



Economic Regulation Authority
WESTERN AUSTRALIA

Inquiry into reform of business licensing in Western Australia

Draft report

22 OCTOBER 2018

How to make a submission

The ERA needs as much information as possible to ensure our final recommendations are robust. The ERA invites stakeholders to provide further evidence about the problems they encounter with state government business licensing, and feedback on the ERA's draft recommendations, for input to our final report.

Submissions are due by **4:00pm (WST) Friday, 30 November 2018**.

We would prefer to receive your comments via our online submission form <https://www.erawa.com.au/consultation>

You can also send comments through:

Email: publicsubmissions@erawa.com.au
Post: PO Box 8469, PERTH BC WA 6849
Fax: 08 6557 7999

Submissions provided electronically do not need to be provided separately in hard copy.

All submissions will be made available on our website unless arrangements are made in advance between the author and the ERA. This is because it is preferable that all submissions be publicly available to facilitate an informed and transparent consultative process. Parties wishing to submit confidential information are requested to contact us at records@erawa.com.au.

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Details of information sessions will be provided shortly after release of the draft report. Interested parties can request a meeting with the ERA at any time.

CONTENTS

Executive summary	4
Chapter 1: Why is this inquiry important?	9
Chapter 2: Assessing the performance of licensing schemes	15
Chapter 3: Reforming licensing schemes	31
Chapter 4: The costs of licensing schemes	43
Chapter 5: Introducing new licensing schemes	57
Chapter 6: Summary of recommendations and questions for stakeholders	63
Appendix A: Analytical framework and existing resources	70
Appendix B: Licensing schemes not reviewed in more than ten years	73
Appendix C: Licensing schemes with outstanding review recommendations	75
Appendix D: Submissions on specific licensing schemes	77
Appendix E: Terms of reference	79
Bibliography	80

EXECUTIVE SUMMARY

The Treasurer has asked the Economic Regulation Authority to undertake an inquiry into options to reduce the regulatory burden and other economic costs of state government business licensing in Western Australia.

Business licensing imposes standards on businesses and professions, usually governing activities that could harm people, the environment or the economy if not regulated. State government business licensing includes licences, registrations, notifications, authorisations, accreditations, permits, approvals and certifications.

Western Australia has about 700 different state government business licensing schemes. Forty-three state government agencies have licensing functions. Every industry in Western Australia is regulated by at least one business licensing scheme. Licensing in Western Australia is varied and far-reaching, for example governing teacher registrations and approvals for breeding cats.

There is evidence that unnecessary or inadequate licensing creates economic costs and inefficiencies. One business says that it took almost five years to obtain licences for a large iron ore project in Western Australia.¹ Delays to water licensing reform mean application processing times for water licences are 30 per cent longer than necessary, slowing businesses' ability to develop water-using industries.² The enabling legislation for some licensing schemes still requires applicants to give notice of their intention to apply for a licence in the newspaper.³ Paper-based processes are still used for many licensing schemes.⁴ Poor regulation, including a prescriptive and inadequate pipeline licensing scheme,⁵ contributed to the 2008 Varanus Island gas explosion, which reduced the State's gas supply by 30 per cent for almost two months and is estimated to have cost the State's economy between \$2 billion and \$3 billion.⁶

Concerns about the burden of regulation are not new. Since at least the introduction of National Competition Policy in the mid-1990s, and often

before, governments have been aware that poorly conceived, designed and/or administered regulation can unduly hamper economic activity. But despite the risks of poor regulation being well known, and regular reviews calling for reform, governments and agencies sometimes struggle to reform or remove unnecessary or harmful licensing schemes. As well as re-stating familiar arguments for reform, the ERA has sought in this inquiry to identify and address the reasons why reform can be difficult for agencies and legislators, and propose ways to address these reasons.

Licences are not just a cost on society. Licensing schemes are established to provide economic, social and environmental benefits and protections. In this, licensing schemes are assets, much like other assets owned by the government, such as public infrastructure. In this inquiry the ERA has used the concept of licences as assets to guide its analysis of the State's licensing schemes. In particular, the ERA has considered what government can do at each stage in the life cycle of a licensing scheme – introduction, operation, review and improvement/peel – to ensure that the costs of designing, implementing and administering the scheme, including the compliance costs incurred by the licensed businesses, are justified by the benefits that the scheme delivers to the Western Australian community.

The ERA's approach to this inquiry is consistent with initiatives in Western Australia and other jurisdictions aimed at improving public sector management, notably "regulatory stewardship", which promotes active management and constant improvement of government regulation. More specifically, this inquiry also identifies areas where measures to improve business licensing are consistent with, and complement, the recommendations of the Government's Service Priority Review.

The terms of reference for this inquiry require the ERA to identify opportunities to improve business licensing in Western Australia. The ERA

1 Roy Hill Holdings Pty Ltd, *How much is too much? Reducing the regulatory burden*, Submission to the Senate Select Committee on Red Tape, 2017, p. 7.

2 Department of Water, *Regulatory Impact Statement for Water Resources Management Reforms*, 2013, p. 20.

3 For example, see: section 4(2)(c) of the *Cremation Act 1929* and section 11 of the *Pawnbrokers and Second-hand Dealers Act 1994*.

4 Department of Health, Department of Local Government, Sports and Cultural Industries, Department of Biodiversity, Conservation and Attractions, Department of Primary Industries and Regional Development responses to ERA information request.

5 K. Bills and D. Agostini, *Offshore Petroleum Safety Regulation: Varanus Island Incident Investigation*, June 2009, p. xx.

6 Senate Standing Committee on Economics, *Matters relating to the gas explosion at Varanus Island, Western Australia*, 2008, pp. 2, 5-6.



has identified common or significant problems in the way regulatory agencies manage state government business licences, rather than assessing in detail the effectiveness of each of Western Australia's more than 700 state government business licensing schemes. The focus is on structural and systemic barriers to effective management of business licences, and recommendations on how policymakers and regulatory agencies can address these barriers.

With this focus, the ERA has identified three broad problems with business licensing in Western Australia.

First, there is no consistent culture across regulatory agencies of active management and continuous improvement in business licensing. There are many examples of good practice in business licensing, but also examples of poor practice.

Regulatory agencies are using the Regulatory Impact Assessment program when introducing new licensing schemes, but there is no consistent, systematic framework governing schemes' ongoing management, review and improvement/repeal. There is no central register of all state government licensing schemes that allows government to easily assess the stock of licensing schemes, and how this is changing over time. Regulatory agencies are not held adequately accountable for their management of licensing schemes, and take different approaches to administration, monitoring and improvement. Each regulatory agency has to develop for itself the motivation, capability and initiatives to improve its licensing schemes without the benefit of cross-government coordination and capability building.

Second, legislators and agencies may recognise that review and reform of licensing could be beneficial, but it is seldom a high priority. For example:⁷

- Nearly 70 per cent of licensing schemes have not had their enforcement and compliance regime reviewed in the past five years, and about 60 per cent have not had their administration reviewed.
- Only 10 per cent of licensing schemes reviewed over the past five years were checked for whether they unnecessarily restrict competition.
- Forty per cent of licensing schemes reviewed since 2013 have not yet had any review recommendations implemented.

The ERA recognises that reform of licensing schemes should properly compete for government's and parliament's attention against other, possibly more important matters. However, the ERA considers that the government's ability to make good decisions on prioritising reforms to business licensing has been hampered by a lack of whole-of-government information on business licensing. This inquiry addresses this information problem and includes recommendations to make licensing review and reform easier.

Third, licences typically impose conditions on businesses, and the general public may not be aware of the effects these conditions have on the cost and quality of the services they receive. Consumer input is often missing from discussion on reform of licensing schemes, which can allow well-informed, better-resourced interest groups to dominate debate.

The ERA's recommendations to address these problems are listed below.

Recommendation 1: Agencies should treat business licensing schemes as public assets and continually manage and improve these schemes. To support licensing agencies to do so, and also to hold these agencies to account, a governance framework for business licensing should be implemented across state government licensing agencies. This governance framework comprises the reporting, review, consultation, transparency and oversight measures outlined in the recommendations below.

Recommendation 2: In order to encourage agencies to improve licensing schemes, agencies should report annually and publicly on:

- A program of business licensing scheme improvements the agency intends to implement in the next 12 months.
- A summary of changes to business licensing schemes made in the previous 12 months.

Recommendation 3: To make reform and improvement of licensing schemes easier, the Government should:

- Introduce an omnibus bill each year to implement any legislative changes needed to improve licensing schemes.
- Ensure that, when licensing schemes are introduced or reviewed by Parliament, primary legislation includes only the elements of licensing schemes that need parliamentary consideration (for example, their objectives), and does not prescribe the administrative and procedural requirements of licensing schemes.
- Consider including sunset clauses in the primary legislation for licensing schemes.

Recommendation 4: Agencies should improve consumer input into the design and management of licence schemes. The Department of the Premier and Cabinet should address this when it develops a whole-of-government strategy for community engagement, as recommended by the Service Priority Review.

⁷ ERA analysis, agency questionnaire responses. Figures exclude licensing schemes contained in state government legislation but administered by local governments or national bodies.

Recommendation 5: The Better Regulation Unit in the Department of Treasury should:

- Report publicly on agency compliance with Regulatory Impact Assessment requirements in an annual report, in accordance with current Regulatory Impact Assessment guidance.
- Publish and maintain a central repository of agencies' Preliminary Impact Assessments and the Better Regulation Unit's responses. These documents should be published as soon as the Better Regulation Unit has provided its response to the agency.
- Publish and maintain a central repository of agencies' Consultation Regulatory Impact Statements, submissions to those statements, Decision Regulatory Impact Statements and the Better Regulation Unit's responses. Statements and Better Regulation Unit responses should be published as soon as they are completed, and submissions to Consultation Regulatory Impact Statements should be published when received.

Recommendation 6: A Licensing Evaluation and Reform Unit should be established as part of the business licensing governance framework. Its purpose would be to help licensing agencies develop their capability in evaluating the performance of licensing schemes and to hold agencies to account in evaluating and improving licensing schemes. The Better Regulation Unit in the Department of Treasury would be a logical place to locate this unit.

The Licensing Evaluation and Reform Unit would have the following functions:

- To regularly identify priority areas for licensing reform. This will help to elevate the priority given to improving licensing schemes by government.
- To support and assist agencies in developing a culture of continuous improvement in managing their licensing schemes, and in applying the analytical framework and guidelines for assessing their regulatory schemes described in appendix A.
- To provide a central repository for existing guidance material, develop further guidance material where there are gaps, and train agencies in licensing evaluation.
- To compile and publish annual State of Licensing reports, based on agencies' assessments of their licensing schemes against a common performance checklist (see Recommendation 7). The report would provide an assessment of the overall quality of licensing in Western Australia, and of agencies' performance in managing their licensing schemes.
- To coordinate and prepare the annual omnibus bill to implement legislative changes needed to improve licensing schemes proposed in Recommendation 3.
- To maintain a catalogue of business licensing schemes and administering agencies.
- To publish agencies' reviews of licensing schemes.



Recommendation 7: Agencies should report to the Licensing Evaluation and Reform Unit annually on the management of their licensing schemes using a performance checklist. This will hold agencies to account for evaluating whether licensing schemes are achieving their intended objectives, being administered in a cost-effective way and being complied with. These performance checklists should be published so that stakeholders can consider whether they agree with the assessments and provide feedback.

Recommendation 8: Agencies should review the outstanding review recommendations for the 65 licensing schemes that have been reviewed in the last five years but have not had recommendations implemented (listed in appendix C). Agencies should consider whether any of the recommendations should be implemented through the next omnibus bill.

Recommendation 9: Agencies should assess licensing schemes that have not been reviewed in more than 10 years (appendix B), to determine whether a major review is required.

The terms of reference require the ERA to develop an analytical framework that state government agencies can use to assess whether business licences are needed, and well designed and administered. The terms of reference also require the ERA to develop a guideline that agencies can use to self-assess against the framework. This inquiry has developed an asset lifecycle model to help agencies to manage licensing schemes. There is already a lot of guidance available to help agencies and policy-makers to design and administer business licensing schemes well. This report collates information about the guidance available.

To ensure the inquiry's final recommendations are robust, further information is sought from stakeholders on the problems they have encountered with state government business licensing. Stakeholders are also invited to provide feedback on the draft recommendations. Chapter 6 of the report includes a summary of the ERA's requests for information.

The ERA thanks everyone who provided views and information to help develop this draft report.



CHAPTER 1:
WHY IS THIS INQUIRY
IMPORTANT?

CHAPTER 1:

WHY IS THIS INQUIRY IMPORTANT?

State government business licensing affects most Western Australian businesses and workers. Excluding vehicle registrations and driver's licences, there are about 2 million state government business licences currently on issue.⁸ The State has more than 700 different business licensing schemes,⁹ and around one in every five pieces of Western Australian legislation covers at least one licensing scheme.¹⁰

The ERA has defined a 'state government business licence' as a requirement arising from state government legislation that is characterised by notification, approval, standards and enforcement. This definition is broad and includes licences, registrations, notifications, authorisations, accreditations, permits, approvals and certifications. Business licensing is just one type of regulation that the state government applies to businesses and individuals. Other types of regulation include legislative requirements that apply generally (for example, road rules), and government endorsed standards, codes of conduct, guidance notes and policies.

A fact sheet describing Western Australia's current stock of business licensing schemes is available on the ERA's website.

Business licensing schemes are public assets

An asset, like the family home or a share portfolio, is expected to create future economic benefits for its owner. Regulations, including business licensing schemes, are public assets that are expected to deliver current and future benefits for Western Australians. These benefits should outweigh the costs of their implementation and management. The Western Australian government manages the State's business licensing assets on behalf of the community.

Governments create licences to address the social, economic and environmental costs and risks of certain business activities. For example, anyone wishing to clear native vegetation must first obtain a clearing permit. This licensing process helps the Department of Water and Environmental Regulation to assess the effect clearing will have on the environment.

Excluding vehicle registrations and driver's licences, there are about 2 million state government business licences currently on issue.

Governments use licences to impose standards on businesses and professions. Occupational licences are required for professions where there is significant risk of harm to the community, environment or economy if people do not have the training or experience needed to do their job properly. A licence may impose minimum standards or training requirements on practitioners, or protect consumers or workers by preventing low quality or dangerous goods and services from entering the market.

Business licences also enable consumers to obtain information about a supplier or product. For example, household electrical appliances must be approved by an Australian regulatory authority before sale, so that consumers know appliances comply with standard specifications and tests for electrical safety. Approved electrical appliances display a certified mark, and consumers and retailers can check online whether this is valid.¹¹

However, sometimes the regulation that a government intended to be a benefit for the community can turn out to be a liability.¹² Regulatory failure occurs when the costs of a business licensing scheme outweigh its benefits. The persistence of unnecessary, ineffective or poorly administered business licensing schemes causes costs that are difficult to quantify and often not visible to the public.

8 ERA analysis – agency questionnaire response. This figure is based on data from 550 licensing schemes contained in state government legislation and administered by state government bodies.

9 ERA analysis – agency questionnaire responses. This figure includes licensing schemes that are contained in state government legislation but administered by local or national bodies. About 593 licensing schemes are contained in state government legislation and administered by state government bodies.

10 ERA analysis – agency questionnaire responses and State Law Publisher online legislation database.

11 Department of Mines, Industry Regulation and Safety, 'Electrical appliance approval marks', 2014, (online) (accessed 31 August 2018).

12 J. Ayto, 'Why Departments Need to be Regulatory Stewards', *Policy Quarterly*, vol. 10, no. 4, 2014, p. 24.

For instance, a licensing scheme may duplicate other effective regulation. A Western Australian example of this was hairdresser registrations, which were required until 2012 even though a range of consumer protection, education and training, and occupational health and safety laws also covered the sector and addressed the same consumer risks.¹³ The licensing scheme imposed unnecessary costs on business and barriers to entry.¹⁴

Licensing to manage the State's water resources provides another example. Discussions on reforming water regulation in Western Australia have been happening since 1994; however, the Government is yet to draft new water resource management legislation. The delay means the State is administering an outdated water licensing scheme. Processing times for water licence renewals and amendments are about 30 per cent longer than necessary.¹⁵

Regulatory agencies still use paper-based processes for many licensing schemes.¹⁶ Some online application forms are so complicated that applicants need telephone support to complete them.¹⁷ Staff turnover at regulatory agencies, and a lack of guidance on process and timeframes, creates uncertainty and in turn costs for businesses.¹⁸

At worst, regulatory failure can lead to disaster. In Western Australia, an investigation into the 2008 Varanus Island gas explosion found that the State's pipeline licensing scheme was inadequate and had contributed to the disaster.¹⁹ The explosion cost the State's economy between \$2 billion and \$3 billion because it reduced the State's gas supply by 30 per cent for close to two months.²⁰ While an inquiry into the Grenfell Tower fire in London is ongoing,²¹ a review commissioned by the United Kingdom Government after the fire found that the regulatory system for ensuring fire safety in high-rise and complex buildings was not fit for purpose.²² In New Zealand, the Pike River Mine tragedy in 2010 resulted in the deaths of 29 miners. The Royal Commission into the incident found that, while a methane explosion was the principal cause, poor regulation was a contributing factor. Many entities were responsible for regulating various aspects of mining operations, resulting in uneven and substandard oversight of health and safety at the mine.²³ If licensing schemes are not reviewed regularly to ensure they are effective, people may not realise that they are inadequate until a disaster happens.

Just like economic assets, licensing schemes need to be managed throughout their lifecycle to get the greatest community and consumer benefit. When licensing schemes are not managed effectively, they are more likely to be ineffective or cost more to operate. The ERA has used the asset lifecycle model set out in Figure 1 to consider the management of licensing schemes in Western Australia.

13 Hairdressers Registration Board of Western Australia, *Annual Report and Financial Statements 2010*, 2010, p. 6.

14 Western Australian Government, *Reducing the Burden – Report of the Red Tape Reduction Group*, 2009, p. 168.

15 Department of Water, *Regulatory Impact Statement for Water Resources Management Reforms*, 2013, p. 20.

16 Department of Health, Department of Local Government, Sports and Cultural Industries, Department of Biodiversity, Conservation and Attractions, Department of Primary Industries and Regional Development responses to ERA information request.

17 Anonymous (6), online questionnaire.

18 Meeting with Roy Hill Holdings Pty Ltd.

19 K. Bills and D. Agostini, *Offshore Petroleum Safety Regulation: Varanus Island Incident Investigation*, 2009 p. xx.

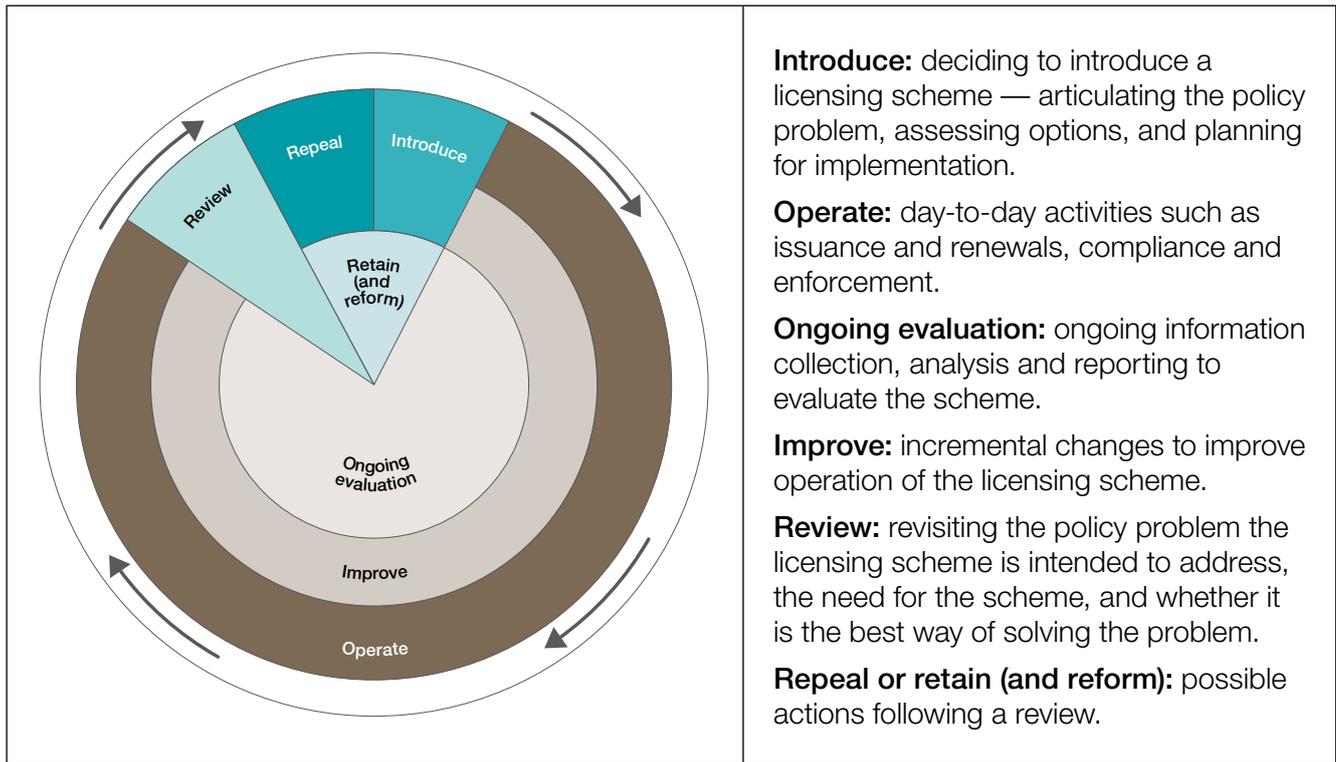
20 Senate Standing Committee on Economics, *Matters relating to the gas explosion at Varanus Island, Western Australia*, 2008, pp. 2, 5-6.

21 The terms of reference for the Grenfell Tower Inquiry were set by the Prime Minister on the 15 August 2017. The Inquiry is to report its findings to the Prime Minister "as soon as possible" and to make recommendations. See Grenfell Tower Inquiry website.

22 J. Hackitt DBE, *Independent Review of Building Regulations and Fire Safety: Final Report*, United Kingdom, 2018, p. 11.

23 Royal Commission on the Pike River Coal Mine Tragedy, *Volume 1*, New Zealand, 2012, pp. 14-15, 22.

Figure 1. Lifecycle of a business licensing scheme



Source: ERA

What was the ERA asked to do?

The Treasurer asked the ERA to undertake an inquiry into options to reduce the regulatory burden and other economic costs of state government business licensing in Western Australia. The ERA was asked to identify opportunities to improve business licensing arrangements generally, and priority areas for reform. The ERA was also asked to develop an analytical framework and guideline that state government agencies can use to assess whether business licences are needed, well designed, and efficiently administered. The focus of the inquiry is on business licences created by state government legislation, not Commonwealth legislation, local government laws or voluntary industry arrangements.

The ERA has identified common or significant problems in the way licences are managed to identify areas for improvement. The ERA did not assess in detail the effectiveness of each of Western Australia’s more than 700 licensing schemes. Each licensing scheme is unique, and to review each properly would require in-depth consideration of each scheme.

The approach taken in this inquiry is intended to identify whether, and why, some licensing schemes are not well managed.

Guidance material on developing and implementing regulation is already available to assist agencies and policy-makers to design and administer licensing schemes. Rather than repeating guidance, policies and recommendations arising from previous inquiries, this draft report focuses on factors that can prevent policy-makers and agencies from managing licences effectively.

During the inquiry, the ERA has consulted with government agencies, industry groups, unions, the ERA’s Consumer Consultative Committee²⁴ and the public. During the public submissions process, we received:

- Twenty submissions to the initial consultation papers.
- Twenty-five responses to an online questionnaire that asked for the public’s comments on state government business licences.

²⁴ This committee includes the Pastoralists and Graziers Association, the Western Australian Council of Social Services, the Financial Counsellors Association, the Western Australian Local Government Association, the Chamber of Minerals and Energy Western Australia, the Chamber of Commerce and Industry Western Australia, the Western Australian Farmers Federation, the Energy and Water Ombudsman, the Department of Mines, Industry Regulation and Safety and the Property Council of Western Australia.

- Forty-two completed questionnaires from state government agencies about the business licensing schemes they administer.

The information contributed by stakeholders has greatly enhanced the ERA's understanding of the issues affecting business licensing in Western Australia. The ERA appreciates the time and effort taken by all those who took part.

What has the ERA found?

Generally, businesses recognised the need for government to regulate certain business activities and supported the use of business licensing to do this.²⁵ Some provided examples of unlicensed activities that they believed should be regulated.²⁶ However, stakeholders also provided many examples of licences they thought ineffective, and licensing processes they found frustrating.²⁷

Agencies are not always frequently, thoroughly and transparently checking whether licensing schemes are achieving their intended environmental, social or economic objectives, being administered in a cost-effective way, or being complied with. This means that problems with licensing schemes are sometimes not identified and resolved quickly, or even at all. The ERA has found examples from across government of business licensing reform taking a long time. Forty per cent of licensing schemes reviewed since 2013 have not had any of the recommendations of the review implemented, and 20 per cent have had only some recommendations implemented.²⁸

Agencies need good information to assess whether licensing schemes are delivering the greatest possible benefits to the community, to decide where to target scarce resources for reform, and to build a case for change and reform where it is needed.

Over the past five years, 17 new licensing schemes have been introduced, and agencies have used a program called Regulatory Impact Assessment to assess their likely effects on the economy prior to introduction. These new schemes include authorisations to prescribe medicinal cannabis, a heavy vehicle pilot licensing scheme, and various biosecurity permits. Rigorous evaluation before licensing is introduced, using programs such as Regulatory Impact Assessment, makes it more likely that the benefits of licensing will outweigh the cost.

Forty per cent of licensing schemes reviewed since 2013 have not had any of the recommendations of the review implemented, and 20 per cent have had only some recommendations implemented.

It is mostly the operation of older licensing schemes that is creating problems for government, businesses and the broader community. Agencies and licensees gave many examples of duplicated information requirements, delays in approving licence applications, outdated data entry processes and poorly designed databases. One business claims the time taken to get licences for a large iron ore project was close to five years.²⁹ Another complained of not being allowed to submit applications

by email, only by post.³⁰ One licence holder said there were now more than 19 application forms for approval, certificates or notifications, which created confusion in the approvals process.³¹

The ERA's overarching finding is that there is no consistent culture, or systematic framework, across regulatory agencies that ensures active management and continuous improvement in business licensing. Currently, there is no cross-government coordination to improve licensing or build capability. Each regulatory agency takes a different approach to managing licensing, and has to develop for itself the motivation, capability and initiatives to improve licensing. While there are many examples of good practice, there are also examples of poor practice.

25 Anonymous (7) online questionnaire; Chamber of Commerce and Industry WA submission, p. 3; Community and Public Sector Union and Civil Service Association submission, p. 15; Electrical Trades Union WA submission 2, pp. 1-4; Kemp, Philip, online questionnaire; Master Electricians Australia submission, p. 2; Master Plumbers and Gasfitters Association submission, p. 2; National Electrical and Communications Association submission, pp. 1-3; Power, Andrew, online questionnaire; Synergy submission, p. 6; Western Australian Local Government Association submission, p. 2; Williams, Graham, online questionnaire.

26 For example, registration of engineers (Anonymous (8), online questionnaire; Engineers Australia submission, pp. 1-3; Neethling, Will, online questionnaire; Marsh, Brendan, online questionnaire; Westcott, James, online questionnaire) and licensing of labour hire companies (Community Public Sector Union and Civil Service Association, submission, p. 11; Construction, Forestry, Mining and Energy Union submission, pp. 1-13; Electrical Trades Union WA submission 1, pp. 1-3).

27 Appendix D summarises these examples.

28 ERA agency questionnaire responses.

29 Roy Hill Holdings Pty Ltd, *How much is too much? Reducing the regulatory burden*, Submission to the Senate Select Committee on Red Tape, 2017, p. 7.

30 Happ, Erl, submission (1), p. 1.

31 Western Australian Local Government Association submission, p. 18.

To address this problem, the ERA recommends a governance framework for business licensing should be implemented across state government licensing agencies.

Recommendation:

Agencies should treat business licensing schemes as public assets and continually manage and improve these schemes. To support licensing agencies to do so, and also to hold these agencies to account, a governance framework for business licensing should be implemented across state government licensing agencies. This governance framework comprises the reporting, review, consultation, transparency and oversight measures outlined in the recommendations throughout this report.

While the ERA has gathered a substantial amount of evidence of the problems that exist with state government business licensing, there is not much concrete evidence about what is causing these problems. The ERA invites agencies and interested parties to provide more information on these issues, which it will consider further in the final report.

Information request:

There is a substantial amount of information on problems with state government business licensing. However, there is limited concrete evidence about what is causing these problems. The ERA invites stakeholders to provide information about the causes of problems with state government business licensing.

The rest of this report sets out the ERA's findings and recommendations.

Chapter 2 explores the finding that agencies are not frequently, thoroughly and transparently assessing the performance of licensing schemes.

Chapter 3 explores the finding that licensing schemes are not being improved and reformed quickly, or sometimes at all.

The costs that older licensing schemes are imposing on businesses, government and consumers, and ways government is addressing these costs are outlined in chapter 4.

Chapter 5 includes analysis of the introduction of new licensing schemes and agencies' use of the Regulatory Impact Assessment program.

A summary of recommendations and requests for further information is included in chapter 6.

The ERA's analytical framework, and information about the resources available to help agencies and policy-makers to design and administer business licensing schemes well, is included in appendix A. The ERA has also published a report prepared by Frontier Economics setting out several case studies of effective licensing schemes in other jurisdictions. These case studies are intended to provide examples that agencies and policy-makers can learn from, to assist them design and administer business licensing schemes well.

Appendix B includes a list of licensing schemes that have not been reviewed in more than 10 years. A list of licensing schemes that have been reviewed in the past five years, but have not yet had any recommendations from those reviews implemented, is included in appendix C.

Appendix D includes a summary of the nature of the issues with particular licensing schemes raised by stakeholders in submissions.

Appendix E includes the terms of reference for the inquiry.

The ERA will publish a revised list of all state government business licensing schemes on its website after releasing the draft report.



CHAPTER 2:
ASSESSING THE
PERFORMANCE OF
LICENSING SCHEMES

CHAPTER 2: ASSESSING THE PERFORMANCE OF LICENSING SCHEMES

Chapter highlights

Policy and regulatory agencies recognise that assessing the performance of licensing can be beneficial, but it is sometimes not a high priority. While there is some evidence that agencies are checking how licensing schemes are performing, the frequency and thoroughness of that checking varies. Agencies are therefore not always informed about where minor adjustments could deliver benefits; or when a major review and reform process needs to occur. A lack of whole-of-government information on business licensing is hampering the government's ability to make good decisions about how it prioritises reforms to business licensing.

There are 50 licensing schemes that have not been reviewed in more than 10 years, for example, the licensing schemes for charitable collections, pawnbrokers, ferries and jetties (appendix B). Agencies should assess the schemes in appendix B to determine whether a major review is required.

Agencies should publicly report on licensing schemes annually using a performance checklist. The performance checklist prompts agencies to consider whether they are managing each of their licensing schemes well by asking them to assess the schemes against a set of criteria. The ERA invites stakeholders to provide feedback about these criteria.

One reason why agencies are not frequently and thoroughly checking licensing schemes could be that doing so can be complicated. Agencies need to be able to seek external help to develop the skills required to conduct robust evaluation. The government should establish a Licensing Evaluation and Reform Unit, with responsibility for helping agencies develop capability in assessing the performance of licensing schemes.

When agencies do assess their licensing schemes, the findings are often not made public. Government is sometimes criticised when deficiencies in licensing schemes are uncovered. This reduces the incentive for agencies to both undertake and publish evaluations. However, a lack of transparency means it is not possible for anyone outside the agency know whether a scheme is functioning well. It also means the public may not be aware of the effects licensing has on the cost and quality of goods and services.

The ERA recommends that the Licensing Evaluation and Reform Unit holds agencies to account for evaluating and publicly reporting on licensing schemes. This would include regularly publishing a State of Licensing report that provides an assessment of the overall quality of licensing in Western Australia, based on agencies' assessments of individual licensing schemes against the performance checklist.

Consumer input is often missing from discussion on the management of licensing schemes, which can allow interest groups to dominate debate. Agencies should improve consumer input into the management of licensing. The Department of the Premier and Cabinet should address this when it develops the strategy for community engagement recommended by the Service Priority Review. One way of increasing the role that consumers play is to have well-informed and well-resourced consumer representative bodies. There is only a small number of state-based groups representing the interests of consumers compared to those representing different industries and trades. The ERA wishes to explore this further in its final report, and invites feedback on the role consumer representative bodies can play in the management of licensing.

What has the ERA found?

While there is some evidence that agencies are checking the performance of licensing schemes, the frequency, thoroughness and transparency of that checking varies. Licensing schemes should be checked to determine whether they:

- achieve their intended environmental, social or economic outcomes, and are the best way of doing so
- are administered in a cost-effective way
- are complied with.

Most major licensing agencies conduct and publish some form of regular evaluation of the regulations they administer. This is often undertaken across all of an agency's regulatory and other functions, and is not specific to business licensing. The performance of each individual scheme, or all schemes administered by an agency, may not be assessed. Agencies that publish checks of some licensing schemes as part of their annual Key Performance Indicator reporting are included in Table 1. These checks tend to focus on compliance, and whether licensing is administered in a cost-effective way, reflecting a focus on reducing the cost of licensing for both agencies and businesses. The overall effectiveness of the licensing scheme receives less attention.

Table 1. Agencies that publish checks of licensing in annual reports (Key Performance Indicators)³²

Agency	Achieving outcomes	Administrative efficiency	Compliance
Department of Transport	-	√	√
Department of Health	-	-	-
Former Department of Commerce	-	√	√
Former Department of Mines and Petroleum	-	-	√
Former Department of Fisheries	√	√	√
Former Department of Agriculture and Food	-	-	-
Former Department of Water	√	√	√
Former Department of Environment Regulation	-	√	√
Former Department of Parks and Wildlife	-	-	-
Former Department of Racing, Gaming and Liquor	√	√	√
Western Australia Police	-	-	-

Note: Agencies included in the table are those currently responsible for administering more than 20 licensing schemes. 2017/18 Annual Reports had not been published at the time of drafting, so 2016/17 Annual Reports have been used for this analysis. 2016/17 Annual Reports were published prior to machinery of government changes — hence, agencies' previous names have been used.

Note: The Department of Health notes it undertakes internal compliance reporting on some schemes (e.g. radiation safety inspections, compliance with conditions of tobacco sellers' licences); and public reporting in documents other than its annual reports about various notifications. The Department of Water and Environmental Regulation notes it is in the process of introducing a review stage in the regulatory cycle for its regulations. *Source: Agency responses to ERA information request.*

³² Department of Transport, *Annual Report 2016-17, 2017*, pp. 26-48, 123-141; Department of Health, *Annual Report 2016-17, 2017*, pp. 21-28; Department of Commerce, *Annual Report 2016-17, 2017*, pp. 119-138; Department of Mines and Petroleum, *Annual Report 2016-17, 2017*, pp. 73-79; Department of Water, *Annual Report 2016-17, 2017*, pp. 17-48, 52-58; Department of Environment Regulation, *Annual Report 2016-17, 2017*, pp. 17-25; Department of Fisheries, *Annual Report 2016-17, 2017*, pp. 137-156; Department of Agriculture and Food, *Annual Report 2016-17, 2017*, pp. 140-153; Department of Parks and Wildlife, *Annual Report 2016-17, 2017*, pp. 13-61, 114-117; Department of Racing, Gaming and Liquor, *Annual Report 2016-17, 2017*, pp. 12-40, 82-84; Western Australia Police, *Annual Report 2016-17, 2017*, pp. 126-144.

Despite this annual reporting, nearly 70 per cent of licensing schemes have not had their enforcement and compliance regime reviewed in the past five years, and about 60 per cent have not had their administration reviewed.³³ About 80 per cent have not been subject to any form of economic analysis — for example, cost–benefit analysis, or cost–effectiveness analysis — in the last five years.³⁴

Agencies tend to assess whether licensing schemes are delivering benefits for the community by undertaking sporadic reviews. About 70 per cent of licensing schemes that are more than 10 years old have been subject to a legislative review in the past decade, or are currently under review.³⁵ The licensing schemes that have not been subject to any form of review in more than 10 years are listed in appendix B. They include some licensing schemes that have never been reviewed.

The adequacy of sporadic reviews varies.

In many instances, the reviews do not consider the underlying problem the licensing scheme was introduced to address.³⁶ Instead, the reviews consider operational aspects of the licensing scheme (like administration, or fees and charges).³⁷ Only about a third of licensing schemes reviewed in the past five years had all aspects considered — that is, the problem being addressed, the terms and requirements of the licensing scheme, the scheme’s administration, enforcement and compliance, and fees and charges.³⁸ For about a third of licensing schemes reviewed during this period, only one aspect of the licensing scheme was considered.³⁹

Reviews are also likely to elicit more information about industry’s experiences of licensing than consumers’ experiences, because industry is more likely to participate in consultation processes. Sometimes this is because government pays more attention to industry, for example, by undertaking targeted, invitation-only consultation. While in some cases this may be appropriate, public consultation was undertaken for less than half of the licensing schemes reviewed over the past five years.⁴⁰ The

Service Priority Review also concluded that the government’s commitment to citizen engagement has declined in recent years.⁴¹ Further, there is only a small number of state-based groups representing the interests of consumers compared to those representing different industries and trades. These include the Western Australian Council of Social Service, the Health Consumers’ Council of Western Australia and the Property Owners’ Association of Western Australia. In contrast, there are about 70 state-based interest groups, such as peak bodies and unions, representing licensees and businesses.

Reviews often lack transparency — progress, findings and recommendations are often not made public. For example, a review of the *Anatomy Act 1930*, which enables the licensing of practicing and teaching anatomy, and removing bodies for medical examinations, commenced in 2014, and a position paper was released in October 2014.⁴² Submissions were due in December 2014 but have not been made public, nor has information about the progress of the review. Similarly, information about the progress of a review of cemeteries and cremation legislation is limited. This legislation enables the licensing of burials, funeral directors, carrying out monumental works, funerals, crematoriums and cremations. The Metropolitan Cemeteries Board explained in its 2015/16 Annual Report, that “due to a number of competing priorities for legislation in the State Parliament, the anticipated review of the *Cemeteries Act 1986*, *Cremation Act 1929* and *Cremation Regulations 1954* being prepared for public consultation has been delayed. It is hoped the consultation process will begin in 2017”.⁴³ The Board’s update the following year said the government had made limited progress in 2016/17.⁴⁴ There is no further public information about the status of this review.

The panel for the Service Priority Review found there is a lack of published and accessible evaluation of past reforms and whole-of-sector performance, noting that “reporting on community outcomes generated by government services is haphazard at best”.⁴⁵ The Program Evaluation Unit

33 ERA agency questionnaire responses.

34 ERA agency questionnaire responses.

35 ERA agency questionnaire responses.

36 For about half of licensing schemes, the most recent legislative review did not consider the policy problem being addressed. Source: ERA agency questionnaire responses.

37 ERA agency questionnaire responses.

38 ERA agency questionnaire responses.

39 ERA agency questionnaire responses.

40 ERA agency questionnaire responses.

41 Department of the Premier and Cabinet (Service Priority Review), *Background Paper: Engaging with the Community*, 2017, p. 4.

42 Department of Health, *Review of the Anatomy Act 1930: Position Paper*, 2014, available from the Department of Health.

43 Metropolitan Cemeteries Board, *Annual Report 2015-16*, 2016, p. 7.

44 Metropolitan Cemeteries Board, *Annual Report 2016-17*, 2017, p. 44.

45 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 25; Department of the Premier and Cabinet (Service Priority Review), *Background Paper: Successful implementation of reform*, 2017, p. 1.

within the Department of Treasury was established in 2013, with the objective of providing “consistent and transparent evaluation of government-funded programs and the development of a culture of evaluation as part of core business activity across the Western Australian public sector”.⁴⁶ However, the Unit focuses on evaluation of service delivery programs, rather than regulation.

Why is assessing the performance of licensing schemes important?

The finding that a substantial proportion of licensing schemes are not assessed frequently and thoroughly has implications for whether agencies are identifying the need for change in a timely manner, or at all.

The performance assessment process can identify opportunities for minor adjustments to deliver benefits. For example, the Department of Primary Industries and Regional Development monitors fish stocks. This enables it to manage fishing to ensure sustainability of the State’s resources. In 2016/17 the Department re-opened the Abrolhos Islands and Mid-West Trawl Managed Fishery after it identified the fishery had adequate stock for commercial fishing to recommence.⁴⁷

The performance assessment process also can be used to determine when a major review and reform process needs to occur. For example, the Department of Transport monitors the taxi industry on a quarterly basis.⁴⁸ When Uber entered the Perth market in 2014, this monitoring provided an early indication that demand for door-to-door transport services was moving away from incumbent service providers, and that regulations intended to protect the safety of drivers and passengers were not fully covering the market. Although the subsequent review and reform process has taken some time (the review process commenced in 2015 and a bill to reform regulation of the sector was introduced to Parliament in August 2018),⁴⁹ the Department of Transport’s monitoring program signalled that

it needed to commence the major review and reform process.

At worst, not assessing the performance of licensing schemes can lead to regulatory failure that causes significant harm to the community, the environment or the way markets work. While the outcomes of the United Kingdom government’s inquiry are still pending,⁵⁰ both sides of politics have argued that inadequate compliance inspections were a major contributor to the Grenfell Tower fire in London, which killed 72 people in June 2017.⁵¹

Following this incident, the Australian Building Ministers’ Forum commissioned Professor Peter Shergold AC and Ms Bronwyn Weir, as experts in reviewing government regulation, to undertake a review of compliance in the building and construction industry across Australia. The review found that the nature and extent of problems with compliance were “significant and concerning”.⁵² They concluded that “the problems have led to diminishing public confidence that the building and construction industry can deliver compliant, safe buildings which will perform to the expected standards over the long term”.⁵³ The review made specific recommendations to strengthen compliance systems.⁵⁴

Inadequate evaluation also has implications for how quickly agencies can undertake reform when it is needed. Assessing the performance of licensing schemes provides evidence and insights that can help build the case for reform. Not doing so, or doing so poorly, means that policy-makers are not able to provide meaningful evidence to support claims about a licensing scheme’s effectiveness.⁵⁵ Further, if consumers’ perspectives are absent, interest groups representing licensees can exert a disproportionate influence on whether reforms are undertaken, and the types of reforms undertaken. If the interests of consumers and licensees do not align, changes to licensing schemes that would benefit consumers might not be implemented.

46 Department of Treasury, ‘Program Evaluation’, n. d., (online) (accessed 12 September 2018).

47 Department of Fisheries, *Annual Report 2016-17*, 2017, p. 61; Department of Primary Industry and Regional Development, *Status reports of the fisheries and aquatic resources of Western Australia 2016-17*, 2018, p. 1; State of the Fisheries reports are available on the Department of Primary Industry and Regional Development’s website.

48 For example: Department of Transport, *Taxi Industry Service Standards – Quarterly Report: April to June 2016*. Industry reports are now called ‘On-Demand Transport Industry Status Reports’ and are available on the Department’s website.

49 Department of Transport, ‘About On-demand transport reform’, (online) (accessed 12 September 2018).

50 Grenfell Tower Inquiry, ‘Terms of Reference’, (online) (accessed 12 September 2018).

51 A. Travis, ‘Grenfell Tower fire: was Tory austerity to blame or do problems date back to Blair?’, *The Guardian*, 29 June 2017, (online) (accessed 4 October 2018).

52 P. Shergold and B. Weir, *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, 2018, p. 1.

53 P. Shergold and B. Weir, *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, 2018, p. 3.

54 P. Shergold and B. Weir, *Building Confidence: Improving the effectiveness of compliance and enforcement systems for the building and construction industry across Australia*, 2018, p. 5. In response to the review, the Building Code of Australia was updated in March this year to remove ambiguity around the use of combustible cladding on buildings. In Western Australia, amended regulations introducing the new building standards took effect in October 2018. Source: Hon. Francis Logan MLA, *New regulations to improve the safe use of combustible cladding*, Media Statement, 6 October 2018.

55 Her Majesty’s Treasury, *The Magenta Book: Guidance for Evaluation*, 2011, p. 11.

Finally, because findings and recommendations are often not made public, it is not possible for anyone outside the agency itself to determine whether licensing schemes are delivering more benefits than costs to the community. While in some cases it is not in the public interest for government decision-making to be public, agencies' default position should be that the findings of reviews should be published, so the public knows whether licensing schemes are being managed properly. The Quinlan Review of the Environmental Protection Authority's policies and guidelines demonstrated that independent, public evaluation can also facilitate reform, compared to internal reviews conducted by the agency itself.

Quinlan Review of the Environmental Protection Authority's policies and guidelines

In 2016, the Minister for Environment requested an independent review of the Environmental Protection Authority's policies about approvals under Part IV of the *Environmental Protection Act 1986*,⁵⁶ after the Supreme Court of Western Australia ruled that the EPA's 2013 environmental impact assessment of the Roe Highway extension was invalid.

The Quinlan Review was critical of the EPA's policy framework and development, concluding that the lack of a policy framework had led to a proliferation of instruments, many of which appeared to have been developed in response to a specific issue without being placed within a coherent framework for policy development.⁵⁷

The Quinlan Review's criticisms were not new. Internal reviews by the EPA in 2009 and 2012 had similar findings. The EPA and Office of the EPA had partially implemented recommendations from these earlier reviews; however, the Quinlan Review noted that while "laudable attempts had been made to rationalise the policy instruments and to develop a policy framework" these attempts had added to, rather than lessened, complexity.⁵⁸

The EPA accepted the findings of the Quinlan Review, and by December 2016, it had implemented a simpler framework for environmental impact assessment guidelines and procedures, published a new website, and organised policy instruments to align with the Act. In addition, the EPA reduced the number of policy documents from 37 to 26, and the content of 14 documents that dealt with procedural matters were incorporated into one document.⁵⁹

What can be done to encourage agencies to assess the performance of licensing schemes?

A possible deterrent to transparent evaluation and review is a desire to avoid criticism and publicity where adverse findings are made. As former Auditor-General for Australia, Pat Barrett, has pointed out, "... organisations are often loathe to commit to indicators that they believe they may not have full control over and that they think may reflect badly on them if they show a drop in performance at any time, or over time".⁶⁰ The ERA recognises that agencies' priorities and resources are often not in their control, and that this affects their ability to manage licensing schemes effectively. However, it is important to address systemic problems with licensing schemes, and making achievements and shortcomings with licensing schemes transparent is one way to assist agencies to do this.

Complexity is another possible deterrent to assessing the performance of licensing schemes. It is generally more challenging to check whether a licensing scheme is achieving its intended environmental, social or economic objectives than to assess administrative efficiency or compliance. A licensing scheme is often only one part of a broader policy framework trying to achieve a certain objective. There are also likely to be multiple environmental or economic factors at play. For example, tracing the effect of

⁵⁶ An environmental approval under Part IV of the *Environmental Protection Act 1986* is a state government business licence.

⁵⁷ P. Quinlan SC, E. Heenan and S. Govinnage, *Independent Legal and Governance Review into Policies and Guidelines for Environmental Impact Assessments under the Environmental Protection Act 1986 (WA)*, 2016, p. 52.

⁵⁸ P. Quinlan SC, E. Heenan and S. Govinnage, *Independent Legal and Governance Review into Policies and Guidelines for Environmental Impact Assessments under the Environmental Protection Act 1986 (WA)*, 2016, p. 53.

⁵⁹ Office of the Environmental Protection Authority, *Annual Report 2016-17*, 2017, p. 15-17.

⁶⁰ Australian National Audit Office, *Results Based Management and Performance Reporting – an Australian Perspective*, 2004, p. 49, (P. Barrett – Auditor-General for Australia).

a reduction in illegal fishing to the improvement of fisheries is challenging, because changes in fisheries can reflect changes in conditions at sea or changes in illegal fishing, both of which are difficult to measure.⁶¹ Agencies need to be able to seek external help to develop the skills required to overcome these complexities, and conduct robust evaluation of their licensing schemes.

When conducting evaluations, it can be challenging for agencies to gather input from consumers to understand their experiences of licensing. Often, consumers do not know how licensing affects them, because it does so only indirectly through their interactions with licensed businesses. Unlike licensees and many businesses, consumers lack incentives and resources to come together to form and express a unified viewpoint.

The ERA's recommendations to address these problems are set out below.

Creating incentives for agencies to evaluate licensing schemes and overcoming complexity

Regulatory stewardship is an emerging approach to regulation that recognises the regulatory framework as a public asset that needs to be actively managed and constantly improved. There are five elements to regulatory stewardship: taking a whole-of-life, systems approach; treating regulation as an asset; collaborative responsibility; evaluation and reporting; and accountability and transparency.⁶²

The Service Priority Review recommended making all heads of regulatory agencies responsible for regulatory stewardship. The Service Priority Review also made recommendations to strengthen leadership and stewardship across government more broadly, including by:

- Improving Chief Executive Officer performance management to support a “more effective focus on system stewardship and whole-of-government objectives”.⁶³

- Requiring central agencies to “take a system stewardship role that supports a culture of collaboration, continuous learning and looking outside for new ideas”.⁶⁴

The State Government has endorsed public sector reform initiatives that are consistent with these recommendations, including “driving regulatory stewardship”, “designing a functional leadership framework” and “strengthening the CEO performance framework”.⁶⁵

The ERA supports these initiatives. If implemented well, a stewardship framework will make agencies more accountable for, and transparent about, identifying problems with regulation and making changes. Many of the draft recommendations complement this broader public sector reform program.

When investigating how to implement the Service Priority Review recommendations, the government needs to consider how best to encourage development of a culture that prioritises evaluating and improving licensing schemes. Approaches to regulatory stewardship in other jurisdictions, and cultures in other sectors that encourage employees to report, address and learn from mistakes,⁶⁶ could provide insights into how to develop a stewardship culture in Western Australia.

New Zealand began implementing regulatory stewardship in 2013. Its model encourages accountability, transparency, evaluation and reporting by making regulatory stewardship a statutory obligation for government departments — the *State Sector Act 1988* sets out the responsibilities of department heads to exercise stewardship.⁶⁷ Accountability is also encouraged by requiring major departments to provide assurance they are fulfilling their stewardship obligations by publishing Regulatory Stewardship Strategies and Four Year Plans.⁶⁸ Among other things, these documents assess the fitness-for-purpose of the department's regulatory systems, and outline the priorities for reform for the year ahead.

61 Department of Primary Industries and Regional Development response to ERA information request.

62 New Zealand Treasury, 'Regulatory Stewardship', 2017, (online) (accessed on 20 April 2018).

63 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 136.

64 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 12.

65 Department of the Premier and Cabinet, *Public Sector Reform Unit: Overview of early initiatives*, 2018; Department of the Premier and Cabinet, 'Public Sector Reform', 10 August 2018, (online) (accessed 12 September 2018).

66 P. Boysen, 'Just Culture: A foundation for Balanced Accountability and Patient Safety', *The Ochsner Journal*, vol. 13, 2013, p. 400; A. Frankel, M. Leonard and C. Denham, 'Fair and Just Culture, Team Behaviour, and Leadership Engagement: The Tools to Achieve High Reliability', *Health Services Research*, vol. 41, 2006, p. 1690. Available from PubMed Central (accessed 5 September 2018).

67 *State Sector Act 1988* (NZ), section 32(1)(d).

68 New Zealand Treasury, 'Regulatory Stewardship', 2017, (online) (accessed on 18 September 2018).



‘Just cultures’ and safety cultures in other sectors (such as aviation) encourage employees to report mistakes, and do not hold employees accountable for system errors. Being able to report system failures without fear of blame enables systems to be fixed and reduces the chance of mistakes.

Regulatory stewardship in other jurisdictions

In New Zealand, regulatory stewardship is a statutory obligation placed on departmental chief executives. The Government has published its Expectations for Good Regulatory Practice, and major regulatory agencies are expected to develop and implement stewardship strategies.⁶⁹

In Canada, a Cabinet Directive on Regulation sets out the Canadian Government’s expectations and requirements for the development, management and review of federal regulations. During all stages of the regulatory life cycle, regulators must engage stakeholders, pursue regulatory alignment with domestic and international jurisdictions and coordinate with all levels of government.⁷⁰

In the United Kingdom, a Regulators’ Code has been established under the *Legislative and Regulatory Reform Act 2006*.⁷¹ The Code requires regulators to engage with stakeholders, base regulatory activities on risk, share information about compliance and risk, and ensure their approach to regulatory activities is transparent. In 2016, the Act was amended to require regulators to annually report on the effect the Code has on how they exercise their regulatory functions.⁷²

To complement the regulatory stewardship framework the ERA recommends the Government establish a Licensing Evaluation and Reform Unit as part of a whole-of-government business licensing governance framework. The Unit would be given functions aimed at holding agencies to account in evaluating their licensing schemes, and assisting agencies to develop the skills and

capabilities necessary to manage their licences effectively.

The Unit’s functions would include regularly publishing a State of Licensing report, to provide an assessment of the quality of licensing in Western Australia and allow the public to assess agencies’ performance in managing licensing schemes. The Unit would publish agencies’ reviews of individual licensing schemes, so the public can assess the quality of agencies’ reviews and whether individual licensing schemes are performing well. The Unit would also maintain a list of business licensing schemes to allow the public to understand the stock of licensing schemes at a point in time.

Existing guidance about how to undertake evaluation includes the Department of Treasury’s Evaluation Guide and Toolkit. Existing bodies can be called upon to either assist with, or undertake, reviews. The Better Regulation Unit⁷³ in the Department of Treasury offers a service that provides support to identify red tape, and a service that facilitates quasi-independent reviews (the 90-day regulatory mapping projects). The Government can also ask the independent Office of the Auditor General to undertake reviews. The analytical framework in appendix A provides further information about these resources.

To help agencies develop evaluation capabilities, the Unit would provide a central repository for existing guidance material, and develop further guidance material where there are gaps. The Unit would also provide training to agencies on how to conduct best practice regulatory evaluations, including how to apply the guidance material in appendix A.

A logical place for the Unit would be within the Better Regulation Unit in the Department of Treasury.

To provide agencies with a simple tool to encourage them to regularly assess the performance of licensing schemes, the ERA will develop a ‘performance checklist’ with its final report. The checklist will include questions agencies can ask themselves to determine whether they are managing their licensing schemes well. The checklist will also include a dashboard with quantitative metrics that allow for

69 New Zealand Treasury, ‘Regulatory Stewardship’, 2017, (online) (accessed on 4 October 2018).

70 Government of Canada, ‘Cabinet Directive on Regulation’, 2018, (online) (accessed 10 September 2018).

71 The United Kingdom Department for Business Innovation and Skills, *Regulators’ Code*, 6 April 2014.

72 The reporting requirement is yet to come into force.

73 Formerly the Regulatory Gatekeeping Unit within the Department of Finance.

a comparison of the licensing schemes' performance over time. The ERA recommends agencies assess their licensing schemes annually against the performance checklist and that Directors General sign off on completed assessments. These performance checklists should be published, and provided to the Licensing Evaluation and Reform Unit, so that stakeholders can consider whether they agree with the assessments and provide feedback.

The performance checklist will include questions for agencies to consider such as those set out in Table 2. Quantitative measures to be included in the dashboard could include those set out in Table 3. The ERA is seeking feedback from stakeholders on the performance questions and measures, for input to the final performance checklist. The ERA will further explore the checklist with agencies after releasing the draft report and prior to releasing the final report.

Table 2. Performance checklist — possible questions

Category	Possible questions	YES	NO
Is the scheme achieving its objectives?	Are the objectives of the scheme clearly set out in legislation?		
	Is data collected to assess whether the objectives are being met?		
	Is the scheme achieving the objectives?		
	Is the scheme the best way to achieve the objectives?		
	Has the scheme been assessed to determine if it is unnecessarily restricting competition?		
Is the scheme administered in a cost-effective way?	Have all opportunities been taken to reduce administrative costs without affecting the quality of service provided by the agency?		
	Does the scheme avoid duplicating requirements in other regulations?		
	Does the legislation that establishes the scheme only include elements that need to be prescribed (for example, the scheme's objectives), and exclude elements that do not need to be prescribed (for example, administrative and procedural requirements)?		
Is the scheme being complied with?	Is data collected to measure compliance?		
	Is the data collected to inform compliance activities actually used?		
	Are compliance resources allocated based on an assessment of risks?		
	Are the compliance arrangements in place, including resources, sufficient to ensure compliance?		
Is the scheme being reviewed and improved?	Is the frequency with which you review the licensing scheme consistent with the pace of change in the industry, consumer behaviour and community values?		
	Have all the recommendations from the last major review of the scheme been implemented?		
Is there community engagement on the scheme?	Have the findings and recommendations from the last major review of the scheme, and information about progress implementing the recommendations, been published?		
	Are licensees able to access information about how to apply for and comply with the scheme?		
	Is there a mechanism in place for consumers and industry to provide feedback on how the scheme is affecting them, including to report cases of non-compliance?		

Source: ERA

Table 3. Performance dashboard — possible measures

Category	Possible measures	Metric
Is the scheme achieving its objectives?	How well is the scheme achieving its objectives?	Scale: 1 = not very well to 5 = very well
Is the scheme administered in a cost-effective way?	What is the cost per licence administered to the agency?	\$ per licence
	What proportion of licence applications and renewals were processed within target timeframes in the last 12 months?	%
Is the scheme being complied with?	How many compliance inspections did the agency complete in the last 12 months?	Count
	How many instances of non-compliance did the agency's inspection program uncover in the last 12 months?	Count
	How many enforcement actions were taken in the last 12 months?	Count

Source: ERA

Regularly reviewing some licensing schemes might not be the best use of public resources. The costs of reviewing the scheme regularly might outweigh the benefits if a licensing scheme has all the following characteristics:

- A very low cost of administration and compliance.
- Addresses a manifest matter of public interest, such that the scheme would never be abolished (for example, driver's licensing).
- Operates in an environment that is not changing rapidly or significantly.

In such cases, annual assessment against the performance checklist may be a sufficient form of evaluation. There should, however, be the opportunity to commence a more substantial review when unexpected negative outcomes are uncovered.⁷⁴ The Licensing Evaluation and Reform Unit could also provide guidance on which licensing schemes need not be subject to regular review.

The ERA has identified 50 licensing schemes that have not been reviewed in more than 10 years (appendix B). Agencies should assess these licensing schemes to determine whether a major review is required.

The ERA invites stakeholders to provide views on these recommendations, as well as feedback on ways to develop a culture of stewardship within state government agencies, and the questions and measures to include in the performance checklist.

⁷⁴ Productivity Commission, *Identifying and Evaluating Regulation Reforms*, Research Report, 2011, p. xxvi.

Recommendation:

A Licensing Evaluation and Reform Unit should be established as part of the business licensing governance framework. Its purpose would be to help licensing agencies develop their capability in evaluating the performance of licensing schemes and to hold agencies to account in evaluating and improving licensing schemes. The Better Regulation Unit in the Department of Treasury would be a logical place to locate this unit.

The Licensing Evaluation and Reform Unit would have the following functions:⁷⁵

- To support and assist agencies in developing a culture of continuous improvement in managing their licensing schemes, and in applying the analytical framework and guidelines for assessing their licensing schemes described in appendix A.
- To provide a central repository for existing guidance material, develop further guidance material where there are gaps, and train agencies in licensing evaluation.
- To compile and publish annual State of Licensing reports, based on agencies' assessments of individual licensing schemes against a common performance checklist (see Recommendation 7 as numbered in the Executive Summary). The report would provide an assessment of the overall quality of licensing in Western Australia and of agencies' performance in managing their licensing schemes.
- To maintain a catalogue of business licensing schemes and administering agencies.
- To publish agencies' reviews of licensing schemes.

Agencies should report to the Licensing Evaluation and Reform Unit annually on the management of their licensing schemes using a performance checklist. This will hold agencies to account for evaluating whether licensing schemes are achieving their intended objectives, being administered in a cost-effective way and being complied with. These performance checklists should be published so that stakeholders can consider whether they agree with the assessments and provide feedback.

Agencies should assess licensing schemes that have not been reviewed in more than 10 years (appendix B), to determine whether a major review is required.

Information request:

How can government develop a culture of continuous evaluation and improvement of licensing schemes?

What questions and measures should be included in the performance checklist and dashboard?

Increasing consumers' input to the development and review of licensing

The Service Priority Review found that Western Australia lags behind other jurisdictions in its commitment to engaging with consumers.⁷⁶

The ERA supports the Service Priority Review recommendation that the Government implement a whole-of-government community engagement strategy.⁷⁷ When developing that strategy, the Government should investigate how agencies can best involve consumers in the development and review of business licensing schemes. The ERA invites stakeholders to provide views about how this can be achieved.

⁷⁵ As set out in recommendation 6 of the Executive Summary, additional functions are recommended for the Licensing Evaluation and Reform Unit, including: identifying priority areas for licensing reform, and coordinating and preparing an annual omnibus bill. The reasons for these functions are explained in chapter 3.

⁷⁶ Department of the Premier and Cabinet (Service Priority Review), *Background Paper: Engaging with the Community*, 2017.

⁷⁷ Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 40.

A further way of increasing the role that consumers play in evaluating licensing schemes is to have consumer representative bodies that have the resources to participate in the review process. That body could represent the interests of consumers, in order to increase their influence. The ERA is seeking input from stakeholders on the usefulness of such a body, as well as its operation and management – such as how it should be funded, and whether it should be independent or a part of government.

Recommendation:

Agencies should improve consumer input into the design and management of licence schemes. The Department of the Premier and Cabinet should address this when it develops a whole-of-government strategy for community engagement, as recommended by the Service Priority Review.

Information request:

How can agencies increase consumer input to reviews of licensing schemes?

Would establishing a body to represent the interests of consumers in business licensing review and reform processes be useful? If so:

- How should it be funded?
- How should its leadership and membership be decided?
- Should it be part of, or independent of, government?
- Should it be a new body, or should the functions of an existing body be expanded?
- What should its functions be?

An area for further investigation: problems with compliance

Some stakeholders have expressed concerns about compliance with licensing schemes (appendix D).⁷⁸ There is evidence that compliance monitoring by some agencies has, in the past, been inadequate. However, there are also examples of agencies improving their compliance regimes by adopting risk-based approaches and by making better use of data. Currently though, there is no way of checking whether the amount of compliance activity for different schemes is commensurate with the consequences of non-compliance.

Levels of compliance with licensing schemes vary. For example, in 2016/17, the Department of Commerce reported rates of compliance with occupational safety and health requirements of between 68 per cent and 73 per cent for the previous four years.⁷⁹ The Department of Water identified suspected incidents of non-compliance in 25 per cent of its inspections in 2016/17, up from 20 per cent in 2014/15.⁸⁰ In 2016/17 there was a 95 per cent compliance rate with regulatory requirements administered by the Consumer

The Department of Water identified suspected incidents of non-compliance in 25 per cent of its inspections in 2016/17, up from 20 per cent in 2014/15.

Protection division of the former Department of Commerce.⁸¹ The former Department of Racing, Gaming and Liquor reported a 95 per cent compliance rate by licensed premises with legislative requirements.⁸²

Not all agencies publicly report compliance rates, so it is not possible to ascertain compliance for all schemes. Further, compliance rates are not the only measure of a licensing scheme's effectiveness.

78 Anonymous (7), online questionnaire; Master Painters and Decorators, online questionnaire; Mackie, Stephen, online questionnaire; Power, Andrew, online questionnaire; Williams, Graham, online questionnaire.

79 Department of Commerce, *Annual Report 2016-17, 2017*, p. 133 and 136.

80 ERA analysis based on Department of Water's 'Response to non-compliance' in its 2016/17 annual report. Source: Department of Water, *Annual Report 2016-17, 2017*, p. 46.

81 Department of Commerce, *Annual Report 2016-17, 2017*, p. 121.

82 Department of Racing, Gaming and Liquor, *Annual Report 2016-17, 2017*, p. 23.

Since 2013, the Auditor General has reported on shortcomings with compliance for four licensing schemes. These shortcomings include agencies not undertaking inspections or not requiring licence holders to provide adequate evidence of compliance with conditions.

Auditor General reports on compliance monitoring

Management of pesticides⁸³

The Auditor General found the Department of Health and the Department of Agriculture and Food rarely carried out legislatively required inspections to determine if licensed operators and permit holders were using pesticides in accordance with permit conditions, and selling pesticides only to authorised people.

The Auditor General also found the agencies were not checking whether applicants for high-risk licences had the qualifications and experience they claimed.

Regulation of builders and building surveyors⁸⁴

The Auditor General found the Building Commission's program of audits was not supported by a sound, documented risk assessment to help target resources at the most serious and likely risks.

The Building Commission was not gathering local government reports on inspections, referring non-compliant builders to local governments in a timely way or following up with local governments on referrals. It also had weak processes for conducting character checks on licence renewal and interstate applicants, increasing the risk of licensing an unsuitable builder or surveyor.

Regulation of real estate and settlement agents⁸⁵

The Auditor General found that while the Department of Commerce's processes ensured only appropriately qualified and reputable people were granted licences to work as real estate and settlement agents, there were legal limitations on the Department's ability to monitor agents once they were licensed. This meant the Department could not be certain agents continued to be of good character during the three years that their licence was valid.

Regulation of training organisations⁸⁶

The Auditor General's review of the Training Accreditation Council's monitoring activities found more than half of the registered training organisations the Council had checked were non-compliant with national standards. There were high rates of significant and critical non-compliance. Examples of non-compliance included lack of evidence of student assessment and unqualified trainers.

Sometimes agencies did not conduct the number of compliance inspections they expected to because an unexpected incident caused them to divert resources away from their inspection program. Failing to meet targets may be the best outcome if it is for good reasons. The former Department of Commerce reported that for 2016/17:

- WorkSafe conducted fewer than the expected number of inspections due to inspector resources being taken up by complex serious injury and fatality investigations.⁸⁷
- The Building Commission conducted fewer than the expected number of inspections due to resources being diverted to major building audits, such as the Perth Children's Hospital.⁸⁸

83 Office of the Auditor General Western Australia, *Management of Pesticides in Western Australia*, Report 14, 2015.

84 Office of the Auditor General Western Australia, *Regulation of Builders and Building Surveyors*, Report 12, 2016.

85 Office of the Auditor General Western Australia, *Regulation of Real Estate and Settlement Agents*, Report 1, 2015.

86 Office of the Auditor General Western Australia, *Regulation of Training Organisations*, Report 11, 2015.

87 Department of Commerce, *Annual Report 2016-17, 2017*, p. 135.

88 Department of Commerce, *Annual Report 2016-17, 2017*, p. 137.



There is evidence that some agencies have fewer resources available for compliance monitoring when compared to other jurisdictions, or the past. As of 2017, WorkSafe had just 93 inspectors, meaning Western Australia had the lowest ratio of inspectors per 10,000 employees across Australia.⁸⁹ The Department of Health told the ERA the number of staff in the Department's Radiation Health unit has halved, from 17 in 1998 to nine in 2018, while the number of facilities and individuals requiring authorisation has increased.⁹⁰

As of 2017, WorkSafe had just 93 inspectors, meaning Western Australia had the lowest ratio of inspectors per 10,000 employees across Australia.

The Department said its compliance regime was restricted by the regional travel required to cover the entire State, the time this takes and the low number of compliance officers (four).⁹¹

There are, however, some examples of agencies addressing resource constraints and by using data to target their compliance activities to areas of high risk. Risk-based compliance takes into consideration the probability and effect of non-compliance when identifying activities that should be monitored and investigated, and allocating compliance resources. Data analysis helps regulators target problematic behaviours or outcomes.

The Department of Transport has established a risk intelligence and data analysis program to improve its compliance and audit functions in driver and vehicle services. The program has increased the Department's ability to identify and respond to compliance risks that could harm the community. It is not known how frequently similar approaches are being used by other agencies. The ERA invites stakeholders to provide examples of similar approaches being adopted, as well as examples of impediments to their adoption.

89 Community and Public Sector Union and Civil Service Association submission, p. 4.

90 Department of Health response to ERA information request; Correspondence with the Department of Health.

91 Department of Health response to ERA information request; Correspondence with the Department of Health.



Improving compliance regimes – risk-based approaches⁹²

Data from the Department of Transport's systems is reviewed to identify unusual activity in areas such as vehicle inspections and practical driving assessments, and in turn target compliance activities. In addition to reducing compliance risks, the program has:

- Increased data and information accessibility and transparency, enabling investigators to identify related cases and subjects.
- Reduced the time taken to produce reports about cases or portfolios of investigations.
- Increased collaboration between government agencies in identifying, investigating and removing unsafe agents.

The Department is extending the program into other areas, such as On Demand Transport.

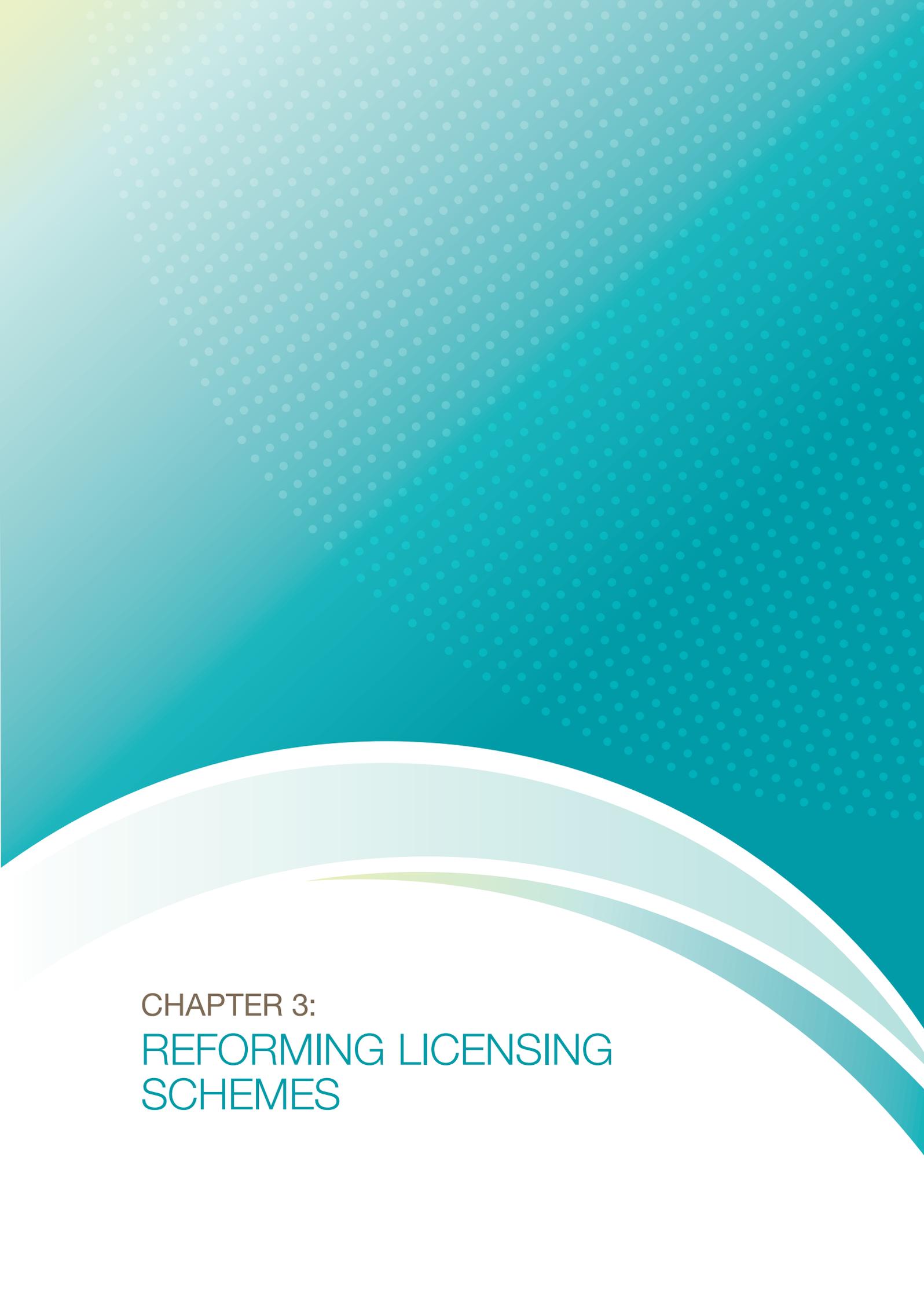
The ERA is requesting further evidence about compliance, for input to our final report.

Information request:

Please provide information about:

- Inadequacies in agencies' inspection regimes leading to non-compliance.
- What is causing any inadequacies in agencies' inspection regimes.
- Non-compliance, or parties not obtaining appropriate licences for a business activity, causing harm to the community.
- Data analysis being used to inform risk-based compliance frameworks.
- Impediments to the adoption of data analysis and risk-based compliance frameworks.

⁹² Department of Transport, 'Outcome 2: Deliver safe vehicles and safe drivers', 2017, (online) (accessed 3 October 2018); Department of Transport response to ERA information request.



CHAPTER 3:
REFORMING LICENSING
SCHEMES

CHAPTER 3: REFORMING LICENSING SCHEMES

Chapter highlights

While agencies recognise that improving licensing schemes is important, it is seldom a high priority. The ERA has found instances of legislative reform taking years to complete. Even when legislative change is not required to improve a licensing scheme – for example to simplify an agency’s internal processes – these improvements are not always occurring.

Reform of licensing should properly compete for government’s and parliament’s resources against other important matters, such as dealing with immediate crises, delivering election commitments, and regular service delivery. However, the amount of time and resources allocated to business licensing scheme reform will affect how quickly it can be implemented. If improving licensing schemes takes a long time then costly, ineffective and redundant schemes persist.

The ERA’s recommendations aim to make it easier for government to reform and improve licensing schemes.

In Western Australia, licensing schemes must be established under legislation. How government chooses to do this affects how quickly schemes can be changed. If primary legislation (an Act of Parliament) is too prescriptive, the licensing scheme it enables will be inflexible, because the parliamentary process to amend the legislation can be lengthy. Government should ensure that when licensing schemes are introduced or reviewed by Parliament, primary legislation includes only the elements of licensing schemes that need parliamentary consideration, such as their objectives.

If licensing scheme improvements are one part of a larger reform process that aims to overhaul many aspects of a regulatory system, implementation of the change to the licensing scheme can be prevented by difficult elements of the broader reform. This can happen even if the proposed change to the licensing scheme is administrative in nature. The Licensing Evaluation and Reform Unit should coordinate an annual omnibus bill, to provide agencies with a mechanism through which they can change prescribed elements of licensing schemes, which may otherwise take years to change.

The Government should also consider including, where appropriate, sunset clauses in the primary legislation for licensing schemes. Sunset clauses would ensure that licensing schemes lapse unless agencies take action to preserve them, and enable licensing schemes to be removed without legislative process.

Forty per cent of licensing schemes reviewed since 2013 have not yet had any review recommendations implemented.⁹³ Agencies should review these outstanding recommendations to determine if any should be implemented through the next omnibus bill.

To elevate the priority given to improving licensing schemes by government, the ERA recommends that the Licensing Evaluation and Reform Unit regularly identify priority areas for licensing reforms. In addition, to encourage agencies to implement licensing scheme reform, agencies should report annually and publicly on a program of business licensing scheme improvements the agency intends to implement in the next 12 months, and has implemented over the past 12 months.

93 ERA agency questionnaire responses; licensing schemes that have not had review recommendations implemented are listed in appendix C.

What has the ERA found?

The ERA has found examples of business licensing reform taking a long time. Once government has identified changes that would improve a scheme, it can be years before these are implemented.⁹⁴ Only 40 per cent of licensing schemes reviewed since 2013 have had their recommendations fully implemented. Forty per cent have not had any recommendations implemented (appendix C), including commercial goods vehicles licences, and pastoral leases and permits.⁹⁵ A further 20 per cent have had only some recommendations implemented.⁹⁶

Reforming licensing schemes takes more time when the licensing scheme reform is one part of a larger reform process that aims to overhaul many aspects of a regulatory system. Difficult or controversial elements of the broader reform can prevent changes to other aspects, such as administrative changes to licensing schemes, from occurring.

An example of this is provided by changes to improve the administration of the licensing of activities and development in the Swan and Canning Rivers. The *Swan and Canning Rivers Management Act 2006*, which enables these schemes, was due for legislative review in September 2012, five years after it commenced.⁹⁷ However, the review was postponed to allow for the operational and management functions of the Swan River Trust to be transferred to the Department of Parks and Wildlife (which is now the Department of Biodiversity, Conservation and Attractions).⁹⁸ On 15 March 2018, nearly six years after it was due to commence, the Minister for Environment tabled the review.⁹⁹ The review included 13 recommendations. Most proposed administrative changes to the Act and regulations to improve operations and streamline approvals.¹⁰⁰

The Department has told the ERA it intends to amend the Act and regulations in 2018/19.¹⁰¹

Reforms can also be delayed due to changes of government. For example, repeal of electricity generator licensing and commercial goods vehicle licensing (proposed in the Licensing and Other Authorisations Amendment Bill 2016) stalled prior to the March 2017 election.

Reforming licensing schemes appears to take more time when reform requires a large number of significant amendments to legislation. For example, to reform the licensing schemes for taking, breeding and dealing with native flora and fauna, a new act was passed to replace the *Wildlife Conservation Act 1950*, the *Sandalwood Act 1929*, and associated regulations. New legislation was first proposed in the early 1990s; however, the *Biodiversity Conservation Act 2016* only passed in 2016, and the regulations that will set out the new licensing schemes are yet to commence.

A large number of amendments to legislation may be required if reform has been triggered by a review that made a large number of recommendations. The 2013 review of the *Liquor Control Act 1988* made 141 recommendations, 90 of which the government supported (fully or in principle).¹⁰² The former government implemented some recommendations in 2015, and the current government implemented further recommendations this year through the *Liquor Control Amendment Act 2018*.¹⁰³ Reforming firearms licensing is another, similar example.

The parliamentary process to amend primary legislation can be lengthy. Improving a licensing scheme can be easier if the change only requires an amendment to subsidiary legislation. For example, the Department of Health told the ERA its process to update a particular form under the *Health (Notifications by Midwives) Regulations 1994*, from initial consultation with stakeholders to gazettal, takes between 11 and 14 months.¹⁰⁴

94 ERA agency questionnaire responses.

95 ERA agency questionnaire responses.

96 ERA agency questionnaire responses.

97 Department of Biodiversity, Conservation and Attractions, *Review of the Swan and Canning Rivers Management Act 2006: Report to the Minister for Environment*, 2018, p. 1.

98 The transfer of functions came into effect on 1 July 2015. Source: Department of Biodiversity, Conservation and Attractions, *Review of the Swan and Canning Rivers Management Act 2006: Report to the Minister for Environment*, 2018, p. 1.

99 Parliament of Western Australia, *Legislative Council Minutes of Proceedings No. 46*, 15 March 2018, p. 1.

100 Department of Biodiversity, Conservation and Attractions, *Review of the Swan and Canning Rivers Management Act 2006: Report to the Minister for Environment*, 2018, p. 6.

101 Department of Biodiversity, Conservation and Attractions response to ERA information request.

102 Government of Western Australia, *Government's response to the review of the Liquor Control Act 1988*, 2014.

103 Western Australia, *Second Reading*, Legislative Council, 18 August 2015, p. 5388d (Hon. Colin Holt).

104 Department of Health response to ERA information request.

Time-consuming legislative reform

Biodiversity Conservation Act 2016

A bill to reform the *Wildlife Conservation Act 1950* and *Sandalwood Act 1929* was first proposed in 1992, with the release of a green paper for public comment.¹⁰⁵ These Acts enabled six licensing schemes for taking, breeding and dealing with native flora and fauna.¹⁰⁶

In September 2016, Parliament passed the *Biodiversity Conservation Act 2016* to replace the old acts, and to create a new framework for regulating interactions with native flora and fauna.¹⁰⁷

Passage of the *Biodiversity Conservation Act 2016* allowed for regulations to be drafted to reform the licensing schemes. Work on drafting these regulations is underway.¹⁰⁸

The Firearms Act 1973

The *Firearms Act 1973*, and the firearm licensing scheme it enables, has been the subject of multiple reviews and audits since 2000. This has included reviews by the Western Australia Police, the Joint Standing Committee on Delegated Legislation, and the Law Reform Commission of Western Australia, and five reviews by the Office of the Auditor General.¹⁰⁹

All identified problems with the systems and processes for licensing and managing firearms. In October 2016, the Law Reform Commission made 143 recommendations, including that “firearms legislation should be redrafted from the ground up and be re-enacted”.¹¹⁰

The Western Australian Police has made several changes to improve its licensing systems.¹¹¹ However, there have been no major amendments to the *Firearms Act 1973* since 2004.

After the shooting deaths of seven people in Margaret River in May 2018, a spokesperson for the Minister for Police said that a working group, consisting of police and stakeholders, was assessing and prioritising the Law Reform Commission’s recommendations.¹¹² In August 2018, the Minister for Police was reported to have asked Western Australia Police to investigate the Law Reform Commission’s recommendations further.¹¹³

Omnibus red tape reduction reforms

The Licensing and Other Authorisations Amendment Bill 2016 lapsed with the proroguing of the 39th Parliament in November 2016, prior to the March 2017 election. This bill would have made improvements to four licensing schemes by:

- Removing the requirement for electricity generators to be licensed.
- Repealing commercial goods vehicle licences.
- Allowing minor lotteries authorised in other Australian jurisdictions to operate in Western Australia.
- Removing the requirement for licence applicants under the *Security and Related Activities (Control) Act 1966* to submit two character references.¹¹⁴

105 Meeting with Department of Biodiversity, Conservation and Attractions; Western Australia, *Second Reading*, Legislative Assembly, 25 November 2015, p. 8906a (Mr Albert Jacob).

106 ERA agency questionnaire responses.

107 Western Australia, *Second Reading*, Legislative Assembly, 25 November 2015, p. 8905b (Mr Albert Jacob); Explanatory Memorandum, *Biodiversity Conservation Bill 2015*, pp. 1-2.

108 Department of Biodiversity, Conservation and Attractions, ‘*Biodiversity Conservation Act 2016 – Biodiversity Conservation Regulations (Have your Say)*’, 2016, (online) (accessed 19 September 2018).

109 The Auditor General has completed four reviews of firearms regulation, and expects to table its fifth review by the end of 2018.

110 Law Reform Commission of Western Australia, *Review of the Firearms Act 1973 (WA): Project 105 Final Report*, 2016, p. 155.

111 Office of the Auditor General Western Australia, *Information Systems Audit Report*, Report 11, 2013, pp. 14, 17.

112 N. Hondros, ‘Mental health check put forward in 2016 WA gun law inquiry’, *WAtoday*, 15 May 2018, (online) (accessed 19 September 2018).

113 K. Campbell, ‘Gun laws to target WA’s most dangerous criminals’, *PerthNow*, 26 August 2018, (online) (accessed 12 September 2018).

114 Explanatory Memorandum, *Licensing and Other Authorisations Amendment Bill 2016*, pp. 1-2.

Even when legislative change is not required, it can be hard to improve licensing schemes. Agencies have provided examples of resources not being prioritised to projects that would improve how they administer licences, such as changes to systems, policies or guidance materials. For example, the Department of Health told the ERA its internal procurement process did not readily support modifications to software that would update databases or enhance processes, even if the funding was available — the only improvements that were “fast-tracked” were for systems that have stopped working.¹¹⁵

Despite these challenges, some agencies are achieving reform. Government has repealed schemes including the licensing of travel agents and grain marketers and the registration of hairdressers. The Licensing Provisions Amendment Bill 2015 amended several acts to streamline licensing processes for businesses and remove administrative burdens. Reforms are also underway to liquor licensing and on-demand transport licensing.

Why is it important to improve licensing schemes easily?

Costly, ineffective and redundant licensing schemes persist in Western Australia because reforming or improving schemes can take a long time. Outdated licensing schemes can be costly for licensees, consumers and administrators.

For example, delays to water resources management reform mean processing times for some types of water licences are 30 per cent longer than necessary.¹¹⁶ Discussions on reforming water regulation in Western Australia have been happening since 1994, but the pace of change has been slow and some important reforms are yet to be implemented.

Water resource management reform

The former Department of Water argued that delays in water resource management reform meant Western Australia’s water licensing scheme was unable to deal with challenges that were not envisioned when it was created, for example, a drying climate, population growth, greater competition for water, new water uses, and water resource over-allocation.¹¹⁷

Further, the Productivity Commission has found that the water licensing scheme is difficult and expensive to administer, and slows down licensing and water trading.¹¹⁸ Full assessment is required of all applications, regardless of the circumstances of each transaction. The former Department of Water received about 3,000 licence applications a year, around half of which were for renewals, amendments, trade or transfers of existing licences. The average processing time for these, using the full assessment process, is about 12.8 hours an application – over 19,000 hours a year. The Regulatory Impact Assessment undertaken for water resource management reforms estimated that assessing licences on the level of risk could reduce processing times by 30 per cent.¹¹⁹

After extensive consultation that commenced with the release of a position paper in September 2013,¹²⁰ the former Department of Water started to draft a water resource management bill in early 2015 to consolidate the six acts that govern water management into one. However, the bill was not completed before the change of government in March 2017.

In August 2018, the State Government announced it was “progressing” new water resources management legislation.¹²¹

115 Department of Health response to ERA information request.

116 Department of Water, *Regulatory Impact Statement for Water Resources Management Reforms*, 2013, p. 20.

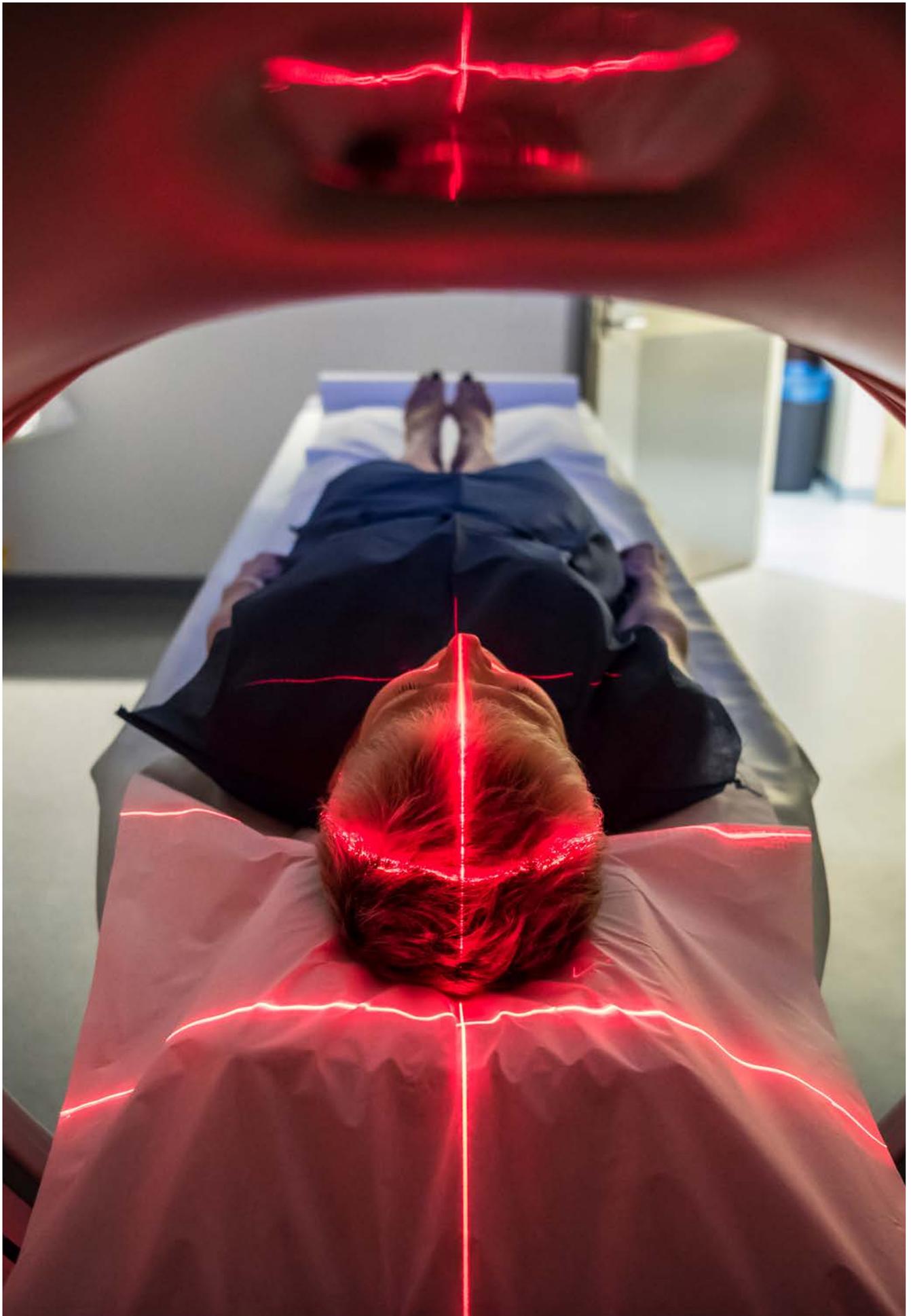
117 Department of Water, *Securing Western Australia’s water future*, Position paper – reforming water resource management, 2013, pp. 3-4.

118 Productivity Commission, *National Water Reform*, Report no. 87, 2017, p. 78.

119 Department of Water, *Regulatory Impact Statement for Water Resources Management Reforms*, 2013, p. 20.

120 The former Department of Water received 98 submissions in response to its September 2013 position paper, *Securing Western Australia’s water future*.

121 Hon. Dave Kelly MLA, ‘State moves to secure water future with reform of century-old laws’, *Media Statement*, 23 August 2018, (online) (accessed on 10 October 2018).



As another example, the enabling acts for some licensing schemes still require applicants to give notice of their intention to apply for a licence in the newspaper,¹²² even though such notices may no longer serve any worthwhile purpose.¹²³

The persistence of potato market regulation in Western Australia for decades longer than in other jurisdictions meant consumers had limited choice of potato varieties and endured poor product quality.¹²⁴ For example, Nadine and Royal Blue potatoes accounted for about 75 per cent of potatoes on offer in Western Australia, whereas in the Eastern States, a much larger range of varieties was available.¹²⁵ In its 2014 Microeconomic Reform Inquiry, the ERA estimated that about \$43 million a year would be passed through to consumers in the form of lower prices if the industry was deregulated.¹²⁶

Deregulation of the potato industry

The Commonwealth Government established a system of growing potatoes at a guaranteed price during the Second World War to ensure adequate supplies of potatoes.¹²⁷ At the request of potato growers, many jurisdictions continued to operate this system once the Commonwealth Government's war time policy finished.¹²⁸

The Western Australian Potato Marketing Corporation was dissolved at the end of 2016. Western Australia lagged behind other Australian jurisdictions in dismantling its potato marketing board by many decades – South Australia dissolved its board in 1986, Tasmania in 1977, while New South Wales, Victoria, Queensland and the Australian Capital Territory closed their potato marketing boards in the 1950s.

When markets are changing rapidly, licensing schemes can become inadequate, inequitable or even harmful. With sharing economy platforms, such as Uber and Airbnb, incumbent – often licensed – businesses face competition from service providers subject to less or no regulation. Incumbent service providers argue that new entrants have an unfair competitive advantage because they do not have to comply with the same regulatory requirements, and that consumers are vulnerable without the protections that licensing provides.¹²⁹ Other concerns include social problems such as increased noise and traffic in residential neighbourhoods with Airbnb rentals,¹³⁰ and the lack of employment protections for workers.¹³¹

However, consumers benefit from the often cheaper, and more diverse and responsive services that are provided through these new platforms.¹³² The sharing economy also allows assets that would otherwise be sitting idle, such as parked cars and empty houses, to be used more intensively.

Governments are grappling with how to regulate the sharing economy without preventing the development and adoption of new technologies and of services consumers want. Given how easy it is to arrange informal sharing, in many cases government could find it hard to regulate these activities even if it wanted to. The Productivity Commission suggests that governments should “use the opportunity of disruption to reform markets where there have been undue regulatory restrictions by removing restrictions that impose a competitive disadvantage on incumbents rather than extend existing restrictions to new business models”.¹³³

In August 2018, the Government introduced the Transport (Road Passenger Services) Bill 2018 to Parliament. The Bill proposes to replace current

122 For example, see: section 4(2)(c) of the *Cremation Act 1929* and section 11 of the *Pawnbrokers and Second-hand Dealers Act 1994*.

123 See: Second reading speech for the Consumer Protection Legislation Amendment Bill 2013. It amended five licensing acts to remove the requirement for notice of licence applications to be published in the newspaper because “advertising such applications no longer appears to serve any worthwhile purpose”. Source: Western Australia, *Second Reading*, Legislative Assembly, 21 August 2014, p. 5747a (Mr. Paul Miles).

124 Economic Regulation Authority, *Inquiry into Microeconomic Reform in Western Australia: Final Report*, 30 June 2014, p. 316; McKinna et al, *Strategic Analysis of the WA Ware Potato Supply Chain: Final Report*, 2011, p. iv.

125 Economic Regulation Authority, *Inquiry into Microeconomic Reform in Western Australia: Final Report*, 30 June 2014, p. 338.

126 Economic Regulation Authority, *Inquiry into Microeconomic Reform in Western Australia: Final Report*, 30 June 2014, p. 316.

127 Western Australia, *Second Reading*, Legislative Assembly, 5 November 1946, p. 1742 (Hon J. T. Tonkin).

128 Western Australia, *Second Reading*, Legislative Assembly, 5 November 1946, p. 1743 (Hon J. T. Tonkin).

129 Community Public Sector Union and Civil Service Association submission, p. 8; Department of Transport, *Executive Summary of On-demand Transport Green Paper Consultation Report*, 2016, p.4; A. Hartley, ‘Uber focuses on regional areas during nationwide rollout of services’, *ABC News Far North*, 21 September 2017, (online) (accessed 12 September 2018); R. Baines, ‘Tasmanian taxi drivers cry ‘unfair’ on Government’s green light for Uber’, *ABC News*, 14 September 2015, (online) (accessed 12 September 2018).

130 Productivity Commission, *Digital Disruption: What do governments need to do?*, Commission Research Paper, 2016, pp. 115-116; R. Eddie, ‘NSW Airbnb guests, hosts face two-strikes-and-you’re-out ban’, *The New Daily*, 15 August 2018, (online) (accessed 12 September 2018); Williams, L, ‘When Airbnb rentals turn into nuisance neighbours’, *The Guardian*, 18 September 2016, (online) (accessed 12 September 2018).

131 Community Public Sector Union and Civil Service Association submission, pp. 8 and 11; J. Liss, ‘Uber and Workers’ Rights in the New Economy’, *Open Society Foundations*, 2 July 2015, (online) (accessed 10 October 2018); R. Davies, ‘Uber loses appeal in UK employment rights case’, *The Guardian*, 11 November 2017, (online) (accessed 12 September 2018); Productivity Commission, *Digital Disruption: What do governments need to do?*, Commission Research Paper, June 2016, p. 78.

132 Deloitte Access Economics, *Economic effects of ridesharing in Australia*, 2016, p. 1.

133 Productivity Commission, *Digital Disruption: What do governments need to do?*, Commission Research Paper, 2016, p. 101.

laws with a new framework that “focuses on safety and flexibility, supports innovation and minimises regulatory burden”.¹³⁴ In addition, to support the Perth taxi sector to adjust to the more open market, the State Government has proposed a buy-back of Perth taxi plates, funded by a levy on taxi and charter passenger fares starting or finishing in a defined Perth and Peel area.¹³⁵

In June 2018, the Minister for Planning was reported to have “asked her department to report on options to manage the booming Airbnb market, including those being considered in New South Wales”.¹³⁶ Similarly, the Minister for Tourism, is reported to have said that the State Government needed to conduct a “comprehensive assessment” of the rules governing Airbnb to ensure the short-stay provider was properly regulated.¹³⁷

What can be done to make it easier to improve licensing schemes?

This section sets out the ERA’s recommendations for reducing the time it takes to improve licensing schemes.

Improvements that require legislative amendments

Licences impose obligations on businesses and people, regulating their affairs, rights and liabilities. Therefore, licensing schemes must be established under legislation.¹³⁸ In Western Australia, about a third of business licensing schemes are established by an Act of Parliament; just over 10 per cent are established by subsidiary legislation; and about 60 per cent are set out in both.¹³⁹

How a licensing scheme is prescribed in legislation (that is, acts and regulations) affects how quickly government can change or adapt the scheme. In general, an act should set out broad legal and policy principles. The subsidiary legislation under the act details how to implement the act’s provisions.¹⁴⁰

Outcomes-focused legislation is better able to adjust to changing circumstances because it specifies the required outcomes rather than prescribing the means by which it must be achieved.¹⁴¹ If legislation is prescriptive, the licensing scheme it enables will be inflexible because a legislative amendment is required to change it. Generally, administrative changes to primary legislation occur if there are enough to warrant drafting an amendment bill or, if changes need to occur across multiple acts, an omnibus bill.¹⁴² This means it can take a long time to remove outdated legislation or parts of legislation. Legislation, whether primary or subsidiary, should not deal with matters that can be dealt with administratively or under an executive power possessed by a Minister.¹⁴³

Even if an amendment bill is drafted, parliamentary time might understandably be allocated to fulfilling election commitments or dealing with other higher priorities. When outlining his legislative agenda for 2018, the Premier’s first priorities were: “legislation to freeze the salaries of ministers, members of parliament, judges and senior public servants; no body, no parole laws; ending the time limitations on civil actions for victims of child sexual abuse; expunging historical homosexual convictions...; and laws to increase penalties and payouts for workplace safety violations and deaths”.¹⁴⁴ Throughout the inquiry, agencies have said that sometimes government does not allocate enough resources, including parliamentary time, to improving licensing schemes. This affects improvements that require legislative amendments, as well as improvements that do not require legislative change.

134 Explanatory Memorandum, *Transport (Road Passenger Services) Bill 2018*, p. 2.

135 Explanatory Memorandum, *Transport (Road Passenger Services) Bill 2018*, pp. 8-10.

136 J. Zimmerman, ‘Airbnb bonanza: Perth property owners raking in \$100,000 a year from home sharing’, *PerthNow*, 24 June 2018, (online) (accessed 19 September 2018).

137 D. Mercer, ‘State Government flags crackdown on Airbnb’, *PerthNow*, 5 June 2018, (online) (accessed 19 September 2018).

138 The purpose of acts and regulations is to regulate people’s affairs, rights and liabilities, impose obligation on them, and give them powers they do not already have. See: Parliamentary Counsel’s Office, *Getting Government Legislation Drafted and Enacted: Guidelines and Procedures*, 2017, p. 1.

139 ERA analysis of preliminary list of state government business licences. Subsidiary legislation refers only to regulations for this statistic.

140 Acts, also referred to as primary legislation, are laws passed by Parliament that can only be amended by another act of parliament. Subsidiary legislation expands on the provisions of an act, and is made by the Governor, a minister or other body, using regulation making powers given to them under an act. The most common type of subsidiary legislation is regulations; however, it also includes local laws, by-laws, planning schemes, codes and rules.

141 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 42.

142 For example, the *Licensing Provisions Amendment Act 2016*, made changes to licensing schemes under eight acts. Source: Western Australia, Second Reading, Assembly, 17 November 2015, p. 8316g (Hon. Bill Marmion).

143 Parliamentary Counsel’s Office, *Getting Government Legislation Drafted and Enacted: Guidelines and Procedures*, 2017, p. 2.

144 Western Australia, *Premier’s Statement*, Legislative Assembly, 13 February 2018, p. 28 (Hon. Mark McGowan).

A common theme: choices about allocation of time and resources

Agencies provided the following explanations of why improving and reforming licensing schemes takes time or is subordinated to higher priorities:

- Legislative changes [for one particular licensing scheme] generally get prioritised on the legislative agenda, far more so than for changes to [another licensing scheme]; this is because there is less activity in the latter sector in the Western Australia economy, relative to the former.
- By the time amendments have been changed to reflect a government's preferences, it is too late in the election cycle for the amendments to be passed.
- There has been a suite of amendments [to an act] in the pipeline for 10 years; however, progress has been slow due to competing priorities of successive governments.
- The time taken to see the bill to fruition [over 20 years] reflected changes in the priorities of the government of the day.
- The government chooses not to adopt independently made recommendations if they are not consistent with its policies; the department implements the recommendations government wants to implement.
- It took three years to undertake a review to consolidate two regulations because the unit had only four policy officers who also provided the business-as-usual functions.
- The initial review to harmonise licensing was a federal government priority in 2007. The aim was for the new legislation to be less complex, less costly and safer. However, the initiative was not revisited again until 2013 due to changes in government priorities.

In addition, agencies said that they have put some licensing projects on hold (for example, working together to link licensing systems) while they adjust to machinery of government changes.

In comparison to primary legislation, changes to subsidiary legislation can occur relatively quickly because the amendment process is not as complex. However, using subsidiary legislation to prescribe licensing schemes will not necessarily improve flexibility or adaptability. Amending subsidiary legislation can still require substantial work,¹⁴⁵ and ultimately, whether amendments occur is “a question of prioritisation...and budgets”.¹⁴⁶ Furthermore, the subsidiary legislation under an act can become unwieldy. For example, 47 regulations and by-laws were made under the *Health Act 1911*. As noted in the explanatory memorandum for the Public Health Bill 2014, the regulatory framework was incoherent and “the sheer volume of regulation” made it difficult to administer and comply with.¹⁴⁷

Agencies and industry stakeholders generally support regulatory approaches that are outcomes-focused.¹⁴⁸ Other jurisdictions have adopted outcomes-focused approaches to regulation. In Canada's British Columbia, reforms to fish and seafood business licensing commenced in January 2017. The reforms move away from a process-based regulatory regime, which specified processes for drying and salting seafood, to an outcomes-focused approach that accommodates the use of improving technologies.¹⁴⁹ This shift allows food businesses to adopt new technologies and minimise costs, while meeting the primary objective of regulation — ensuring food safety standards.¹⁵⁰

145 For example, as noted by the Department of Primary Industries and Regional Development, unwinding legislation can be challenging and often cannot be done in one go because the various requirements need to be systematically unravelled from all the subsidiary legislation.

146 Meeting with Department of Transport (Driver and Vehicle Services).

147 The *Public Health Act 2016* repealed the *Health Act 1911*. Source: Explanatory Memorandum, *Public Health Bill 2014*, p. 4.

148 Synergy submission, pp. 3-4; meetings with the Department of Health, Main Roads, and Department of Water and Environmental Regulation.

149 Frontier, *Case studies on best practice licensing frameworks: a report prepared for the Economic Regulation Authority of Western Australia*, July 2018, pp. 33-37.

150 Frontier, *Case studies on best practice licensing frameworks: a report prepared for the Economic Regulation Authority of Western Australia*, July 2018, pp. 33-37.

In Western Australia, while there is “no central mandate or obligation” for agencies to do so, the Service Priority Review noted that some agencies had made considerable progress towards implementing outcomes-focused regulatory approaches.¹⁵¹ The ERA has also found examples of this. For instance, Part 8 of the *Public Health Act 2016* (which the Department of Health anticipates will commence in 2020/21) is flexible, because it provides a registration and licensing framework that can be applied to any activity declared by the regulations to be a public health risk. The Act replaces the *Health Act 1911*, which is prescriptive in nature, and “provides regulation by way of specific known and often historical risks to public health”.¹⁵² The old Act did not capture new and emerging public health risks, which limited the capacity of the government to take immediate action to protect the public.

The ERA recommends that government ensure that when licensing schemes are introduced or reviewed by Parliament, primary legislation includes only the elements of licensing schemes that need parliamentary consideration, such as their objectives. The administrative and procedural requirements of a licensing scheme should not be prescribed in the primary legislation. Implementing the Service Priority Review recommendation that the Department of Treasury, with support from all regulatory agencies, develop best practice principles for making and applying regulation, will also assist government develop regulatory approaches that are outcomes-focused.¹⁵³ The performance checklist in chapter 2 includes a measure to prompt agencies to check whether primary legislation unnecessarily prescribes administrative processes for licensing schemes.

Other Australian jurisdictions use sunset clauses to manage their stock of regulation. For example, at the Commonwealth level, the *Legislation Act 2003* automatically repeals all legislative instruments (instruments made under primary legislation, such as regulations and orders) after about 10 years, unless instruments are exempted or action is taken to preserve them. The sunset clauses ensure that, at least every 10 years, agencies are reviewing legislative instruments to check if they are fit-for-purpose, necessary and relevant.

However, sunset clauses are not appropriate in all circumstances. The Commonwealth’s sunset clause regime has created significant workloads for agencies because each instrument must be reviewed in advance of its sunset date to give sufficient time to redraft an instrument or take action to preserve it.¹⁵⁴ Due to the large number of instruments reaching their sunset date (thousands since 1 April 2015), the Australian Government has also had to develop an alternative Regulatory Impact Assessment process for instruments being remade without significant change.¹⁵⁵

Western Australia does not have a mandatory sunset clause regime for its legislation. The ERA recommends that the Government consider including expiry provisions in primary legislation for the licensing schemes the legislation is enabling, where appropriate. Introducing sunset provisions for licensing schemes would ensure they lapse unless agencies take action to preserve them. It would also enable licensing schemes to be removed outside of the legislative process.

Recommendation:

To make reform and improvement of licensing schemes easier, the Government should:

- Introduce an omnibus bill each year to implement any legislative changes needed to improve licensing schemes.
- Ensure that, when licensing schemes are introduced or reviewed by Parliament, primary legislation includes only the elements of licensing schemes that need parliamentary consideration (for example, their objectives), and does not prescribe the administrative and procedural requirements of licensing schemes.
- Consider including sunset clauses in the primary legislation for licensing schemes.

151 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 42.

152 Explanatory Memorandum, *Public Health Bill 2014*, p. 6.

153 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 47.

154 Australian Attorney-General’s Department, *Guide to Managing Sunsetting of Legislative Instruments*, 2016, p. 5.

155 Australian Department of the Prime Minister and Cabinet, *Guidance Note: Sunsetting Legislative Instruments*, 2016, p. 1.

Information request:

Should legislation include sunset provisions for licensing schemes? If so, how should the sunset clause mechanism operate? In particular, how could sunset provisions affect other processes such as Regulatory Impact Assessment?

The ERA has identified 65 licensing schemes that have been reviewed in the past five years, but have not had any recommendations from those reviews implemented. These licensing schemes are listed in appendix C. Agencies should review these outstanding review recommendations and consider whether any of these should be implemented through the next omnibus bill.

Recommendation:

Agencies should review the outstanding review recommendations for the 65 licensing schemes that have been reviewed in the last five years but have not had recommendations implemented (listed in appendix C). Agencies should consider whether any of the recommendations should be implemented through the next omnibus bill.

The ERA also recommends that the Licensing Evaluation and Reform Unit coordinate an annual omnibus bill. An omnibus bill will give agencies a mechanism through which they can change or remove prescriptive aspects of licensing schemes set out in primary legislation. Successive governments have used omnibus bills to improve legislative elements of licensing schemes, and should continue to do so.

In order to elevate the priority given to improving licensing schemes by government, the Licensing Evaluation and Reform Unit should be given the function of identifying priority areas for licensing reform.

Recommendation:

Functions of the Licensing Evaluation and Reform Unit should include:

- To regularly identify priority areas for licensing reform. This will help to elevate the priority given to improving licensing schemes by government.
- To coordinate and prepare the annual omnibus bill to implement legislative changes needed to improve licensing schemes proposed above.

Improvements that do not require changes to legislation

Licensing reform projects must compete for time and resources with a range of other reforms, major projects and core business functions.

Ministerial and community priorities influence how an agency allocates resources. If reforming a licensing scheme is a government priority then an agency will be encouraged, for example through ministerial direction, to change the scheme. Following the Grenfell Tower fire in 2017, the Department of Mines, Industry Regulation and Safety allocated “significant departmental resources to a widespread audit of building cladding in Western Australia and the development of a coherent building plan to accelerate reforms and improvements to building regulation”.¹⁵⁶

An agency’s decision to change a licensing scheme might also be influenced by its assessment of whether the risks and costs it will face in making changes outweigh the rewards it will receive. There are examples of agencies coming under scrutiny because attempted reforms to licensing schemes have been costly and only partially successful. For example, the Auditor General’s June 2017 Information Systems Audit reported various weaknesses in the former Department of Racing, Gaming and Liquor’s new licensing system, known as Navigate. Furthermore, the project to implement Navigate was 11 months late and \$2.1 million (44 per cent) over budget.¹⁵⁷

¹⁵⁶ Government of Western Australia, *State Budget 2018-19: Budget Paper No. 2, Volume 1*, 2018, p. 209.

¹⁵⁷ Office of the Auditor General Western Australia, *Information Systems Audit Report: Navigate – Department of Racing, Gaming and Liquor*, Report 12, 2017, pp. 15-17.



As set out in chapter 2, the ERA invites stakeholders to provide information about ways to develop a culture within state government agencies that encourages them to continuously improve licensing schemes.

The Regulatory Impact Assessment Guidelines request that agencies develop and publish a regulatory plan that outlines their regulatory proposals for the reporting period;¹⁵⁸ however, currently, no agency is doing this. In order to encourage agencies to improve licensing schemes, agencies should report annually and publicly on a program of business licensing scheme improvements they intend to implement in the next 12 months, and a summary of changes that have been made in the previous 12 months. This will increase transparency over what improvements are being made, and in turn encourage agencies to prioritise making changes. The program of improvements should be consistent with the priority reforms identified by the Licensing Evaluation and Reform Unit (Recommendation 6).

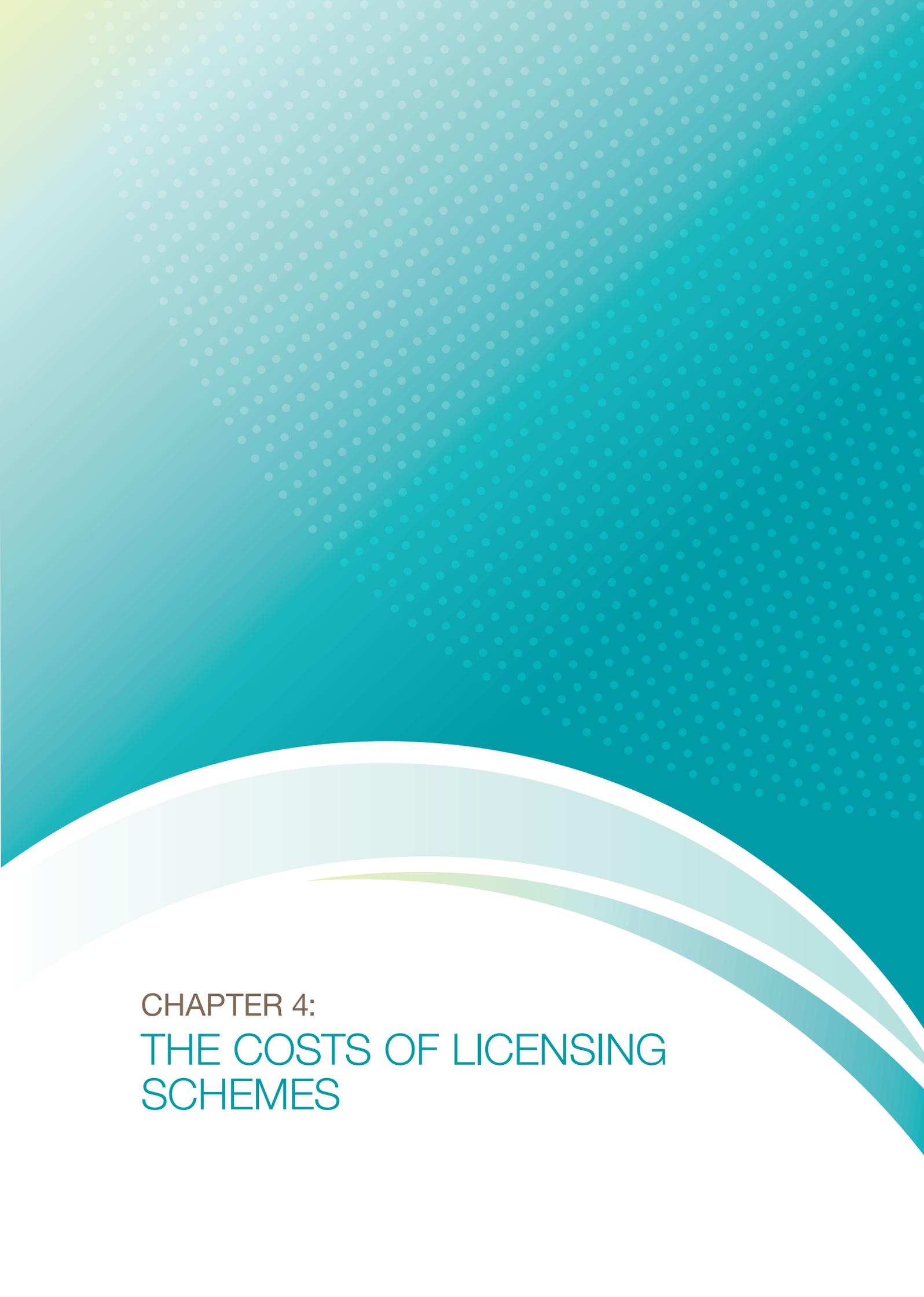
Recommendation:

In order to encourage agencies to improve licensing schemes, agencies should report annually and publicly on:

- A program of business licensing scheme improvements the agency intends to implement in the next 12 months.
- A summary of changes to business licensing schemes made in the previous 12 months.

The Regulatory Impact Assessment Guidelines request that agencies develop and publish a regulatory plan that outlines their regulatory proposals for the reporting period; however, currently, no agency is doing this.

¹⁵⁸ Government of Western Australia, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010, p. 17.



CHAPTER 4:
THE COSTS OF LICENSING
SCHEMES

CHAPTER 4: THE COSTS OF LICENSING SCHEMES

Chapter highlights

While licensing creates benefits for the community, it also creates costs. These include the effects on businesses resulting directly from the scheme, such as the cost of complying with the scheme, and the time waiting for applications to be approved, as well as the cost to government of administering the scheme. Costs also include the subsequent, indirect effects of licensing — such as reduced business activity, and higher prices and less customer choice.

Agencies and licensees have provided many examples of outdated administrative processes. However, there are also examples of schemes operating well. Most agencies are investing in online platforms and there is work under way to improve information sharing. Outcomes include easier processes for submitting and tracking licence applications, and faster compliance reporting. This has made it easier for agencies to assess applications, and more timely for licensees.

Indirect costs may arise if minimum conditions and requirements create unnecessary barriers to market entry that affect competition.¹⁵⁹ Only 10 per cent of licensing schemes reviewed over the past five years were checked for whether they unnecessarily restrict competition. The performance checklist in chapter 2 will prompt agencies to conduct this assessment.

Indirect costs can be created by minimum conditions and requirements that are not set stringently enough.¹⁶⁰ For example, a licensing scheme intended to keep the community safe will not work if licensees are not trained well enough to carry out the requirements of the licence. The ERA has not yet uncovered examples of harm resulting from licence conditions and requirements that are not stringent enough. The ERA invites stakeholders to provide further evidence on this issue for input to our final report.

Indirect costs can also arise if poorly designed fees and charges create perverse incentives for businesses and consumers that cause unintended changes in behaviour.¹⁶¹ The way fees are set varies across licensing schemes, and the approach that should be adopted depends on the objectives of the licensing scheme. Appendix A lists guidelines that establish principles for fee-setting.

Appendix A also includes further guidance and resources that can assist agencies and policy-makers to find ways to minimise the unnecessary costs of business licensing. The government is also investigating broader public sector reforms that, if implemented, will address some of the unnecessary costs of business licensing.¹⁶² Rather than repeating guidance and recommendations arising from previous inquiries, this draft report focuses on the factors set out in chapter 2 and chapter 3 that can prevent policy-makers and agencies from managing licences effectively.

159 Comments about this were received from: WA TAB Agents Association submission, p. 3; Anonymous (3), online questionnaire; Anonymous (4), online questionnaire; Young, Paul, online questionnaire.

160 This point was made by: Anonymous submission, p. 1; Community and Public Sector Union and Civil Service Association submission, p. 8; Construction, Forestry, Mining and Energy Union submission pp. 16-17; Master Plumbers and Gasfitters Association submission, p. 3; Mackie, Tony, online questionnaire; Shuttleworth, Daniel, online questionnaire.

161 Comments were received from: Western Australian Local Government Association submission, p. 2; Town of Port Hedland submission, pp. 1-2; Department of Biodiversity, Conservation and Attractions; Master Electricians Australia submission, p. 2; Restaurant and Catering Association submission, p. 2.

162 Department of the Premier and Cabinet, *Public Sector Reform Unit: Overview of early initiatives*, 2018; Department of the Premier and Cabinet, 'Public Sector Reform', 2018, (online) (accessed 12 September 2018).

Licensing creates costs as well as benefits. There is no one classification system for the costs of regulation that has achieved widespread agreement — the distinction between different types of costs is ambiguous.¹⁶³ In this chapter, the ERA distinguishes between the direct effects of the scheme on businesses and government (direct costs), and the effects that flow through to the community, economy or environment (indirect costs). Direct costs include the costs to businesses of, for example, filling out forms, and the cost to government of administering and enforcing the scheme. Indirect costs include effects such as reduced investment and innovation, and less choice and value for money for consumers.

Some licensing schemes create unnecessary direct costs

The inquiry has found examples of burdensome administrative processes such as duplicated information requirements and paper-based processes.¹⁶⁴

Outdated and costly licensing administrative processes

Processes identified by agencies include:¹⁶⁵

- “Current payment processes are directed through another part of the Department and reconciliation is a manual process by review of a spreadsheet of receipts.”
- “[There is a] double data entry process for receipts, records and database entry ... there is no licensing program that manages the entire process of payments, approvals, forms, and history.”
- “[The] majority of the ... application types remain paper-based. When completing these [applicants] need to either post or lodge the applications at an ... office with the prescribed payment. Currently online applications ... are limited.”
- “[Two agencies] both provide a number of services to ... customers. There are considerable opportunities to enhance ... customers’ experience and create operational efficiencies by understanding ... what systems, tools and databases are being used and how approval for permits and licensing ... can be aligned or connected to better assist customers.”

Frustrations highlighted by licensees include:

- “I am not allowed to submit applications by email, only by post. I am not allowed to apply for more than one ... exemption in the same letter of application.”¹⁶⁶
- “Online applications [are] complicated and needed telephone support to complete. [It] took a day to complete because ... the application form [did not store information]. A simple variation to the licence ... took three months from submission to approval. Any form which requires telephone support to complete is by definition poorly designed.”¹⁶⁷
- “In Western Australia the requirements for [a licence] are extensive, expensive and are a significant barrier to enter the industry.”¹⁶⁸
- “... The upfront costs incurred during this [application] process, [and] delays in licence approval times can also result in lost productivity for the business further compounding the frustration and anxiety for business-owners.”¹⁶⁹

163 Department for Business, Innovation and Skills and Regulatory Policy Committee, *Evaluating costs and benefits for regulatory purposes: direct and indirect impacts of regulation on business*, Working Paper prepared by Brian Titley Consulting Ltd, United Kingdom, 2015, p. 8.

164 Department of Health, Department of Local Government, Sports and Cultural Industries, Department of Biodiversity, Conservation and Attractions, Department of Primary Industries and Regional Development responses to ERA information request.

165 Department of Health, Department of Primary Industries and Regional Development, Department of Transport responses to ERA information request.

166 Happ, Erl, submission (1), p. 1.

167 Anonymous (6), online questionnaire.

168 Master Electricians Australia, p. 2.

169 Restaurant and Catering Industry Association submission, p. 2.

Outdated and costly licensing administrative processes (continued)

- “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.”¹⁷⁰
- “More generally the two ... stage process of works approval, then licence application appears to be unnecessary, as the completion of the works approval is not actually inspected by the Department and sometimes works approval information (which relate only to the construction of the facility) are then included in licences.”¹⁷¹
- “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 ... all strata forms should be consolidated into a single application and one certificate issued to avoid any confusion in the approvals process.”¹⁷²
- “In March 2017, PPA [Pilbara Ports Authority] lodged an application with DWER [Department of Water and Environmental Regulation] 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.”¹⁷³

The availability of online services is limited

The online services (such as applications and renewals, payments and complaints lodgement) available for many licensing schemes are limited.¹⁷⁴ Eighty per cent of licensing schemes have some information about the scheme online,¹⁷⁵ but some licensees say that in general they are not provided with enough information about processes such as timeframes and decision-making criteria.¹⁷⁶

For some licensing schemes, legislation acts as an impediment to moving online by requiring physical signatures or application forms, or the use of particular communication media (such as fax or post).¹⁷⁷ For example, it was difficult to move the application process for real estate and business sales representatives online because under the *Real Estate and Business Agents Act 1978* forms had to be physically signed by an authorised witness.¹⁷⁸

In some cases, moving online takes time because smaller digitisation projects are delayed or rejected because agencies prefer to procure information communication technology (ICT) on a larger scale.¹⁷⁹ For example, the Department of Health said one particular business case was delayed so it could be included as part of a suite of process improvements in a larger ICT business case.¹⁸⁰

More generally, the Service Priority Review found there were opportunities to improve ICT in the public sector. The review identified limited administrative oversight, accountability and governance which means ICT priorities often lose out to other resourcing demands at agency level. The Service Priority Review found that agencies need support to manage ICT and build capability. It recommended the Department

170 Community Public Sector Union and Civil Service Association submission, p.12.

171 Waste Management Association of Australia submission, p. 2.

172 Western Australian Local Government Association submission, p. 18.

173 Pilbara Ports Authority submission, p. 3.

174 ERA agency questionnaire responses. Online services are available for: application lodgement for 25 per cent of licensing schemes; renewals lodgement for 20 per cent of licensing schemes; payment of application fees for 21 per cent of licensing schemes; payment of renewal fees for 17 per cent of licensing schemes; complaints lodgement for 26 per cent of licensing schemes; updating licensee details for 19 per cent of licensing schemes; and lodging information about compliance for 14 per cent of licensing schemes.

175 ERA agency questionnaire responses

176 Waste Management Association of Australia submission, p. 1; Pilbara Ports Authority submission, p. 3.

177 Meetings with the Department of Biodiversity, Conservation and Attractions, the Department of Primary Industries and Regional Development, and the Department of Transport, Department of Health and Department of Local Government, Sports and Cultural Industries responses to ERA information request.

178 Department of Mines, Industry Regulation and Safety, 'New Application – Real Estate and Business Sales Representative Registration', n.d., (online) (accessed 21 September 2018).

179 Meeting with the Department of Transport; Western Australia Police response to the Office of the Auditor General Western Australia's *Information Systems – Application Control Audits* report, released 27 June 2013; Department of Health response to ERA information request; Department of Primary Industries and Regional Development response to ERA information request.

180 Department of Health response to ERA information request.

of the Premier and Cabinet be responsible for leading ICT policy, and the Department of Finance for leading procurement, in order to achieve these objectives.¹⁸¹ “Strengthening ICT leadership” was identified as an early initiative, and endorsed by the State Government, under the Government’s roadmap for public sector reform.¹⁸² The Office of Digital Government was set-up within the Department of the Premier and Cabinet on 1 July 2018.¹⁸³

The Office of the Auditor General also found there were weaknesses with the government’s GovNext ICT project, including overstated benefits and slow take up by agencies.¹⁸⁴ The Office of the Auditor General made recommendations to help the Department of the Premier and Cabinet rethink its role in the GovNext project, including how it can help agencies through the change process. The Department of the Premier and Cabinet has agreed to the recommendations.¹⁸⁵

Many agencies have already invested in digitising licensing systems and processes. For example, in April 2018, the Index of Biodiversity Surveys for Assessments database was launched by the Department of Water and Environmental Regulation, in collaboration with the Western Australian Biodiversity Science Institute, the Environmental Protection Authority and the Department of Mines, Industry Regulation and Safety. The Index consolidates online information on assessment and compliance requirements for native vegetation clearing permits, works approvals, and referrals to the Environmental Protection Authority.¹⁸⁶

The Government has also recently introduced the Consumer Protection Legislation Amendment Bill 2018, which will reduce “unnecessary red tape” and facilitate online systems for submitting applications and information for a range of occupational licensing schemes.¹⁸⁷

Agencies digitising licensing administration processes¹⁸⁸

Department of Mines, Industry Regulation and Safety¹⁸⁹

The Department’s online system allows parties to submit and track mineral, petroleum and dangerous goods applications; submit reports; download data, maps and publicly available information; and access free and paid publications. Access to the system is mobile, so inspectors can conduct audits and prepare site visit records, notices and actions while in the field. In 2016/17, the system had 22,000 registered customers, and 92 per cent of business was conducted online.

This system has improved the quality of data available online and increased the capacity for data analysis. The Department exceeded its target timeframes for environmental approvals in 2016/17, and attributed its success to “new online spatial lodgement systems, increased pre-application consultations with applicants, improved guidance material for applicants and staff training.”

Department of Water and Environmental Regulation¹⁹⁰

Water Online, launched in 2015, is the Department’s main interface with licensees for water-related transactions. It has more than 2,000 users, and receives 53 per cent of licensing applications. It allows parties to submit compliance reports, track the status of their applications, and provides access to water information and regulatory requirements. The Water Information Reporting feature has reduced waiting times for data on surface and ground water quality and quantity from months to minutes.

181 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final report), 2017, pp. 65-67.

182 Department of the Premier and Cabinet, ‘Public Sector Reforms’, 2018, (online) (accessed 12 September 2018).

183 Office of the Auditor General Western Australia, ‘Implementation of the GovNext-ICT program: Recommendations’, 2018, (online) (accessed 12 September 2018).

184 GovNext is intended to be a coordinated, least-cost modernisation of ICT functionality and delivery. It represents a shift from a traditional ‘own and maintain’ to a ‘pay-as-you-use’ model, in response to the finding that many agencies deliver their services through legacy ICT models that fail to take advantage of significant improvements in both cost and function. Source: Office of the Auditor General Western Australia, *Implementation of the GovNext-ICT program*, 2018, p. 4.

185 Office of the Auditor General Western Australia, *Implementation of the GovNext-ICT Program*, 2018, pp. 7-8.

186 Department of Water and Environmental Regulation, ‘Index of Biodiversity Surveys for Assessments (IBSA)’, 2018, (online) (accessed 17 September 2018).

187 Hon. Francis Logan MLA, *Toppling furniture Bill to be introduced to Parliament*, Media Statement, 7 October 2018; Explanatory Memorandum, *Consumer Protection Legislation Amendment Bill 2018*, p. 2.

188 The Department of Health, Department of Primary Industries and Regional Development, and Department of Local Government, Sport and Cultural Industries also provided examples to the ERA of digitisation of back end and front-end systems and processes.

189 Department of Mines and Petroleum, *Annual Report 2016-17*, 2017, pp. 38-39, 73.

190 Department of Water, *Annual Report 2016-17*, 2017, pp. 44-46.

Agencies digitising licensing administration processes (continued)

A compliance and water resource management system, COMPASS, was launched in 2016/17. COMPASS integrates with Water Online, and enables the Department to assess licences electronically, and schedule compliance monitoring for licensed and unlicensed activities.

Department of Transport¹⁹¹

The Department offers 29 online services which allow parties to apply for vehicle and driver licence renewal, check vehicle registrations, and pay traffic infringements, boat registrations and coastal infrastructure invoices, among other things. The Department has also simplified and reduced the number of forms it uses by nearly 40 per cent, and made all forms available digitally.

The Department's driving examiners use the iAssess mobile tablet application to digitally record assessments, allowing users to access their full assessment history. The app makes it easier for the Department to identify trends showing where driver behaviour needs to be improved, and reduces waiting times for drivers' test results.

The Department is also working on a digital strategy for medical assessments to streamline the process for receiving medical information from doctors. The Department estimates that approximately 60,000 fewer medical appointments will be required a year.

The State Government has launched a common platform for the public to locate and access online transactional services provided by different agencies (wa.gov.au). Over time, the government intends to use data analysis to look at how people use the website and what they search for, to help identify where information and services can be added or improved.¹⁹²

The Small Business Development Corporation's Business Licence Finder also aims to improve access to information and online services. Website users receive a report on the local, Western Australian and Australian government requirements of their business. They also get information about licence fees, how to apply for and renew licences, and where to go for help and information.¹⁹³

The Better Regulation Unit's 90-day regulatory mapping and reform projects allow businesses to access information about the regulations that apply to them. Each 90-day project maps the regulatory processes for existing and prospective businesses. The results of these projects are available on the Department of Treasury's website. The projects commenced in 2015 and will be undertaken until 2019.¹⁹⁴

Businesses are frustrated by duplicated requirements

For businesses subject to more than one licensing scheme, administrative requirements are sometimes duplicated, particularly when more than one agency is involved.¹⁹⁵

Sometimes this is caused by agencies being unable to share information with each other.¹⁹⁶ The absence of privacy and data sharing legislation in Western Australia limits information sharing between agencies, because common law principles of confidentiality — which are restrictive, inconsistent, and not comprehensive — apply instead.¹⁹⁷ For example, the Department of Transport holds customer identity information that it collects from issuing driver licences. However, the Department told the ERA the absence of privacy and data sharing legislation limits what can be shared with other agencies and the private sector, and participation in projects such as GovNext.¹⁹⁸

191 Department of Transport responses to ERA information request.

192 Government of Western Australia, 'About this website', 2017, (online) (accessed 12 September 2018).

193 Small Business Development Corporation, 'Business Licence Finder', 2018, (online) (accessed 12 September 2018).

194 Department of Treasury, '90-day regulatory mapping and reform projects', (online) (accessed 12 September 2018).

195 Community Public Sector Union and Civil Service Association submission, pp. 5 6 and 13; Small Business Development Corporation submission, pp. 7-8; Wines of Western Australia, online questionnaire; Western Australian Local Government Association submission, p. 18; Kemp, Philip, online questionnaire. In its submission, the Chamber of Commerce and Industry WA noted that "the cumulative burden of regulation does not only occur as a result of different State Government agencies, but also across different state government jurisdictions". (Chamber of Commerce and Industry WA submission, pp. 4-5).

196 Meeting with and response to ERA information request from the Department of Transport; Department of Treasury's Regulatory Mapping and Reform Projects such as: *Making it easier to start a restaurant* (online), *Making it easier to build a single residential dwelling* (online).

197 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final report), 2017, pp. 60-61.

198 Department of Transport response to ERA information request.

The Service Priority Review recommended that the Department of the Premier and Cabinet develop legislation and processes to facilitate information sharing between agencies, while protecting sensitive personal and other information.¹⁹⁹ The State Government has since endorsed “enhancing data and information sharing” as an early initiative under the Government’s roadmap of reform.²⁰⁰ In the meantime, some agencies have overcome the lack of privacy legislation using memoranda of understanding or similar agreements.²⁰¹

Other agencies are overcoming duplicated requirements by being more flexible in their approach to assessing applications. For example, the Department of Mines, Industry Regulation and Safety recognises there is regulatory overlap and duplication between the mining proposal assessment process and other state and commonwealth environmental regulations. To help reduce duplication, it asks that proponents include in their mining proposals a list of all environmental approvals and statutory requirements that will affect the environmental management of the project. This allows it to focus on the environmental factors that are not regulated by another agency.²⁰²

The Service Priority Review’s recommendation to make all heads of regulatory agencies responsible for regulatory stewardship is also intended to assist reduce duplication and regulatory overlap within and between agencies.²⁰³ The Western Australian chapter of the Australia New Zealand School of Government’s Regulators Community of Practice is another initiative which aims to share knowledge and experience among regulators to help solve common problems.²⁰⁴

Other frustrations identified by businesses subject to multiple licensing schemes include cumulative costs, and delays from processes that do not run in parallel. Roy Hill Holdings says that the cost of complying with thousands of separate approvals from multiple agencies for its large iron ore project

near Newman was twice the amount spent on securing those approvals in the first place. The time taken to obtain licences, some before other applications could be submitted, was also claimed to add up to nearly five years, with a similar amount of time spent waiting for various agencies to process applications.²⁰⁵ The uncertainty created by delays in processing licences due to agency staff turnover, and a lack of guidance from agencies on process or timeframes, was another cost Roy Hill identified.²⁰⁶

The ERA invites stakeholders to provide further evidence of these costs for input to the final report.

Information request:

Please provide examples of:

- ‘Red tape’ (for example, overly complex and difficult to understand licensing schemes, challenges working with regulators, redundant licensing schemes) that limits business activity.
- The cumulative effects of being regulated by multiple licences and agencies.

In addition to the improvements to administrative processes by Western Australian agencies, there are many examples from other jurisdictions. Hong Kong’s “Be the Smart Regulator” Program uses ICT and targeted communication with business to reduce application processing times, and improve licensee understanding of requirements and procedures.²⁰⁷ British Columbia’s licensing processes have been streamlined over the past two decades through process changes and technological improvements, reducing the time and cost for citizens to comply with regulatory requirements. Targeted communication with businesses is again a feature of the reforms.²⁰⁸ Examples such as these provide a strong foundation on which agencies can build.

199 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final report), 2017, p. 67.

200 Government of Western Australia, ‘Public Sector Reforms’, 10 August 2018, (online) (accessed 12 September 2018); Government of Western Australia, *Public Sector Reform Unit: Overview of early initiatives*, 2018.

201 The Department of Water and Environmental Regulation shares systems and information with the Department of Mines, Industry Regulation and Safety to ensure consistent approaches to clearing permit assessments (Department of Water and Environmental Regulation response to ERA information request); the former Department of Mines and Petroleum had information sharing arrangements in place with the former departments of Environment and Conservation and Water, and the Office of the Environmental Protection Authority (*Administrative Agreement between Department of Environment and Conservation and Department of Mines and Petroleum*, 2011; *Administrative Agreement between the Department of Mines and Petroleum and Department of Water*, 2015; *Memorandum of Understanding for Collaborative Arrangements between the Office of the Environmental Protection Authority and the Department of Mines and Petroleum*, 2016); the Department of Local Government, Sports and Cultural Industries has a memorandum of understanding about information sharing with Western Australia Police (Meeting with the Department of Local Government, Sports and Cultural Industries).

202 Department of Mines, Industry Regulation and Safety, *Guideline for Mining Proposals in Western Australia* (April 2016), p. 16.

203 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final Report), 2017, p. 47.

204 Australian New Zealand School of Government, ‘About the Community’, 2018, (online) (accessed 12 September 2018).

205 Roy Hill Holdings Pty Ltd, *How much is too much? Reducing the regulatory burden*, Submission to the Senate Select Committee on Red Tape, 2017, p. 7.

206 Meeting with Roy Hill Holdings Pty Ltd.

207 Frontier, *Case studies on best practice licensing frameworks: a report prepared for the Economic Regulation Authority of Western Australia*, July 2018.

208 Frontier, *Case studies on best practice licensing frameworks: a report prepared for the Economic Regulation Authority of Western Australia*, July 2018.

Reform initiatives in other jurisdictions

Hong Kong “Be the Smart Regulator” Program²⁰⁹

In 2007, Hong Kong Government launched the “Be the Smart Regulator” program that aimed to:

- improve quantitative and qualitative data collection for performance and cost measurement
- enhance processing of licensing by introducing new roles and IT systems within agencies
- strengthen communication with the private sector through business liaison groups
- introduce a Business Impact Assessment framework for evaluating new regulations.

The government developed the program after it consulted with businesses to identify problems with its licensing system. The program reduced application processing times, improved licensees’ understanding of requirements and procedures, and improved coordination between agencies. Hong Kong is consistently rated in the top five countries in the World Bank’s *Doing Business Report*.

British Columbia Reform Initiative

In the 1990s, economic growth and employment in British Columbia was lower than other parts of Canada. Excessive regulation was often cited as a major contributor to this underperformance.

In 2001, the British Columbia government established a Red Tape Reduction Task Force, a net zero increase regulation target, and an online platform for the public to provide suggestions for regulatory improvement. In its first year, the Red Tape Reduction Task Force received 600 proposals for reducing red tape on businesses.

Subsequent reforms halved the number of regulatory requirements between 2001 and 2017 and reduced compliance costs for citizens. The regulatory regime is now highly rated by businesses in Canada — from 2012 to 2017, the government earned an “A” grade each year (unmatched by other provinces) from the Canadian Federation of Independent Business. While other factors were at play in British Columbia’s economic turnaround, many in the private sector credit red tape reduction with playing a critical role.

Registration of businesses under the New Zealand *Food Act 2014*

The *Food Act 2014* establishes a single licensing scheme for all food businesses in New Zealand, with registration and reporting requirements determined by the level of risk posed to food safety. The previous framework consisted of three different food licensing regimes and regulators, which created duplication and confusion, leading to non-compliance and high regulatory costs. Further, the old framework applied the same requirements on all food businesses regardless of the food safety risks posed by the business.

The Ministry for Primary Industries website provides guides and information on the new registration process, regulatory requirements and food standards, and how monitoring and surveillance activities under the licensing scheme will be carried out. It also provides information to assist businesses to transition from the old regulatory framework to the new licensing scheme, including a defined transition timeline.

Transition to the new scheme ends on 28 February 2019.

Registration with the Australian Charities and Not-for-profits Commission

The *Australian Charities and Not-for-profits Commission Act 2012* established a national regulatory framework for not-for-profit entities and established the Australian Charities and Not-for-profits Commission. One objective of the Commission is to “promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.”

²⁰⁹ All case studies in this box are from Frontier, *Case studies on best practice licensing frameworks: a report prepared for the Economic Regulation Authority of Western Australia*, July 2018.

Reform initiatives in other jurisdictions (continued)

In 2013, the Commission held a forum on red tape in the not-for-profit sector, and in 2014, it commissioned an independent review that quantified regulatory costs for the charity sector. Both highlighted the need to standardise the information charities provide to state governments and the Commission for fundraising approvals and charity registration. In response, the Commission implemented the charity passport and other data-sharing initiatives to reduce the amount of information charities must provide by allowing both state and Australian government agencies to access charity data from the Commission. The Commission estimates that duplicated reporting requirements have about halved.

Some licensing schemes create unnecessary indirect costs

Some stakeholders say that licensing schemes are causing unnecessary indirect costs because minimum conditions and requirements prevent them from participating in markets.²¹⁰ Others say minimum conditions and requirements are not stringent enough, creating a risk of harm to the community, economy or environment because individuals do not have the training or experience needed to do their job properly.²¹¹ Others say unnecessary indirect costs are created by poorly designed fees and charges.

Some licensing schemes may be creating unnecessary barriers to participating in markets

About one-third of business licensing schemes in Western Australia are occupational licensing schemes, or have features similar to an occupational licence.²¹² If minimum conditions and requirements are set too high, occupational licensing can create barriers to market participation, and an increase in the price, and reduction in the choice, of goods and services available to consumers. Some studies have found that occupational licensing can impose a high cost on the economy.²¹³ Poland repealed or reformed 250 occupational licensing schemes for this reason — the Warsaw School of Economics found that the reforms had lowered unemployment, increased the number of companies in previously regulated industries, and reduced prices without a significant effect on quality.²¹⁴

However, the costs of occupational licensing can be offset by better social, environmental and consumer protection.²¹⁵

210 WA TAB Agents Association submission, p. 3; Anonymous (3), online questionnaire; Anonymous (4), online questionnaire; Young, P., online questionnaire.

211 Anonymous submission, p. 1; Community and Public Sector Union and Civil Service Association submission, p. 8; Construction, Forestry, Mining and Energy Union submission pp. 16-17; Master Plumbers and Gasfitters Association submission, p. 3; Mackie, Tony, online questionnaire; Shuttleworth, Daniel, online questionnaire.

212 ERA agency questionnaire responses.

213 Some studies argue occupational licensing fails to lead to improvements in quality or safety of the licensed activities. Instead, it limits consumer choice, raises consumer costs, deprives disadvantaged groups of adequate services, and restricts labour markets, innovation and worker mobility. US studies have found occupational licensing results in a loss in overall output of about 0.1 per cent of annual consumption expenditures, and a reduction in 2.8 million jobs nationally. Sources: M. M. Kleiner, *Reforming Occupational Licensing Policies: Discussion Paper*, The Hamilton Project, 2015, p. 6; C. Cox and S. Foster, *The Costs and Benefits of Occupational Regulation*, Federal Trade Commission, USA, 1990, p. v; Occupational Licensing Research Consortium, *The State of Occupational Licensing: Assessing State Policy and Practice*, National Conference of State Legislatures, USA, 2017, pp. 6-7, available online; S.D. Young, Occupational Licensing; E. Canton, D. Ciriaci and I. Solera, *The Economic Impact of Professional Services Liberalisation*, European Economy, Economic Papers 533, 2014, p. 1.

214 Frontier, *Case studies on best practice licensing frameworks: a report prepared for the Economic Regulation Authority of Western Australia*, July 2018.

215 Some studies have found occupational licensing delivers benefits to the community by: enabling consumers to assess a professional's skills when they are not easily assessable or when the costs of poor quality services are especially high; and helping historically disadvantaged groups discover ways into various careers they would otherwise have trouble accessing. Sources: R. Roberts, 'Beth Redbird on Licensing', *The Library of Economics and Liberty* [Podcast], 2018; C. Cox and S. Foster as cited in *The State of Occupational Licensing: Assessing State Policy and Practice*, National Conference of State Legislatures, USA, 2017, p. 4.



Poland's deregulation of occupational licensing²¹⁶

A 2011 Ministry of Science and Higher Education survey concluded that Poland had the highest number of regulated professions and activities in the European Union, with around 300 professions, accounting for almost half a million workers. This was believed to be causing high unemployment rates. The Polish unemployment rate ranged between 9.5 per cent in 1991 and 20 per cent in 2005, which was significantly higher than in Western European countries, where unemployment rates ranged between 5 and 10 per cent.

From 2011 to 2015, Poland undertook a whole-of-government effort to reduce the number of occupational licensing schemes. The reforms were prioritised based on the restrictiveness of current licensing requirements, social expectations, analysis on each occupation, and the expected effect on the labour market. Ultimately, 250 occupational licensing schemes were repealed or reformed.

A 2016 study by the Warsaw School of Economics found that the reforms:

- Lowered the level of unemployment from 9 per cent to 6 per cent between 2014 and 2016.
- Increased the number of companies in affected industries.
- Reduced prices without a significant effect on quality.

Over the past two decades, several processes have been established to encourage Australian governments to review, repeal or reform regulation that creates unnecessary barriers to entry.

The National Competition Policy reforms of the 1990s required all Australian governments to review their legislation, and reform legislation that restricted competition by the year 2000 (later extended to 2005).²¹⁷ Western Australia had the lowest level of compliance with this requirement, reviewing only 68 per cent of all legislation by 2005 (compared to 93 per cent in the Australian Capital Territory, and 91 per cent in New South Wales and Tasmania).²¹⁸

Also as part of these reforms, the Western Australian Government committed to applying the competition test when considering new, or changes to, regulation. Under the Regulatory Impact Assessment program, if a regulatory proposal will impose restrictions on an industry, or barriers to entry or exit, it must undergo full Regulatory Impact Assessment.²¹⁹

The competition test

Clause 5 of the Competition Principles Agreement states:

“Legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.”²²⁰

Application of these principles is called the competition test.

The 2014/15 Competition Policy Review recommended the competition test be applied when conducting reviews of regulation, and that when it is applied, factors to consider in assessing the public interest should be determined on a case-by-case basis.²²¹

Western Australia signed an Intergovernmental Agreement on Competition and Productivity in December 2016, in which it agreed to apply the test to regulation and government policy or practices.²²²

216 Frontier, *Case studies on best practice licensing frameworks: a report prepared for the Economic Regulation Authority of Western Australia*, July 2018.

217 Clause 5(3), *Competition Principles Agreement*, 11 April 1995 (as amended to 15 April 2007); National Competition Council, *Legislation Review and Reform*, (online) (accessed 13 September 2018).

218 National Competition Council, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: 2005*, p. 9.6.

219 Government of Western Australia, *Regulatory Impact Assessment Guidelines for Western Australia, 2010*, pp. 12-13.

220 Clause 5(1), *Competition Principles Agreement*, 11 April 1995 (as amended to 15 April 2007).

221 I. Harper, P. Anderson, S. McCluskey & M. O'Bryan, *Competition Policy Review: Final Report*, 2015, p. 43.

222 Council of Australian Governments, *Intergovernmental Agreement on Competition and Productivity – Enhancing Reforms*, 2016.

In 2009, a Council of Australian Governments working group commenced a process to identify unnecessary industry-specific consumer regulation and repeal (or nationally harmonise) it where beneficial.²²³ In 2013, the Council of Australian Governments reported that reform to reduce occupational licensing was complete.²²⁴ Further, with the Australian Consumer Law's introduction in 2011, all jurisdictions endeavoured to repeal, amend or modify any legislation that is inconsistent with or alters the effect of the Australian Consumer Law.²²⁵

The 2014/15 Competition Policy Review also recommended that all Australian governments should again review regulations to ensure unnecessary restrictions on competition are removed.²²⁶ The federal government supported the recommendation and agreed to include a regulation review in its regulatory reform agenda. It also encouraged the states to undertake similar reviews.²²⁷ As a signatory to the Intergovernmental Agreement on Competition and Productivity in December 2016, the State Government has committed to review regulation against the competition test, and to remove "unnecessary regulatory barriers to competition".²²⁸

However, the competition test was applied by agencies to only 10 per cent of licensing schemes that were reviewed in the last five years.²²⁹ Very few licensing schemes have been repealed since 2009.²³⁰ Reflecting this, there are still examples of licensing schemes in Western Australia that might create unnecessary barriers to market participation. For example, Western Australia is the only jurisdiction to licence real estate

developers, and one of the few jurisdictions to licence land valuers, employment agents, motor vehicle repairers and salespeople, and motor vehicle sales yard managers.²³¹ In general, however, Western Australia licences much the same occupations as other jurisdictions.²³²

Stakeholders provided examples of schemes they believed were creating unnecessary barriers to market participation. For example, the WA TAB Agents Association stated that TAB agents "are controlled by an organisation (Racing and Wagering Western Australia) that

For example, Western Australia is the only jurisdiction to licence real estate developers, and one of the few jurisdictions to licence land valuers, employment agents, motor vehicle repairers and salespeople, and motor vehicle sales yard managers.

also acts as these agents' competitor, and makes decisions that undermine the profitability of these agencies".²³³ The Australian Automotive Aftermarket Association told the ERA the requirement to hold a licence to install accessories, such as windscreen wipers and dash mats, limits competition between shops that sell accessories and licensed vehicle repairers.²³⁴

An example of a licensing scheme that creates an unnecessary barrier to entry in Western Australia (and other jurisdictions) is that applying to pharmacies: only pharmacists²³⁵ can operate a pharmacy. The

2014/15 Competition Policy Review concluded: "... current regulations ... limiting ownership to pharmacists and friendly societies, impose costs on consumers ... developments in Australia strengthen the case for repealing the present arrangements and replacing them with new regulations that better serve consumers and are less harmful to competition".²³⁶

223 Ministerial Council on Consumer Affairs, *Minutes of Meeting on Friday 15 August 2009*, Council of Australian Governments, *Seamless National Economy: Part 2*, 2011.

224 Council of Australian Governments, *National Partnership Agreement to Deliver a Seamless National Economy: Report card prepared by the COAG Business Advisory Forum Taskforce*, 2013, p. 6.

225 Council of Australian Governments, *Maintaining consistency with the Australian Consumer Law: A guide to maintaining a harmonised and consistent approach when developing and reviewing legislation*, 2013. If a piece of industry specific regulation has elements that go over and above the Australian Consumer Law, it need not be changed if it provides more effective and/or certain protection; and there are sound policy reasons for such protection.

226 I. Harper, P. Anderson, S. McCluskey & M. O'Bryan, *Competition Policy Review: Final Report*, 2015, p. 43. Australian Government, Australian Government Response to the Competition Policy Review, 2015, p. 9.

227 Australian Government, *Australian Government Response to the Competition Policy Review*, 2015, p. 9.

228 Council of Australian Governments, *Intergovernmental Agreement on Competition and Productivity – Enhancing Reforms*, 2016.

229 ERA agency questionnaire responses.

230 For example, the travel agent's licensing scheme was repealed in 2013. Registration of hairdressers was repealed in 2012. The licensing scheme for grain marketers was repealed in 2010. Source: Government of Western Australia, *Subsidiary legislation that have ceased to be in force*, 2018.

231 ERA analysis based on occupations licensed by the Department of Mines, Industry Regulation and Safety (online), the Australian Business Licence and Information Service (ABLIS) and websites of relevant regulators in other jurisdictions.

232 ERA analysis based on occupations licensed by the Department of Mines, Industry Regulation and Safety (online), the Australian Business Licence and Information Service (ABLIS) and websites of relevant regulators in other jurisdictions.

233 WA TAB Agents Association submission, p. 3. Additional examples include: Anonymous (3), online questionnaire – "the criteria [for a wine producer's licence] appears to be written by existing businesses to prevent competition from new, smaller operators ..."; Anonymous (4), online questionnaire – "I would like to see the addition to the Producer's Licence such that we can have cellar experiences in other locations ... This allows us to take our product to markets as opposed to markets needing to find our cellar doors."; Young, P., online questionnaire – "They [mining licences and approvals] cost significant time and money to prepare...They can sometimes kill a project due to onerous conditions applied to projects."

234 Meeting with the Australian Automotive Aftermarket Association.

235 Or friendly societies.

236 I. Harper, P. Anderson, S. McCluskey & M. O'Bryan, *Competition Policy Review: Final Report*, 2015, p. 189.

Barriers to entry created by pharmacy registration

Since 1964, pharmacy ownership rules in Western Australia have limited who can own a pharmacy, and how many pharmacies can be owned. Currently, only registered pharmacists, close family members of registered pharmacists, pharmacist-controlled companies and friendly societies can fully own, or own a stake in, a pharmacy. A company or individual can only own four pharmacies at any one time.²³⁷

One submission to the review highlighted the effect that a lack of competition has on prices:

“... when Chemist Warehouse entered the Tasmanian market, the price for the popular hay fever medication Telfast was more than \$75. Chemist Warehouse retailed the same product at \$29. Within months the prices charged by other providers had fallen to similar levels.”²³⁸

The review recommended that “the pharmacy ownership and location rules should be removed in the long-term interests of consumers”. It also recommended that, “within two years of governments accepting the recommendation, these rules should be removed and replaced with regulation that achieves the desired policy outcomes without unduly restricting competition”.²³⁹

In October 2017, the Western Australian Government commenced a review of community pharmacy ownership. Submissions to the review closed on 8 December 2017, but have not yet been made public.²⁴⁰

Consistent with the State Government’s commitments under the 2016 Intergovernmental Agreement on Competition and Productivity, agencies should assess their licensing schemes against the competition test. When agencies are using the performance checklist in chapter 2, they should consider whether the scheme unnecessarily restricts competition. Including this check in the performance checklist will make agencies more accountable for applying the competition test.

The Better Regulation Unit’s current Regulatory Impact Assessment guideline explains how to consider restrictions on competition.²⁴¹ There is also material available from other jurisdictions that agencies can use to help them assess the effects of their licensing schemes on competition. The analytical framework in appendix A provides information about these resources.

Minimum conditions and requirements are not stringent enough

Some industry stakeholders said that the minimum conditions or training requirements of some licensing schemes are not stringent enough to deliver the schemes’ intended economic, social or environmental benefits.²⁴² If minimum conditions and requirements are not stringent enough, this creates a risk of harm to the community, economy and environment because individuals may not have the training or experience needed to do their job properly.

The ERA has not yet found evidence of harm being caused by licensing conditions and requirements not being sufficiently stringent. The ERA invites stakeholders to provide evidence on this issue for input to our final report.

Information request:

Is harm being caused to the community, economy or environment because licensing conditions and requirements are not stringent enough? Please provide examples.

237 Department of Health, ‘Review of Community Pharmacy Ownership in Western Australia’, (online) (accessed 13 September 2018).

238 Chemist Warehouse, *Chemist Warehouse Submission to the Competition Policy Review*, 2014, p. 5.

239 I. Harper, P. Anderson, S. McCluskey & M. O’Byrne, *Competition Policy Review: Final Report*, 2015, p. 190.

240 Department of Health, ‘Review of Community Pharmacy Ownership in Western Australia’, (online) (accessed 13 September 2018).

241 Government of Western Australia, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010, p. 13.

242 Anonymous submission, p. 1; Community and Public Sector Union and Civil Service Association submission, p. 8; Construction, Forestry, Mining and Energy Union submission pp. 16-17; Master Plumbers and Gasfitters Association submission, p. 3; Mackie, T., online questionnaire; Shuttleworth, D., online questionnaire.

Fees and charges are set incorrectly

Poorly designed fees and charges can provide perverse incentives for businesses and consumers, causing unintended changes in behaviour. For example, poorly designed fees and charges might cause businesses to avoid obtaining a licence and to illegally carry on a licensed activity. They might also mean the regulator cannot fund compliance, which might reduce the incentive for businesses to comply.

Local governments argue that, because fees and charges for some licensing schemes are set in state-based legislation, they cannot recover the cost of running these schemes.²⁴³ They say this means rate-payers subsidise the true cost of licensing services.²⁴⁴

Some agencies argue that fees should not be set to recover costs.²⁴⁵ They say this is because higher fees might influence compliance levels, or that the scheme should be funded from general revenue because the public benefits from the scheme, not the licence holder.²⁴⁶

A third set of stakeholders argues fees and charges are set so high they create barriers to entering the relevant industries, or encourage unlicensed activities.²⁴⁷

The way fees are set varies across licensing schemes.²⁴⁸ The approach that should be adopted for setting fees depends on the objectives of the licensing scheme. Appendix A lists guidelines that establish principles for fee-setting. As an example, the Department of Treasury provides guidance on how to map out the full costs of a service (including direct, indirect and opportunity costs), and the circumstances in which fees and charges should not be set on a full cost recovery basis.²⁴⁹

The Department of Local Government, Sport and Cultural Industries is examining local government rates and charges in phase two of its review of the *Local Government Act*, which commenced in July 2018.²⁵⁰ The review provides an opportunity for the State Government to consider local governments' concerns about their lack of autonomy in setting fees and charges not only for licensing, but for service delivery more broadly.

Conclusion

Concerns with the costs of business licensing are not new. Agencies can draw on the existing guidance material and resources outlined in appendix A when looking for ways to reduce the unnecessary costs of business licensing. Implementing recommendations from the Service Priority Review, such as those to strengthen leadership in ICT, and develop legislation and processes to facilitate information sharing between agencies, would also address some of the unnecessary costs of business licensing.

This report focuses on factors that hinder policy-makers and agencies from managing licences effectively, rather than repeating guidance and recommendations from previous inquiries.

As noted in chapter 2, the ERA recommends agencies should check their licensing schemes annually against a performance checklist. The ERA invites stakeholders to provide views on measures that could be included in the performance checklist to assist agencies assess whether their licensing schemes are operating in a cost-effective way for both the agency, and licensees.

243 Western Australian Local Government Association submission, p. 2; Town of Port Hedland submission, pp. 1-2.

244 Western Australian Local Government Association submission, p. 2.

245 Meeting with Department of Biodiversity, Conservation and Attractions.

246 Meeting with Department of Biodiversity, Conservation and Attractions.

247 Master Electricians Australia submission, p. 2; Restaurant and Catering Association submission, p. 2.

248 ERA agency questionnaire responses. About 60 per cent of licensing schemes have fees set to recover costs (either full costs, or processing costs only). About 25 per cent of schemes attract no fees; 8 per cent have fees set at an arbitrary level (e.g. based on historical precedent); 3 per cent have fees set to reflect the social cost of the activity; and 2 per cent have fees set to collect funds for other purposes. None have fees set by the market (e.g. auctioned / tradeable licences).

249 Department of Treasury, *Costing and Pricing Government Services*, 6th Edition, 2015.

250 Department of Local Government, Sport and Cultural Industries, 'Local Government Act Review', 2018, (online) (accessed 13 September 2018).



CHAPTER 5:
INTRODUCING NEW
LICENSING SCHEMES

CHAPTER 5: INTRODUCING NEW LICENSING SCHEMES

Chapter highlights

On average, there have been six to seven licensing schemes introduced each year since 1950. Fewer new licensing schemes have been introduced in the last five years, with just over three schemes introduced on average each year.

The licensing schemes introduced in the past five years have generally been introduced to solve emerging policy problems, or to make regulations more streamlined or effective. They include authorisations to prescribe medicinal cannabis, a heavy vehicle pilot licensing scheme and various permits to promote biosecurity.

Evaluating a licensing scheme before it is introduced using a program such as Regulatory Impact Assessment makes it more likely that the benefits of the scheme will outweigh the cost. The ERA has assessed the processes agencies adopted when introducing licensing schemes over the past five years. All agencies engaged with the Better Regulation Unit, and used the Regulatory Impact Assessment program.

The Service Priority Review assessed and made recommendations about the current Regulatory Impact Assessment program. Because these recommendations are recent and sensible, the ERA has not assessed the effectiveness of the Regulatory Impact Assessment program, beyond whether it was applied to licensing schemes introduced over the past five years.

There is, however, a lack of public information about agencies' use of the Regulatory Impact Assessment program when introducing and changing licensing schemes, as well as their assessment of the expected effects on consumers, businesses and the economy. This lack of information means the public may be unaware of the effects licensing schemes have on the cost and quality of the goods and services they receive.

The ERA recommends increasing transparency over agencies' use of the Regulatory Impact Assessment program, and their findings. This will allow the community to access information about whether the benefits of new licences, or changes to licences, outweigh the cost.

Rigorous evaluation before licensing is introduced makes it more likely that the scheme will achieve its objective, and the benefits will outweigh the cost. In Western Australia, the Regulatory Impact Assessment program is used to assess new regulations, and changes to existing regulations. The program seeks to deliver regulations (or other policies) that generate the greatest net benefits to the community. It does this by testing alternative approaches and consulting with those affected. As a broad concept, Regulatory Impact Assessment is accepted and used by all Australian governments.

Western Australia's current Regulatory Impact Assessment program has been in place since December 2009.²⁵¹ More than 90 per cent of current business licensing schemes were introduced before this time.²⁵² Other arrangements to assess the effects of regulatory proposals were in place from 1993,²⁵³ but 60 per cent of current business licensing schemes were introduced before 1993.²⁵⁴

The Regulatory Impact Assessment program in Western Australia

The Regulatory Impact Assessment program has two parts:

1. Preliminary Impact Assessment – The agency must prepare a Preliminary Impact Assessment for all regulatory proposals, unless the Treasurer has provided an exemption.
2. Regulatory Impact Statement – If the Preliminary Impact Assessment finds the regulation will have a 'significant negative impact' on businesses, consumers and/or the economy, then the agency must prepare a Consultation Regulatory Impact Statement and a Decision Regulatory Impact Statement.

The Better Regulation Unit reviews the Preliminary Impact Assessment. If it agrees with the agency that the proposal will not have a significant negative effect on businesses, consumers and/or the economy, a Regulatory Impact Statement is not required. The Better Regulation Unit's formal agreement with the agency is provided to the decision-maker (for example, Cabinet) when seeking approval to draft a bill.

If a proposal proceeds to the Regulatory Impact Statement stage, the Better Regulation Unit reviews the Decision Regulatory Impact Statement to assess whether it has been correctly prepared and includes the required information. Following comment from the Better Regulation Unit, the Decision Regulatory Impact Statement is provided to the decision-maker when seeking approval to draft a bill.

251 Government of Western Australia, 'Premier's Circular 2009/06 – Regulatory Impact Assessment Guidelines for Western Australia', 24 November 2009, (online) (accessed 31 August 2018).

252 ERA agency questionnaire responses.

253 From 1993 to 2009, assessment of the need for regulation and effects of regulatory proposals was largely undertaken by the former Ministry of Premier and Cabinet (now the Department of the Premier and Cabinet) and the Small Business Development Corporation. Source: Industry Commission, *Regulation and its Review 1994-95*, 1995, p. 171; Western Australian Parliament Standing Committee on Uniform Legislation and Intergovernmental Agreements, *Competition Policy: Consideration of the Implementation of a National Competition Policy*, 1996, pp. 88-94.

254 ERA agency questionnaire responses.

In October 2017, the Service Priority Review made the following recommendations about the current Regulatory Impact Assessment program, to ensure it “provides critical support and adds meaning, rigour and value to the policy design and decision-making processes”:²⁵⁵

- The Department of Treasury (supported by all regulatory agencies) develop best practice principles for making and applying regulation that includes evaluation of policy objectives, involvement of end-users, and transparency of data and decisions.
- The Department of Treasury redesign Regulatory Impact Assessment from an assessment of the regulatory burden, to the consideration of policy options of which regulation is only one option.

Given this recent review, the ERA has focused on whether Regulatory Impact Assessment was applied to business licensing schemes introduced over the past five years, rather than the effectiveness of the program itself.

All agencies that introduced new licensing schemes from 2013 onwards used the Regulatory Impact Assessment program, even when there were available exemptions, such as for election commitments.²⁵⁶ For 13 of the 17 new licensing schemes, the Better Regulation Unit concluded the proposals were not expected to have a significant negative effect on consumers, businesses or the economy, meaning a Regulatory Impact Statement was not required.²⁵⁷ These included the heavy vehicle pilot licensing scheme, approvals for providers of alcohol interlocking devices, and the registration scheme for lobbyists. The new schemes that were considered in a Regulatory Impact Statement included authorisations to prescribe medicinal cannabis and notices of accreditation for rail transport operators.²⁵⁸ The Regulatory Impact Statements considered the schemes as just one part of a broad suite of policy measures.²⁵⁹

There is, however, a lack of publicly available information about agencies’ use of the Regulatory Impact Assessment program when introducing and changing licensing schemes. The Regulatory Impact Assessment Guideline sets out that any agency responsible for making regulatory changes must produce a twice-yearly regulatory report in January and July each year.²⁶⁰ The report must include information about regulation made, and planned to be made. The guideline also sets out that the Better Regulation Unit will report publicly on agency compliance with the Regulatory Impact Assessment requirements in an Annual Report.

None of the above reports have ever been published. Further, agencies’ Preliminary Impact Assessments and the Better Regulation Unit’s responses to these statements are not always published. Regulatory Impact Statements are only published sporadically and often only after a decision has been made. This means the community does not have access to information about whether the benefits of new schemes, or changes to schemes, will outweigh the cost.

Fewer new licensing schemes have been introduced over the past five years than in previous decades. On average, there have been six to seven licensing schemes introduced each year since 1950, while over the past five years just over three schemes have been introduced each year on average.²⁶¹ The number of new schemes fluctuates from year to year. For example, 25 licensing schemes were introduced in 1950 with the commencement of the *Wildlife Conservation Act 1950*. In 2007, the high number of new licensing schemes was caused by dangerous goods safety regulations coming into effect.²⁶² A fact sheet describing the introduction of Western Australia’s current licensing schemes is available on the ERA’s website.

255 Department of the Premier and Cabinet (Service Priority Review), *Working Together: One Public Sector Delivering for WA* (Final report), Government of Western Australia, Perth, 2017, p. 42.

256 Correspondence with agencies that introduced licensing schemes since 2013.

257 Correspondence with agencies that introduced licensing schemes since 2013.

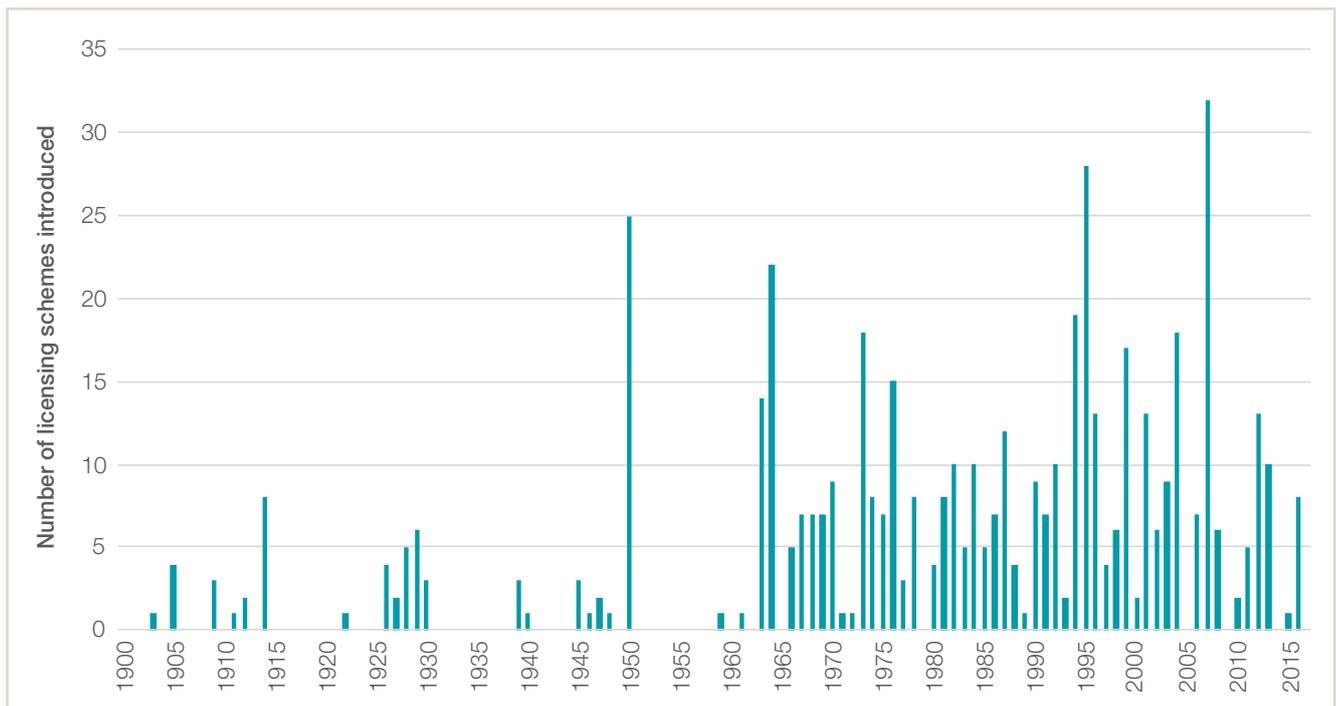
258 Correspondence with agencies that introduced licensing schemes since 2013.

259 Department of Health, *Medicines and Poisons Regulations 2015 – Consultation Regulation Impact Statement*, 2015; National Transport Commission, *Rail Safety National Law Regulatory Impact Statement*, 2011.

260 Government of Western Australia, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010, p. 17.

261 ERA agency questionnaire responses.

262 *Dangerous Goods Safety (Explosives) Regulations 2007*, *Dangerous Goods Safety (Major Hazard Facilities) Regulations 2007*, *Dangerous Goods Safety (Road and Rail Transport of Non-Explosives) Regulations 2007*, *Dangerous Goods Safety (Security Sensitive Ammonium Nitrate) Regulations 2007*, and *Dangerous Goods Safety (Storage and Handling of Non-explosives) Regulations 2007*.

Figure 2. When were current licences introduced?

Note: The first scheme was introduced in 1839, and seven schemes were introduced before 1900.
Source: ERA agency questionnaire responses.

The licensing schemes introduced in the past five years have generally been introduced to solve emerging policy problems, or to make regulations more streamlined or effective.²⁶³ For example, the authorisations for prescribing medicinal cannabis were introduced after medicinal cannabis was legalised nationally. Accreditation of rail transport operators was introduced to promote national consistency. While heavy vehicle pilots were previously regulated under an industry accreditation scheme, growing concerns from transport and logistics companies, the resources sector and the general public about the professionalism of pilots prompted the State Government to legislate the scheme.

There is a lot of guidance material available in Western Australia and from other jurisdictions that agencies can use to help them design licensing schemes that deliver benefits that outweigh their cost. The Better Regulation Unit also offers training to government agencies, including on policy options, regulatory design, and enforcement design and practice.²⁶⁴ The analytical framework in appendix A provides information about these resources.

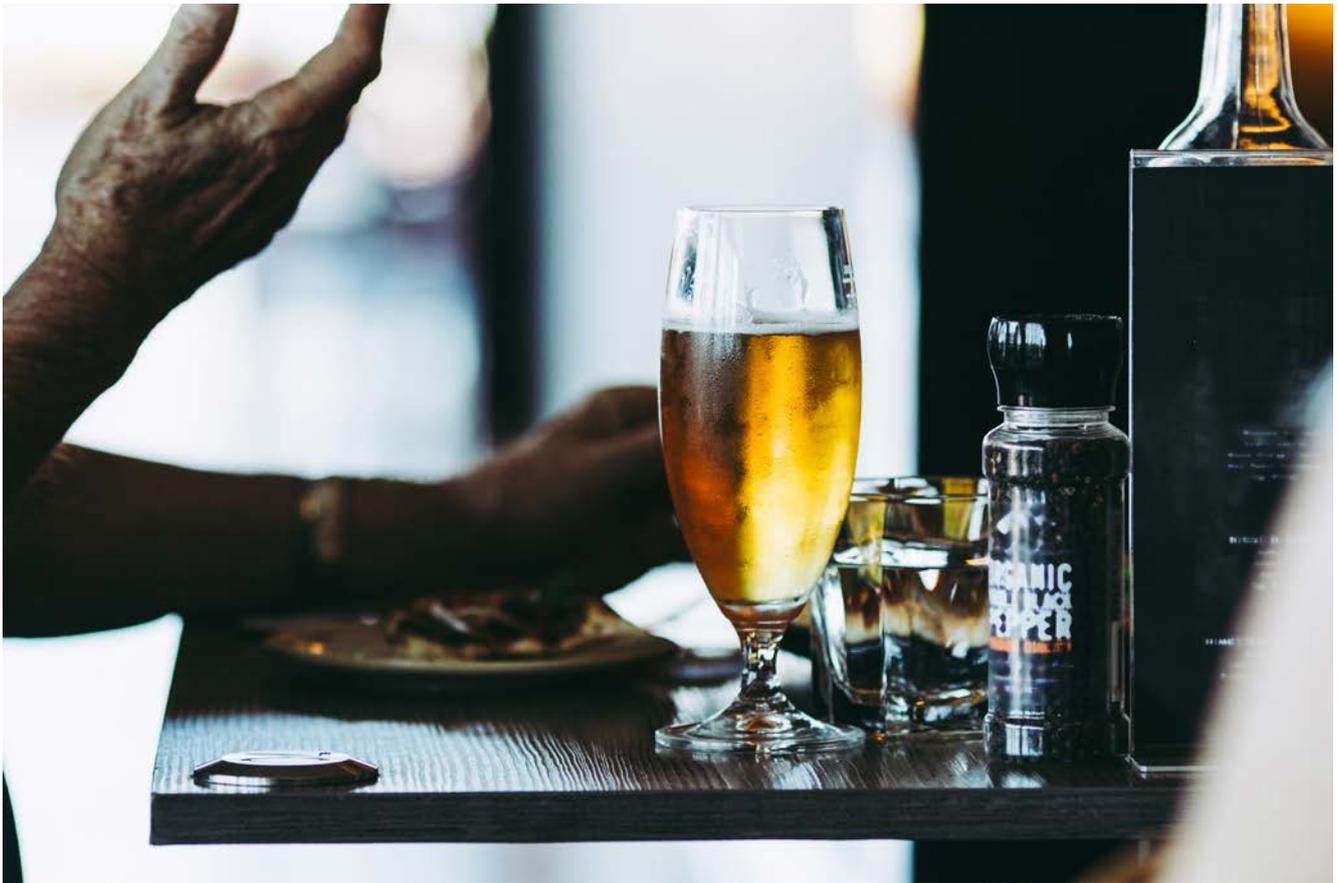
Some of the resources available from other jurisdictions are more recent than Western Australia's Regulatory Impact Assessment guideline. The ERA understands the current Regulatory Impact Assessment guideline is under review. It would be helpful for agencies if the updated guideline is published as soon as possible.

As there are processes in place and material available to guide the introduction of new licences, this report has focused on problems identified in the management of older licensing schemes.

The ERA does, however, recommend the transparency of agencies' use of the Regulatory Impact Assessment program be improved, so the community has access to information about whether the benefits of new schemes, or changes to schemes, outweigh the cost.

263 Correspondence with agencies that introduced licensing schemes since 2013.

264 Department of Treasury, 'Regulatory Impact Assessment support', n.d., (online) (accessed 13 September 2018).



Recommendation:

The Better Regulation Unit in the Department of Treasury should:

- Report publicly on agency compliance with Regulatory Impact Assessment requirements in an annual report, in accordance with current Regulatory Impact Assessment guidance.
- Publish and maintain a central repository of agencies' Preliminary Impact Assessments and the Better Regulation Unit's responses. These documents should be published as soon as the Better Regulation Unit has provided its response to the agency.
- Publish and maintain a central repository of agencies' Consultation Regulatory Impact Statements, submissions to those statements, Decision Regulatory Impact Statements and the Better Regulation Unit's responses. Statements and Better Regulation Unit responses should be published as soon as they are completed, and submissions to Consultation Regulatory Impact Statements should be published when received.



CHAPTER 6:
SUMMARY OF
RECOMMENDATIONS
AND QUESTIONS
FOR STAKEHOLDERS

CHAPTER 6:

SUMMARY OF RECOMMENDATIONS AND QUESTIONS FOR STAKEHOLDERS

The ERA invites stakeholders to provide feedback on the draft recommendations — both individually, and how they would operate together as a package — for input to the final report.

The ERA recognises the recommendations could affect agency resources. Agencies are invited to provide information about whether this would affect their ability to implement the recommendations, as well as any other obstacles to implementing the recommendations.

Information request:

Please provide feedback on the draft recommendations. Would they operate well together as a package?

Could the recommendations be implemented with existing resources, and are there obstacles to implementing the recommendations?

Summary of recommendations

Recommendation 1: Agencies should treat business licensing schemes as public assets and continually manage and improve these schemes. To support licensing agencies to do so, and also to hold these agencies to account, a governance framework for business licensing should be implemented across state government licensing agencies. This governance framework comprises the reporting, review, consultation, transparency and oversight measures outlined in the recommendations below.

Recommendation 2: In order to encourage agencies to improve licensing schemes, agencies should report annually and publicly on:

- A program of business licensing scheme improvements the agency intends to implement in the next 12 months.
- A summary of changes to business licensing schemes made in the previous 12 months.

Recommendation 3: To make reform and improvement of licensing schemes easier, the Government should:

- Introduce an omnibus bill each year to implement any legislative changes needed to improve licensing schemes.
- Ensure that, when licensing schemes are introduced or reviewed by Parliament, primary legislation includes only the elements of licensing schemes that need parliamentary consideration (for example, their objectives), and does not prescribe the administrative and procedural requirements of licensing schemes.
- Consider including sunset clauses in the primary legislation for licensing schemes.

Recommendation 4: Agencies should improve consumer input into the design and management of licence schemes. The Department of the Premier and Cabinet should address this when it develops a whole-of-government strategy for community engagement, as recommended by the Service Priority Review.

Recommendation 5: The Better Regulation Unit in the Department of Treasury should:

- Report publicly on agency compliance with Regulatory Impact Assessment requirements in an annual report, in accordance with current Regulatory Impact Assessment guidance.
- Publish and maintain a central repository of agencies' Preliminary Impact Assessments and the Better Regulation Unit's responses. These documents should be published as soon as the Better Regulation Unit has provided its response to the agency.
- Publish and maintain a central repository of agencies' Consultation Regulatory Impact Statements, submissions to those statements, Decision Regulatory Impact Statements and the Better Regulation Unit's responses. Statements and Better Regulation Unit responses should be published as soon as they are completed, and submissions to Consultation Regulatory Impact Statements should be published when received.

Recommendation 6: A Licensing Evaluation and Reform Unit should be established as part of the business licensing governance framework. Its purpose would be to help licensing agencies develop their capability in evaluating the performance of licensing schemes and to hold agencies to account in evaluating and improving licensing schemes. The Better Regulation Unit in the Department of Treasury would be a logical place to locate this unit.

The Licensing Evaluation and Reform Unit would have the following functions:

- To regularly identify priority areas for licensing reform. This will help to elevate the priority given to improving licensing schemes by government.
- To support and assist agencies in developing a culture of continuous improvement in managing their licensing schemes, and in applying the analytical framework and guidelines for assessing their regulatory schemes described in appendix A.
- To provide a central repository for existing guidance material, develop further guidance material where there are gaps, and train agencies in licensing evaluation.
- To compile and publish annual State of Licensing reports, based on agencies' assessments of their licensing schemes against a common performance checklist (see Recommendation 7). The report would provide an assessment of the overall quality of licensing in Western Australia, and of agencies' performance in managing their licensing schemes.
- To coordinate and prepare the annual omnibus bill to implement legislative changes needed to improve licensing schemes proposed in Recommendation 3.
- To maintain a catalogue of business licensing schemes and administering agencies.
- To publish agencies' reviews of licensing schemes.



Recommendation 7: Agencies should report to the Licensing Evaluation and Reform Unit annually on the management of their licensing schemes using a performance checklist. This will hold agencies to account for evaluating whether licensing schemes are achieving their intended objectives, being administered in a cost-effective way and being complied with. These performance checklists should be published so that stakeholders can consider whether they agree with the assessments and provide feedback.

Recommendation 8: Agencies should review the outstanding review recommendations for the 65 licensing schemes that have been reviewed in the last five years but have not had recommendations implemented (listed in appendix C). Agencies should consider whether any of the recommendations should be implemented through the next omnibus bill.

Recommendation 9: Agencies should assess licensing schemes that have not been reviewed in more than 10 years (appendix B), to determine whether a major review is required.

Summary of information requests

To ensure the ERA's final recommendations are robust, further information is sought from stakeholders on the problems they have encountered with state government business licensing. Stakeholders are also invited to provide feedback on the draft recommendations.

Request 1: There is a substantial amount of information on problems with state government business licensing. However, there is limited concrete evidence about what is causing these problems. The ERA invites stakeholders to provide information about the causes of problems with state government business licensing.

Request 2: How can government develop a culture of continuous evaluation and improvement of licensing schemes?

Request 3: What questions and measures should be included in the performance checklist and dashboard?

Request 4: How can agencies increase consumer input to reviews of licensing schemes?

Request 5: Would establishing a body to represent the interests of consumers in business licensing review and reform processes be useful? If so:

- How should it be funded?
- How should its leadership and membership be decided?
- Should it be part of, or independent of, government?
- Should it be a new body, or should the functions of an existing body be expanded?
- What should its functions be?

Request 6: Please provide information about:

- Inadequacies in agencies' inspection regimes leading to non-compliance.
- What is causing any inadequacies in agencies' inspection regimes.
- Non-compliance, or parties not obtaining appropriate licences for a business activity, causing harm to the community.
- Data analysis being used to inform risk-based compliance frameworks.
- Impediments to the adoption of data analysis and risk-based compliance frameworks.

Request 7: Should legislation include sunset provisions for licensing schemes? If so, how should the sunset clause mechanism operate? In particular, how could sunset provisions affect other processes such as Regulatory Impact Assessment?

Request 8: Please provide examples of:

- 'Red tape' (for example, overly complex and difficult to understand licensing schemes, challenges working with regulators, redundant licensing schemes) that limits business activity.
- The cumulative effects of being regulated by multiple licences and agencies.

Request 9: Is harm being caused to the community, economy or environment because licensing conditions and requirements are not stringent enough? Please provide examples.

Request 10: Please provide feedback on the draft recommendations. Would they operate well together as a package?

Request 11: Could the recommendations be implemented with existing resources, and are there obstacles to implementing the recommendations?

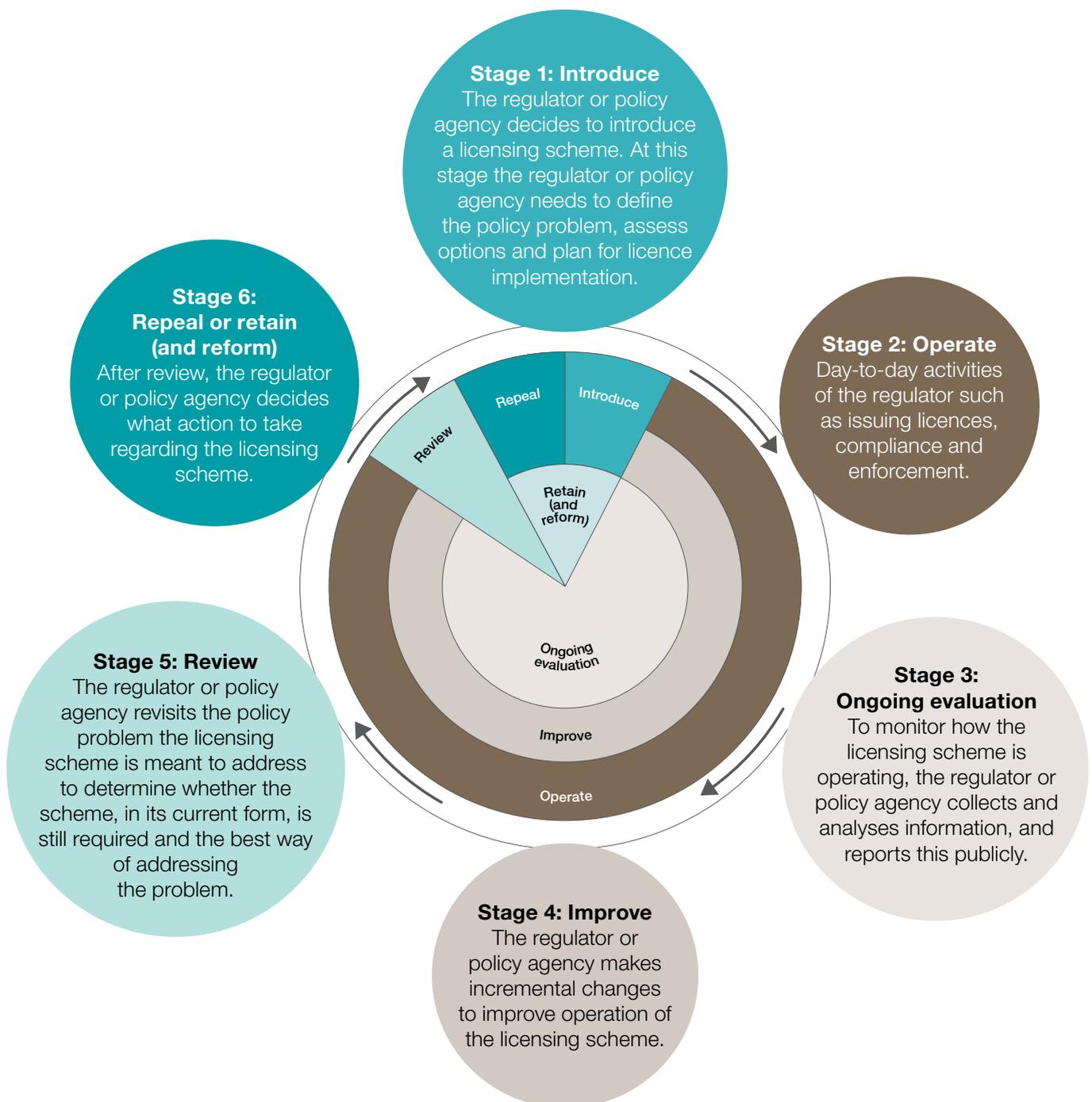


APPENDICES

APPENDIX A:

ANALYTICAL FRAMEWORK AND EXISTING RESOURCES

Licences are public assets that need to be managed throughout their lifecycle to ensure they deliver current and future benefits for Western Australians. There are six stages to managing licences. Guidance material and external support is available to assist agencies to manage licences well at each of these stages. This document collates guidance from Western Australia, and other Australian and international jurisdictions. The document also lists Western Australian initiatives and organisations that can provide further support, and programs that agencies can access at each stage of the lifecycle.



Stage 1: Introduce

Western Australian guidance material

- WA Department of Treasury Economic Policy Unit, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010.
- WA Department of Treasury Economic Policy Unit, *Preliminary Impact Assessment Template*, 2010.
- WA Department of Treasury, *Costing and Pricing Government Services*, 2015.
- WA Department of the Attorney General Parliamentary Counsel's Office, *Getting Government Legislation Drafted and Enacted: Guidelines and Procedures*, 2017.

Support available in Western Australia when designing licensing schemes

- WA Department of Treasury Economic Policy Unit.
- ANZSOG/National Regulators Community of Practice (WA Chapter).

Australian and international guidance material

- Allen Consulting Group for Consumer Affairs Victoria, *A Framework for Considering the Use of Occupational Licensing*, 2007.
- Australian Government, *Influencing Consumer Behaviour: Improving Regulatory Design*, 2012.
- Australian Government, *The Australian Government Guide to Regulation*, 2014.
- Australian Government, *Guidance Note: Cost-Benefit Analysis*, 2016.
- Australian Government, *Guidance Note: Risk Analysis in Regulation Impact Statements*, 2016.
- Australian Government, *Guidance Note: Competition and Regulation*, 2016.
- Australian Government, *Guidance Note: Best Practice Consultation*, 2016.
- Australian Government, *Guidance Note: Small Business*, 2017.
- Australian National Audit Office, *Successful Implementation of Policy Initiatives*, 2014.
- Bureau of Industry Economics (now Productivity Commission), *Business Licences: International Benchmarking*, 1996.
- Bureau of Industry Economics (now Productivity Commission), *Business Licences and Regulation Reform*, 1996.
- Consumer Affairs Victoria, *Choosing Between General and Industry Specific Regulation*, 2006.
- Consumer Affairs Victoria, *Using Licensing to Protect Consumers' Interests*, 2006.
- Council of Australian Governments, *Maintaining Consistency with the Australian Consumer Law: A Guide to Maintaining a Harmonised and Consistent Approach when Developing and Reviewing Legislation*, 2013.
- Natural Resources Canada, *'Literature Review to Assess the Relevance of Outcome-Based Regulations to Innovation'*, 2013.

- NSW Department of Finance, Services and Innovation, *Guidance for Regulators to Implement Outcomes and Risk-based Regulation*, 2016.
- NSW Department of Finance, Services and Innovation, *Assessment Against the Competition Test*, 2017.
- OECD, 'Behavioural Insights'.
- OECD, 'Regulatory Impact Assessment'.
- OECD, 'Risk and Regulatory Policy'.
- PricewaterhouseCoopers for IPART, *Licensing Framework and Guideline: A Best Practice Approach to Designing and Reviewing Licensing Schemes*, 2013.
- Queensland Productivity Commission, *Guidance Note: Assessing Competition Impacts*, 2018.
- Queensland Productivity Commission, *Guidance Note: Identifying and Defining the Problem*, 2018.
- Queensland Productivity Commission, *Guidance Note: Policy Objectives*, 2018.
- US Department of the Treasury Office of Economic Policy, Council of Economic Advisers and Department of Labour, *Occupational Licensing: A Framework for Policymakers*, 2015.
- Victorian Competition and Efficiency Commission, *Smart Regulation: Grappling with Risk – Guidance Note and Supporting Paper*, 2015.

Stage 2: Operate

Accessing information about Western Australian licensing schemes online

- Australian Business Licence and Information Service. Regulatory maps produced as part of the Department of Treasury's 90-Day regulatory mapping and reform projects.
- Small Business Development Corporation Business Licence Finder.
- wa.gov.au.

Opportunities for collaboration and information sharing between Western Australian agencies

- ANZSOG/National Regulators Community of Practice (WA Chapter).
- Bilateral agreements and memoranda of understanding between agencies.

Australian and international guidance material

- Australian Government, *Guidance Note: Best Practice Consultation*, 2016.
- Australian Government, *Guidance Note: Small Business*, 2017.
- Australian National Audit Office, *Administering Regulation: Achieving the Right Balance*, 2014.
- Consumer Affairs Victoria, *Better Business Regulation*, 2008.
- NSW Department of Finance, Services and Innovation, *Guidance for Regulators to Implement Outcomes and Risk-based Regulation*, 2016.

PriceWaterhouseCoopers for IPART, *Licensing Framework and Guideline: A Best Practice Approach to Designing and Reviewing Licensing Schemes*, 2013.

Stages 3 and 4: Ongoing evaluation and review

Guidance at the introduction stage can also be used at these stages.

Western Australian guidance material

WA Department of Treasury Economic Policy Unit, Tools to assist with Red Tape Reduction.

WA Department of Treasury Program Evaluation Unit, *Evaluation Guide*, 2015.

WA Department of Treasury Program Evaluation Unit, *Evaluation Toolkit*.

WA Public Sector Commission, *Guidelines for the Review of Legislation*, 2013.

Western Australian independent and public review processes

The Office of the Auditor General's audit program.

The Regulatory Impact Assessment program.

The WA Department of Treasury Economic Policy Unit – 90-Day regulatory mapping and reform projects.

Parliamentary Committee inquiries.

The WA Department of Treasury's Program Evaluation Unit.

Support available in Western Australia to identify reform opportunities

WA Department of Treasury's Economic Policy Unit.
ANZSOG/National Regulators Community of Practice (WA Chapter).

Australian and international guidance material

Her Majesty's Treasury, *The Green Book: Central Government Guidance on Appraisal and Evaluation*, 2018.

Her Majesty's Treasury, *The Magenta Book: Guidance for evaluation*, 2011.

OECD, 'Measuring Regulatory Performance'.

Productivity Commission, *Regulator Engagement with Small Business*, 2013.

Queensland Productivity Commission, *Guidance Note: Implementation and Evaluation*, 2018.

Stages 5 and 6: Improve, and repeal or retain (and reform)

Western Australian guidance material

WA Department of the Attorney General Parliamentary Counsel's Office, *Getting Government Legislation Drafted and Enacted: Guidelines and Procedures*, 2017.

WA Department of Treasury Economic Policy Unit, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010.

Mechanisms to implement legislative changes in Western Australia

Statutes (Repeals and Minor Amendments) Bill, coordinated by the WA Department of Justice (ongoing).

Australian and international guidance material

Australian National Audit Office, *Successful Implementation of Policy Initiatives*, 2014.

OECD, 'Administrative Simplification and Reducing Burdens'.

APPENDIX B:

LICENSING SCHEMES NOT REVIEWED IN MORE THAN TEN YEARS

This list includes 50 licensing schemes that have not been reviewed in more than ten years. Data were compiled from agencies' responses to a questionnaire about the licences they administer, issued by the ERA in February 2018.

There are several reasons why reviews might not happen. For example, agencies might only do a review if it is a legislative requirement or has been requested by the Minister. Reviews might be delayed when other agency activities are a higher priority. The ERA has not assessed the reasons why the below licensing schemes have not been reviewed.

Unique ID	Name of licence	Agency	Date legislation establishing the scheme was introduced	Date of last legislative review
BLR-154-AT	Authorisation to Operate a Totalisator	Department of Local Government, Sport and Cultural Industries	1992	No review
BLR-156-LI	Bookmaker's Employee Licence	Department of Local Government, Sport and Cultural Industries	2002	No review
BLR-157-LI	Bookmaker's Licence	Department of Local Government, Sport and Cultural Industries	2002	No review
BLR-158-LI	Bookmaker's Manager Licence	Department of Local Government, Sport and Cultural Industries	2002	No review
BLR-163-LI	Casino Liquor Licence	Department of Local Government, Sport and Cultural Industries	1984	>20 years
BLR-428-RG	Off-Road Vehicle Registration	Department of Local Government, Sport and Cultural Industries	1978	No review
BLR-222-LI	Debt Collector's Licence	Department of Mines, Industry Regulation and Safety	1964	No review
BLR-230-LI	Exploration Licence (Offshore Minerals)	Department of Mines, Industry Regulation and Safety	2003	No review
BLR-258-LI	Mining Licence (Offshore Minerals)	Department of Mines, Industry Regulation and Safety	2003	No review
BLR-319-LI	Retention Licence (Offshore Minerals)	Department of Mines, Industry Regulation and Safety	2003	No review
BLR-335-LI	Special Purpose Consent (Offshore Minerals)	Department of Mines, Industry Regulation and Safety	2003	No review
BLR-341-LI	Works Licence (Offshore Minerals)	Department of Mines, Industry Regulation and Safety	2003	No review
BLR-216-LI	Charitable Collections Licence	Department of Mines, Industry Regulation and Safety	1946	No review
BLR-254-LI	Land Valuer's Licence	Department of Mines, Industry Regulation and Safety	1978	2002
BLR-295-PE	Permit to Conduct a Street Collection	Department of Mines, Industry Regulation and Safety	1940	No review
BLR-728-CR	Retirement Villages Exemption Certificate	Department of Mines, Industry Regulation and Safety	1992	No review
BLR-282-PE	Offshore Exploration Permit ¹	Department of Mines, Industry Regulation and Safety	1983	No review
BLR-283-LI	Offshore Petroleum Production Licence ¹	Department of Mines, Industry Regulation and Safety	1983	No review
BLR-284-LI	Offshore Pipeline Licence ¹	Department of Mines, Industry Regulation and Safety	1983	No review

Unique ID	Name of licence	Agency	Date legislation establishing the scheme was introduced	Date of last legislative review
BLR-285-PE	Onshore Exploration Permit (Petroleum and Geothermal) ¹	Department of Mines, Industry Regulation and Safety	1969	No review
BLR-286-LI	Onshore Geothermal Energy Production Licence ¹	Department of Mines, Industry Regulation and Safety	1969	No review
BLR-287-AT	Onshore Petroleum and Geothermal Access Authority ¹	Department of Mines, Industry Regulation and Safety	1969	No review
BLR-288-AP	Onshore Petroleum or Geothermal Drilling Reservation ¹	Department of Mines, Industry Regulation and Safety	1969	No review
BLR-289-LI	Onshore Petroleum Production Licence ¹	Department of Mines, Industry Regulation and Safety	1969	No review
BLR-298-LI	Petroleum Pipeline Licence ¹	Department of Mines, Industry Regulation and Safety	1969	No review
BLR-393-PE	Permit to Move, Enter or Leave any Infected Area, Infected Vehicle or Restricted Area	Department of Primary Industries and Regional Development	1993	No review
BLR-418-LI	Ferry Licence	Department of Transport	1966	No review
BLR-419-LI	Fuel Pipeline Licence	Department of Transport	1926	No review
BLR-421-LI	Jetty Licence	Department of Transport	1926	No review
BLR-451-AP	Approval to Discharge Trade Waste ²	Department of Water and Environmental Regulation	1976	1995
BLR-463-CR	Certificate of Appointment of Honorary Warden ²	Department of Water and Environmental Regulation	1976	1995
BLR-464-CR	Certificate of Appointment of Inspector ²	Department of Water and Environmental Regulation	1976	1995
BLR-466-PE	Conduct Activities in a Waterway Management Area ²	Department of Water and Environmental Regulation	1976	1995
BLR-470-LI	Disposal Licence ²	Department of Water and Environmental Regulation	1976	1995
BLR-472-LI	Licence to Carry Out Dredging or Reclamation on Waterways ²	Department of Water and Environmental Regulation	1976	1995
BLR-473-LI	Licence to Construct a Retaining Wall on a Waterway ²	Department of Water and Environmental Regulation	1976	1995
BLR-481-LI	Private Boat Ramp or Jetty Licence ²	Department of Water and Environmental Regulation	1976	1995
BLR-654-RG	Registration of an Agricultural Society to Conduct an Agricultural Show	The Royal Agricultural Society of Western Australia	1926	1929
BLR-675-LI	Pawnbroker's Licence	Western Australia Police	1994	No review
BLR-678-LI	Second-hand Dealer's Licence	Western Australia Police	1994	No review
BLR-664-LI	Crowd Control Agent Licence	Western Australia Police	1996	2006
BLR-665-LI	Crowd Controller Licence	Western Australia Police	1996	2006
BLR-672-LI	Inquiry Agent Licence	Western Australia Police	1996	2006
BLR-673-LI	Investigator Licence	Western Australia Police	1996	2006
BLR-676-PE	Permit/ Endorsement to Carry a Weapon (Security Officer)	Western Australia Police	1996	2006
BLR-679-LI	Security Agent Licence	Western Australia Police	1996	2006
BLR-680-LI	Security Bodyguard Licence	Western Australia Police	1996	2006
BLR-681-LI	Security Consultant Licence	Western Australia Police	1996	2006
BLR-682-LI	Security Installer Licence	Western Australia Police	1996	2006
BLR-683-LI	Security Officer Licence	Western Australia Police	1996	2006

1 According to the Department, legislation establishing this licensing scheme is likely to be reviewed as part of the Department's Petroleum 2020 Project.

2 According to the Department, this licensing scheme will be considered as part of the reform of water resources legislation announced by the State Government in August 2018.

APPENDIX C:

LICENSING SCHEMES WITH OUTSTANDING REVIEW RECOMMENDATIONS

This list includes 65 licensing schemes reviewed in the last five years where review recommendations have not yet been implemented. Data were compiled from agencies' responses to a questionnaire about the licences they administer, issued by the ERA in February 2018.

The nature of the reviews varies. Some reviews covered all aspects of the licensing scheme (for instance, the policy problem being addressed by the licence, conditions, fees and charges, administration, and compliance and enforcement) whereas others covered just one aspect. The nature of outstanding review recommendations is therefore also likely to vary. The ERA has not assessed the nature of the outstanding recommendations for the below licensing schemes.

Unique ID	Name of licence	Agency
BLR-203-AP	Approval of Packaging Designs	Department of Mines, Industry Regulation and Safety
BLR-206-AT	Authorisation of an Explosive	Department of Mines, Industry Regulation and Safety
BLR-218-LI	Dangerous Goods Driver Licence	Department of Mines, Industry Regulation and Safety
BLR-220-LI	Dangerous Goods Site Licence	Department of Mines, Industry Regulation and Safety
BLR-221-LI	Dangerous Goods Vehicle Licence	Department of Mines, Industry Regulation and Safety
BLR-232-LI	Explosive Manufacture (MPU) Licence	Department of Mines, Industry Regulation and Safety
BLR-233-LI	Explosives Driver's Licence	Department of Mines, Industry Regulation and Safety
BLR-234-LI	Explosives Import / Export Licence	Department of Mines, Industry Regulation and Safety
BLR-235-LI	Explosives Storage Licence	Department of Mines, Industry Regulation and Safety
BLR-236-LI	Explosives Supply Licence	Department of Mines, Industry Regulation and Safety
BLR-242-PE	Fireworks Event Permit	Department of Mines, Industry Regulation and Safety
BLR-243-LI	Fireworks Operator Licence	Department of Mines, Industry Regulation and Safety
BLR-329-LI	Shotfiring Licence	Department of Mines, Industry Regulation and Safety
BLR-337-PE	Test Permit for Explosives	Department of Mines, Industry Regulation and Safety
BLR-211-RG	Car Market Operator Registration	Department of Mines, Industry Regulation and Safety
BLR-260-PE	Motor Vehicle Dealer - Special Occasion Permit	Department of Mines, Industry Regulation and Safety
BLR-261-LI	Motor Vehicle Dealer's Licence	Department of Mines, Industry Regulation and Safety
BLR-264-LI	Motor Vehicle Salesperson's Licence	Department of Mines, Industry Regulation and Safety
BLR-262-LI	Motor Vehicle Repair Business Licence	Department of Mines, Industry Regulation and Safety
BLR-263-CR	Motor Vehicle Repairer's Certificate	Department of Mines, Industry Regulation and Safety
BLR-265-LI	Motor Vehicle Yard Manager's Licence	Department of Mines, Industry Regulation and Safety
BLR-312-RG	Registration of Plant Design	Department of Mines, Industry Regulation and Safety
BLR-313-RG	Registration or Re-Registration of Individual Plant Items	Department of Mines, Industry Regulation and Safety
BLR-238-PE	Extended Trading Permit	Department of Mines, Industry Regulation and Safety
BLR-729-LI	Explosives Manufacture Licence	Department of Mines, Industry Regulation and Safety
BLR-227-LI	Employment Agent's Interim Licence	Department of Mines, Industry Regulation and Safety
BLR-228-LI	Employment Agent's Licence	Department of Mines, Industry Regulation and Safety
BLR-229-LI	Employment Agent's Restricted Licence	Department of Mines, Industry Regulation and Safety
BLR-197-NT	Accident and Dangerous Occurrence Notification (Offshore)	Department of Mines, Industry Regulation and Safety
BLR-198-NT	Accident and Dangerous Occurrence Notification (Onshore)	Department of Mines, Industry Regulation and Safety

Unique ID	Name of licence	Agency
BLR-200-AP	Approval as a Dangerous Goods Transport Provider	Department of Mines, Industry Regulation and Safety
BLR-219-CH	Dangerous Goods Security Card (DGSC)	Department of Mines, Industry Regulation and Safety
BLR-225-AP	Design a Type II Segregation Device	Department of Mines, Industry Regulation and Safety
BLR-237-LI	Explosives Transport Licence	Department of Mines, Industry Regulation and Safety
BLR-241-LI	Fireworks Contractor Licence	Department of Mines, Industry Regulation and Safety
BLR-272-NT	Notification of Major Hazard Facility	Department of Mines, Industry Regulation and Safety
BLR-301-LI	Pyrotechnics (Special Use) Licence	Department of Mines, Industry Regulation and Safety
BLR-321-AP	Safety Report Approval	Department of Mines, Industry Regulation and Safety
BLR-322-LI	Security Sensitive Ammonium Nitrate Fertiliser Licence	Department of Mines, Industry Regulation and Safety
BLR-323-LI	Security Sensitive Ammonium Nitrate Import / Export Licence	Department of Mines, Industry Regulation and Safety
BLR-324-LI	Security Sensitive Ammonium Nitrate Manufacture Licence	Department of Mines, Industry Regulation and Safety
BLR-325-LI	Security Sensitive Ammonium Nitrate Storage Licence	Department of Mines, Industry Regulation and Safety
BLR-326-LI	Security Sensitive Ammonium Nitrate Supply Licence	Department of Mines, Industry Regulation and Safety
BLR-327-LI	Security Sensitive Ammonium Nitrate Transport Licence	Department of Mines, Industry Regulation and Safety
BLR-332-AP	Special Berth Declaration	Department of Mines, Industry Regulation and Safety
BLR-730-RG	Dangerous Goods Pipeline	Department of Mines, Industry Regulation and Safety
BLR-731-AP	Approval of Tank Designs or IBCs	Department of Mines, Industry Regulation and Safety
BLR-732-AP	Approval of Overpacks	Department of Mines, Industry Regulation and Safety
BLR-733-AP	Approval of Emergency Information	Department of Mines, Industry Regulation and Safety
BLR-734-AP	Approval of Insurance	Department of Mines, Industry Regulation and Safety
BLR-735-AP	Approve Mutual Recognition of Correspondence, Determinations, Exemptions, etc.	Department of Mines, Industry Regulation and Safety
BLR-736-AP	Approval of Test of Competence for Drivers	Department of Mines, Industry Regulation and Safety
BLR-737-AP	Approval of Training Courses for Drivers	Department of Mines, Industry Regulation and Safety
BLR-738-AP	Authorise a Body or Person to Give Approvals	Department of Mines, Industry Regulation and Safety
BLR-739-AP	Approval of Codes of Practice	Department of Mines, Industry Regulation and Safety
BLR-740-AP	Approval of Qualifications	Department of Mines, Industry Regulation and Safety
BLR-741-AP	Approval of Laboratories	Department of Mines, Industry Regulation and Safety
BLR-344-PE	Pastoral Lease and Permits	Department of Planning, Lands and Heritage
BLR-371-AP	Approval to Store an Ester within the Prescribed Areas ¹	Department of Primary Industries and Regional Development
BLR-396-CR	Pilot Chemical Rating Certificate ²	Department of Primary Industries and Regional Development
BLR-411-LI	Commercial Goods Vehicle Licence ³	Department of Transport
BLR-416-LI	Driving Instructor's Licence	Department of Transport
BLR-510-RG	Registration of Timber Workers	Forest Products Commission
BLR-513-LI	Land Surveyors Licence	Land Surveyors Licensing Board of Western Australia
BLR-514-CR	Licensed Surveyor Practising Certificate	Land Surveyors Licensing Board of Western Australia

¹ According to the Department, the regulations establishing this licence have been identified for repeal.

² According to the Department, the regulations establishing this licence are expected to be repealed in September 2018.

³ According to the Department, changes to the legislation establishing the commercial goods vehicle licence were introduced into the WA Parliament in 2016 but not passed because Parliament ceased for the general election. Legislative amendments are proposed for reintroduction to the Parliament in 2019.

APPENDIX D:

SUBMISSIONS ON SPECIFIC LICENSING SCHEMES

This list includes all licensing schemes raised by stakeholders in submissions, and broadly summarises the nature of the issue raised. Submissions are available on the ERA's website.

Licensing scheme	Submission	Nature of issue raised		
		Achieving outcome	Compliance and enforcement	Administrative efficiency
Assignable business licence	WA TAB Agents Association	√		
Builders' and trades' licences (general)	Construction, Forestry, Mining and Energy Union ¹	√		
	Kemp, P.	√	√	√
Building approvals	Happ, E. (1)			√
	Town of Port Hedland			√
	Western Australian Local Government Association			√
Caravan park licence ²	Town of Port Hedland			√
Electricians' licences	Electrical Trades Union of Western Australia (2)	√		
	Master Electricians Australia	√		√
	National Electrical and Communications Association WA ³	√		
Electricity generation licence	Synergy	√		
Electricity retail licence	Synergy	√		√
Employment agent licence	Community Public Sector Union and Civil Service Association	√	√	
	Construction, Forestry, Mining and Energy Union	√		
	Electrical Trades Union WA (2)	√		
Engineering services ⁴	Anonymous-8	√		
	Engineers Australia	√		
	Marsh, B.	√		
	Neethling, W.	√		
	Westcott, J.	√		
Extractive industry licence	Jackson, K.			√
General purpose lease and licences for laydown areas and accommodation	Town of Port Hedland	√		
High risk work licences	Anonymous-5 ⁵			
	Construction, Forestry, Mining and Energy Union	√		
Licence to impound and manage livestock ⁶	Town of Port Hedland			√
Licences needed to manage a port: <ul style="list-style-type: none"> • Environmental licensing under Part 5 of the <i>Environmental Protection Act 1986</i>. • Security sensitive ammonium nitrate storage licensing. • Application for special berth (non-explosive) declarations. • Licences administered by the Department of Transport. 	Pilbara Ports Authority			√

Licensing scheme	Submission	Nature of issue raised		
		Achieving outcome	Compliance and enforcement	Administrative efficiency
Licences needed to operate a business in the café, restaurant and catering industry	Restaurant and Catering Industry Association			✓
Licences needed to operate a winery	Wines of Western Australia			✓
Liquor licensing	Anonymous-6			✓
	Western Australian Local Government Association			✓
Local planning schemes for home occupation/business ⁷	Town of Port Hedland	✓		
Mining licences and approvals	Young, P.			✓
Omnibus licence and drivers licence (F extension)	Timmins, T.			✓
Painters' registrations ⁸	Anonymous-1	✓		
	Anonymous-7	✓	✓	
	Fuller, J.W.	✓		
	Mackie, S.	✓	✓	✓
	Mackie, T.	✓	✓	
	Master Painters and Decorators Australia	✓	✓	
	Shuttleworth, D.	✓	✓	
	Williams, G.	✓	✓	
Permit to promote tourism ventures on Crown land ⁹	Town of Port Hedland	✓		
Permit to undertake works within a road reserve ¹⁰	Western Australian Local Government Association	✓		
Planning and development approvals ¹¹	Town of Port Hedland			✓
	Western Australian Local Government Association			✓
Plumbers' licences	Master Plumbers and Gasfitters Association of Western Australia	✓		✓
	Power, A.	✓	✓	
Prescribed premises licence under the <i>Environmental Protection Act 1986</i> (including works approvals)	Community Public Sector Union and Civil Service Association			✓
	Waste Management Association of Australia		✓	✓
	Western Australian Local Government Association	✓		✓
	Synergy			✓
Settlement agent licence	Anonymous	✓		
Temporary accommodation land use requirements ¹²	Town of Port Hedland	✓		
Wine and beer producer's licence	Anonymous-2 ¹³			
	Anonymous-3	✓		
	Anonymous-4 ¹⁴	✓		
	Happ, E. (1)	✓		✓
Total number of times issue was raised		36	9	25

1 This submission calls for licensing of certain trades.

2 This licence is administered by local governments.

3 This submission highlighted the benefits of the licensing scheme, rather than raising issues of concern.

4 The submissions listed call for licensing of this profession.

5 No specific issue raised.

6 This licence is administered by local governments.

7 This licence is administered by local governments.

8 The submissions listed call for more stringent licensing of this profession.

9 The submissions listed call for licensing of this activity.

10 This licence is administered by local governments.

11 This licence is administered by local governments.

12 This licence is administered by local governments.

13 No specific issue raised.

14 This submission highlighted the benefits of the licensing scheme, rather than raising issues of concern.

APPENDIX E:

TERMS OF REFERENCE

On 30 November 2017, the Treasurer of Western Australia asked the ERA to undertake the following:

INQUIRY INTO REFORM OF BUSINESS LICENSING IN WESTERN AUSTRALIA TERMS OF REFERENCE

I, BEN WYATT, Treasurer, pursuant to Section 32 (1) and Section 38 (1) (a) of the *Economic Regulation Authority Act 2003*, request that the Economic Regulation Authority (the ERA) undertake an inquiry into options to reduce the regulatory burden and other economic costs of State government business and occupational licences (business licences) in Western Australia.

In conducting this inquiry, the ERA will:

- identify all State government business licences in Western Australia;
- develop an analytical framework to help:
 - assess when licensing is the most efficient way of addressing identified problems and risks compared with other options;
 - assess whether the design elements of a licence are consistent with its purpose;
 - assess any other significant ways to improve the administration of licences;
- consider best practice design elements across licence types and in other jurisdictions;
- identify priority areas of reform for business licences in Western Australia and the impacts of the current licensing arrangements in those areas on all relevant stakeholders;
- assess high priority business licences against the analytical framework to determine whether individual licences are necessary, well-designed and well-administered;
- recommend reforms to specific business licences and licensing arrangements more generally that will produce net benefits for Western Australia;
- identify opportunities to improve the overall administration of business licences in Western Australia; and
- develop a guideline that Departments can use to self-assess against the framework.

In undertaking the inquiry and proposing changes, the ERA is to have regard to the approach, findings and recommendations of the NSW Independent Pricing and Regulatory Tribunal's 2014 report *Reforming licensing in NSW*.

The ERA will release an issues paper as soon as possible after receiving this terms of reference. The paper is to facilitate public consultation on the basis of invitations for initial written submissions from State government agencies, the business community and other relevant stakeholder groups, including the general community.

The ERA will release a draft report, including recommendations, for further targeted consultation.

The ERA will complete a final report, including recommendations, by 22 February 2019.

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