

Inquiry into reform of business licensing in Western Australia

Consultation paper 1: Identifying priority areas for reform

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1 About this consultation paper

This consultation paper provides guidance on the questions the ERA will consider to:

- Identify priority areas for reform of business licensing in Western Australia.
- Decide which high-priority business licences to assess against the analytical framework.

Information about the analytical framework can be found in consultation paper 2.

2 Identifying priority areas for reform

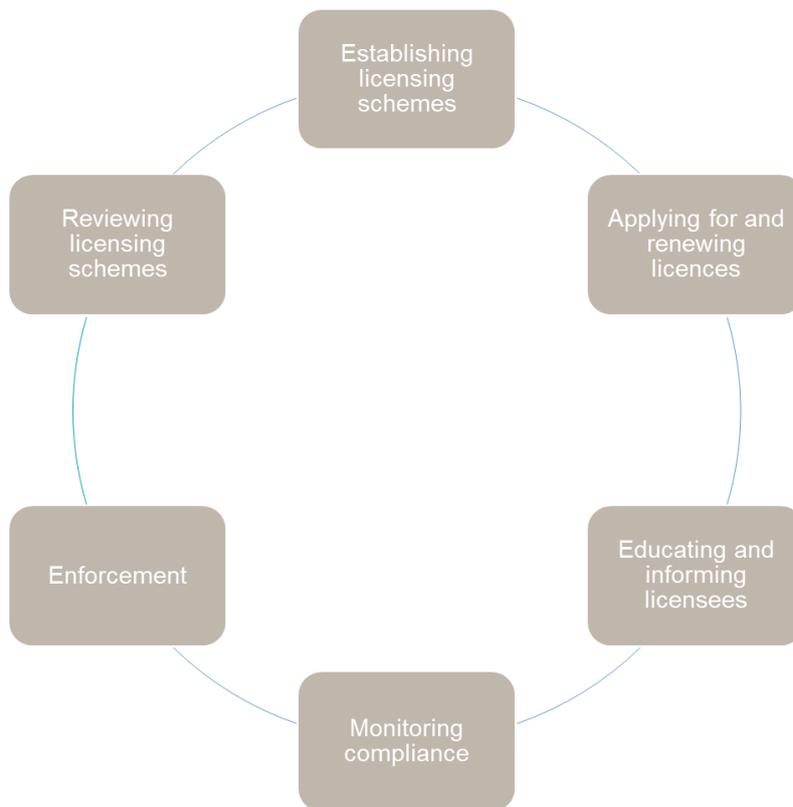
The ERA has been asked to:

- Identify priority areas for reform of business licences in Western Australia and the effects of the current licensing arrangements in those areas on all relevant stakeholders.
- 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.

The ERA will address these terms of reference by:

- Identifying issues across business licensing schemes — generally, and with their administration — and making recommendations for reform to address these issues.
- Identifying which business licensing schemes are a priority for review and reform. Three to four of these business licensing schemes will then be assessed in detail against the analytical framework (as set out in section 3 of this paper).

The ERA will identify the effects these issues and licensing schemes are having on state government agencies, businesses and consumers, at all stages of the business licensing 'lifecycle'.



The ERA will prioritise areas for reform using information from:

- submissions to this consultation paper and the ERA website
- responses from state government agencies to the licence questionnaire
- meetings with stakeholders
- hearings and workshops

2.1 Issues arising across business licensing schemes

A lot of work has been done on identifying and reducing the regulatory burden in the past two decades. For example, the Red Tape Reduction Group made recommendations to Government in its Reducing the Burden report in 2009. The ERA reviewed the regulatory burden as part of its 2014 Microeconomic Reform review. Most recently, the State Government has released annual red tape reduction report cards and undertaken 90-day regulatory mapping and reform projects. In addition, some business licensing schemes have been reviewed and reformed.

This work has identified the following themes:¹

- Regulatory agencies do not always properly assess the effects of new regulations or administrative and compliance procedures on business, particularly small business. An example of this is food safety compliance inspectors conducting random audits during restaurants' peak times (for example, Friday lunch times), instead of quieter times.
- There are inconsistencies between roles, laws and policies (or their interpretation), making the regulatory system difficult to navigate. For example, the ERA's Microeconomic Reform inquiry received evidence about a tourism business's application to land at a disused helipad being rejected by one state government agency for safety reasons, but being considered safe by another.
- In parts of government, there is a culture of risk aversion and strict compliance rather than assistance. For example, the Red Tape Reduction Group received submissions about officers in government agencies refusing to give assistance about processes they administer, due to a perceived conflict of interest between regulatory and customer service functions.
- Regulation does not always take into account risk, and the same requirements apply to low and high risk entities or activities. For example, a Department of Treasury 90-day Regulatory Mapping Project found the standards of safety businesses are required to comply with for some adventure-based activities in State managed parks are not based on the risk of the activities.
- There is a lack of transparency, accountability and ownership of decision-making processes. For example, stakeholders told the Service Priority Review that, despite progress having been made, there is a lack of transparency in safety, environmental and natural resources approval processes for major projects.

Lack of risk-based planning approvals

Development applications that comply with the residential design codes are considered 'low-risk' and are streamlined while all other approvals are automatically treated as 'high-risk', regardless of the size and nature of the development. For example, shopping centres go through a similar process to some residential properties.

¹ Economic Regulation Authority, *Inquiry into Microeconomic Reform in Western Australia – Final Report*, Government of Western Australia, Perth, 2014; Department of Treasury, *Making it easier for eco and nature-based tourism businesses in Western Australia*, Regulatory Mapping and Reform Project, Government of Western Australia, Perth, 2016, <http://www.treasury.wa.gov.au/Economic-Reform/90-Day-Projects/Regulatory-Mapping-Projects/>, [accessed 10 January 2018]; Department of Treasury, *Main recommendations agreed to by the State Government to help make it easier to start a restaurant in Western Australia*, Regulatory Mapping and Reform Project, Perth, Government of Western Australia, 2015, <http://www.treasury.wa.gov.au/Economic-Reform/90-Day-Projects/Regulatory-Mapping-Projects/>, [accessed 10 January 2018]; Department of Treasury, *Making it easier to build a single residential dwelling*, Regulatory Mapping and Reform Project, Government of Western Australia, Perth, 2017, <http://www.treasury.wa.gov.au/Economic-Reform/90-Day-Projects/Regulatory-Mapping-Projects/>, [accessed 10 January 2018]; Department of Treasury, *Making it easier for aquaculture in Western Australia*, Regulatory Mapping and Reform Project, Government of Western Australia, Perth, 2017, available from: <http://www.treasury.wa.gov.au/Economic-Reform/90-Day-Projects/Regulatory-Mapping-Projects/>, [10 January 2018]; Red Tape Reduction Group, *Reducing the Burden*, Government of Western Australia, Perth, 2009; Service Priority Review, *Working Together: One Public Sector Delivering for WA*, Final report to the Western Australian government, Government of Western Australia, Perth, 2017.

- Some processes are complex and poorly communicated, both across the whole of government and within licensing schemes. For example, the ERA's Microeconomic Reform inquiry found the compliance processes for food safety regulation are complex due to regulations being in place from all three levels of government. The firms affected are mostly small to medium sized businesses that are not well placed to address the requirements of attaining and maintaining food processing licences.
- Some administrative requirements for businesses are duplicated, requiring inspections by several agencies, or the submission of forms requesting the same data to multiple agencies. For example, a Department of Treasury 90-Day Regulatory Mapping Project found that eco- and nature-based tourism businesses are subject to duplicated audits of business sustainability conditions.
- There is a lack of online lodgement facilities for compliance processes. For example, The Service Priority Review found the Western Australian public sector lags behind other states to make information and services availability online.. Stakeholders said digital transformation is being hindered by bureaucratic, legal and cultural barriers, complex governance structures, resources constraints, and a lack of capability.

This regulatory burden is reflected in the prices, quality and choice of goods and services available to Western Australian consumers.

Reducing the regulatory burden created by both the introduction of new business licensing schemes and existing business licensing schemes can be challenging.

Business licensing is used to respond to social, environmental and economic problems. The increase in its volume and reach may be a response to the changing needs and expectations of society, including an increasing desire to avoid risk. However, the desire to avoid risk has created a culture where any problem is presented to government for a regulatory solution. Regulation can be attractive to government because it demonstrates concern and responsiveness.

Once a business licensing scheme is established, it can be hard to abolish. This is particularly the case where a business licensing scheme protects licensed businesses from competition. Removal of the licensing scheme could reduce the prices businesses can charge, and force them to invest more in the quality of their goods and services. Licensed businesses can therefore sometimes have an incentive to maintain the status quo.

Multiple licences needed to operate

To start an eco or nature-based tourism operation, operators require or may require licences, certificates, permits, approvals, and voluntary accreditations to establish the business, to operate in crown land areas, to access national and marine parks, for transport on land and water, for service alcohol and for specific activities e.g. fishing.

Even where business licensing is clearly justified, the culture that shapes its implementation can create regulatory burden and challenges for reform. Regulatory agencies may favour strict and prescriptive or legalistic approaches – instead of an education and customer-service focus – to lessen their own risks of exposure to criticism. This can lead to businesses taking excessively defensive and costly actions to ensure compliance. In addition, if business licensing schemes are devised within individual agencies, instead of collaboratively, the challenges for licensees to navigate the regulatory system are less likely to be understood or considered. These issues affect the appetite for, and pace of, reform of business licensing.

However, regulatory reform is possible:

- Repeal of the *Marketing of Potatoes Act 1946* – It used to be illegal to sell potatoes grown in Western Australia for human consumption without a licence from the Potato Marketing Corporation. The regulation was introduced following the Second World War to ensure supply of potatoes and control prices. In 2016, Parliament repealed the regulation. In its 2014 inquiry into Microeconomic Reform, the ERA found the licence raised incomes of potato growers, increased prices for consumers, and limited productivity in the industry. The ERA did not find any substantive arguments for requiring potato sellers to have a licence.²
- The Australian Tax Office’s cultural change process – In 2014, the ATO found “Bureaucracy, risk aversion, cost reduction focus and [a] silo mentality all inhibit flexibility and adoptability to changes in the client experience, it also means that decisions on client cases take longer”³. Since the review, the ATO has set out a clear vision to reinvent itself to be a “contemporary, service-oriented organisation” and is changing the way it deals with customers to do this.⁴
- Repeal of the *Hairdressers Registration Act 1946* – In 2009, Western Australia was the only Australian jurisdiction requiring compulsory registration of hairdressers with a statutory authority. Since the regime was introduced in 1946, a range of consumer protection, education and training, and occupational health and safety laws were put in place. The Red Tape Reduction Group found that these provided a sufficient regulatory framework for the hairdressing industry. The *Hairdressers Registration Act 1946* was repealed in 2012.
- DoTDirect – DoTDirect is the Department of Transport’s suite of applications and tools that facilitate online licence transactions. The system is an example of digitalisation of administration processes for licencing: it allows users to make payments, book services, make changes to licences and keep updated with changes that may affect them.
- Service NSW (see case study box)

² Economic Regulation Authority, *Inquiry into Microeconomic Reform in Western Australia – Final Report*, 2014

³ Towell, N. and Butler, B., *ATO’s ‘rotten’ culture revealed*, The Canberra Times, 22 July 2014. Available from: www.canberratimes.com.au [6 February 2018].

⁴ Australian Tax Office, *Reinventing the ATO*, Commonwealth of Australia, Canberra, available from: www.ato.gov.au [6 February 2018].

Case study: Service NSW

Service NSW aims to make it easier for people and business across NSW to access government services. It offers customers a single way to access government services, including to:

- *book a driver licence test with Roads and Maritime Services*
- *lodge a bond claim if your tenant owes you money*
- *pay a penalty notice if your vehicle has been reported*
- *register the birth of your child*
- *apply for a Seniors Card when you turn 60.*⁵

wa.gov.au is the Western Australian government's equivalent website. The site brings together information from multiple government agencies so that users can find and access government online services and information quickly and easily from a trusted source. The site provides information only and does not enable transactional interactions with users.

Not all transactions can or should be able to occur online. Some licences require applications to be considered by a staff member. Examples include licences where a public interest test is required and where site inspections are needed.

A challenge for agencies is to determine when online systems improve the efficiency of licence administration, and maintain or improve the effectiveness of the licence in achieving its objectives. It's in these circumstances that businesses will most benefit from the adoption of online systems.

As part of this inquiry, the ERA will consider what is needed for reforms to business licensing to be implemented.

⁵ Service NSW, *About Us*, Government of New South Wales, Sydney, available from: www.service.nsw.gov.au [2 February 2018].

Questions

- What are the priority areas for reform of business licensing in Western Australia? Why? What effects do they have on you? What reforms would you recommend?
- Is business licensing used too freely to address problems and risks? If so, why is this the case?
- What shapes the way regulatory agencies and licensees interact?
- What types of issues hinder reforms of business licensing? What can be done to make business licensing reforms more likely to be progressed?
- What are some examples of successful reforms of business licensing?

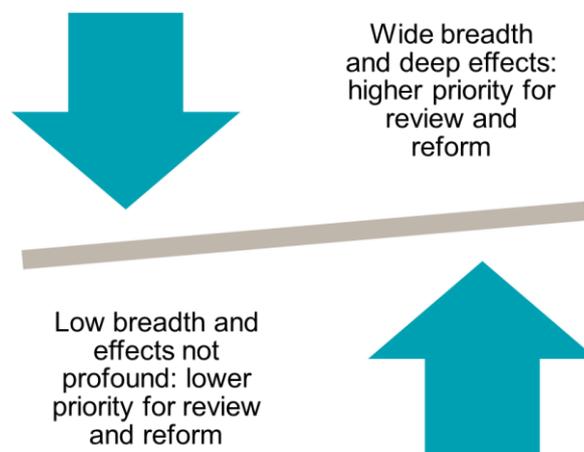
2.2 Prioritising business licensing schemes

When identifying which business licensing schemes are a priority for review and reform, the ERA will take into account the breadth and depth of the effects of the licensing scheme on state government agencies, businesses and consumers.

Breadth refers to the range of activities affected by the business licensing scheme. To assess the breadth of a licensing scheme, the ERA will consider things such as the size of the sector(s) affected, and the number of licence holders affected.

Depth refers to how profound the effects of the licensing scheme are. The ERA will consider things such as whether the licensing scheme restricts entry and/or competition, whether it adds substantially to business costs, whether it reduces investment and innovation, whether it disproportionately affects small business and/or whether it affects the prices, quality and choice of goods and services available to consumers.

The ERA will also consider whether a business licensing scheme has been reviewed in the past five years. If so, it will be a lower priority for review and reform — unless the reforms recommended by the review have not been implemented.



Questions

- Which licensing schemes should be a high priority for review and reform? Why? What effects do they have on you?
- Please provide evidence of the effects of the licensing scheme(s), including:
 - the sectors affected;
 - whether it restricts entry to the industry and/or competition and if so how;
 - how it adds to business costs;
 - whether it reduces investment and innovation and if so how;
 - whether it disproportionately affects small business; and
 - how it affects the prices, quality and choice of goods and services available to consumers.
- What reforms would you recommend for these licensing schemes?
- Which licensing schemes have been reviewed over the past five years? Were these reviews effective? Why/why not? Have recommendations for reform been implemented?

3 Assessing case studies against the analytical framework

The ERA has been asked to:

- Assess high priority business licences against the analytical framework to determine whether individual licences are necessary, well-designed and well-administered.
- Recommend reforms to business licences and licensing arrangements more generally that will produce net benefits for Western Australia.

Information about the analytical framework can be found in consultation paper 2.

The ERA will select three to four business licences to use as case studies to demonstrate how the analytical framework can be applied. The ERA will make recommendations about how these licences could be reformed.

The ERA will select case studies based on the following considerations:

- The licences must be high priorities for review and reform.
- Stakeholders must perceive review and reform of the licences as being important and of interest.

- They will provide insightful and varied, but understandable, examples of how to apply the framework.

The case studies will not include business licences the ERA administers or enforces, to avoid the perception of a conflict of interest arising from self-review. The ERA will review the business licences it administers against the analytical framework and guideline after the inquiry is complete.

The ERA welcomes feedback from stakeholders on this approach to selecting case studies, and on the business licences that could be selected.

Once the ERA has selected the case studies to assess, it will undertake further detailed consultation with the stakeholders that are affected by the current licensing arrangements. This consultation will take the form of meetings, and licence specific workshops. The ERA will provide further information about this consultation following receipt of submissions to this consultation paper.

Recommendations for reform of the licences will be included in the draft report. All stakeholders will be able to provide feedback on the draft report.

Questions

- What should the ERA consider to select case studies to assess against the analytical framework?
- What case studies should the ERA assess against the analytical framework?

Appendix 1 Summary of questions

- What are the priority areas for reform of business licensing in Western Australia? Why? What effects do they have on you? What reforms would you recommend?
- Is business licensing used too freely to address problems and risks? If so, why is this the case?
- What shapes the way regulatory agencies and licensees interact?
- What types of issues hinder reforms of business licensing? What can be done to make business licensing reforms more likely to be progressed?
- What are some examples of successful reforms of business licensing?
- Which licensing schemes should be a high priority for review and reform? Why? What effects do they have on you?
- Please provide evidence about the effects of the licensing scheme(s), including:
 - the sectors affected;
 - whether it restricts entry to the industry and/or competition and if so how;
 - how it adds to business costs;
 - whether it reduces investment and innovation and if so how;
 - whether it disproportionately affects small business; and
 - how it affects the prices, quality and choice of goods and services available to consumers.
- What reforms would you recommend for these licensing schemes?
- Which licensing schemes have been reviewed over the past five years? Were these reviews effective? Why/why not? Have recommendations for reform been implemented?
- What should the ERA consider to select case studies to assess against the analytical framework?
- What case studies should the ERA assess against the analytical framework?

Appendix 2 Reference list

Australian Tax Office, *Reinventing the ATO*, Commonwealth of Australia, Canberra, available from: www.ato.gov.au [6 February 2018].

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