

# Inquiry into reform of business licensing in Western Australia

## Feedback

The Pilbara Ports Authority (**PPA**) submits the following in response to the consultation papers issued by the Economic Regulation Authority (**ERA**) as part of its inquiry into reform of business and occupational licencing in Western Australia.

## Consultation paper 1: Identifying priority areas for reform

### 1. General Feedback

Comment
PPA has provided its view of the main priority areas for reform, including some specific examples for DWER licensing arrangements. PPA welcomes the opportunity to meet with ERA to expand on this feedback.

### 2. Specific Feedback

Questions	PPA Comment
<p><b>What are the priority areas for reform of business licensing in Western Australia? Why? What effects do they have on you? What reforms would you recommend?</b></p>	<p>PPA's main priority areas for reform of business licensing in Western Australia are:</p> <ul style="list-style-type: none"> <li>• Department of Water and Environmental Regulation (<b>DWER</b>):               <ul style="list-style-type: none"> <li>○ Environmental licensing under Part V of the <i>Environmental Protection Act 1986</i>; and</li> </ul> </li> <li>• Department of Mines, Industry Regulation and Safety (<b>DMIRS</b>):               <ul style="list-style-type: none"> <li>○ Security sensitive ammonium nitrate (SSAN) storage licensing; and</li> <li>○ Application for a special berth (non-explosives) declarations; and</li> </ul> </li> <li>• Department of Transport (<b>DoT</b>):               <ul style="list-style-type: none"> <li>○ General administration of DoT managed licensing regimes.</li> </ul> </li> </ul> <p><b><u>DWER</u></b></p> <p>Environmental licensing under Part V of the <i>Environmental Protection Act 1986</i> is a priority area for business licencing reform in Western Australia. The issue for PPA</p>

Questions	PPA Comment
	<p>specifically relates to DWER’s protracted process for issuing licences and reviewing licence amendment applications. PPA has provided two recent relevant examples (below) that highlight this issue and the potential impacts to PPA and our proponents in the mining sector:</p> <ol style="list-style-type: none"> <li>1. In March 2017, PPA lodged an application with DWER to amend environmental licence L4432 (East Side Operations) to consider a realignment of the Prescribed Premises boundary. PPA received revised draft licence conditions for the amended licence firstly in June then in November 2017, and subsequently received a final amended licence in March 2018.</li> <li>2. In March 2017, PPA also lodged a licence amendment application with DWER seeking to amend environmental licence L8937 (Utah Point Operations) to export Spodumene (Lithium Ore). The licence amendment application was prepared to support port user trade needs to meet the growing global demand for lithium products. As at the date of this submission (5 April 2018), the licence amendment application remains under assessment by DWER. PPA understands similar applications by other ports are also still under assessment with similar protracted approvals timeframes.</li> </ol> <p>There is no statutory timeframe associated with DWER’s assessment of licence amendments. DWER’s target approvals timeframe is 60 days for works approvals, licences and significant amendments, and 40 days for minor amendments. There is no requirement for communication with the licensee during the assessment period.</p> <ul style="list-style-type: none"> <li>• The current assessment timeframes for PPA’s Environmental Licences (L4432 and L8937) are well in excess of these targets, which may unduly delay the export of a port user’s product. This could result in a loss of both immediate and potentially long-term market opportunities, as global customers look elsewhere for a product that can be supplied to meet</li> </ul>

Questions	PPA Comment
	<p>production timeframes.</p> <ul style="list-style-type: none"> <li>• While most activities within the port environment have long lead times for development, the ability to maintain operational flexibility and facilitate trade in response to immediate issues remains a priority for PPA. Certainty on regulatory process and outcome expectations is therefore critical. The extended timeframes taken by DWER to complete assessments of licence amendment applications represents a significant barrier to trade facilitation and PPA's ability to have flexibility in its operations. The uncertainty around securing timely approval of licence amendment applications will adversely impact the viability of port users operations and restrict PPA's ability to facilitate trade in a timely manner as required under the <i>Port Authorities Act 1999</i>.</li> <li>• Long lead times can also extend to timing impacts to business and commercial decisions made by PPA where these decisions are based on existing licence conditions. Any significant change to these conditions, particularly in the absence of consultation, can have significant impact on not only PPA activities, but site exporters who have developed processes in line with current licence conditions. In the absence of consultation, the Port Authorities and exporters become exposed and opportunities are constrained. In a recent example of this, a set of conditions which afforded Port Authorities a level of risk-based flexibility in export products, was removed without any consultation. This had immediate impact on the PPA's ability to potentially honour agreements with exporters in lieu of alternative conditions or an amended licence. Given the protracted time taken to assess such amendments, from an exporter's perspective there was a loss of confidence in PPA's capacity PPA to facilitate these trades. Without due consultation, the removal or change of environmental conditions within a Part V licence can</li> </ul>

Questions	PPA Comment
	<p>create significant business interruption.</p> <p>PPA recommends licensing reforms that provide greater certainty on the approvals timeframe and a more streamlined process. Greater consultation whilst applications are under consideration is also recommended, along with mutual agreement between DWER and the licensee prior to any substantive changes being made.</p> <p><b><u>DMIRS</u></b></p> <p>PPA also recommends the:</p> <ul style="list-style-type: none"> <li>a) security sensitive ammonium nitrate (SSAN) storage licences; and</li> <li>b) applications for special berth (non-explosives) declarations,</li> </ul> <p>as further priority areas for business licensing reform in Western Australia.</p> <p>From PPA's perspective, the main issues with these regimes are administrative in nature and relate to consistency of approach over time. The Special Berth Application process and SSAN expectations are extremely time consuming (in some instances the process has taken up to three months). In PPA's experience it appears this may be due to factors such as DMIRS':</p> <ul style="list-style-type: none"> <li>a) limited personnel resources and / or experience in responding to licensing administration; and</li> <li>b) personnel's new interpretation on matters that conflict with historical DMIRS' decisions.</li> </ul> <p>The issues raised above impact on PPA and PPA's customers as they impair PPA's ability to operate efficiently in meeting PPA's customer requirements.</p>

Questions	PPA Comment
	<p>Accordingly PPA would recommend the factors above be considered in any reform of these licensing regimes.</p> <p><b><u>DoT</u></b></p> <p>PPA also recommends that there could be efficiency gains in the administration of DoT managed licensing regimes. As per the issues relating to DMIRS outlined above, the main issues from PPA's perspective in relation to DoT licences are administrative in nature, including: limited DoT personnel resources to respond to licensing administration; personnel lack of knowledge and / or understanding of PPA requirements and/or specific licensing requirements; and personnel's new interpretation on matters that conflict with historical DoT decisions.</p> <p>The issues raised above impact on PPA and PPA's customers as they impair PPA's ability to operate efficiently in meeting PPA's customer requirements.</p> <p>Accordingly PPA would recommend the factors above be considered in any reform of DoT licensing regimes.</p>
<p><b>Is business licensing used too freely to address problems and risks? If so, why is this the case?</b></p>	<p>No comment</p>
<p><b>What shapes the way regulatory agencies and licensees interact?</b></p>	<ul style="list-style-type: none"> <li>• Historical processes and decisions;</li> <li>• Legislation and internal policies and procedures;</li> <li>• Interpretation of applicable legislation;</li> <li>• Availability of resources;</li> </ul>

Questions	PPA Comment
	<ul style="list-style-type: none"> <li>• Decision making authority / delegations within agencies;</li> <li>• Business requirements; and</li> <li>• Directions from State / Ministers.</li> </ul>
<p><b>What types of issues hinder reforms of business licensing? What can be done to make business licensing reforms more likely to be progressed.</b></p>	<p>Types of issues hindering reform, include:</p> <ul style="list-style-type: none"> <li>• Lack of shared understanding between agencies on the issues requiring reform;</li> <li>• Lack of a risk based approach to decision making;</li> <li>• Overly prescriptive processes for reform;</li> <li>• Limited resources to implement change;</li> <li>• Process and requirements being captured within legislation inhibiting flexibility in the reform process i.e. requiring legislative amendment before change can be implemented; and</li> <li>• Conflicting priority for licensing reform amongst agencies.</li> </ul> <p>To assist in making business licensing regimes clearer, more efficient, and accordingly more likely to be progressed, the following should be considered:</p> <ul style="list-style-type: none"> <li>• Establish clear processes;</li> <li>• Allow for flexibility where required;</li> <li>• Allow for greater consultation at appropriate levels prior to implementation of amendments; and</li> <li>• Increase resources and knowledge base to administer the licensing regimes.</li> </ul>
<p><b>What are some examples of successful reforms of business licensing?</b></p>	<p>No comment.</p>

Questions	PPA Comment
<p><b>Which licensing schemes should be a high priority for review and reform? Why? What effects do they have on you?</b></p>	<p>As above, PPA's view is that environmental licencing administered DWER under Part V of the <i>Environmental Protection Act 1986</i> is a high priority area for business licencing reform in Western Australia.</p> <p>PPA also recommends reform to the DMIRS / DoT licensing regimes as outlined above.</p>
<p><b>Please provide evidence of the effects of the licensing scheme(s), including:</b></p> <ul style="list-style-type: none"> <li>• <b>the sectors affected;</b></li> <li>• <b>whether it restricts entry to the industry and/or competition and if so how;</b></li> <li>• <b>how it adds to business costs;</b></li> <li>• <b>whether it reduces investment and innovation and if so how;</b></li> <li>• <b>whether it disproportionately affects small business; and</b></li> <li>• <b>how it affects the prices, quality and choice of goods and services available to consumers.</b></li> </ul>	<p>As above, PPA has provided two recent examples (repeated below) that highlight this issue and the potential impacts to PPA and our proponents in the mining sector:</p> <ol style="list-style-type: none"> <li>1. In March 2017, PPA lodged an application with the Department of Water and Environmental Regulation (<b>DWER</b>) to amend environmental licence L4432 (East Side Operations) to consider a realignment of the Prescribed Premises boundary. PPA received revised draft licence conditions firstly for the amended licence firstly in June then in November 2017, and subsequently received a final amended licence in March 2018.</li> <li>2. In March 2017, PPA also lodged a licence amendment application with DWER seeking to amend environmental licence L8937 (Utah Point Operations) to export Spodumene (Lithium Ore). The licence amendment application was prepared to support port user trade needs to meet the growing global demand for lithium products. In March 2018, the licence amendment application remains under assessment by DWER. PPA understands similar applications by other ports are also still under assessment.</li> </ol> <p>PPA notes:</p> <ul style="list-style-type: none"> <li>• There is no statutory timeframe associated with DWER's assessment of Licence amendments. DWER's target approvals timeframe is 60 days for</li> </ul>

Questions	PPA Comment
	<p>works approvals, licences and significant amendments, and 40 days for minor amendments. There is no requirement for communication with the licensee during the assessment period.</p> <ul style="list-style-type: none"> <li>• The current assessment timeframes for PPA’s Environmental Licences (L4432 and L8937) are well in excess of these targets, which may unduly delay the export of a port user’s product. This could result in a loss of both immediate and potentially long-term market opportunities, as global customers look elsewhere for a product that can be supplied to meet production timeframes.</li> <li>• While most activities within the port environment have long lead times for development, the ability to maintain operational flexibility and facilitate trade in response to immediate issues remains a priority for PPA. Certainty on regulatory process and outcome expectations is therefore critical. The extended timeframes taken by DWER to complete assessments of licence amendment applications represents a significant barrier to trade facilitation and PPA’s ability to have flexibility in its operations. The uncertainty around securing timely approval of licence amendment applications will adversely impact the viability of port users operations and restrict PPA’s ability to facilitate trade in a timely manner as required under the Act.</li> </ul>
<p><b>What reforms would you recommend for these licensing schemes?</b></p>	<p>As above, PPA’s view is that environmental licencing administered by DWER under Part V of the <i>Environmental Protection Act 1986</i> is a priority area for business licencing reform in Western Australia. Refer above for PPA’s recommendations.</p>

Questions	PPA Comment
<p><b>Which licensing schemes have been reviewed over the past five years? Were these reviews effective? Why/why not? Have recommendations for reform been implemented</b></p>	<p>No comment.</p>
<p><b>What should the ERA consider to select case studies to assess against the analytical framework?</b></p>	<p>PPA recommends that ERA consider the submissions to consultation papers 1 and 2 collectively to ascertain where the greatest value can be obtained in testing the analytical framework. In selecting case studies PPA proposes that ERA should consider selecting case studies:</p> <ul style="list-style-type: none"> <li>a) where the current licensing regimes are impeding an organisation's ability to comply with legislation; or</li> <li>b) where the current licensing regimes are impeding an organisation's ability to operate efficiently; or</li> <li>c) where there is potential for significant and detrimental impacts to trade and / or development; or</li> <li>d) where the actions taken by agencies administering the licensing regimes do not reflect the risk profile.</li> </ul>
<p><b>What case studies should the ERA assess against the analytical framework?</b></p>	<ul style="list-style-type: none"> <li>• DWER Part V licences under the <i>Environmental Protection Act 1986</i>.</li> </ul>

## Consultation paper 2: Analytical framework and guideline

### 1. General Feedback

Comment
PPA has no comment on the contents of Consultation Paper 2 at this time.

### 2. Specific Feedback

Questions	PPA Comment
What would make the framework and guideline useful for you?	None
What would discourage you from using the ERA's analytical framework and guideline?	None
What has deterred you from using existing frameworks and guidelines in the past?	None
Do you use the Regulatory Impact Assessment program? Why/why not?	None
Are there other analytical frameworks (e.g. from other jurisdictions) you find useful in considering whether business licensing schemes are the best way of addressing	None

Questions	PPA Comment
a problem? Why do you find these useful?	
What concepts should be used to assess whether business licensing is the best way to address a problem?	None
Can these concepts be applied in the same way when introducing new, and assessing existing, business licensing schemes? If not, why not?	None
Is the existing Regulatory Impact Assessment program effective at ensuring new business licensing schemes are rigorously justified?	None
Could the existing Regulatory Impact Assessment program, and the analytical framework and guideline that the ERA is developing, work together to assist state government agencies assess when business licensing is the most efficient way to address a problem? If not, why not? If so, in what ways and at what stage(s) of the Regulatory Impact Assessment process?	None

Questions	PPA Comment
<p><b>Does the Regulatory Impact Assessment program protect against the cumulative burden of regulation, including business licensing? If so, how? If not, why not?</b></p>	None
<p><b>What mechanisms could be included in the analytical framework that the ERA develops to address the cumulative burden of both the existing stock of, and new, regulations and business licences?</b></p>	None
<p><b>What elements of business licences should the ERA include as design elements?</b></p>	None
<p><b>What features should the following design elements have to ensure the design of a business licence is consistent with its purpose, while minimising costs:</b></p> <ul style="list-style-type: none"> <li>• Coverage</li> <li>• Conduct rules</li> <li>• Mandatory attributes</li> <li>• Duration</li> <li>• Reporting requirements</li> </ul>	None

Questions	PPA Comment
<ul style="list-style-type: none"> <li data-bbox="349 225 725 256">Fees and charges</li> </ul>	
<p data-bbox="297 280 752 523"><b>What processes and approaches (for example, cost-benefit analysis, public consultation) should be used to both set and review business licence design elements?</b></p>	None
<p data-bbox="297 547 752 646"><b>What is needed for an application process to be clear and concise?</b></p>	None
<p data-bbox="297 670 752 805"><b>What characterises effective communication between state government agencies and licensees?</b></p>	None
<p data-bbox="297 829 752 965"><b>What are easy ways for regulated parties to access information about their business licences?</b></p>	None
<p data-bbox="297 989 752 1088"><b>How can information requirements and duplication be minimised?</b></p>	None
<p data-bbox="297 1112 752 1248"><b>What are the essential features of a risk-based compliance and enforcement regime?</b></p>	None
<p data-bbox="297 1272 752 1407"><b>How frequently should business licensing schemes be reviewed and what features should the review process</b></p>	None

Questions	PPA Comment
have?	
Are there other aspects of the administration of business licenses that the ERA should include in the analytical framework?	None
Should risk-based regulation be adopted when considering the design elements and administration of licences? Why/why not?	None
If risk-based regulation should be adopted, how could it be reflected in each of the design elements of business licences?	None
If risk-based regulation should be adopted, in what ways can it be reflected in the administration of business licences?	None
What are the essential features the ERA's guideline should have for it to be useful to your agency?	None
Do you find existing guidelines helpful, and easy to understand and apply? Why/why not?	None

<b>Questions</b>	<b>PPA Comment</b>
<b>How can the analytical framework and guideline instil a good regulatory culture?</b>	None
<b>How can the analytical framework and guideline encourage a coordinated approach to business licensing across the State Government?</b>	None