

# Business Licensing Reform Inquiry

**CPSU/CSA Submission**



# CPSU/CSA Submission to the Inquiry into Business Licensing

The Community and Public Sector Union/Civil Service Association (CPSU/CSA) is a West Australian Union representing 630 occupations in over 130 public sector agencies.

We make work life better for over 40,000 people in WA.

We represent public sector staff responsible for enforcing, overseeing and developing business licensing guidelines in order to regulate a fairer and more ethical society and marketplace.

- We believe that robust, dynamic and quality public services are the foundation of a fair and just society.
- We are vehemently opposed to the privatisation of public goods and services, which increases the risk of exploitation of taxpayer funds.
- In formulating this report, we have actively consulted with members working within licensing, regulation, auditing and inspections.

## *CPSU/CSA's Recommendations*

- Before the Regulatory Impact Assessment programme can be widely used, efforts must be made to make the program less bureaucratic and more streamlined.
- Urgent consideration must be given to resource Department of Mines, Industry Regulation and Safety (DMIRS) Worksafe Unit in order to reverse cuts and provide a standard of service appropriate to the growth of the population in the state of Western Australia.
- DMIRS licensing software is resourced to be updated to provide a better standard of service for the user and the public alike.
- The Small Business Development Corporation is resourced to be expanded into a 'one-stop-shop' for businesses seeking to operate responsibly and following the law. This central point of regulatory assistance should be modelled on the 'Service NSW' operation in order to deliver benefits from Department of Health regulatory responsibilities.
- That the government includes union representation on any advisory group determining how the state regulates 'gig economy' employers.
- That the reform of On-demand transport goes further than establishing a level playing field and actually regulates to protect workers and consumers alike.
- An audit of current operations, either state-wide or as part of a coordinated Australia-wide process, would be the first step towards a well-informed decision making process regarding the future of ride-sharing applications in Western Australia.
- Efforts must be made to address understaffing and workload pressures experienced by the workforce of the Department of Transport.
- The prevalence of Fixed Term Contracts in the Department of Transport is also a concern which needs to be addressed as a matter of priority. The CPSU/CSA requests confirmation that the conversion to permanency pathway recently agreed in the industrial agreement will be implemented as a matter of urgency.
- Department of Water and Environmental Regulation (DWER) conduct a caseload and workload assessment to define a viable workload for regulatory officers.
- DWER improve communications to regional staff following their greater role in across-the-state regulatory responsibilities.
- DWER considers improvements or implementation of a more effective project management system which provides a unified platform for the merged agencies regulatory functions.
- Consideration should be given to streamline ministerial advice and liaison for 'super agencies' which report to two or more Ministers.

## Introduction

The CPSU/CSA welcomes the opportunity to comment on the current state of licensing in Western Australia. In preparing this submission, the Union was less interested in assisting the development of greater “whole-of-society” principles around licensing than we were to share our insights on the workplace issues affecting the highly trained professionals who are responsible for making sure our licensing system works — our public servants.

The Union membership considers that it is overly challenging to develop universal frameworks for licensing given the 700+ licenses and multiple agencies responsible across the state. We reject the notion that licenses are developed for their own sake. Each area of government regulation has been formulated to respond to and prevent societal problems. Licensing, regulation and compliance measures can be improved, but deleting licences should not happen without careful and cautious consideration.

The Union was also concerned by the tendency within some of the consultative documents to prioritise the needs of some stakeholder groups such as WA business owners over others. While the needs and wishes of WA business owners are a relevant consideration, we would ask the Inquiry to consider that licensing is not a bureaucratic barrier, but a preventative service designed to stop incidents from arising in the first instance, and allow rapid and swift action to entities which damage society —whether this be through environmental contamination, breach of workers’ industrial rights, sale of harmful substances or even responsible provision of industrial advice, collective bargaining and workplace protections.

In such cases the relevant licensing procedures may require verification of the veracity of the information provided in the application. This may require the inspection of premises or operating procedures or the sighting or verification of the qualifications, evidence of experience, identification or other information provided by the applicant. In these cases, the cost is for businesses and individuals to operate in ways that do not create undue risk to workers, the public or WA’s environment, not the regulatory requirement to demonstrate that competence.

Although customer-focus and education can improve the likelihood of the information being provided is accurate, it is complementary to regulation rather than an alternative to it. This is consistent with the regulatory approach in other States (NSW and Victoria).

The CPSU/CSA believes regulation is required where there is a clear need for government action, where action is effective and proportionate and the regulation is informed by consultation with the wider community. Regulation must also be regularly reviewed and reformed to ensure continued efficiency and effectiveness. Current evidence of no problems arising does not necessarily mean that licenses should be reduced, because in the fields of environmental and personal safety, multiple licenses exist to ensure there are no retrograde steps for Western Australians and our quality of life.

## Department of Mines, Industry Regulation and Safety

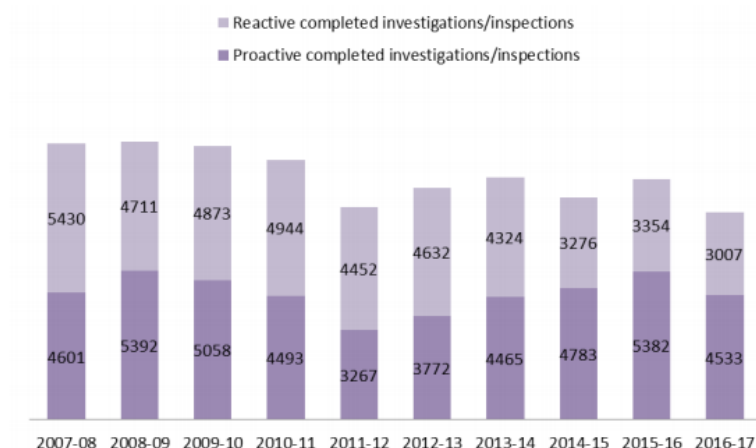


Chart 8 Completed investigations proactive and reactive: 2007-08 to 2016-17

The CPSU/CSA believes licensing and regulation cannot occur without a fully resourced authority. Currently, WorkSafe is affected by poor resourcing, excessive workload and a legacy of ineffective leadership, causing the authority to still be playing “catch up”.

(page 12, DMIRS – WorkSafe Division Submission)

In recent years, WorkSafe has suffered a series of cuts which have significantly impacted the effectiveness of the agency and its workforce. The July 2015 state budget removed \$4.1 million from the agency. This cut abolished 10 WorkSafe Inspector positions alongside positions in training and development, community education and administrative support. Broome and Karratha Regional Inspectors were also cut due to the unacceptably high cost of running an office in these regions. WorkSafe management have stated publicly that if the resources were available, these offices would still be open (p20, Inquiry transcript). Worryingly, the cuts to administrative support also had a flow-on effect with increases to workload for inspectors and insufficient time to perform core duties due to time spent completing administrative tasks. This has meant less time on inspections, investigations fieldwork and analysis.

As of 2017, WorkSafe had just 93 Inspectors, meaning WA had the lowest ratio of Inspectors per 10,000 employees across all of the jurisdictions in Australia. WorkSafe must regulate 225,000 registered businesses in Western Australia and some 1.2 million workers. It is a small agency with 132 staff and 93 inspectors and any cuts have an enormous flow-on effect to WA workplaces.

The CPSU/CSA is aware that workplace investigations have fluctuated.

In evidence presented by WorkSafe, in the five-year period between 2007–08 and 2011–12 there was an average of 9,444 investigations carried out per year while for the five-year period 2012–13 to 2016–17, there was an average of 8,306 investigations carried out per year.

Reactive investigations in 2007–08 were 5,430 compared to just 3,007 in 2016–17.

Workplace visits have fallen from 12,173 visits in 2007–08 to just 7,536 visits in 2016–17.

Prohibition notices have fallen from 676 in 2007–08, to 278 in 2016–17. Regional prohibition notices issued have fallen from 227 in 2006–07 to 66 in 2016–17.

The number of traumatic workplace deaths in Western Australia has hovered around 20 per year for the last decade (p11, DMIRS – WorkSafe Division submission).

The noticeable reduction of activity by WorkSafe was a cause for concern in last year's September Parliamentary Inquiry hearings:

*The CHAIR: In view of these figures, would it be fair to say that WorkSafe is struggling to meet the objects of the Occupational Safety and Health Act?*

*Ms NORTH: I would not say that, no. As Lex said at the beginning, I think we are actually doing a reasonable job and I think the outcomes that you see in this reflect that.*

*The CHAIR: I do not know that those figures that I have just read out reflect that at all.*

*(Inquiry into Worksafe, 4 September 2017, p13)*

This lack of auditing was highlighted in the warning signs of a shortfall in regulators and systems for occupational health and safety.

*On the legislation front, we have broad concerns that a range of legislation is not fit for times, including occupational health and safety and workers' compensation legislation. It is important that we stay on top of some emerging issues, and a few that we wish to highlight are the changing nature of work and whether or not our regulations and legislation are properly adapting to that, continuing developments in occupational carcinogens and cancer, and the potential rollout of the NDIS and what that might mean in terms of what is a definition of "employer" and a definition of "worker" in our occupational health and safety systems. We believe that some of these issues are not being adequately addressed at the moment.*  
(page 2, Inquiry into Worksafe, Session 2)

The lack of resourcing and need for catch up was described accurately by UnionsWA during the Parliamentary Public Inquiry into Worksafe, occurring in September 2017. UnionsWA reported that WorkSafe is not able to invite union cooperation when it comes to the inspector's assessment of a



workplace. Given that the important role of unions is referenced multiple times in the Act, there is a deficiency where employee representational bodies are not being informed about the progress or outcome of investigations.

*We have found that their triaging the system has not been effective at really looking at high-risk areas, as well as responding to imminent threats that are reported to them... from an outsider's perspective, when union officials or union members or health and safety representatives have reported what we believe to be serious and imminent risks to health and safety to WorkSafe, we see very little either initial investigations or follow-ups.*

(page 3, Inquiry into Worksafe, Session Two)

The CPSU/CSA has previously raised concerns with how WorkSafe's Non Compliance with Improvement Notices are referred to court. A lack of resourcing to WorkSafe has meant the current work procedure is to avoid complex cases where a conviction is not guaranteed. The disadvantage to this strategy is that many cases are not heard which would test the current laws and expose inadequacies. While this improves the statistics for WorkSafe's successful prosecutions, it does not lead to stronger protections and benefits for the community.

WorkSafe's insufficient resourcing also affects the auditing of training programs. There are a great many occupational safety and health training programs being delivered across Western Australia which are not to a high standard and/or are non-compliant with the Act, however given the reduction in funding and staff, WorkSafe only has the capacity to conduct these audits very peripherally and in practical terms it has slid down the hierarchy of priorities. Further, WorkSafe officers themselves are missing out on key professional development and training to maintain their own competency. A specific example is the reduction in training for Construction Inspectors, in relation to work activities such as scaffolding, rigging and working at heights.

The CPSU/CSA also believes it is time to reassess whether a return to the Mine Health Surveillance Scheme is necessary. High profile media articles and community outrage following the resurgence of black lung in Queensland suggests it would be a backward step to wind down proactive health policy. This scheme started in 1996 under the Mines Safety and Inspection Regulations 1995. The scheme ended in 2013 under the Barnett Government, as two epidemiological studies suggested the scheme may not be able to prevent illness. The surveillance scheme was removed in favour of a self-regulatory scheme whereby hazards are identified and addressed. The CPSU/CSA echoes the concerns of UnionsWA and affiliate members that this protection is not enough.

In terms of wider licensing concerns, Union delegates reported the following:

- The licensing branch uses very old ICT systems to serve the public which will require improvements to deliver an expected standard of service.
- Workforce/resources management issues are ongoing. A significant number of employees are currently engaged in contract work arrangements.
- Job security and permanency must be a priority to retain experience and prevent turn-over costs.

### **Small Business Development Corporation**

The CPSU/CSA would be interested in seeing reforms to the Small Business Development Corporation (SBDC) in order to empower the Corporation to fulfil a role as the "one-stop shop" for small business to navigate their responsibilities in licensing and compliance. The Union is interested in the New South Wales initiative "Service NSW" which has merged the compliance requirements of ten agencies into one.

Any one stop shop model also needs to better embrace Information and Communication Technology (ICT) to allow concurrent assistance in paperwork. If multiple forms must be filled out, the public sector should

be developing auto-filling forms which do not waste time on the same data being added again and again. Completing a form electronically should link to other forms that are required, or simply make the most of the opportunity to advise a business owner that they responsibilities that they may not be aware of. Auto-renewal notices can be automated and wherever possible, licensing and forms should be available to be completed and submitted online. This project would require development from the Office of the Government Chief Information Officer.

Department of Health (DoH) members were keenly interested in the prospects of such a model, especially from the standpoint of regulation of private entities that sell alcohol, tobacco products, or possibly require use of pesticides in commercial operations. The expansion of SBDC to a greater assistance role could reduce workload for DoH staff. This would be of great benefit, considering there are only five staff to monitor over 3,000 licensees selling tobacco products across WA.

### **Department of Transport - Outsourcing of Inspection Services**

A report published on 24 January 2017 by the Corruption and Crime Commission (CCC) entitled "Report on the Activities of Certain Vehicle Examiners Contracted by the Department of Transport" looked into issues of corruption which arose in relation to vehicle inspection services which were outsourced to private contractors under the former Barnett government. The report uncovered many disturbing incidences of bribery, fraud and corruption which were enabled by the partially privatised environment and its corresponding lack of oversight.

The former government had an ideological preference for outsourcing, as has been demonstrated by the Commission of Inquiry. Their outsourcing agenda in relation to the Department of Transport's vehicle inspection services was implemented following a series of tender processes commencing in 2009 which increased in number from 2011 onwards.

As at October 2017, there were 250 Authorised Inspection Stations (AIS) across the state including 65 in the Perth metropolitan area, performing over 90 per cent of all inspections. The increase in private inspection stations to perform these essential frontline services enabled the then-Minister to close down all but one of the public centres. The Department of Transport's Vehicle Inspection Centres (VEC) were consolidated into the one location at Welshpool. The reduction in FTE which accompanied these changes was implemented through voluntary redundancies and so-called "natural attrition."

These frontline public sector jobs were cut, in a deliberate decision to save money on salaries which did not anticipate the hidden costs of outsourcing. The reduced cost per vehicle was cited by the former government as another rationale for outsourcing these services. As has been well documented in the case of outsourcing essential frontline services, any reduced cost to the government is often due to reduced wages and conditions made possible by substandard industrial relations instruments in the private sector.

Further, any short-term reduction in costs usually corresponds to an increase in costs further down the track. These latter stage costs include the costs of rectification of breaches due to a lack of oversight, as well as costs associated with inquiries and reviews. All of these hidden costs were evident in the cases discussed in the CCC's report.

From the report:

*Outsourcing government services to the private sector without strong oversight and governance facilitates an environment in which bribery, fraud and corrupt business relationships can flourish. ...because of the nature of their work, an examiner inspects vehicles autonomously without peer review... The potential for misconduct is high.*

The Department of Transport is a major contributor to the WA economy. It delivered services at a cost of \$195 million in the 2015-16 financial year. It is also a significant generator of revenue on behalf of government, generating \$201 million in revenue in the same year. In a notification of change document sent to the CPSU/CSA on 10 October 2017, there is acknowledgement that the Department's revenue has substantially reduced as a result of outsourcing these services:

*This change has also resulted in a financial impact on the Department with a steady decline in the revenue received from motor vehicle inspections over the past four financial years.*

This notification of change document, titled 'Organisational Change Proposal: Driver Vehicle Services: Vehicle Operations and AIS Reform' outlines a series of structural and functional changes to the remaining Vehicle Inspection Centre which will result in a reduction of 12 FTE. Nine of these reductions will be Vehicle Compliance Examiners. While the notification of change document refers to some relation with the Voluntary Targeted Separation Scheme (VTSS), it is unclear whether the 12 FTE reduction will be considered part of the 3000 FTE to be reduced in that scheme or additional to that number.

The CPSU/CSA is extremely disappointed that the current government is supporting the further privatisation of vehicle inspection services within the Department of Transport, particularly given the recent report of the Corruption and Crime Commission in January 2017 describing the impact of outsourcing these services and the relationship to bribery, fraud and corruption.

Between August 2011 and September 2014, one of the contractors the Department engaged to provide vehicle inspections, Mr Alfonso Berardis, was contracted by the WA State Government to conduct inspections on over 7,000 vehicles, at a cost to government of \$139 per vehicle. From this single example, it is evident that a compromised contractor can potentially cost the Department \$371,000 per year of operation. This does not take into account the significant workload and staffing impact this has on the remaining Government inspection centre which is required to re-assess the compromised vehicles. In addition, the impact of a non-compliant inspector causes increased reputational damage to the Department of Transport as well as data integrity issues as there are potentially years of false or incorrect information fed into the Transport Executive and Licensing Information System (TRELIS).

Similarly, there have been integrity and transparency issues surrounding truck assessments. Union delegates anecdotally report that they have seen approvals increasing from approximately 66 per cent to 99 per cent with privatisation due to "license for cash" arrangements, which then enables the driver to trade down for a car license without going directly through the DoT assessment. There is usually only paper auditing of privatised functions which isn't sufficient to ensure there is financial accountability for these arrangements.

### **Greater regulation for the AIS network**

The concluding stages of the CCC report outlined a range of measures being considered by the Department of Transport which the CCC recommended to adopt. Additionally, the CCC resolved to report in early 2018 on the Department's progress in implementing these measures, which are as follows:

- developing of a system of predictive analytics;
- obtaining photographic evidence of vehicle examinations;
- broadening compliance activities;
- rigorous audit of invoices against TRELIS;
- increasing physical and technical resources;
- enhancing training and integrity awareness provided to contractual partners; and
- creation of a public reporting phone line.

In the CPSU/CSA's view, the scale and magnitude of the bribery, fraud and corruption exposed in the report emphasises that the above commitment will not be sufficient. The report clearly demonstrates that outsourcing the Department of Transport's vehicle inspection services is a failed experiment and results in higher costs to government, the community and the workforce along with delivering a reduced quality service. Accordingly, the CPSU/CSA requests that these services be directly delivered by the Department of Transport, in line with election commitments to return privatised services to the public sector where possible and economically beneficial to do so as a matter of priority.

### **Restructure of On-Demand Transport Services: Industry reform of Uber vehicles**

The rise of the ride-sharing digital application Uber has presented significant challenges to the state control and regulation of on-demand driving services. Most notably, this industry shift has seen the loss of value of a taxi license plate from \$300,000 to \$85,000 with some reports the value may have dropped as low as \$10,000. While the West Australian state government is now considering whether to recompense taxi drivers who have lost a significant portion of their livelihoods, Uber's chief executive Travis Kalanick boasted in 2014 that the business has a market value of over \$20 billion (US) and is doubling its revenue every two months.

Between November 2012 and November 2014, Uber has gone from a market share of one per cent of Electronic Taxi Transactions in Australia to 19 per cent and the proportion continues to grow. Perth is the only mainland city in Australia in which Uber rides have overtaken taxi rides, with 24 per cent of residents having taken an Uber within the first three months of 2017, compared with 22 per cent of people who have caught a taxi.

Meanwhile, taxi user subsidies in Western Australia are now expected to be over \$10 million per year. This is occurring while taxi licence fees collected are expected to substantially drop, with a reduction of at least one million dollars observed from 2014-15. The proposed industry funded buyback scheme to mitigate this inequity will also come at a cost to the taxpayer.

The former Western Australian government failed to act on reforming the on-demand transport industry, despite agreeing that Uber is frequently operating in serious breach of Western Australian laws. It is the CPSU/CSA's hope that strong leadership will be demonstrated on this issue and introduces reform that will protect the workforce and end-users of the services alike.

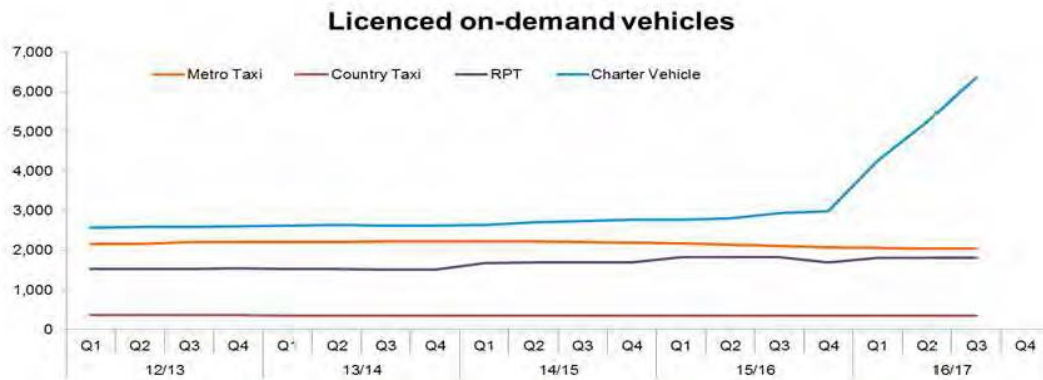
The regulation of ride-sharing digital applications in Western Australia is inadequate to meet the current challenges caused by the introduction of these applications to on-demand transport. Motor vehicles which are used to transport passengers in association with ride-sharing applications meet the definition of "omnibus" under the *Transport Coordination Act 1966*, however the provisions of that Act were not established with this development in the workforce in mind and are not effective at regulating the industry.

For example, there is currently no requirement for fixed cameras in each vehicle as is the case with taxis, which leads to significant safety concerns, particularly due to the high proportion of women and young people who use ride-sharing applications. These concerns have proven substantiated with cases of indecent assault being prosecuted within Western Australia and returning guilty verdicts, in relation to multiple drivers of the ride-sharing application Uber.

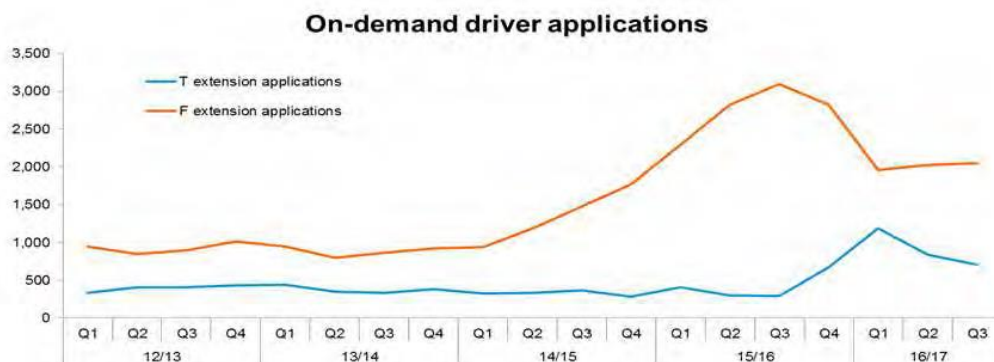
Other safety concerns which are heightened due to the insufficient regulation and lack of vetting by a responsible employer include recent cases of public defecation and driving under the influence of methamphetamine, both reported in recent months in Western Australia in relation to Uber drivers. Uber has "community guidelines" which they claim drivers are to abide by, however there is no oversight or monitoring of compliance, and access to the digital application is only revoked after cases have been brought to Uber's attention, usually by the police.



There is also rising evidence that the aggressive business model Uber engages is not fair to workers, who experience occupational safety and health issues, costly overheads, limited guidance or assistance from the principal and limited scope for earning a living. The Centre for Future Work has conducted an analysis on the “gig economy” which has been published in the peer-reviewed University of New South Wales journal *Economic and Labour Relations Review*, with the research indicating that hourly rates for part-time workers for Uber fall well below minimum wage.



(p4, March 2017 Quarterly Report of the On-Demand Transport Industry)



(p5, March 2017 Quarterly Report of the On-Demand Transport Industry)

These tables illustrate the rapid increase of chartered vehicles in Western Australia which has occurred in conjunction with Uber’s introduction to the state. They also demonstrate the significant increase in omnibus chartered vehicle licenses F extension applications which represent the increase may be driven by changes in the industry or in legislation. Ride-sharing services entered the market in the first quarter of the 2014-15 financial year, which corresponds with the rapid increase in the top line which commences at that point. Prior to this it had been steady at 1,000 new applications a year, however within 18 months had tripled to over 3,000 new applications per year.

Our members have concerns that the introduction of this relatively new form of on-demand transport has exploded into the market without the Department of Transport or its workforce having clarity from government on how best to respond to it. The legislative and regulatory framework has not kept up with the pace of growth. Additionally, our members have concerns about inequity across both the taxi and ride-sharing workforces as a result of these rapid changes in the market. Our members have a commitment to providing quality advice and licensing services to the public and take pride in seeing their work delivering positive transport services to the community of Western Australia. In the case of the rise of ride-sharing services, the public benefit has yet to be observed and there is evidence that the virtual monopoly currently in existence is not beneficial to the community or workers.

An On-demand Transport Advisory Group (OdTAG) was set up by the previous government to provide advice to the Department regarding reform of on-demand transport. Concerns around the growth in Charter Vehicle Licenses were discussed at the most recent (and last) meeting of the On-demand Transport Advisory Group which occurred in January 2017:

*Mr Allan Lantzke, Manager Education and Compliance, was invited by the Chair to update the Group on recent compliance activities. Mr Lantzke advised the group of recent compliance activity and discussed some statistics on new CVL operators, including the provision of a graph depicting these figures against other players in the industry. This prompted some taxi representatives to query DoT's continued control of the number of vehicles in the taxi industry, whilst allowing a rapidly growing CVL industry. Concern was expressed that if taxi numbers continue to be capped, so should CVLs.*

There is a high level of uncertainty in On-Demand Transport Services at this time. CPSU/CSA members at the Department of Transport are aware that the legislation around taxis is in the process of reform, with on-demand reform legislation due to be introduced in November and a finalisation of duties expected by 2018. The On-demand Transport Advisory Group provided advice to the Department on potential reform within the following parameters:

- Implement an annual licensing framework for vehicles, drivers and booking services.
- Ensure a chain of accountability across all entities that deliver on-demand transport services.
- Define the role of the regulator in what is now an information technology driven environment.
- Provide appropriate tools and penalties that will ensure on-demand transport industry participants who are non-compliant are held accountable.

### **Department of Transport - staffing capacity and workload**

Members within the Department of Transport have concerns for the capacity of the remaining workforce within the Department to undertake core duties following a series of staffing cuts since 2013-14. An example of this is the capacity to address crises which stretch the Department, such as the hail storm of 2011. During that event, 40,000 vehicles were damaged which increased the demands on the workforce who worked extra hours and weekends to meet the demands this event created, with 95,000 vehicles assessed during that year. The following year, when the number of vehicles assessed had decreased down to 52,000, this was used as a rationale to make staffing cuts and outsource work to contractors. There are serious concerns that when extraordinary events such as hailstorm damage occur again, there will not be the workforce to address them urgently as will be required.

A staffing ceiling of 43 FTE within Vehicle Examinations and Compliance has been reduced to a remaining 8, which impacts on wait times for the public in having their motor vehicle assessed, as well as the capacity to service other public sector clients such as the Western Australian Police.

A particularly disappointing outcome was the recent inability to carry out the requirements of a national operation in conjunction with the National Heavy Vehicle Regulator (NHVR), to carry out the Heavy Vehicle National Law (HVNL). This uniform regulatory system when introduced in 2014 was intended to be a one-stop shop for all heavy vehicle road transport business within government including assessments of the national heavy vehicle fleet, however despite initially agreeing to, Western Australia did not join the other participating states and territories due largely to not being able to meet the workforce capacity.

The low workforce numbers within Department of Transport to respond to heavy vehicles is particularly concerning given Western Australia has the most heavy vehicles on the roads of any state or territory. The Department of Transport also undertakes the work required for licensing arrangements for the Federal Interstate Registration Scheme (FIRS) which provides for separate licenses to drive rigid heavy motor vehicles including prime movers, trailers and semi-trailers involving in interstate hauling. This area is again impacted by low staffing with the current workforce having difficulty meeting the workload demands.

## **Stop the side-stepping: regulation and the gig economy**

Any review of licensing and regulation would be remiss in not considering the widespread impacts created by the resurgence of the gig economy. For the union movement, business operators who have embraced the gig economy business model are widely known to sidestep society's established laws and codes, especially in the area of general industrial rights, workplace safety and working conditions.

While CPSU/CSA membership are not yet at risk of seeing their working conditions diminished through this industrial disruption, we have instead seen members actively struggle to regulate groups attempting to sidestep responsibilities through gig economy business models. The Union is aware WA's On-Demand Transport inspectors usually hold approximately 60 open court cases against Uber at any given time due to a lack of clarity around wider corporate and employer responsibilities. We are aware Worksafe inspectors are working to health and safety regulations that are more suited to traditional workplaces rather than the non-standard employment arrangements that gig economy employers' offer.

One key need for reform is amending the *Work Health and Safety Act* and the *Industrial Relations Act* to better define "employer" and "worker." These definitions are in urgent need of reform to prevent gig economy employers from sidestepping laws by claiming staff providing a service under the corporation's banner are independent contractors and not employees. Importantly to their recognition as employees, these 'independent contractors' are often banned from providing the service if they promote a competitor's service while using the app (eg advising an Uber passenger that Lyft provides a superior service while driving as an Uber driver).

Another reason for the urgent updating of licensing and regulation to adapt to the gig economy is the flawed decision by the McGowan government to transition to the federal NDIS. This decision will open an entire sector to precarious employment models – regulatory reform and worker protections must be developed now.

## **Environmental regulation**

Many Union members in the Department of Water and Environmental Regulation (DWER) play key roles in the statutory licencing that enables commercial, industrial, agricultural and other activities to operate with confidence that the underlying natural assets and key ecological processes and functions are protected. There are a number of environmental regulatory models that have been applied across different jurisdictions within Australia over the past decade (Heckenburg) (Australian Government).

One common theme in reviews of States' environmental regulation is that environmental regulation is often a patchwork of different models on the spectrum between command and control and persuasion. This has led to confusion for industry and project proponents and frustrations for regulators and public servants. It is further hampered when prolonged and ongoing budget crises leave environmental regulators understaffed, under resourced and under-trained to apply environmental regulatory frameworks with confidence and consistency across all functions from providing guidance, effective thorough and timely assessment, monitoring, compliance and enforcement.

Where statutes have developed over time, based on different regulatory framework models this can further create confusion. Across Australia the outcome has been a trend of ongoing environmental degradation despite several decades of environmental protection laws aimed at halting and reversing that trend.

## **Key issues**

Members and delegates have raised the following key issues pertinent to this review that hamper their ability to provide the high quality public service:

**1. Resourcing issues** including:

- Insufficient staffing in key roles, including regions, and potential further job losses
- Excessive workloads and stress/pressure on staff
- Outdated digital project management systems in relation to Industry Regulation
- Implications flowing from differences in the underlying funding model between the regulatory models of the two former agencies (Department of Environmental Regulation and the Department of Water)

**2. Process-related issues**

- Changing operating procedures and internal consultation and communication processes
- Lack of uniformity in application of policy, reporting and operating procedures across the State and between the various regional management areas creating confusion with development proponents who are responsible for multiple projects

## **Staffing levels**

Over the last decade the then DER (and its prior iterations) faced significant resource constraints which saw the staffing levels in Environmental Regulation, as defined and reported in the State Budget, fall from 275 FTE in 2013/2014 to an anticipated 223 FTE in 2016/2017 despite no decrease in volume of applications (WA Budget Papers 2014-15, 2015-16). Anecdotal evidence from members suggests that the volume of applications may be starting to increase, which is consistent with signs of economic recovery in the resources sector. This is despite significant workload pressures documented by the Union from 2014/2015 and raised with the agency repeatedly through JCCs and other meetings.

Positions in regions were not backfilled and some regional staff have been transferred to Perth or Bunbury. This is on top of the impacts of various budget-related cuts including the workload renewal process, hiring freezes and efficiency dividends. The restructure currently underway is anticipated to result in further changes to roles. This has created further stress on already overloaded staff.

The former Department of Water (DoW) has undertaken numerous 10 per cent 'efficiency dividends' driven by the Agency Expenditure Review (AER) process. The AER process of December 2015 set a DoW target of 1.5 per cent reductions which equated to approximately \$900,000 per year, continuing to the 2018-19 financial year. The Workforce Renewal Policy also required that DoW reduce the salary budget by \$12.7 million over four years. This has so far seen a reduction of 24 FTE.

## **Workload**

Issues related to the excessive workloads reported by members include:

- Works approval and other application processes have tight, specified timeframes for completion regardless of the complexity of the proposed works or of the receiving environment and whether any specialised expertise within the agency needs to be sought. The timeframes, which form part of the individual's Key Performance Indicators (KPIs) means that assessment work may be prioritised over monitoring, compliance and audit related tasks. To the best of our members' knowledge, there has been no work undertaken by the agency to identify what constitutes an appropriate and achievable workload for staff in the Industry Regulation team.
- For Works Approvals/Licensing Applications, the relevant DWER Operating Procedure (IR-OP-11) sets 22 days as the time for officers to undertake potential complex risk assessment as part of the overall 60 day response timeframe. One manager has reported that his or her staff can be dealing with 30-40 applications at a time.
- Changes to how licence amendments are managed and communicated, with licences now having up to 10 stapled amendments to the original licence rather than a single consolidated updated licence.

This means cross-referencing between multiple documents for both staff and proponents, leading to frustration and possible confusion.

- Improved communication and coordination between the assessment, compliance and enforcement teams across DWER, including the provision of adequate training when operational procedures and support while gaining experience with new systems and applications.
- Inadequacies in project management systems also impact on operational procedures.
- Efficiency that could be gained through a unified DER/DoW whole of agency approach have not been implemented.

### **Digital project management systems**

One of the resourcing elements that has added further strain has been the 'Industry Licensing System' (ILS) used by the Industry Regulation Branch, which has not been significantly updated over the last decade and is no longer fit-for-purpose. For example, regional members have reported instances when work entered into the ILS system appears to have been lost, thus producing inaccurate KPI data. Regional members have also raised issues in relation to having limited access to some components of the system so tracking spreadsheets have been developed, which duplicates what should be a single, effective project management system. DER and DoW ICT systems currently hold limited compatibility and must be updated before they can effectively operate DoW corporate applications.

The amalgamation with the DoW with the DER and the Office of the Environmental Protection Authority (OEPA) in forming the DWER has further highlighted the discrepancies in functionality. Currently the Industry Regulation and Water Regulation use separate systems. It is understood that there is intent to address through adoption of an enhanced DoW "Compass" system. This is anticipated to take time through both system modification and DER PC upgrades. The change process can be frustrating for staff, proponents and other stakeholders. It is noted that DWER is moving to utilisation of existing DoW corporate systems such as Human Resource / HR Hub (Aurion) and TechOne Finance systems, which is somewhat understandable as the DER / OEPA had been reliant upon the corporate systems provided by the former DPAW / P&W, now the Department of Biodiversity, Conservation and Attractions.

### **Funding models**

In terms of funding, there are differences in the underlying funding models of Industry Regulation and Water Regulation again brought to the fore by the amalgamation. In terms of Industry Regulation works approvals and licensing under regulations under the *Environmental Protection Act 1986*, these include fees for licences, permits and a system of fines for breaches of licence conditions. This was established as a means of self-funding regulatory functions to better match varying resources with needs. Fees are regulated with minor annual increases.

In recent years, reclassification of some types of proposals has reduced fees for proponents but potentially led to under resourcing of some functions. For example, under s53 of the *Environmental Protection Act 1986*, a works approval fee may have been in the vicinity of \$30,000. Changes to the processing of legislation (and thus Applications) resulted in some of these proposals now being carried out as licence amendment, which might have a fee of around \$2000. Although proponents might welcome the reduction in costs, the outcome has increased the gap between the resources needed and those available. A review of this model is now required.

The DoW, while operating under a regulatory framework that included assessment of breaches under the *Rights in Water and Irrigation Act 1914*, has actively worked at limiting breaches with KPI's linked to reducing the number of breaches. The DoW employed active negotiations and discussions with proponents with modification of operating strategies to better fit the licence conditions to avoid breaches. Fines

associated with breaches of the Act go into the State's consolidated revenue — not into DoW operating expenses.

Costs for carrying out water licencing functions are met from DWER budget allocations. The Union has heard from members who operate under each of the systems and it is anticipated that the development of whole of government principles for licencing systems will give thought to appropriate models. The Union would strongly urge that these principles lead to guidelines that ensure responsible resourcing for these functions.

### **The Boundy review**

A number of additional issues related to staff consultation and poor change management processes were addressed in a review of the (then) DER's leadership practices, systems and processes carried out by Marlene Boundy of the Public Sector Commission in November 2016. One of Ms Boundy's findings included:

*Interviewees expressed there is a lack of recognition and acknowledgement of the expertise and commitment of staff and indicated there is insufficient consideration given to workload issues.*

In addition, the independent consultancy firm Working Life found:

*There was very strong support from staff for Managers and in both the survey and the face to face interviews it was suggested that it would be too simplistic to say that Managers are not managing. There are several factors that contribute to this, including a view that Managers are too busy to do this. For example, Managers are:*

- *Struggling with workloads and thus people were discouraged to discuss issues as their Managers often told them they had work to do; (Working Life, p60)*

Although the review led to some changes in leadership and some improvements in staff consultation and engagement, this is still a work in process and further improvements are needed. The Union will continue to engage the agency through the Joint Consultative Committee process to develop further improvements. It is noted that members and delegates have repeatedly raised concerns about the proposed relocation of the agency to Joondalup and the additional travel time to and from meetings in terms of their capacity to achieve already high work through-flow expectations.

### **Process-related issues - rapid change**

In 2015 significant changes were introduced to the (then) DER Licensing and Approvals processes as a part of the adoption of a risk-based model. The issues noted above in terms of inadequate staffing, excessive workloads and inadequate internal consultation, communication, coordination and training meant significant challenges in both adapting to a new model and addressing system inefficiencies. Many of these changes were introduced at short notice and with little or no consultation with staff. The processes themselves were also subject to rapid change, often with limited resources with which to implement them. Throughout these changes members expressed considerable frustration to the Union and through staff surveys. It is understood that work is currently being undertaken on simplifying templates. Some particular issues raised by members include reduced resources limiting the opportunity to engage proponents at the scoping stage, which can flow through to requests for further information at later stages, which increases the burden for both staff and proponents that could be avoided with greater investment in scoping.

The changes included a shift from regionally-based processing and management of licensing and work approvals processes to a risk-based approach. This was achieved through a centralised work-distribution hub based in Perth with the objective of improving coordination and consistency across the State.



Under this model, licence and works approval applications, including those coming from regional areas, were allocated to staff potentially based anywhere across the State. Thus, for example, a works approval application from the Kimberley may be allocated to an officer based in the Great Southern rather than an officer based in the Kimberley. It is recommended that the system be reviewed so that goals in terms of improved coordination and consistency can be met whilst also valuing and making best use of regional knowledge and experience.

As a part of the Machinery of Government process, further changes to organisational structure, systems and operating procedures are continuing. The Union would invite the Inquiry to closely assess how the current arrangements are functioning and make an informed assessment to inform reform.

### **Water, the environment and multiple ministers**

One of the outcomes of the agency amalgamations in mid-2017 was that the new Department of Water and Environmental Regulation brought two different ministerial portfolios into a single agency. Given that both agencies have roles in the regulation and management of the State's natural assets, there is considerable overlap in practice. This has meant:

- Staff time needed to respond to questions from two Ministers and their offices has increased
- Two reports must be drafted to meet different Ministerial requirements where a licensing or regulatory issue is relevant to both.

### **Conclusion**

Given the wide scope of protection and regulation duties undertaken by CPSU/CSA members, this submission has only scratched the surface of current roles and work undertaken in licensing. This submission has sought to inform the Inquiry of a number of the disruptors currently creating challenges for proper business licensing, regulation and support across Western Australia. The Union is likely to submit supplementary information detailing licensing around working with children that would be relevant for this review.

Union members were unified in urging the Inquiry to not address the review with an aim to experiment with removal of regulation to see if societal problems arise, but to instead consider smarter, more common-sense methods of ensuring our current protections work better. This can be achieved via the promise of better ICT, shared data and better information access to the public. But no reforms can be successful without properly resourcing our civil service to achieve the expectations placed upon them.

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