice Regulation (2013) *Final Report - Measuring and Reducing the Burden of Regulation*; Government of South Australia (2008) *Reducing Red Tape for Business in South Australia 2006-2008*; Stenning and Associates and KPMG (2013) *Measuring Red Tape: Understanding the compliance burden on Tasmanian businesses*.

3.3 Materiality of issues and costs

The impact of individual regulatory requirements can be small, but when the impact of all requirements are added the burden becomes very large – particularly for the small business sector, which has limited resources to dedicate time to address compliance requirements. In our consultations, the SBDC described this situation as follows:

It is the cumulative effect of various administrative burdens and costs that has a crippling impact on a small business. It is not always one specific piece of regulation.

At the other extreme, Synergies was provided with examples of regulatory processes that singularly represent a large burden because they affect many sectors of the economy, involve protracted and complex negotiations with government authorities and/or delay potentially high value economic activities from progressing in a timely manner.

3.3.1 Compliance burden on small businesses

Disputes handled by the Small Business Development Corporation

Since 1 July 2012 the SBDC has been operating an ‘Alternative Dispute Resolution’ (ADR) service that assists small businesses with disputes pertaining to their relationships with other businesses or with government agencies. ADR is a voluntary process where an SBDC case manager assists parties to understand their rights and responsibilities and to examine options for the resolution of a dispute without the need for a determination by a court or tribunal.

The SBDC provided Synergies with a confidential statistical summary of the types of disputes raised through the ADR process and the extent to which issues relate to red tape. Over the last 20 months, around half of the enquiries received by SBDC relate to local government, with planning approvals being the most common type of dispute. Almost half of the complaints are disputes with State Government agencies. The most frequent issues raised were licensing and issues relating to utility businesses.

State of Small Business Survey

The SBDC conducts an annual survey of small businesses that, among other things, collects data on the amount of time small businesses are spending on compliance related activities. The data provide a measure of regulatory burden, although it is not possible to discern what proportion of this time represents ‘red tape’ as opposed to an acceptable level of effort required from businesses to respond to regulatory matters that are in the public interest.

Key results are summarised in Tables 2 and 3. In 2013 the *State of Small Business Survey* found that:

- 61.3 per cent of respondents are spending between one and five hours per week on compliance related activities;
- Compared to the previous year, in 2013 there was a 6.3 percentage point reduction in the percentage of businesses spending more than ten hours per week on compliance activities (which, if statistically significant, could indicate that compliance burden has reduced)
- The most time-demanding compliance activity was taxation, which on average accounted for 63 per cent of time spent by businesses on compliance.
- In 2013 there was a small reduction in the proportion of time devoted to planning approvals (4.8 per cent compared to 7.2 per cent in 2012). This could indicate a progressive lessening of regulatory burden in planning.

Table 2 Time spent by small businesses on compliance

Hours per week	Percentage of businesses		
	2012	2013	% point change
< 1	5.5	5.1	-0.4
1 – 2	29.0	31.9	2.9
3 – 5	25.9	29.4	3.5
6 – 10	15.1	15.4	0.3
10+	24.5	18.2	-6.3

Source: *State of Small Business Survey*, Small Business Development Corporation, 2012 and 2013.

Table 3 Proportion of time devoted to different compliance activities

Compliance activity	Percentage of businesses		
	2012	2013	% point change
Taxation	60.8	63.1	2.3
Industrial relations and human resources	8.6	5.9	-2.7
Occupational licensing	7.3	7.6	0.3
Planning approvals	7.2	4.8	-2.4
Other	16.1	18.6	2.5

Source: *State of Small Business Survey*, Small Business Development Corporation, 2012 and 2013.

Synergies does not have access to the base data underpinning these tables and therefore has not assessed the statistical significance of the inter-year differences.

3.3.2 Criteria-based assessment of costs

While it is difficult to be definitive about the economic significance of particular forms of red tape without undertaking a detailed assessment, in this study we have used the following criteria-based framework to conduct a high-level assessment of the materiality of Western Australian issues described in Table 1. The five criteria for this assessment are as follows.

- Broadness of regulatory reach: – costs will generally be greater if the regulation affects a large number of businesses or consumers in the economy. The aggregate cost imposed by a regulation may be high, even if the unit cost of compliance on individual firms is small, if the regulation has widespread reach.
- Economic significance of affected industry(s) – this is intended to capture the size and significance of the industry affected by regulations, or the size of sections of government that must comply with the regulation. Industry size can be assessed using measures such as contribution to Gross State Product (GSP), turnover and number of employees.
- Incidence of regulations on small business – this criterion is used to take into account the disproportionate affect that regulatory compliance has on small businesses relative to big business. Due to the lower resources available to small businesses to address regulatory matters or to pay fees, this sector often incurs higher or disproportionate compliance burdens compared to big business.
- Direct compliance costs and frequency – this is a measure of the direct impact of the regulation on the businesses and government and the frequency of cost impact (annual or reoccurring costs)
- Indirect costs – this criterion is designed to capture the less transparent aspects of the regulatory burden, such as the potential for red tape to distort resource allocation and entrepreneurial behaviour in the economy.

Ratings against these criteria (high, mid, low) were determined by Synergies based on the characteristics of the regulatory instruments within each category of regulation and how the nature of the industries governed by the regulation. The results of this high-level assessment are summarised in Table 4.

Table 4 Materiality of costs – qualitative assessment

Area of regulation	Broadness of regulatory reach	Economic significance of industry(s) affected	Does red tape issue mostly apply to small businesses?	Direct compliance costs and frequency	Indirect costs – e.g. reduced consumer choice or less business investment	Overall cost ranking
Environmental approvals	Broad	High	No	High/upfront	High	High
Planning and development approvals	Broad	High	No	High/upfront	High	High
Building design and approvals	Broad	High	No	High/upfront	High	High
Local government administration/local laws	Broad	High	Yes	Mid/Frequent	High	High
Food safety	Mid	Mid	Yes	High/frequent	High	High
Government procurement	Narrow	Mid	Yes	Mid/frequent	Low	Low-Mid
Occupational licensing	Mid	High	Yes	Low/frequent	High	Mid
Heavy vehicle transport	Narrow	Mid	No	Mid/frequent	Mid	Mid
Waste management regulation	Mid	Mid	No	Low/frequent	Mid	Low-Mid
Occupational Health and Safety	Mid	High	Yes	Mid/frequent	Mid	Mid

Source: Synergies Economic Consulting.

Based on the ratings against each of the five criteria, Synergies concludes that several areas of regulatory burden stand out as imposing material costs, corresponding to those given a ‘high’ overall cost ranking. These are:

- Environmental approvals
- Planning and development approvals
- Building design approvals
- Local government administration of local laws
- Food safety regulation

These were rated as high cost for different reasons, but in general the first four areas have broad regulatory reach, involve high compliance costs, affect high value sectors of the economy (such as mining, which accounts for 40 per cent of GSP) and have significant scope to delay or prevent altogether the development of high value projects that would be beneficial to the economy and wider community. Food safety regulation has a narrower reach, but firms affected are mostly small to medium sized businesses

that are not well placed to address the complex regulatory requirements of attaining a food processing licence and maintaining that licence.

The costs imposed by these 'high cost' categories of regulation on a number of key sectors of the economy are examined in further detail in the next chapter.

4 Regulatory burden in key areas of the economy

This chapter presents evidence of red tape costs being experienced in a number of key areas of the Western Australian economy. The following areas are examined:

- Food safety compliance - lack of clarity around responsibilities between different government agencies, duplication, multiple layers of legislation at State, Local and Federal level.
- Major project development approvals - much progress has been made since RTRG conducted its study in 2009 report, but inefficiencies still persist.
- Approvals for tourism projects - it is evident that there are often lengthy delays in environmental and heritage planning approvals for ventures that are proposed for State-managed parks and conservation areas.
- Planning and development approvals - inconsistency across local governments, poor transparency of process, and lengthy delays for major commercial and residential developments.

4.1 Food safety regulations

The food industry in Western Australia is regulated under laws that are administered at all three levels of government - federal, state and local. In addition, supermarkets place a further layer of safety requirements on food suppliers. While public health is a priority, the evidence presented in this section suggests that the way the laws and regulations are administered is causing excessive regulatory burden for some businesses, particularly small to medium sized firms.

4.1.1 Legislative arrangements

In Western Australia food safety for the entire food chain (that is, 'paddock to plate') is governed by several pieces of legislation - the *Food Act 2008* (WA) (the Food Act), the *Food Regulations 2009* (WA) (the Food Regulations) and *Health (Food) Local Laws 2009*

At the federal level the *Food Regulation Agreement 2000 (as amended 2002 and 2008)* (the FRA) establishes a national approach to food regulation within Australia. The *Model Food Act (2000)* is designed to harmonised regulatory principles and approach across Australian jurisdictions⁸. The *Australia New Zealand Food Standards Code* (the Code) sets

⁸ Annex A of the Model Food Act forms the core provisions which each state and territory agreed to adopt. (Productivity Commission. 2009. *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. December. p 78.)

foods standards across Australia and New Zealand. The Western Australian Food Act and Food Regulations adopt the Code - which covers areas such as cleanliness, hygiene and aspects associated with the preparation and provision of food - and reflect the agreed principles agreed in the FRA.

Food exporting businesses must also comply with regulations contained in the *Export Control Act 1982*. The Australian Quarantine and Inspection Service (AQIS) regulates food intended for export.

All levels of government are involved (at varying levels) in the administration and enforcement of food regulation. The Western Australian Department of Health (DOH) is responsible for food businesses that prepare food for patients in a public hospital, diary primary production and processing businesses, primary production and manufacturing of bivalve mollusc businesses and food business that are not in a district. The DOH also has the responsibility of investigating and managing outbreaks of food-borne illnesses, and any food recalls that required coordination from a state level.

Local governments, comprising 139 councils, are responsible for food businesses within their respective districts. The DOH provides support to local councils through the development of guidance material and by providing professional development training.

4.1.2 Nature of the regulatory burden

Regulatory burdens in this sector arise through the number and frequency of assessments and audits, the inconsistency in approach across local government authorities and inconsistencies between state and territory jurisdictions. The issues are summarised below.

Assessments and audits

Part 9 of the Food Act requires a food business to either register or notify the appropriate enforcement agency of its operation.⁹ Registration is a once-off administrative mechanism that applies to most food businesses in Western Australia. For those food businesses exempted from registration¹⁰ there remains a requirement to notify the appropriate enforcement agency of its activities.

⁹ This is a new requirement for enforcement agencies and the food industry.

¹⁰ These are businesses that (1) are conducted solely for charitable or community purposes and prepare non-potentially hazardous food or foods that, after being appropriately cooked, are served for immediate consumption; (2) sell certain packaged food; (3) provide complimentary drinks in conjunction with another kind of business; and (4) form part of premises registered under the *Commonwealth Export Control Act 1982*.

All food businesses must be assessed for compliance under the Food Act, Food Regulations and the Code. There are many ways monitoring can be conducted, including on-site assessments, auditing, sampling or document verification. This assessment process (i.e. scope, frequency and duration) is at the discretion of each enforcement agency, taking into consideration risk management principles and the activities of the food business.

According to the DOH, most enforcement agencies determine regulatory measures based on the risk and activities of a food business. Whilst it is not mandatory for enforcement agencies to undertake risk prioritisation of the food business, The DOH reports that the majority of enforcement agencies (130) have adopted this approach to assist with food business monitoring and compliance.¹¹ During 2010-2012 an average of 96.2% of food business were risk profiled¹².

However, Synergies understands that the possibility still remains, particularly for businesses operating outside metropolitan Western Australia, of a food processing business with a strong track record in food safety being subject to the same level of assessment as a small start-up business.¹³

Regulatory food safety auditing requirements apply to those food businesses that are required to implement a documented food safety program in accordance with the Code – approximately 6 per cent (1279) of food businesses.¹⁴ This includes businesses that serve food to vulnerable populations and some primary production and processing food businesses.

Supermarkets such as Woolworths and Coles, place an additional layer of safety requirements on food suppliers, such as BRC Global Standard and WQA Woolworths.¹⁵ The Food Processing Industry Strategy Group notes that the information sought by the audits undertaken across all levels of government and the private sector can be duplicated by up to 80 per cent, the number of audits appears to be excessive, as does the significant direct and indirect costs.¹⁶

¹¹ Department of Health. (2013) *Enforcement Agency Reporting Information (1 July 2010 to 30 June 2012)*. June. p 7.

¹² Department of Health. (2013) *Enforcement Agency Reporting Information (1 July 2010 to 30 June 2012)*. June. p 7.

¹³ CCI, during stakeholder consultation (March 2014).

¹⁴ Department of Health. (2013) *Enforcement Agency Reporting Information (1 July 2010 to 30 June 2012)*. June. p 15.

¹⁵ CCI submission to ERA Issues Paper.

¹⁶ Food Processing Industry Strategy Group. (2012). *Final Report of the Non-Government Members*. September. p 171.

Inter-jurisdictional differences

Despite recent reforms, including the FRA and the *Model Food Act 2000*, differences in food safety regulations are still evident between the states and territories (Productivity Commission, 2009¹⁷). As each state and territory maintains their own regulations, audit processes and have varying levels of priority and resources assigned to enforcement. The Food Processing Industry Strategy Group assert that these differences across the jurisdictions 'cause large unnecessary costs for food manufacturers operating in multiple jurisdictions'.¹⁸

There are also material differences between food safety obligations for Australian and New Zealand businesses, which have a material impact on the compliance costs incurred by food manufacturers. For example, Food Control Plans (which are similar to FSPs) are a voluntary obligation under New Zealand legislation.¹⁹ Also, there is only one central agency in New Zealand responsible for regulating the different aspects of food safety affected by primary production; processing; manufacturing; transport; storage; wholesale; retail and international trade of food.²⁰ By having integrated approval agency, New Zealand producers benefit through reduced duplication and inconsistency.²¹ The Australian Bureau of Agricultural and Resource Economics and Science (ABARES) recently recommended that there is a sound case to re-evaluate the provisions of Annex B of the Food Model Act to challenge whether it is necessary to allow the provisions to be open to jurisdictional variation.²²

Direct compliance costs to industry

The cost of demonstrating compliance with regulatory requirements, often to multiple authorities, is a significant issue for the food sector. As noted by Woolworths, in its submission to the Productivity Commission's review of food safety²³,

¹⁷ Productivity Commission. 2009. *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. December 2009.

¹⁸ Food Processing Industry Strategy Group. (2012). *Final Report of the Non-Government Members*. September. p 104.

¹⁹ Productivity Commission. 2009. *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. December 2009. p 106.

²⁰ Productivity Commission. 2009. *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. December 2009. p 167.

²¹ Productivity Commission. 2009. *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. December 2009. P 329.

²² Gibbs, C, Harris-Adams, K & Davidson, A (2013) *Review of Selected Regulatory Burdens on Agriculture and Forestry Businesses*, ABARES (Report to client prepared for the Department of Agriculture's Agricultural Productivity Division), November. p99.

²³ Productivity Commission. 2009. *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. December. p 160.

We are concerned that the lack of legislative consistency and administrative co-ordination between State and Local Government jurisdictions continues to impose significant and unnecessary burdens on industry with little or no consumer benefit.

Several case examples that demonstrate compliance costs are presented in Box 1. In particular, our consultations and the literature suggest that the magnitude of regulatory burden represents a material barrier to entry for small businesses. These costs generally fall disproportionately on smaller firms that do not have the resources to cope with the compliance obligations. Compliance costs are typically fixed regardless of firm size.²⁴

At an aggregate, whole of sector level, these regulatory costs are potentially high. The regulations affect many Western Australian businesses. The In 2011-12, approximately 55 per cent of the State's retail trade (\$16.3 billion) was attributable to 'food' and 'cafes, restaurants and takeaway food services.'²⁵ During this period there were 18,358²⁶ food businesses operating within the State. The State's food manufacturing sector is valued at \$3.92 billion.²⁷

Indirect costs

In addition to the direct monetary and time costs of complying with food regulations, excessive regulatory burden can deter some businesses from commencing operations in Western Australia. A consequence of this is reduced business investment, innovation and potentially less consumer choice of locally made food stuffs. For example, the small cheese producer profiled in Box 1 is experiencing high regulatory costs in marketing its produce in farmer's markets across different parts of the State, which arguably is deterring this producer, and similar small producers, from entering the market and supplying innovative and diverse food products.

²⁴ CCI, during stakeholder consultation (March 2014).

²⁵ Australian Bureau of Statistics. (2013). *Western Australia at a Glance*.

²⁶ Department of Health. (2013) *Enforcement Agency Reporting Information (1 July 2010 to 30 June 2012)*. June. p6. Based on data from the 2011/12 reporting period.

²⁷ Department of Agriculture, Fisheries and Forestry. (2013) *Australian Food Statistics 2011 – 2012*. Canberra, p. 68.

Box 1 Case examples of compliance costs for Western Australian food businesses

Meals on Wheels suppliers ^a

A medium size organisation (delivering around 80 000 meals per annum) estimated food safety program set-up costs to be \$3,000 of chef/manager's time. Another supplier estimated that the implementation of a food safety program triggered additional expenditure of around \$10,000 over two years, for additional equipment such as thermometers, data loggers, ice bricks and eskies, refrigerator monitoring equipment and software. The ongoing cost to another medium sized provider was estimated to be around \$3,800 per year consisting of kitchen staff time (\$1,500) and administration staff time (\$1,800), in addition to \$500 additional stationery and printing.

Cambray Cheese, Western Australia ^c

Cambray Cheese is a family operated business located in Nannup, Western Australia. The business has experienced considerable regulatory hurdles in establishing and maintaining its operations:

- Cambray Cheese had to register with Dairy Australia to operate a commercial dairy business. This involves payment of an annual industry levy which contributes to dairy research and development.
- As a dairy food producer, Cambray had to develop a Food Safety Plan under the Food Act. Synergies was advised that this was a confusing process as minimal guidance was available from the Department of Health on exactly what was required for the plan.
- The business must take fortnightly samples of its cheese products for testing by the Department of Health. Cambray Cheese has experienced a number of false positive test results. There has been an instance where the Department of Health recalled Cambray's products, only to find that the contamination came from the Department's own laboratory. The recall cost time and lost income.
- The business sells much of its produce at farmers' markets across a number of shires. Cambray Cheese must be registered with each shire in which the farmer's market is located. This is contrary to the initial advice received by Cambray Cheese from the Department of Health, which advised that they would only need to be registered with the Department to sell products at farmers markets.
- Furthermore, despite initial advice that the registration fee charged by shires would only be a one-off fee, some shires are charging this fee on an annual basis. Fees can range from \$60-\$600, with most being in the \$150-\$200 range.

Farm-direct meat retailer, Western Australia ^c

The Small Business Development Corporation was contacted by a client intending to set up a small retail business selling his own meat products from the farm direct to consumers. The client wanted advice on what regulatory obligations would be, specific for his circumstances (excluding general requirements common to all businesses). The following list of regulatory obligations was prepared:

- Food sellers must register with the Department of Health via the Registration of Food Business form
- Meat retailers must contact Meat and Livestock Australia to address obligations concerning food service and retailing of meat products
- The business should review the National Measurement Act 1960 and associated regulation to confirm whether or not meat is a product that is required to be sold by weight; as not all products require this
- The business must contact the Department of Health Department of Health for:
 - requirements for the premise where the animal is killed, stored, prepared and sold
 - requirements for transporting products (food transport vehicles)
- The business should refer to the Local Government Standards applicable to the District in which it proposes to operate and identify obligations covering the retailing of meat at growers/weekend markets. These obligations can differ across Districts/Shires
- Refer to Food Standards Australia and New Zealand.

^a Productivity Commission. 2009. *Performance Benchmarking of Australian and New Zealand Business Regulation: Food Safety*. December. p 116. ^b Chamber of Commerce and Industry Western Australia (2012) *Submission to Green Paper to Inform Development of a National Food Plan*; ^c SBDC, during stakeholder consultation (March 2014).

4.2 Project approvals for the resources sector

Major resource projects are regulated, to varying degrees, by all three levels of government, with the State assuming the primary role. Regulations are designed to guard against unacceptable damaging impacts of mining activity on the environment, water resources and indigenous culture and heritage. The mining and petroleum is of critical importance to the Western Australian economy, accounting for 37 per cent of gross state product (GSP) in 2013.²⁸ Regulatory inefficiencies not only impose direct costs on the sector but also risk inhibiting the confidence of companies to invest in exploration and operations.

Although Western Australia's regulatory frameworks are seen as leading practice, compared with practices in Canada, the United States of America and New Zealand,²⁹ our review suggests that there remains significant scope to improve the regulatory framework.

4.2.1 Legislative arrangements

The State holds the primary role, with the Commonwealth is responsible for matters of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999 (Cwth)* (the EPBC Act), as well as projects on Commonwealth lands and in Commonwealth waters. Local governments also have a role through planning legislation and secondary approvals.³⁰

The approval process for major projects requires compliance with multiple pieces of state legislation, which are enforced by various government departments/agencies. These obligations broadly include but are not limited to the features summarised in Table 5 below.

²⁸ Government of Western Australia: Department of Mines and Petroleum, (2014). *Quick Resource Facts*. Available from: <http://www.dmp.wa.gov.au/7846.aspx> [Accessed 11 March 2014].

²⁹ Productivity Commission (2013) *Major Project Development Assessment Processes, Research Report*. Canberra. p 11.

³⁰ However, the responsible Minister can in certain circumstances call-in or declare a development to be a major project, which effectively curtails local government planning powers.

Table 5 Features of legislation relating to major resources projects in WA

Issue	Agency	Legislation
Development Assessment and Approval (DAA) processes for major (or 'significant') projects	Department of State Development	<i>State Agreements</i>
Resource legislation	Department of Mines and Petroleum	<i>Mining Act 1978</i> <i>Offshore Minerals Act 2003</i> <i>Petroleum and Geothermal Energy Resources Act 1967</i> <i>Petroleum (Submerged Lands) Act 1982</i> <i>Petroleum Pipelines Act 1969</i> <i>Petroleum Act 1936</i>
Requirement to conduct an environmental impact assessment (EIA) and may also be required to undertake other assessments such as a social impact assessment	Environmental Protection Authority Department of State Development	<i>Environmental Protection Act 1986</i>
Protection of Indigenous heritage	Department of Indigenous Affairs	<i>Aboriginal Heritage Act 1972</i>
Protection of the environment	Department of Environment and Conservation	<i>Environmental Protection Act 1986</i> <i>Conservation and Land Management Act 1984</i> <i>Contaminated Sites Act 2003</i> <i>Waste Avoidance and Resources Recovery Act 2007</i> <i>Reserves (National Parks, Conservation Parks, Nature Reserves and Other Reserves) Act 2004</i>
Protection of natural resources	Department of Water	<i>Country Areas Water Supply Act 1947</i> <i>Rights in Water and Irrigation Act 1914</i> <i>Swan and Canning Rivers Management Act 2006</i> <i>Waterways Conservation Act 1976</i>

Source: Productivity Commission (2013) *Major Project Development Assessment Processes*, Research Report. Pp 70-71. Chamber of Commerce and Industry (2013) Submission to the Productivity Commission Issues Paper Major Projects Development Assessment Processes.

Major project approvals for the mining and resources sector in Western Australia are conducted under the Lead Agency Framework, which was introduced in 2009.³¹ This Framework requires that assistance with, or coordination of, approvals for a proposal is administered by one department. This agency is responsible for providing proponents with information on statutory requirements and coordinating the necessary approval processes. The lead agency also consults on each proposal with relevant agencies. The lead agencies for mining and resource projects are:³²

- Department of Mines and Petroleum

³¹ Department of Premier and Cabinet. *Lead Agency Framework: A Guidance Note for Implementation*. p 6.

³² Department of Premier and Cabinet. *Lead Agency Framework: A Guidance Note for Implementation*. p 9.

- Lead agency for regulation of mining, petroleum, geothermal, carbon capture and storage
- Lead agency for exploration promotion (pre-competitive geoscience, Exploration Incentive Scheme)
- Department of State Development
 - Lead agency for major resource and industry infrastructure projects.

4.2.2 Nature of the regulatory burden

The approval process for resource projects can be complex, due to the large quantity of legislation and the number of regulatory instruments that may apply to a project, depending on its size, type and location. For example, AngloGold Ashanti required 66 different approvals for its Tropicana Gold Project in Western Australia³³ whilst some other businesses have suggested their project required hundreds of approvals from various agencies at all levels of government³⁴. Although the Western Australian regulatory framework has been assessed to be by the Productivity Commission to perform well compared to its international counterparts, our review suggests that there is still significant scope for improvement. The areas for improvement are summarised below.

Regulatory overlap, inconsistency and duplication

Although steps have been taken in recent years to reduce the financial impact (i.e. compliance and administration costs) of regulatory overlap and duplication, it still remains a key issue for stakeholders.

Duplication exists between the various levels of government. According to the Minerals Council of Australia³⁵, the EPBC Act is 'widely regarded as simply another layer of regulation, process-driven and without providing demonstrable additional value in the protection of biodiversity above that which is already afforded through other jurisdictional requirements. It is also present in the analysis and reports required by regulatory agencies. As noted by CCI,³⁶ tailored reports are required by both state and federal environmental approvals and for monitoring and compliance of projects after approvals have been granted; but cannot be shared between approval authorities.

³³ Productivity Commission (2013) *Major Project Development Assessment Processes, Research Report*. Canberra. p 10.

³⁴ CCI (2013) *Submission to the Productivity Commission Issues Paper: Major Project Development Assessment Process*. p2.

³⁵ Minerals Council of Australia. (2013) *Policy brief: for the forty-fourth commonwealth parliament*. September. p 51.

³⁶ CCI (2013) *Submission to the Productivity Commission Issues Paper: Major Project Development Assessment Process*. p4.

Duplication also exists between the Commonwealth National Greenhouse and Energy Report Scheme.³⁷

Regulatory obligations can also be inconsistent, which ultimately increases the cost of a project. This was highlighted by CCIWA in the context of environmental offsets:

within a project a single environmental impact can require two separate, sometimes conflicting, actions as an offset. For example Federal procedures could require a direct offset of offsite habitat protection, while the state might mandate scientific research in response to the same impact, effectively double counting the impact and its costs to the business.

Regulatory burden is expected to be reduced as a result of two bilateral agreements that the Western Australian government signed in mid and late 2013. These agreements should underpin a streamlining of environmental assessment and approval process and reduced duplication of state-based procedures with Commonwealth procedures under the EPBC Act.^{38 39}

Capacity and performance of regulatory bodies

It is widely acknowledged by industry participants that the current regulatory system faces administrative capacity and capability constraints, which have been compounded in recent years due to the mining boom and increasing planning complexities relating to climate change precautions, land and water use.⁴⁰ Similar concerns were also raised by a respondent in a recent survey of mining companies⁴¹:

Western Australia should have everything going for it, but its permitting processes are now more costly than actual exploration on the ground, are slow, and the regulators woefully under manned and underfunded.

³⁷ CCI (2013) *Submission to the Productivity Commission Issues Paper: Major Project Development Assessment Process*. p4.

³⁸ Government of Australia: Department of the Environment (2013a). *Western Australia Bilateral Agreement Information*. Available from: <http://www.environment.gov.au/topics/environment-protection/environment-assessments/bilateral-agreements/wa> [Accessed 12 March 2014].

³⁹ Government of Australia: Department of the Environment (2013b). *'One stop shop' for environmental approvals*. Available from: <http://www.environment.gov.au/topics/about-us/legislation/environment-protection-and-biodiversity-conservation-act-1999/one-stop> [Accessed 12 March 2014].

⁴⁰ Minerals Council of Australia. (2013) *Policy brief: for the forty-fourth commonwealth parliament*. September. p 51.

⁴¹ Wilson A, McMahon F, Cervantes M. (2013) *Fraser Institute Annual Survey of Mining Companies 2012/13*. p 41.

Timeliness

Major resource projects often take a significant period of time to develop and construct and in some instances can take up to a decade to complete⁴². Whilst there are a wide range of factors that contribute to this timeframe, the approvals process represents a key stage in the development process. According to the Department of Mines and Petroleum, mining projects in WA take on average 28 months⁴³ to complete the environmental assessment process of the Department of Mines and Petroleum and the EPA; though timeframes can be significantly longer.

Although statutory and targeted timelines exist, performance against these can be varied. For example over the last two reporting periods the EPA has not meet agreed initial timeframes in 20% (2011/12)⁴⁴ and 19% (2012/13)⁴⁵ of assessments, respectively. During 2013, the majority of applications assessed by the Department of Mines and Petroleum met the target of 80 per cent finalised within the agreed timeframe.⁴⁶

Delays can also occur as a result of inefficient practices, which lead to long delays. This has been seen in the context of basic raw materials approvals which in some instances have taken four or five years to resolve.⁴⁷ Transparency on the assessment process and its requirements is also important. As late requests for additional information can add to costs and lengthen the approval process.

Procedural fairness

According to CCI, procedural fairness remains an ongoing concern for many project proponents in WA. Whilst recent changes have been made, through the introduction of guidelines for environmental impact assessments, there is still scope for limited transparency and/or predictability in the approval process. This was highlighted by CCI:⁴⁸

...the WA Minister for Mines and Petroleum recently enacted a blanket ban on coal mines in the Margaret River region without any strategic assessment of the region.

⁴² Kenneth W Clements and Jiawei Si. 2011. "The investment project pipeline: cost escalation, lead time, success, failure and speed", Australian Journal of Management. 36(3): 317-348

⁴³ Department of Mines and Petroleum. 2012. How long does it take to get a mine approved in Western Australia? http://www.dmp.wa.gov.au/documents/WA_Mine_Approval_Timelines.pdf

⁴⁴ Environmental Protection Authority. 2012. Annual Report 2011-12.

⁴⁵ Office of the Environmental Protection Authority. 2013.

⁴⁶ Department of Mines and Petroleum. (2013) *Approvals Performance Report – Quarter 4 2013*. p 2.

⁴⁷ CCI (2013) *Submission to the Productivity Commission Issues Paper: Major Project Development Assessment Process*. p5.

⁴⁸ CCI (2013) *Submission to the Productivity Commission Issues Paper: Major Project Development Assessment Process*. p6.

The decision followed an impact assessment and appeal for one project in the region under which other existing and potential investors had no indication it would form the basis of a more wide ranging decision.

...Environmental assessments often form the primary vehicle for governments to engage the public on major projects ... environmental assessments therefore often consider wider cultural and strategic development issues, outside the relevant acts (in this case cultural and economic issues).

4.2.3 DMP 'Cost of Doing Business' review

In May 2013 the Minister for Mines and Petroleum commissioned a review of all policies and guidelines administered by DMP that have, or potentially can have, an impact on the costs of doing business in Western Australia. The review is yet to be finalised and details remain confidential but the draft findings (unpublished) show that there is scope for significant cost savings – in the order of tens of millions per annum. These cost savings represent benefits to the mining and petroleum industry and arise through the removal of duplication in reporting requirements across approval and assessment agencies, improved transparency of policy guidance and better administrative processes.

The identification of these regulatory efficiencies, with planned actions to resolve the issues, is a positive step toward addressing regulatory burden in the resources sector. Some of DMP's earlier reform initiatives, which are outlined in section 2.3.2, also appear to be delivering benefits in terms of reducing regulatory burden (for example, the results of the 2013 Fraser Institute survey, which found that global mining company executives now rank Western Australia as the topmost state in Australia in terms of regulatory certainty, and sixth overall out of 112 jurisdictions internationally, up from 15th place last year).

4.3 Regulatory burden in the tourism sector

A wide range of licences, permits and regulations apply to the tourism industry, which are issued through either local councils or state and federal government departments. Complicated and lengthy approvals processes and regulatory inconsistencies are causing significant regulatory burden for some businesses, particularly when the tourism venture involves innovative elements that cannot be readily addressed under existing regulatory arrangements or policies. Burdens are also especially apparent for those ventures that interact with Western Australia's natural environment.

The Western Australian tourism sector is predominantly made up of small businesses (approximately 86 per cent of businesses in the sector are classed as ‘small’).⁴⁹ The burden therefore falls disproportionately on smaller firms that do not have the resources to cope the administrative burdens and financial capacity to persevere with the lengthy approval processes or ongoing compliance obligations.

4.3.1 Legislative arrangements

The most common licences issued by State Government for tourism activities are summarised in Table 6 below.

Table 6 Common tourism licences in Western Australia

Key activity	Agency	Legislative requirement
Land based activities	Department of Environment Regulation (DER)	If conducted on lands or waters managed by DER – a permit is required
<ul style="list-style-type: none"> ▪ E.g. Vehicle tours ▪ Safari tours ▪ Guided tours ▪ Adventure activities ▪ Souvenir & food outlets 	(responsibility for managing WA’s national and marine park, regional parks and state forest recreation areas)	If conducted on Aboriginal land an entry – a permit is required
Water based activities	Department of Transport, Marine division	Licence
<ul style="list-style-type: none"> ▪ E.g. Hire drive operators ▪ Passenger carrying vessels 		
Tour operation licences	Department of Transport, Passenger Services division	Licence
<ul style="list-style-type: none"> ▪ E.g. winery/sightseeing tours ▪ Airport shuttles ▪ Limousines ▪ Coach services 		

Source: Small Business Development Corporation, <http://www.smallbusiness.wa.gov.au/TourismBoost/ensuring-business-success/regulations-and-protection/> (accessed 14 March 2013)

4.3.2 Nature of the regulatory burden

The level of regulation imposed on a business varies according to the nature of the tourist activity and location licences to be acquired. Regulatory obligations include mandatory operating standards, reporting requirements, audits and application fees. The SBDC provided Synergies with a summary of the range of regulatory requirements that a typical eco-based tourism business would need to contend with. In the scenario presented in Table 7, which is based on a ‘real life’ example, requirements are summarised for a tourist business that proposes to take tourists on walking tours through a National Park in Western Australia. During the tour tourists would forage

⁴⁹ Tourism Research Australia. 2012. *Tourism Business in Australia June 2010 to June 2012: Appendix C – Tourism Businesses in Australia’s States/Territories by Employment Size*. p 10.

for food, prepare and eat it. The operator transports the tourists to and from the National Park. They also manage the booking process for the tour.

Table 7 Obligations for an eco-based tourism business

	Regulatory requirement	Level of Government
Tourism business	Travel agents licence	State
	Authorised Parking Permit	Local
	Commercial Operations Licence	State
	Omnibus licences – tour and charger passenger vehicles (TC)	State
	Transit and Mining Access Permits for Aboriginal Reserves (if applicable)	State
	Vehicle licence	State
	Permit to Conduct Commercial Activities in Commonwealth National Parks and Reserves (if applicable)	Commonwealth
Employing staff (within the State system)	Relevant Award & Minimum Conditions of Employment	State
	<ul style="list-style-type: none"> • Normal Conditions • Penalty Rates 	
	Timesheets and Payslips	State
	Superannuation	Commonwealth
	Registration for PAYG	Commonwealth
	Workers Compensation Insurance	State
	OHS Standards and Obligations	State
	<ul style="list-style-type: none"> • Duty of Care • Performance of Manual Tasks • Working Hours • First Aid Facilities and Services • Violence, Aggression, Bullying in the Workplace • Prevention of Falls in the Workplace • Infectious Diseases • Personal Protective Clothing and Equipment • Occupational noise management - Hearing protector program; Measurement and assessment of noise emission and exposure • Code of Practice - Manual Tasks • Code of Practice - Safeguarding of Machinery and Plant • Joint Australian and New Zealand Standards AS/NZS 2210: Occupational Protective Footwear • Clothing for protection against heat and flame 	
Operating a business (general requirements)	Australian Business Number Registration (ABN)	Commonwealth
	National Business Name Register	Commonwealth
	TFN Application	Commonwealth
	Goods and Services Tax Registration (GST)	Commonwealth
Food business	Australia New Zealand Food Standards Code (Section 3)	Commonwealth State/ Local
	Registration of a Food Business	Local
	Approval to use containers other than a receptacle	Local

	Regulatory requirement	Level of Government
Entering a National Park	AS 2444-2001 Portable Fire Extinguishers and Fire Blankets - Selection and Location	Commonwealth
	AS3301- 1902 Approval and Test Specification - Particular Requirements for Microwave Ovens	Commonwealth
	Australia New Zealand Food Standards Code	Commonwealth
	Aquatic Eco-Tourism Operator's Licence	State
	Lease of Land Managed by the Department including	State
	National Parks (All Purposes)	State
	Environmental Impact Assessment - Australian Antarctic Territory [if applicable]	State
	Lease of Land Managed by the Department including National Parks (All Purposes)	State

Source: Small Business Development Corporation.

Approval process

The approval process for new tourism projects can be a complicated and lengthy process, particularly for operators that wish to offer innovative experiences and/or their proposed tour interacts with the natural environment (for example, national parks, state forest, conservation areas or waterways). In consultations with the SBDC, examples were presented that demonstrate this regulatory burden to be a material barrier to entry (see Box 2).

The delays can mostly be attributed to the overlapping and at times conflicting regulatory framework. It is often the case that interagency referrals must be obtained as part of the assessment/approvals process. Delays can also be attributed to the nature of the sector, where the proposed experiences are often novel and innovative, and thereby requiring regulators to be responsive/adaptive.

Costs

The case examples in Table 8 and Box 2 illustrate not only the scale of regulatory burden experienced directly by 'start up' tourism ventures but, perhaps more importantly, the risk that innovative tourist offerings will be hampered or never emerge because of the difficulties in getting approvals. This ultimately reduces the range of tourism options in the State and arguably results in loss of potential economic benefits and consumer value.

Box 2 Case examples of regulatory costs for Western Australian tourism businesses

Sea planes on the Swan River

Catalina Adventures is a West Australian tourism company that provides adventure tours in Perth and the Kimberley. The company has plans to expand its service offering to include seaplane voyages taking off from the Swan River to Dunsborough, Geraldton, the Abrolhos Islands, Broome and Ningaloo Reef.

Before offering tourists these experiences, various applications must be lodged, assessed and approved by various government departments and agencies at all levels of Government. This is can be a time consuming and frustrating process, due to the number of regulatory agencies (5-6 government agencies) involved and that individually they have the power to say no.

The tours have experienced significant time delays and administrative hurdles from two regulatory authorities – the Metropolitan Redevelopment Authority and the Swan River Trust – despite support for the plans from the Tourism Council of Western Australia. In the case of the Swan River Trust the application to land seaplanes on the Swan has taken over a year to be given approval to undertake a 12-month noise monitoring trial. Regulatory inconsistencies have also caused delays as the Metropolitan Redevelopment Authority believes the city helipad is no longer operational (due to its close proximity to the Queens Riverside redevelopment area) but the Civil Aviation Safety Authority still recognises the helipad as an appropriate place to launch and land helicopters. Approval from the Department of Transport and the Civil Aviation Safety Authority will be required before any tours can be conducted.

Segway Tours

Segway Tours provides guided Segway tours in Perth and Rottnest. After coming across the transportation devices whilst on holiday in Washington DC, Owen Williams knew it would be a great experience for tourists to experience Perth. So innovative was the concept that when initially presented to Department of Transport in 2007, they did not know what to do with it. In effect, Western Australia's legislation did not recognise Segways.

It has taken Segway Tours approximately 6 years, culminating with the passing of legislation, allowing for their use for tour purposes on approved cycle ways. However, this is only one of many regulatory hurdle Segway Tours have had to navigate. For example, Segways also had to be approved for use by local government authorities to allow various destinations to be added to the tours.

Sources: Wilkie, Dan (2013) *WA first Segway tours roll out of Barrack Square*, Business News WA, 2 October 2013; Wilkie, Dan (2013) *Engines idle as approvals stall*. Business News WA, 18 October 2013; Wilkie, Dan (2013) *Swan River seaplane trial wins approval*. Business News WA, 29 November 2013.

4.4 Planning and development assessment

Planning and development regulations have an important role in meeting contemporary challenges of accommodating Perth's growing population, providing affordable housing, promoting higher urban densities to reduce the potential social and public costs associated with urban sprawl, maintaining amenity values (including, for example, built heritage, neighbourhood character and green space) and managing 'greenfield' development.

Planning often involves making decisions about allocating land and development opportunities to meet the various interests and multiple societal objectives. Because so many individuals, households and businesses interact with the planning system in pursuing their goals, there is considerable scope for any inefficiencies in planning administration to be amplified many times. At one level, the cost of inefficient planning processes manifests in higher than necessary compliance costs to households and businesses or inconvenient delays. At another level, red tape in planning can lead to costly indirect impacts such as restrictions on competition, constraints on land supply, poor housing affordability and traffic congestion.

4.4.1 Legislative arrangements and Western Australia's planning system

At the broadest level, planning has two main components – a strategic component and a statutory planning component.⁵⁰ Strategic planning sets a framework for future development of towns and regions in Western Australia, to guide land supply, to allocate land to different classes of use, and to set the 'big picture' parameters for urban and regional development. Statutory planning is guided by legislation and concerns the day-to-day decision making by the various responsible authorities on planning schemes, subdivision and development proposals.

Legislation

The principal legislation governing land-use planning, sub-division and development in Western Australia is the *Planning and Development Act 2005* (the P&D Act). Its stated purposes are to provide for an efficient and effective land-use planning system in the State, and to promote the sustainable use and development of land in the State. The P&D Act is the enabling legislation for most of the tasks undertaken by the Western Australian Planning Commission (WAPC), the Department of Planning (DoP) and local government in progressing planning and development for Western Australia.

The *Town Planning Regulations 1967* prescribe the procedures by which local planning strategies, local planning schemes and amendments to local planning schemes must be prepared and adopted by local government, the WAPC and the Minister for Planning; and establish a 'Model Scheme Text' for local planning schemes.

Other relevant legislation that may influence planning decisions includes, but is not limited to: *Environmental Protection Act 1986*, the *Heritage of Western Australia Act 1990* and the *Contaminated Sites Act 2003*.

Planning authorities

A number of entities are responsible for different functions within the State's planning system.

- The WAPC is a statutory authority with state-wide responsibility for urban, rural and regional land-use planning and land development matters. The WAPC is required to respond to the strategic direction of government and is responsible for the strategic planning of the State.
- The DoP provides professional and technical expertise, administrative services, and resources to advise the WAPC and implement its decisions. In this partnership the

⁵⁰ Department of Planning (2014) *Introduction to the Western Australian Planning System*, February 2014

WAPC has responsibility for decision-making and a significant level of funding while the DoP provides the administrative and technical advice.

- Local governments have the responsibility of planning for local communities by ensuring appropriate planning controls exist for land use and development. This is facilitated through the preparation and administration of local planning schemes and strategies, which are required under the P&D Act to be consistent with State Government planning objectives and requirements. Local planning schemes contain planning controls such as designation of appropriate land-uses, residential densities and development standards. Local governments must base their planning decisions on the provisions and controls in their local planning scheme. The WAPC has delegated to local government the power to determine most development applications under the region schemes.
- Development Assessment Panels (DAPs) were introduced to the Western Australian planning system through the *Planning and Development (Development Assessment Panels) Regulations 2011* (DAP Regulations). DAPs are panels of five members, comprising a mix of technical experts and local government representatives. DAPs have the power to determine applications for developments above a particular size (as measured by specified monetary value thresholds), and thus override the authority of local government to make these decisions. DAPs exist to provide additional transparency, consistency and reliability in decision-making on complex and significant development applications.

4.4.2 Nature of the regulatory burden

During consultation, a range of concerns were recorded about the regulatory burden imposed by Western Australia's planning system. While improvements were acknowledged in some areas - for example, the introduction of DAPs for developments above a threshold size - there remain concerns about inconsistencies between state planning strategy and local government policies and local planning schemes. Inconsistencies also arise between local governments in the treatment of similar issues in different districts. This is said to be introducing uncertainty about allowable housing densities, residential versus commercial zoning, the predictability of development assessment outcomes and other matters, which are resulting in prolonged time delays for developers.

Information collected through our consultations support an earlier finding by the Productivity Commission in 2011 that, in relation to planning systems generally across Australia, conflicts about land uses have not been resolved early enough and at a

strategic level.⁵¹ Where these conflicts pervade through to the development assessment stage, this typically causes protracted assessments and uncertainty for project proponents. The Productivity Commission observes:

Because some important policy issues are not fully resolved during strategic and structure planning, de facto policy-making occurs during development assessment and rezoning where significant discretion is exercised (p. XXVI).

Concerns were also raised about duplication of responsibilities across government departments in regard to assessment of major housing and infrastructure developments. The Master Builder's Association stated that:

One of the difficulties in reforming the planning regime, however, is the overlap it has with several government departments such as Environment, Local Government, Transport, Health, Housing and Infrastructure. This makes a holistic approach more difficult to achieve. An effective State Infrastructure Plan or Strategy must be developed to better integrate land development and infrastructure provision.

The lack of an effective Lead Agency Framework approach in Western Australia would appear to be causing these concerns.

⁵¹ Productivity Commission (2011) *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment*, April 2011

4.4.3 Costs imposed on businesses and community

The Productivity Commission (2011) categorised the costs of compliance with development and planning regulations as follows (Table 8):

Table 8 Types of direct and indirect costs of development and planning regulations

Direct costs	Indirect costs
The costs of preparing, submitting and providing supporting material for planning scheme amendments (rezoning) or development applications	Increased holding costs associated with unnecessary delays in obtaining planning approval (interest on capital, foregone revenue from development, higher input costs, contractual penalties)
Compliance costs of meeting specified development controls (for example, restrictions on signage, housing density, heritage requirements)	Reduced investment and business confidence arising from uncertain and protracted timeframes
Fees and charges for applications and other administration fees (for example, charges to verify developments accord with approved drawings)	Incidence of developers avoiding certain jurisdictions and local government areas because of comparatively high regulatory burden
Developer contributions for local, headwork and community infrastructure	Incidence of developers postponing land acquisition or release (land banking) and distorting sectoral and market investment decisions

Source: Based on Productivity Commission (2011) *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment, April 2011, page 228.*

Based on our consultations, the costs of regulatory burden in planning and development assessment are not so much related to the direct cost of fees and charges or preparation of development proposals (although this is an issue in some instances) – it is more to do with the delays and uncertainties in obtaining approval to develop. The Master Builders Association advised that developers frequently experience delays in getting development approval, which gives rise to capital holding costs. It is common practice for developers to anticipate these delays by incorporating a risk premium in the cost of their building projects, which is ultimately passed onto property buyers.

The Urban Development Institute of Australia (WA) has quantified the cost of planning delays on average home lots. Their study found that a six month delay increased the price of an average lot by 13 per cent, and a four year delay increased the price by 68 per cent.⁵²

The cost of planning uncertainty therefore can lead to higher development costs, impedes investment decisions and potentially results in poor public amenity outcomes, as exemplified by the Forrest Highway case study in Box 2. There are also many examples of planning red tape that have adversely affected small businesses. Two of these are presented in Box 3.

⁵² UDIA (WA) Submission to the Senate Select Committee on Land and Housing Affordability, March 2008

Box 3 Case examples of regulatory burden associated with the planning system

Forrest Highway services and amenities

The Forrest Highway was a large scale infrastructure project, involving design and construction of 70.5 km of dual carriageway. The Highway and the extension of Kwinana Freeway were officially opened on 20 September 2009. But after almost five years of operation there are still no service stations or roadside facilities for most of the 110km journey between Perth and Lake Clifton.

It is understood that there is commercial interest from private developers to build a service station at Herron Point Road, 10 kilometres north of Lake Clifton. However, the development requires approval from Main Roads Department and at this stage no approval has been given because the proposal does not conform to the Department's requirements. While details of the factors contributing to Main Road's concerns have not been published, ongoing delays in establishing a service station will continue to cause inconvenience for the Western Australian community. Approximately 50,000 motorists per weekday travel along this stretch of Highway.

Retrospective changes to local planning requirements

In January 2013 the Small Business Development Corporation was approached by a retail business owner to assist in resolving a dispute with local council. She was found by council to be operating a business without correct land zoning. She was required to submit a Change of Use application and pay for seven car bays to be developed, even though it was the incorrect zoning before she purchased the shop lease.

The costs to this individual were considerable and included the cost of a Change of Use application, the cost of developing seven car bays, cost of legal fees (as landlord was demanding that she pay all costs or he would not renew her lease), and loss of business income while the issues were being resolved.

Delays to business operation relating to local government rules

In June 2013 the owner of a beauty salon requested assistance from the Small Business Development Corporation to resolve a dispute with local council. The business required the salon owner to advertise his shop renovation plans for 21 days before the work could take place. However, council did not tell the small business operator about this when he first applied for planning approval (which meant the rent free period he negotiated was not long enough).

This generated a number of unforeseen costs to the business, including the cost to advertise, cost of paying rent for an additional 21 days (on top of the time taken to undertake the renovation works), and almost a one month delay before any income could be generated.

4.4.4 Recent progress in reducing regulatory burden

In section 2.3.4 we discussed a number of planning reforms that have been implemented by the Western Australian State Government since 2009. Phase one of these reforms included amendments to the P&D Act as well as the delivery of several other non-legislative reforms. DAPs were introduced in 2011 for the purposes of including professionals in the determination of applications for substantial developments (as opposed to having elected Councils assess the applications). Other reforms included a revision of gazetted Residential Codes, changes to ancillary housing provisions (granny flats), reducing requirements for planning approval for single houses, and amendments and improvements to specific design requirements.

These reforms appear to be delivering benefits. In 2012 the Property Council of Australia, in partnership with the Residential Development Council (RDC), published its second *Development Assessment Report Card*, which scores the progress of each state and territory in planning reform. The previous assessment was conducted in 2010. The assessment scores progress against ten principles:

1. Effective policy development
2. Objective rules and tests

3. Built-in improvement mechanisms
4. Track-based assessment
5. A single point of assessment
6. Notification
7. Private sector involvement
8. Professional determination for most applications
9. Applicant appeals
10. Third-party appeals

The report found that Western Australia has made considerable progress towards meeting the above principles and was given an overall score of 7.1 out of 10, up from 5.3 in 2010 and placing it second in the country after Northern Territory. The report found that:

The reform progress in Western Australia has been a shining light in the intervening reporting period, with the introduction of planning assessment panels, a Residential Design Code (R-Code) update and considerable advancement of regional and metropolitan strategies (page 6).

The DoP, in partnership with WAPC, has embarked on a second phase of reform, which commenced with a discussion paper released by the DoP in September 2013. The primary focus of phase two is on improved statutory decision making processes and land use planning and supply.

5 Conclusion

This study has demonstrated that there is a range of factors that contribute regulatory burden. In some instances burden arises from legislation that is not fit for purpose – possibly because it is too prescriptive or because it addresses policy matters that are no longer relevant in today’s environment. In other cases, the legislation is fundamentally sound but poor implementation and incorrect interpretation of legislative intent has given rise to unnecessarily complex administrative processes. This report has provided a number of examples where regulatory activities are being duplicated across agencies. There are also examples of where administrative processes could be streamlined with available technology, if sufficient resources were dedicated to the task.

Prior to embarking on reforms to reduce regulatory burden it is important to evaluate:

- The cost or economic significance of identified red tape issues
- Progress to date in improving regulatory efficiency and the size of the task remaining
- The options available for addressing each issue
- The net benefits of taking action and reform priorities

This report has focussed on the first of these matters – the costs - as opposed to evaluating potential reform options and the cost-benefit of reform.

5.1 Costs of red tape

It is difficult to be definitive about the scale of costs associated with regulatory burden in Western Australia. As discussed in the report, there have been relative few studies that have examined the cost of red tape to the State economy. Studies cited in the report include:

- A 2006 study by the CCI, which estimated the cost of compliance for the Western Australian business community with State, Federal and Local government regulations to be approximately \$2.1 billion at the time, which accounted for around two per cent of gross state product.
- The RTRG report, which in 2009 identified \$44 million of potential cost savings each year through a range of reforms designed to reduce regulatory burden on businesses

- A recent study by the DMP (January 2014), which identified \$28 million of potential cost savings each year to the Western Australian mining industry through a suite of improvements to the way mining activities are regulated.

The CCI estimate of \$2.1 billion should be regarded as an upper estimate of the cost of red tape to the State because it includes compliance activities that are potentially efficient activities and economically justified.

The contribution of our report to this existing body of literature is that it demonstrates the types and scale of compliance costs in several sectors of the economy that could be regarded as 'inefficient'. While we have not been able to estimate dollar costs in all cases, the report does provide ample evidence of regulatory inefficiency.

5.2 Evidence of progress

The report has found that significant progress has been made in some areas since the RTRG report was handed down in 2009. In particular, positive steps have been made in the areas of planning, building certification and approvals, environmental assessments for mining and resources projects, and environmental licensing.

Progress in reducing red tape in these areas has been recognised in a variety of publications that contain comparative rankings of regulatory burden across different jurisdictions. For example, as discussed in the report, Western Australia's progress in mining sector reforms has been reflected in the 2013 survey results produced by the Fraser Institute, which measure mining companies' perceptions about regulatory certainty/stability across international jurisdictions. Western Australia scored the highest ranking of all Australian states and was ranked sixth overall out of 112 jurisdictions, up from 15th place last year.

Similarly, in the area of planning and development, Western Australia has demonstrated positive progress. In 2012 the Property Council of Australia's 'Development Assessment Report Card' found gave Western Australia a score of 7.1 out of 10, up from 5.3 in 2010, which places this State second in the country after Northern Territory.

5.3 How big is the task that remains?

Despite evidence of recent gains, the case material presented in this report suggests that there remain many areas where regulatory costs are inefficient. Western Australia still lags behind other states in terms of not having a formalised, systematic process for periodically reviewing the cost of regulatory burden at a 'whole of government' level and setting targets for each agency to reduce regulatory burden. Based on the evidence

presented in this report, there is strong economic case to establish this function within government and pursue necessary reforms.

5.4 Broad reform options

This report demonstrates that the underpinning causes for red tape are varied. At a high level, this report has shown that there four root causes of regulatory burden:

- Inefficient, outdated or poorly conceived legislation
- Inefficient administrative processes
- Insufficient information or poor quality guidance about the regulatory process
- Inappropriate culture within authorising agencies

Where compliance costs are deemed to be excessive, reforms should be structured to address one or more of these areas.

Legislative reform

Examples have been provided in this report that call for the repeal of outdated legislation, regulation, rules, policies and procedures. In some situations, new governance arrangements may be required to simplify or clarify the responsibilities and accountabilities of different authorising agencies. In other cases, there may be a need for changes in licensing arrangements for occupations to reduce the burden on affected businesses, where prudent to do so without unduly reducing consumer protection.

Administrative reforms

A number of options may be available for reducing regulatory burden that do not require legislative amendments. For example, we have noted in the report that the Western Australian government is pursuing the concept of a Lead Agency Framework for major project assessment and approvals, which seeks to improve coordination between agencies and clarify responsibilities. Other reforms could include further uptake of electronic lodgement of applications and other documents. Tracking systems for approvals stop-the-clock provisions have been introduced for some, but not all approval agencies.

Information reforms

Our research for this study uncovered a number of cases where it appears there is inadequate guidance being given to regulatory agencies and/or regulated parties about the legislative intent of specific regulations, the processes to be used to implement the

regulation and the obligations of relevant parties. This is particularly evident at local government level. This has led to confusion about what is required under the legislation, duplication across agencies and inconsistency in treatment of regulatory issues. Where these problems are evident, it may be sufficient to re-write statutory guidelines, operating protocols and similar guidance documents. For businesses and consumers that are subject to regulation, improved information kits that set out the regulatory process in a transparent way may be required.

Cultural and management reforms

The small business sector raised specific concerns about the inappropriate culture that persists in some government agencies which manifests as unhelpful advice to businesses or deliberate blocking of potential solutions. Concerns were expressed that all too often there is a 'one size fits all' culture as opposed to adopting a risk-based approach to compliance. Changing the culture of regulatory authorities may be challenging, although this report has demonstrated some instances where administrative reforms – for example in DMP's environmental approval processes - have also wrought positive improvements in culture.

Western Australia's pursuit of micro economic reform in reducing regulatory burden will need to examine all the above options and select elements of each that best apply to individual cases.