Inquiry into the reform of business licensing in Western Australia

Submission to the Economic Regulation Authority

March 2018

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1. Introduction

The Western Australian Local Government Association (WALGA or 'the Association') is the peak organisation for Local Government in Western Australia. The Association is an independent, membership-based group representing and supporting the work and interests of 136 mainland Local Governments in Western Australia, plus the Indian Ocean Territories of Christmas Island and Cocos (Keeling) Islands.

The Association provides an essential voice for more than 1,200 Elected Members, approximately 14,500 Local Government employees, and the 2.4 million constituents that they serve and represent. The Association also provides professional advice and offers services that provide financial benefits to the Local Governments.

WALGA is grateful for the opportunity to provide a submission to the Economic Regulation Authority (ERA) Inquiry into the reform of business licensing in Western Australia. While the primary focus of this Inquiry is State Government Licences, Local Governments also face significant costs from out-dated and poorly designed regulations. Further, Local Governments also face unique challenges from issues resulting from their requirement to administer a number of licenses on behalf of the State Government.

WALGA's submission highlights a number of considerations to reduce the regulatory burden on business, including specific examples where the licensing regime may not be delivering optimal outcomes. WALGA members have also noted that that delays in processing licenses are caused and costs increased due to the issues surrounding the slow and/or inadequate responses from state agencies.

Findings and Recommendations

- *In recent years, there has been a growing recognition by the Local Government sector of the need to reduce the regulatory burden on business as part of a broader strategy to facilitate economic development.*

- *While the need to minimise the overall regulatory burden is recognised, any efforts to reduce regulation should not be at the expense of the broader community. Regulatory reform should look to balance these objectives, and ensure that the regulations are proportionate and fit for purpose and that the community is protected*.

- *WALGA supports the principles identified by the ERA as to when regulation should be adopted.*

- *After determining that a regulation or licence should be introduced, a key consideration is the level of Government that is best placed to effectively and efficiently administer it. This should be determined based on the principle of subsidiarity.*

- *The State Government must consult with Local Governments before transferring additional regulatory/licensing responsibilities to identify the full costs of administering the regulation. For some Local Governments with limited human or financial resources, the State Government may need to provide additional support to undertake these regulatory responsibilities. This should be factored into any cost benefit assessment.*

- *WALGA supports an assessment of Local Government capacities as part of the regulatory impact analysis for any regulation that envisages a role for the sector*.

- *Local Governments are required to set fees and charges for certain licences at levels that have been established under State Government legislation. While the intention of the legislation is to ensure that fees and charges are specifically limited to recouping the cost of service provision, in practice many of these are now set below cost recovery levels. This creates inefficiencies as it provides inappropriate signals to consumers, and means that these licensing services are cross-subsidised by all ratepayers.*

- *The requirement for Local Governments to administer regulation (including licences) on behalf of the State Government can create an additional financial burden for the sector which is ultimately paid for by the community – including businesses – through higher rates or reductions in services.*

- *WALGA considers that these indirect costs resulting from State Government licenses should be factored into any cost benefit analysis to assess the net benefits of a regulation or licence, and should also be examined by the ERA in investigating options to reduce the regulatory burden and economic costs of State Government business and occupational licenses*.

- *It is appropriate that Local Governments have the freedom to set the level of their fees and charges. In the few cases where legislative restrictions are deemed necessary, they*

should be justified by a clear and logical rationale. Those fees and charges should be reviewed and indexed on an annual basis to ensure they are set at appropriate cost recovery levels.

- *A risk-based approach to regulation is appropriate to ensure that the community is protected without creating an excessive compliance burden.*

- *The transition to a risk-based approach for licensing Local Government Waste Water Treatment Plants is an example of a successful regulatory reform that has streamlined the regulatory process without compromising community safety.*

- *Despite past reviews, fees and charges for planning activities are insufficient to cover Local Government's costs. WALGA considers that a full review of the planning fees and charges is necessary, with a view to bringing fees and charges back to full cost recovery. Further, planning fees and charges should be indexed for future years.*

- *There may be benefits from the standardisation of application processes for all State agencies.*

- *The Service WA initiative recently undertaken by the WA Government Chief Information Officer should be monitored and reviewed to determine its effectiveness in streamlining application processes.*

- *The use of the term 'Development Approval' can be confusing to applicants as it implies approval to commence development, when other approvals in areas such as health, building and engineering are also required.*

- *Despite past reviews, fees and charges for building activities are insufficient to cover Local Government's costs. WALGA considers that the fee for structure applications made under the Building Act should be reviewed with the aim for cost recovery.*

- *The imposition of a penalty in the Building Act for not meeting the processing timeframes is also an unfair impost on the Local Government sector*

- *The requirement for a building permit for temporary buildings and structures could be duplication of the Health Act requirements (Public Building Certificate of Approval), to the extent that a Building Permit has to be issued, and a Health Permit granted for the same temporary structure.*

- *WALGA considers that this issue could be resolved by using a similar approach to other states and territories where building control legislation has clear definitions pertaining to temporary buildings/structures (large tents, marques used for public events etc.)*

- *The introduction of private certification is being pursued by the development industry as a way to reduce the regulatory burden. However, WALGA members have raised concerns that these reforms have the potential to deliver adverse outcomes and open the community up to significant risks.*

- *The WA Utility Providers Code of Practice is not operating as an effective regulatory instrument in relation to the requirement to seek a permit to undertake works within the road reserve or work that will impact on movement of vehicles and pedestrians in the road reserve.*

- *WALGA considers that there is opportunity to strengthen and streamline this process by amending the relevant Regulations and providing for a consistent "front end" process to simplify the task for users while retaining the benefits of a coordinated approach.*

- *WALGA considers that there is scope to reduce the regulatory burden associated with landfill licenses issued under the Environmental Protection Act Schedule 1 Prescribed Premises by using a risk based approach to regulation, and assisting Local Governments and others to understand their compliance requirements.*

- *There may be scope to reduce duplication in relation to the licensing of building safety regulations for licensed premises.*

2. The Role of Local Government

Local Governments play an important role in the economy. They employ more than 22,000 workers, spend more than $3.9 billion providing services to the community, and manage an asset base worth more than $45 billion.

In recent years, there has been a growing recognition by the sector of the need to reduce the regulatory burden on business as part of a broader strategy to facilitate economic development. Many Local Governments have economic development strategies, and a number have undertaken reforms to minimise the regulatory burden on business. Further, Local Governments have also signed up to the Small Business Development Corporation's Small Business Friendly Local Government initiative, which includes a commitment to take reasonable action to limit unnecessary administrative burdens on small businesses.

While the need to minimise the overall regulatory burden is recognised, it is important that this does not occur at all costs. Any efforts to reduce regulation should not be at the expense of the broader community. Any regulatory reform program should look to balance these objectives, and ensure that the regulations are proportionate and fit for purpose and that the community is protected. In this regard, it is critical that regulatory reforms (including to licences) are undertaken on a case by case basis, with the aim to find the most appropriate solution based on the risk to the community.

Local Governments are required to administer a significant number of business licences and other regulations on behalf of the State Government. In its consultation papers for the Inquiry, the ERA has identified a range of licences that are administered by Local Government on behalf of the State Government. WALGA has identified some inaccuracies with this list and provides the following feedback in relation to these licences.

- *Residential Codes Variation Approval* – This is no longer a valid certificate as the 2010 version of the Residential Design Codes (SPP 3.1) removed this process.
- *Building Approval Certificate* – These are issued predominantly by Local Governments, not the State Government, therefore the agency responsible should be Local Government as they are the 'Permit Authority' under the Act, not the Department of Mines, Industry Regulation and safety.
- *Building Approval Certificate Strata* – These are issued predominantly by Local Governments, not the State Government
- *Certificate of Building Compliance* - These are issued by Private Building Certifiers, or Local Governments, not the State Government. *Certificate of Construction Compliance* – These are issued by Private Building Certifiers, or Local Governments, not the State Government.
- *Certificate of Design Compliance* - These are issued by Private Building Certifiers, or Local Governments, not the State Government.
- *Building and Demolition Licences* – These are included in the ERA's list of licences, but are a pre-2012 process (legislation has been superseded), and are now called Building and Demolition Permits which are administered by Local Governments under the *Building Act 2011*.

Administering regulations on behalf of the State Government represents a significant proportion of Local Government's regulatory activities. The Productivity Commission's 2012 Research Report on the *Role of Local Government as a Regulator* found that implementing and enforcing state and territory laws, rather than local laws, dominates Local Governments' regulatory workload.[i]

While it is recognised that this approach can be the most efficient way to administer these regulations from an economy-wide perspective, in practise it can create a significant burden for the sector and in turn the broader community. When these licensing functions are not appropriately resourced, this can create additional economic costs or imposts on business and the community that are not necessarily taken into account when assessing the net impact of the regulation. This approach can also create confusion in the community about which level of Government is responsible for a particular licence.

As well as being a regulator, the Local Government sector itself is heavily regulated, and can face significant costs when regulations are out-dated and poorly designed. As well as the overarching legislation governing the sector (the *Local Government Act 1995*) the sector must also meet the compliance obligations of a raft of State Government regulations and licences. For example, some of the licences that Local Governments, as a business organisation, are required to comply with are as follows.

- Motor vehicle licence
- Child care service licence
- WA drivers licence
- Special facility liquor licence
- Bulk controlled waste drivers licence
- Bulk controlled waste vehicle/tank licence
- Licence to construct a retaining wall on a waterway
- Aquatic facility operator permit
- Permit to construct, alter, extend an aquatic facility or water body
- Fireworks event permit
- Clearing permit
- Conduct activities in a waterway management area
- Waste collection permit
- Electrical appliance approval
- Approval for activities in marine and harbour development area
- Approval of fittings, fixtures and pipes
- Occupational licensing and registration

WALGA considers that the compliance requirements of Local Governments can also be used to identify areas of concern with current arrangements and provide direction on priority reforms to reduce the burden on businesses.

3. Analytical framework for assessing and designing business licences

WALGA considers that the concepts proposed by the ERA to underpin an analytical framework to assess and design business licences are generally sound. However, the Association believes there are some further design and administration elements that should be taken into consideration by the ERA in developing the analytical framework.

These comments primarily relate to the need to capture the true costs of the regulation or licence as part of any regulatory assessment process.

When is licensing the most efficient way of addressing problems?

Capacity of Local Government as a regulator

WALGA supports the principles identified by the ERA as to when regulation should be adopted. When it has been determined that a regulatory approach is required, WALGA considers that a further important consideration relates to the level of Government that is best placed to administer the regulation.

Governments at all levels need to work together to determine which level is best placed to administer a regulation based on the principle of subsidiarity, and to remove areas of duplication or overlap. The Productivity Commission found that a collaborative approach towards policy development, implementation and funding is critical to identifying opportunities to make real improvements to business regulation.[ii]

Despite the benefits of this collaborative approach, to date, it does not always occur in practise. Regulatory responsibilities can be delegated from the State Government with no regard for the capacity of individual Local Governments to provide these services.

The State Government must consult with Local Governments before transferring additional regulatory/licensing responsibilities in order to identify the full costs of administering the regulation. Given the diversity of the sector, some individual Local Governments may have limited ability to take on these responsibilities – particularly smaller Local Governments and those in remote regional areas, which suffer from limited financial and human resources. In these circumstances, the State Government may need to provide Local Governments with additional support to undertake these regulatory responsibilities, as well as funding to any cost imposition on Local Government as a result of the additional regulatory responsibilities . These additional requirements should be reflected in any cost benefit analysis of the proposed regulation to understand the true net benefits of its introduction.

The Productivity Commission reinforced the importance of ensuring Local Governments have adequate finances, skills and guidance to undertake these regulatory roles, and that this type of support can reduce the potential for regulations to be administered inefficiently, inconsistently or haphazardly. The Productivity Commission recommended that an assessment of Local Government capacities should be undertaken as part of the regulatory impact analysis for any regulation that envisages a role for the sector. WALGA supports this recommendation.

The State Local Government Agreement which was signed in 2017 is an important step towards facilitating a more collaborative approach. The agreement specifically acknowledges that Local Government is a major stakeholder in many State Government decisions, and sets out a commitment and appropriate timeframes for consultation with the sector when developing, amending or reviewing State legislation and regulations.[iii]

Key Findings

- *WALGA supports the principles identified by the ERA as to when regulation should be adopted.*

- *After determining that a regulation or licence should be introduced, a key consideration is the level of Government that is best placed to effectively and efficiently administer it. This should be determined based on the principle of subsidiarity.*

- *The State Government must consult with Local Governments before transferring additional regulatory/licensing responsibilities to identify the full costs of administering the regulation. Where appropriate the State should fund the cost of any imposition on Local Government from additional regulatory responsibilities, and for some Local Governments with limited human or financial resources, the State Government may need to provide additional support to undertake these regulatory responsibilities. This should be factored into any cost benefit assessment.*

- *WALGA supports the assessment of Local Government capacities as part of the regulatory impact analysis for any regulation that envisages a role for the sector*.

Interaction between levels of Government

Cumulative Burden of Regulation

The Consultation Paper notes that the ERA's analytical framework will assist to address the cumulative effects of both existing and new business licences. WALGA supports this focus, and agrees that an analytical framework must not just assess the costs and benefits of a new regulation in isolation, but examine the impacts on the broader regulatory context.

The cumulative burden of regulation often comes about because of the regulatory responsibilities of all three levels of Government. WALGA considers that a starting point to reduce the cumulative burden of both and new regulations and business licences is to determine which level of Government is the most appropriate to administer the licence, and to identify areas of duplication that must be eliminated before any new regulation is introduced.

Design Elements

Setting fees and charges

The requirement for Local Governments to administer regulation (including licences) on behalf of the State Government can create an additional financial burden for the sector if there is not an adequate revenue source to fund the associated costs. This additional cost is ultimately paid for by the community – including businesses – through higher rates or reduced services

in order to address this revenue leakage, because of restrictions on the sector's capacity to raise own sourced revenue.

This additional financial burden has been a key issue in recent years as Local Governments have taken on growing responsibility for functions that were previously provided by other levels of Government. The Productivity Commission found that the quantum of responsibilities devolved to Local Governments from the State Government has increased markedly over the previous thirty years, but that these additional roles have not been accompanied by appropriate increases in resourcing. The report found that 18% of Local Governments in WA don't have sufficient resources to undertake their regulatory roles.[iv]

In relation to business licensing, the key issue relates to the inability to recover costs through fees and charges.

The ERA notes that business licences will be more likely to achieve their purpose, while minimising costs, if fees and charges are set to reflect the value of access to the resource; and if licences that grant permission to undertake a specific activity are set to recover the cost of administration.

The *Local Government Act 1995* (clause 6.16) provides the head of power for a Local Government to set fees and charges for any goods or services it provides. Clause 6.17 outlines the following factors that a Local Government is required to take into consideration in determining the amount of a fee or charge:

- the costs to the Local Government of providing the service or goods;
- the importance of the service or goods to the community; and
- the price at which the service or goods could be provided by an alternate provider.

Clause 6.17(3) also outlines that the fee or charge for receiving an application for approval, granting an approval, making an inspection and issuing a licence, permit, authorisation or certificate must be based on the cost of providing that service.

Clause 6.18 further restricts Local Governments from charging a fee that is different to a fee imposed under another written law. This means that Local Governments are required to set fees and charge at levels that have been established under State Government legislation. Further, Local Governments cannot impose a fee or charge if doing so is prohibited under another written law. Some examples of these licences/approvals/permits include:

- Camping Ground Licence (*Caravan Parks and Camping Grounds Regulations 1997*)
- Transit Park Licence (*Caravan Parks and Camping Grounds Regulations 1997*)
- Approval for camping on private or unapproved land (*Caravan Parks and Camping Grounds Regulations 1997)*
- Caravan Licence *(Caravan Parks and Camping Grounds Regulations 1997)*
- Licence to be an approved kennel establishment (*Dog Regulations 2013*)
- Planning Approvals issued under the Local Planning Scheme, as prepared under the *Planning and Development Act 2005* (the planning fees and charges are set under the *Planning and Development Regulations 2009*)

- Building Permits (*Building Act 2011*).
- Strata title clearances (*Strata Titles General Regulations 1996)*

While the intention of the legislation is to ensure that fees and charges specifically limited to recouping the cost of service provision, this is not the case in practice for some licences. A number of fees and charges are now set below cost recovery levels, as a result of:

- lack of indexation;
- lack of regular review (fees may remain at the same nominal levels for decades, e.g. Dog licensing fees); and
- lack of transparent methodology in setting the fees (fees do not appear to be set with regard to appropriate costs recovery levels).

Further detail on the specific licences where fees are not set to recover costs is provided later in the submission.

Concerns with fees and charges being set below cost recovery were identified by the Productivity Commission, which found that Local Governments are denied an efficient source of income, and that fuller cost recovery could lead to better overall outcomes, achieving a more rational balance between ratepayers (both commercial and residential) and service users. .[v] The inability to recover costs through fees and charges sends inappropriate signals to users of these services, particularly when the consumption of those services is discretionary.

Further, this additional financial impost is ultimately paid for by the community – including businesses – through higher rates or reduced services in order to address this revenue leakage. This is because the only source of taxation revenue that is available to the sector at its own discretion is rates, which must be used to fund the myriad of services expected by the community.

The requirement to recover the cost of administering State Government regulations including licensing through the rate base adds to overall business costs and leads to inefficient outcomes to the extent that all ratepayers subsidise the provision of services that are only used by a few.

In addition, there are also a range of fees and charges that Local Governments collect on behalf of other agencies. Some examples include DAP application fees (under the *Planning and Development (Development Assessment Panels) Regulations 2009*), the Building Services Levy, and Construction Training Fund Levy. For some of these, Local Governments receive a fee for undertaking this role, while for others no fee is available to assist with the associated administration costs.

WALGA considers that the indirect costs resulting from State Government licences should form part of any cost benefit analysis to assess the net benefits of a regulation or licence, and should also be examined by the ERA in investigating options to reduce the regulatory burden and economic costs of State Government business and occupational licenses.

As a general principle, WALGA considers that Local Governments should have the freedom to set the level of their fees and charges, and to recover costs associated with administering licences. In the few cases where legislative restrictions on fees and charges are deemed necessary, they should be justified by a clear and logical rationale. In these circumstances, fees and charges should be reviewed on a regular basis to ensure they are set at appropriate cost recovery levels.

If fees cannot be reviewed on an annual basis, then indexation should be used in the intervening years to ensure the cost recovery levels of fees and charges are not eroded by inflation. This could be achieved by indexing fees and charges to an appropriate measure of price escalation, such as the Local Government Cost Index.

Findings

- *The current arrangements mean that Local Governments are required to set fees and charges for certain licences at levels that have been established under State Government legislation.*

- *While the intention of the legislation is to ensure that fees and charges are specifically limited to recouping the cost of service provision, in practice many of these are now set below cost recovery levels. This creates inefficiencies as it provides inappropriate signals to consumers, and means that these licensing services are cross-subsidised by all ratepayers.*

- *WALGA considers that these indirect costs resulting from State Government licenses should be factored into any cost benefit analysis to assess the net benefits of a regulation or licence, and should also be examined by the ERA in investigating options to reduce the regulatory burden and economic costs of State Government business and occupational licenses*.

- *It is appropriate that Local Governments have the freedom to set the level of their fees and charges. In the few cases where legislative restrictions are deemed necessary, they should be justified by a clear and logical rationale. Those fees and charges should be reviewed and indexed on an annual basis to ensure they are set at appropriate cost recovery levels.*

- *The requirement for Local Governments to administer regulation (including licences) on behalf of the State Government can create an additional financial burden for the sector which is ultimately paid for by the community – including businesses – through higher rates or reductions in services.*

Risk based regulation

WALGA considers that licensing – like other forms of regulation – should be proportionate, using a risk based approach that weighs up the likelihood of the risk with the consequences. In some circumstances where there is a high risk or potentially significant impact to the community, licensing or other regulatory approaches may be appropriate. In other

circumstances, alternative policy approaches such as education or voluntary codes of compliance may suffice.

In looking at reducing the burden of business licences, WALGA considers that it is important that the risks to the community are taken into consideration.

One example of successful reform that introduced a risk based approach to reduce the burden of licensing relates to Local Government managed wastewater treatment plants (WWTPs).

In 2010 WALGA commenced work with the (then) Department of Water in exploring a risk based approach to the licensing of Local Government managed WWTPs, with a view to reducing red tape and generating substantial audit and administrative cost savings to Local Government, without compromising the public interest.

There are currently 20 Local Governments providing wastewater treatment services for their communities. These providers are typically small shires, the majority of which have fewer than 500 connections, with the notable exception being the City of Kalgoorlie-Boulder, which has in excess of 14,000 connections.

Under a one-size fits-all regulatory approach, Local Governments were subject to both State Government licence fees, and audit costs, with the audits provided by the private sector, overseen by the ERA. In many instances, the cost of undertaking the licensing regime exceeded the revenue generated from the provision of the service. Audits were conducted more frequently where non-compliances were recorded, with the majority of non-compliances related to asset management and financial requirements, rather than the actual functioning of the WWTPs themselves. For example, in 2013, the Shire of Brookton (with only 213 connections) spent 50% of the operating cost of its water service in meeting its respective audit and compliance costs.

Following advocacy by the sector and WALGA in 2015, the Minister for Water requested the Department undertake a public interest assessment, as required under section 7 of the *Water Services Act (2012).*

The outcome was that in April 2016, an exemption was granted to all but 5 Shires. Those Shires continue to be regulated by the ERA in accordance with the *Water Services Act*, and are working with the Department to resolve the asset management deficiencies that precluded their exemption. Due to the amount of connections, the City of Kalgoorlie Boulder was not considered for a class exemption.

The outcome is that those Shires with a class exemption are now meeting a streamlined reporting regime to the Department of Water and Environment Regulation, are not compromising the public interest, and have improved the financial viability of their schemes, as the audit and compliance cost savings are now underpinning their asset and financial management requirements in providing a sustainable scheme for their communities.

Key findings

- *A risk-based approach to regulation is appropriate to ensure that the community is protected without creating an excessive compliance burden.*

- *The transition to a risk-based approach for licensing Local Government Waste Water Treatment Plants is an example of a successful regulatory reform that has streamlined the regulatory process without compromising community safety.*

4. Identifying Priority Areas of Reform

Issues arising from business licensing schemes - Priority Areas of Reform

Planning

The *Planning and Development Act 2005* is the primary legislation governing planning and development in Western Australia. Local Governments have responsibilities under this legislation for preparing and administering local planning schemes and strategies, and are also responsible for approval of a range of development proposals on behalf of the State Government as set out in the *Planning and Development Regulations 2009.*

Fees and charges

The primarily issue in relation to planning approval activities relates to the associated fees and charges. Most fees and charges applied by Local Governments for planning and development approvals are set under Part 7 of the *Planning and Development Regulations 2009.* The Regulations can be amended by the Minister for Planning and up until 2013, fees were generally increased by movements in the Consumer Price Index (CPI).

However, the Parliamentary Joint Standing Committee on Delegated Legislation decided not to not approve a fee increase in 2012-13, on the basis that Consumer Price Index was no longer considered to be an appropriate inflator for planning fees. Instead, the Committee recommended to the then Minister for Planning that fee increases or changes must be based on the Western Australian Treasury 'Guidelines for Costing and Pricing Government Services'.

A review of planning fees was undertaken in 2013, and WALGA assisted in this process to quantify the cost of administering the regulations, given the complexity of cost structures across Local Governments. A working party of eight local governments was formed to assist with this process. WALGA's research found that:

- If the State wishes to continue to regulate fees for services provided by Local Governments for various planning assessments and approvals, the type, categories and amounts of fees and charges set under the *Planning and Development Regulations 2009* should be re-examined.

- The current levels and types of fee have some relationship to the work involved in dealing with the various types of applications, however, there are some inadequacies:

- The current system is the result of negotiation and compromise rather than being based on a notion of fee for service or cost recovery;

- In most cases the cost to undertake the work required is more than the regulated fee;

- In higher value or complex applications, applicants tend to seek out local government planning staff for advice and identify/resolve issues before application. On the surface this makes the cost to process higher value applications appear less as the time (and hence cost) spent in these discussions is not recorded or recovered.

The Review recommended that planning fees be increased by the Consumer Price Index for both the 2012-13 and 2013-14 financial years.[vi] In line with the Planning Bulletin 93/2013 the base fee in each category was increased from 1 July 2013 by the cumulative two year Consumer Price Index rate of 6.25%, however the percentage rates did not change.[vii]

As a result, there remains a shortfall in cost recovery for planning fees. This was identified as a key area of cost shifting by Local Governments in a WALGA survey in 2017. The survey found that the shortfall for planning activities is costing individual Councils between $5,000 per annum up to $1.8 million. While it was not possible to quantify the proportion that related to planning approvals, anecdotally members nominated the freeze on planning fees and charges since 2013 as a key concern. One member indicated that the shortfall in cost recovery for planning approvals is approximately 42%.

WALGA considers that a full review of the planning fees and charges is necessary, with a view to bringing fees and charges back to full cost recovery. Further, planning fees and charges should be indexed for future years.

Key findings

- *The lack of contemporary and regular reviews has resulted in fees and charges for planning activities being insufficient to cover Local Government's real costs.*

- *WALGA considers that a full review of the planning fees and charges is necessary, with a view to bringing fees and charges back to full cost recovery. Further, planning fees and charges should deregulated, or at a minimum be indexed for future years.*

Application processes

Anecdotal feedback from WALGA members has suggested that there may be benefits from the standardisation of application processes for all State agencies. Local Governments have raised concerns about the number of differing application forms depending on the legislation process. For example, the Department of Water and Environmental Regulation have 25 applications forms,[viii] Main Roads WA has 22 forms,[ix] the Department of Biodiversity, Conservation and Attractions also has numerous formats and forms with the merger of the different Departments.[x]

It is understood that the WA Government Chief Information Officer is examining options for public sector agencies to work towards aligning their business functions to improve service delivery to the community as part of the Service WA initiative. WALGA considers that this

should be monitored and reviewed to determine its effectiveness in streamlining application processes.

A further anecdotal issue that has been raised by WALGA members relates to the interactions with licensees during the application process. Local Governments have raised concerns that the use of the language 'Development Approval' under the *Planning and Development Act 2005* can be confusing to applicants. Although legally correct, this language can confuse people into thinking that they have approval to commence development just with the issuing of the Planning approval, when other approvals in areas such as health, building and engineering are also required before any works can commence on a site.

Key Findings

- *There may be benefits from the standardisation of application processes for all State agencies.*
- *The Service WA initiative recently undertaken by the WA Government Chief Information Officer should be monitored and reviewed to determine its effectiveness in streamlining application processes.*
- *The use of the term 'Development Approval' can be confusing to applicants as it implies approval to commence development, when other approvals in areas such as health, building and engineering are also required.*

Approval Timeframes

In recent years, concerns have been raised that the time taken for Local Government planning approvals is adding to the costs for developers, and in turn consumers. In particular, the Property Council's 2016 Benchmarking Greater Perth Local Governments report stated that the bulk of councils in Greater Perth fell well below the requirements for a best practice planning system. [xi] These concerns have also been echoed in recent times by the Urban Development Institute of WA. [xii]

WALGA research does not support these claims. In response to these concerns, the Association recently undertook a project to assess the performance of the planning and building functions of 11 metropolitan Local Governments in the 2016/2017 financial year, which shows that Local Governments are achieving their planning functions. These Local Governments represent 54% of the total population of greater Perth, and accounted for 70% of the region's growth between 2011 and 2016. The results show that 98% of all applications were approved or responded to within the statutory timeframes.

It is recognised that this study captures only a proportion of the Local Government sector, and WALGA is in discussion with other Councils for more Local Governments to participate in this monitoring project. WALGA would welcome the opportunity to work with the State Government to progress a more transparent review of the entire planning and building process, which would allow our Members the opportunity to provide greater input and feedback into any findings and methods of assessment.

Key Findings

- *WALGA research does not support claims that the time take for Local Government planning approvals is adding to the costs for developers, and in turn consumers.*

- *WALGA would welcome the opportunity to work with the State Government to progress a more transparent review of the entire planning and building process*.

Building

In Western Australia, the building approvals process is legislated under the *Building Act 2011.* Under this legislation, Local Governments often have significant responsibilities for licensing activities. Local Governments are frequently delegated with authority over the construction, occupation and demolition of building and incidental structures and are responsible for granting permits enforcing compliance with these. The 'licences' that Local Governments may be responsible for administering are as follows. :

- Building Approval Certificate
- Building Approval Certificate Strata
- Certificate of Building Compliance
- Certificate of Construction Compliance
- Certificate of Design Compliance
- Building and Demolition Permits
- Temporary Occupancy Permit for Incomplete Building

Since the implementation of the *Building Act*, there have been a number of issues raised by Local Governments that are preventing the sector from implementing the Act with clarity and consistency, which may be creating adverse outcomes for businesses.

Fees and Charges

The fees charged for building applications are among State-determined fees and charges. Building permit and demolition fees are legislated through the *Building Act 2011* and can be found in Schedule 2 of the *Building Regulations 2012*.

The building fees that were adopted in 2012 under the new regulations were not on the basis of cost recovery, but merely transferred across an existing fee structure that existed before the Building Act was introduced. This resulted in most Local Government building Departments losing around 30-40% of their revenue as a result of no longer receiving applications fees to certify Class 2-9 applications. At the same time, the new Act also resulted in an increase in administrative requirements.

Local Government building fees are still below cost recovery, despite a review that was undertaken by the former Department of Commerce in 2015. One WALGA member indicated that the Building Approvals function recovers approximately 70% of its costs. The inability to charge on a cost recovery basis means that the applicant is not paying for the assessment, rather it is a combination of the applicant and the ratepayer, with the ratepayer picking up the shortfall.

Subsequent to this review, the fees relating to the Building Commissions functions were updated on 23 June 2017. [xiii]

WALGA has concerns that this review focussed primarily on building fees imposed by the State Government, rather than Local Government fees. To this end, the Review resulted in a 1% increase to Local Government fees which was insufficient to ensure cost recovery, whereas the Building Commission fees increased by more than 50%, as the Building Services Levy increased by 0.047%, from 0.09% to 0.137%.[xiv] The Government advised the public that the 0.047 per cent increase in the building services levy represented an increase in the levy rate for a $200,000 house from $180 to $275, while the Local Government fee only increased 1% to $380, and the Construction Training Fund is now $400. Local Government provides the processing of the application, and forwards the other fees to the other agencies, retaining only $5 per application as an administrative fee.

The imposition of a penalty in the Building Act for not meeting the processing timeframes of 10 days (Certified Application) or 25 days (uncertified), is also an unfair impost on the Local Government sector that results in a refund of the fee to the applicant. Section 23 (4) of the Act states

> (4) If the permit authority has not made a decision within the time mentioned in subsection (1) or (2) —
>
> (a) the permit authority must refund to the applicant the fee mentioned in section 16(l) that accompanied the application; and
>
> (b) the amount of the fee paid is recoverable in any court of competent jurisdiction as a debt due to the applicant.

If the timeframe is exceeded, the Local Government is still required to process the application, make a decision, and refund the money. This is a substantial burden placed on the building departments to meet the regulated timeframes. A local government may not met the timeframe due to a variety of issues, lack of staff, staff on leave (annual/sick) or due to an increase in the volume of applications being lodged

WALGA considers that the fee for structure applications made under the Building Act should be reviewed with the aim for cost recovery.

Key Findings

- *Despite recent reviews, fees and charges for building activities are insufficient to cover Local Government's costs.*

- *The imposition of a penalty in the Building Act for not meeting the processing timeframes is also an unreasonable requirement given the demonstrated performance of the sector*

- *WALGA considers that the fee for structure applications made under the Building Act should be reviewed with the aim of achieving full cost recovery for Local Governments.*

Application process

Since the introduction of the *Building Act* in 2012, there are now more than 19 application forms for approval, certificates or notifications. There may be scope to streamline the process to apply for building licences.

For example, WALGA considers that all strata forms should be consolidated in to a single application and one certificate issued to avoid any confusion in the approvals process. The current approach creates confusion by referring to two forms as an 'Occupancy Permit – Strata' and 'Building Approval Certificate – Strata' under the Building Act, while there are several other similarly worded forms that also exist under the *Strata Titles Act.* There may be opportunity to progress this reform as part of the review of the *Strata Titles Act*.

Key Finding

- *There may be scope to streamline the process to apply for building licences, such as the consolidation of all strata forms in to a single application with one certificate issued.*

Temporary Buildings

Section 69 of the *Building Act 2011* requires a building permit for temporary buildings and structures. To clarify the application of this section, WALGA has viewed legal advice provided to a Member Local Government that states "Marquees, tents and other similar structures which members of the public will use (or are using) are buildings and will require a building permit."

This interpretation means that there could be duplication of the Health Act requirements (Public Building Certificate of Approval), so in effect, a Building Permit has to be issued, and a Health Permit granted for the same temporary structure.

WALGA members consider that this issue could be resolved by using a similar approach to other states and territories where building control legislation has clear definitions pertaining to temporary buildings/structures (large tents, marques used for public events etc.).

Members have pointed towards Victorian legislation, where an occupancy permit for such a structure is made to the Victorian Building Authority and is considered under the auspices of the Australian Building Codes Board (ABCB) Temporary Structures Standard 2015. This standard does "borrow" a number of Building Code of Australia (BCA) requirements to help ensure a "safe" temporary structure (structural adequacy, some fire safety provisions, emergency exits & emergency exit lighting).

In Queensland the use of the Queensland Development Code (QDC) contains provisions for "temporary tents" which is used for public events. The QDC also borrows some BCA time provisions. In fact the ABCB temporary structures standard in Appendix B contains a good summary of all state and territory legislative requirements for these types of structures and how they are addressed.

WALGA understand that the Building Commission are obtaining legal advice from State Solicitors Office on this matter, and that a Bulletin will subsequently be prepared based on the advice received.

Key Findings

- *The requirement for a building permit for temporary buildings and structures could be duplication of the Health Act requirements (Public Building Certificate of Approval), to the extent that a Building Permit has to be issued, and a Health Permit granted for the same temporary structure.*

- *WALGA considers that this issue could be resolved by using a similar approach to other states and territories where building control legislation has clear definitions pertaining to temporary buildings/structures (large tents, marques used for public events etc.)*

Private Certification processes – Planning and Building

The introduction of private certification is being pursued as a way to reduce the regulatory burden. However, WALGA members have raised concerns that these reforms have the potential to deliver adverse outcomes and open the community up to significant risks.

The introduction of the *Planning and Development (Local Planning Schemes) Regulations 2015* allowed for a low risk form of private certification for the assessment of development applications. This was done by providing for an exemption from a development approval in clause 61 through self-assessment of compliance with the Residential Design Codes (R-Codes) deemed-to-comply requirements and relevant local planning scheme requirements.

This partial private certification process aimed to allow for third party technical assessment by private building certifiers while still requiring all building permits to be issued by the relevant Local Government.

There have been issues with this reform, which have meant that it may not be delivering the best outcomes. Many WALGA members cite the example of private certifiers who issue Certificates of Design Compliance without ensuring compliance with the RCodes or the Local Planning Scheme requirements, and will simply lodge their application for a Building Permit. Local Governments are concerned that the community expect the sector to carry out this 'precheck' or 'compliance' work but with no ability to charge for this service Local Governments find it difficult to recover costs. The Local Government has no choice but to return the application/or refuse it, until the Planning Issues have been addressed. The Form associated with this process (Form 6 under the *Local Planning Scheme Regulations)* is not used by applicants or supported by Local Governments, as it does not provide any confidence that the planning requirements have been met.

Further, in recent years there has been a push towards full private certification of building permits. Supporters of the private certification process claim that allowing private operators to both assess applications and issue permits will reduce costs and streamline the process, however there are fears it could lead significant conflicts of interest for private building certifiers and an increase in Professional Indemnity Insurance. The supporters of full private certification do not include the costings for the inclusion of mandatory inspections, as occurs in other States with full private certification systems, so it is not clear how they cost savings would

occur if at least 4 or more inspections will be required. There is strong agreement among Local Governments about the need to introduce a mandatory inspection framework, but only if it meets community expectations and protects the end consumer.

Some WALGA members have noted that full private certification has created significant costs for local government the building industry and their clients due to their lack of understanding of planning and health controls. WALGA considers that Local Government should remain the permit authority to keep the separation between the technical assessment and the final permit issuing. This would reduce the conflict of interests for private building certifiers and maintains community expectations that an independent and impartial authority will be issuing the approval.

Key Finding

- *The introduction of private certification is being pursued as a way to reduce the regulatory burden. However, WALGA members have raised concerns that these reforms have the potential to deliver adverse outcomes and open the community up to significant risks.*

Roads

Local Governments are responsible for land vested in road reserves under the *Land Administration Act 1997* and the *Local Government Act 1995*. The Commissioner of Main Roads has authority to erect traffic control signals and road signs under Section 297 of the *Road Traffic Act 2000*. This authority may be delegated to an authorised body such as a Local Government in certain circumstances.

To effectively discharge their responsibilities to manage safety and congestion, Local Governments issue permits to third parties such as utility companies, builders and others seeking to undertake works within the road reserve or work that will impact on movement of vehicles and pedestrians in the road reserve. The Permit requirements include ensuring that the party undertaking the work has appropriate traffic management plans in place and the plans of one party do not impact on the concurrent plans of another.

The WA Utility Providers Code of Practice is published by the Utility Providers Services Committee to document industry best practice and provide essential information and guidance in managing and undertaking street works associated with the provision of underground utility services in public road reserves. The Code refers to the requirement to seek a Permit for traffic management and safety in order to work in the road reserve. However, feedback from WALGA members is that this Code is not operating as an effective regulatory instrument, given that some businesses are not adhering to the requirement to seek a Permit to work in the road reserve.

This is opening the community up to additional risk, and contributing to delays and disruptions. Without co-ordination, the risk of negative impact on residents and others moving through the area is significant.

WALGA considers that there is opportunity to strengthen and streamline this process by amending the relevant Regulations and providing for a consistent "front end" process to simplify the task for users while retaining the benefits of a coordinated approach.

Key findings

- *The WA Utility Providers Code of Practice is not operating as an effective regulatory instrument in relation to the requirement to seek a permit to undertake works within the road reserve or work that will impact on movement of vehicles and pedestrians in the road reserve.*

- *WALGA considers that there is opportunity to strengthen and streamline this process by amending the relevant Regulations and providing for a consistent "front end" process to simplify the task for users while retaining the benefits of a coordinated approach.*

Waste

WALGA considers that there is scope to reduce the regulatory burden associated with landfill licenses issued under the *Environmental Protection Act Schedule 1 Prescribed Premises*. WALGA members have raised a number of concerns in relation to the regulatory burden associated with this licences.

- *Approval timeframes* - The current licence is quite lengthy, with one member reporting that they have been waiting for about 8 months already for a license renewal that has not been completed yet.

- *Regulation is not always proportionate to the risk* - In recent times the regulator applied stringent rules on the whole composting industry because of one bad operator instead of addressing the issues with the relevant operator.

- *Inconsistencies or unclear information* – Members have reported that there are inconsistencies among the licence conditions of the different landfills in WA, and that there is often not clear explanation or examples to assist Local Governments to understand regulations supporting licenses. An example of the lack of supporting information was when the landfill flare was included on the Certificate of Approval licence. A testing regime from the United States was adopted for pollution testing without sufficient explanation to assist Local Governments to understand what levels of pollution would be acceptable. The sector is required to provide the test results without this broader context about acceptable levels.

The key issue with licences issued under this schedule is that there is no guidance for the applicant on what approaches are needed and how risk will be considered by the Department of Water and Environmental Regulation (DWER).

Notwithstanding these issues, the DWER is considered to be approachable and willing to work with the sector.

WALGA worked with the DWER on the development of Environmental Standards for small rural landfills. A Draft was developed and WALGA sought permission to road test it with the Shire of Koorda on the development of their landfill. The site was taking a very small amount of waste (250T/annum) and in a low risk location. The licensing process took around a year to complete. The determination on the site was over 50 pages in length, and outlined every possible risk, rather than simply noting that the site met the requirements of the Environmental Standards.

WALGA considers that a risk based approach would help to streamline this process and reduce approval timeframes.

Another issue related to waste raised by WALGA members relates to requirements under the *Contaminated Sites Act 2003*. Although the process under the legislation is clear, and officers at the Department Water, Environmental Regulation are available to assist, it is considered that more guidance for the Local Government sector in relation to its responsibilities under the Act, and opportunities to limit cost in investigation and remediation work would be of benefit to the sector. For example, a historical unlined landfill could have a specific investigations guideline (produced by the DWER), that Local Government can use when preparing and assessing tenders.

Key Findings

- *WALGA considers that there is scope to reduce the regulatory burden associated with landfill licenses issued under the Environmental Protection Act Schedule 1 Prescribed Premises by using a risk based approach to regulation, and assisting Local Governments and others to understand their compliance requirements*

- *Additional guidance materials would assist Local Government to meet their requirements under the Contaminated Sites Act.*

Health

Local Governments enforce the *Health (Public Buildings) Regulations 1992*, which involves building safety, emergency lighting, risk management plans, seating safety, exit doors not being obstructed, fire rating of curtains, cleanliness of premises for public buildings such as recreation centres, churches, events and licensed premises.

These activities duplicate those undertaken by the Office of Racing, Gaming and Liquor (ORGL) in relation to licensed premises. One option that could be explored is the ORGL to be the lead agency in relation to licensed premises, and remove the Local Government from regulating these premises (pubs, clubs and large licensed premises). This would reduce duplication of services and potentially be a cost saving to industry.

Key Findings

- *There may be scope to reduce duplication in relation to the licensing of building safety regulations for licensed premises.*

5. Conclusion

Regulatory reform is an important objective in order to reduce the cost on business, but it is not a straightforward task. Any efforts to reduce the burden of State Government licensing must be undertaken in a collaborative way, with appropriate consultation, as set out in the State Local Government Agreement.

Like any policy changes, regulatory reform must be considered in the context of the Federation, and the most appropriate level of Government to administer a regulation. As the closest level of Government to the community, there are often cases where there are broader economic efficiency benefits by delegating administration of a regulation to Local Government. However, the practical implications of this must also be considered given the constraints on the sector's ability to raise own sourced revenue.

In circumstances where it is deemed that it is appropriate for Local Government to administer State Government regulations, it is important that the autonomy of the sector is preserved, and that appropriate resources are provided. A failure to do so can impact on the financial viability of the sector, and create an additional financial burden for the broader community.

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[xiv] (Former) Minister for Commerce, 2015, "Reforms for building and plumbing industries," *Media Statement*. Accessed 14 March 2018 from https://www.mediastatements.wa.gov.au/Pages/Barnett/2015/03/Reforms-for-building-and-plumbing-industries.aspx