

# Inquiry into reform of business licensing in Western Australia

Consultation paper 2: Analytical framework and guideline

19 February 2018

Economic Regulation Authority

WESTERN AUSTRALIA

## Economic Regulation Authority

4<sup>th</sup> Floor Albert Facey House  
469 Wellington Street, Perth

**Mail to:**

Perth BC, PO Box 8469  
PERTH WA 6849

**T:** 08 6557 7900

**F:** 08 6557 7999

**E:** [records@erawa.com.au](mailto:records@erawa.com.au)

**W:** [www.erawa.com.au](http://www.erawa.com.au)

National Relay Service TTY: 13 36 77  
(to assist people with hearing and voice impairment)

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# 1. About this consultation paper

The analytical framework and guideline are intended to assist assess whether business licences are needed, well designed, and efficiently administered. Some state government agencies are currently reviewing and reforming their licensing schemes. The analytical framework and guideline will complement this work, and maintain the momentum of reform.

This consultation paper is designed to assist stakeholders to provide their views on how the ERA should design its analytical framework and guideline. However, all stakeholders are welcome to provide feedback. The consultation paper includes some principles for consideration – these are to prompt discussion, and will be revised when the ERA has considered stakeholders' comments.

The issues addressed in this paper mostly concern the activities and priorities of state government agencies. However, other interested parties – including business licence holders, representative bodies and academics – are welcome to provide submissions.

## 1.1 Building an effective framework

This is not the first time that regulation and licencing have been reviewed. In Western Australia, Australia and internationally there have been many attempts to produce frameworks, guidelines and principles for effective regulation and licensing. Yet regulatory burden has continued to grow, and ineffective and unnecessary licensing is still an impediment to economic efficiency and a burden on the community.

This suggests that past approaches to regulatory review have not always been effective.

There could be many reasons for this. In some cases an increased level of licensing and control might be justified; for example, in response to the community's growing interest in protecting the environment. But in other instances, it could reflect the fact that these tools are not useful for practitioners, or do not suit the needs and objectives of the agencies that design and administer licences. Or, as discussed further below, there could be cultural barriers in agencies to using frameworks to review licences, political priorities that override agencies' processes, or a misalignment between the interests of the community and the interests of licensees and those who licence them.

The ERA is particularly keen to hear from licensing practitioners about what would make the analytical framework and guideline useful for the people expected to apply them, along with any views on why similar documents have not always been useful or effective in the past. This is to assist the ERA to develop an analytical framework and guideline that are easy to understand and apply, and that help state government agencies and their employees to undertake their roles as regulators.

## Questions

- What would make the framework and guideline useful for you?
- What would discourage you from using the ERA's analytical framework and guideline?
- What has deterred you from using existing frameworks and guidelines in the past?
- Do you use the Regulatory Impact Assessment program? Why/why not?
- Are there other analytical frameworks (e.g. from other jurisdictions) you find useful in considering whether business licensing schemes are the best way of addressing a problem? Why do you find these useful?

## 2. The analytical framework

The ERA has been asked to develop an analytical framework to help assess:

- When licensing is the most efficient way of addressing identified problems and risks compared with other options.
- Whether the design elements<sup>1</sup> of a licence are consistent with its purpose.
- Any other ways to improve the administration of licences.

The ERA defines 'problems and risks' as activities that, unconstrained, result in outcomes that are inconsistent with consumers' interests or community expectations and standards.

The analytical framework will include questions for state government agencies to consider when they design or review a licensing scheme. The questions are intended to assist state government agencies to ensure the following:

- Licensing is the most efficient way of addressing the identified problem.
- The design of the licence is consistent with its purpose.
- Administration of the licence is effective and efficient.

This section of the consultation paper sets out, and seeks views on, the concepts the ERA proposes to consider to develop the analytical framework.

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<sup>1</sup> 'Design elements' is a term developed by the Independent Pricing and Regulatory Tribunal of New South Wales to define the following licence features: coverage, duration, reporting requirements, fees and charges, conduct rules and mandatory attributes.

Independent Pricing and Regulatory Tribunal of New South Wales, *Reforming licensing in NSW: Review of licence rationale and design*, Regulation Review – Issues paper, Government of New South Wales, Sydney, 2012.

## 2.1 When is licensing the most efficient way of addressing problems?

Business licensing is a form of regulation. Regulation – including business licensing – should only be adopted if:

- there is evidence of a problem;
- the government needs to intervene because businesses and their customers cannot solve the problem on their own;
- regulation is the best form of government intervention; and the benefits of regulation exceed the costs (where these can be measured).

### 2.1.1 What problems require government intervention?

Government intervention generally aims to address activity that, unconstrained, results in outcomes that are inconsistent with consumers' interests or community expectations and standards. This includes the following circumstances:<sup>2</sup>

- Where there is a lack of competition ('monopoly' or 'market power') – for example, airports or electricity distribution networks.
- If one party in a transaction has substantially more information than another ('information asymmetry') – for example, the seller of a second-hand car knows more about its condition than a potential buyer.
- When the activity of a person or organisation is generating a positive or negative effect for others that is not included in the price of goods and services ('externalities') – for example, discharging pollution.
- Where businesses either will not provide, or under-provide, a good or service because they are unable to recover the costs of providing it by charging consumers ('public goods') – for example, national defense: to the extent one person in an area is defended, other people in the same area are also defended. This makes it hard to charge people for defense – hence businesses would not provide it.
- Where an unregulated market leads to socially unacceptable outcomes – for example, utilities such as telecommunications not being provided in regional areas, or being provided at a lower quality or quantity.
- Where the behaviour of businesses and/or consumers is socially undesirable – for example, excessive alcohol consumption, or problem gambling.

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<sup>2</sup> Department of the Prime Minister and Cabinet, *The Australian Government Guide to Regulation*, Commonwealth of Australia, Canberra, 2014.

## 2.1.2 When is regulation the best form of government intervention?

All forms of government intervention, including regulation, have costs and benefits. The benefits of regulation vary depending on its objectives and design. The costs of regulation include lost time, compliance burdens, inconvenience, delay, foregone opportunity, impediments to competitiveness, and higher prices and less choice for consumers.<sup>3</sup>

Cost-benefit analysis is commonly used to assess whether regulation is the best form of government intervention.<sup>4</sup> Cost-benefit analysis quantifies and compares the total benefits and costs for all people affected by different forms of government intervention. The option that creates benefits that most outweigh costs is the best option.<sup>5</sup>

The costs and benefits of regulation are distributed between the government, regulated entities and consumers. A change to regulation may decrease costs or increase benefits for one party by shifting these costs and benefits from another. Both the net benefits and distribution of costs and benefits should be considered when designing or reviewing regulation.

Quantifying the costs and benefits of different options can present challenges. For example, it may not be feasible to assign monetary values to some types of costs and benefits, or it may not be cost-effective to obtain the required data. Quantifying costs and benefits can also be subjective. Cost-effectiveness analysis and multi-criteria analysis are generally used where it is not feasible to conduct cost-benefit analysis.<sup>6</sup> Cost-effectiveness analysis compares the cost of different options to achieve a particular outcome. Multi-criteria analysis compares different options against a set of criteria that are chosen to judge, on a qualitative basis, costs and benefits.

In Australia, the Competition Principles Agreement often guides policy-makers consideration of the costs and benefits of regulation.<sup>7</sup> The Competition Principles Agreement was agreed between the federal and state governments in 1995 to promote competition.<sup>8</sup> It requires that regulation should not restrict competition unless the following can be demonstrated:

- The benefits of the restriction to the community as a whole outweigh the costs.
- The objectives of the regulation can only be achieved by restricting competition.<sup>9</sup>

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<sup>3</sup> Department of the Prime Minister and Cabinet, *The Australian Government Guide to Regulation*, 2014.

<sup>4</sup> Department of the Prime Minister and Cabinet, *The Australian Government Guide to Regulation*, 2014.

<sup>5</sup> Department of the Prime Minister and Cabinet, *The Australian Government Guide to Regulation*, 2014.

<sup>6</sup> Productivity Commission, *Regulatory Impact Analysis: Benchmarking*, Research Report, Commonwealth of Australia, Canberra, 2012.

<sup>7</sup> The Competition Principles Agreement provides principles for governments to use to regulate businesses that do not have sufficient competition; to assess whether government-owned businesses have an unfair advantage compared to private businesses; and to develop mechanisms for businesses to access infrastructure owned by other parties. Department of the Prime Minister and Cabinet, *The Australian Government Guide to Regulation*, Canberra, Commonwealth of Australia, 2014.

<sup>8</sup> National Competition Council, *About the National Competition Policy*, Melbourne, <http://ncp.ncc.gov.au/pages/about#agreements> [accessed 30 January 2018].

<sup>9</sup> Council of Australian Governments, *Competition Principles Agreement – 11 April 1995*, <https://www.coag.gov.au/about-coag/agreements/competition-principles-agreement>, [accessed 2 February 2018].

## Questions

- What concepts should be used to assess whether business licensing is the best way to address a problem?
- Can these concepts be applied in the same way when introducing new, and assessing existing, business licensing schemes? If not, why not?

### 2.1.3 *The analytical framework and existing regulatory impact assessment frameworks*

The ERA's analytical framework and guideline will not be the only tools available to assist State Government agencies assess when licensing is the most efficient way to address a problem or risk.

In Western Australia, the Regulatory Impact Assessment program (explained in Box 1) helps state government agencies consider forms of regulation to assist selecting the most efficient and effective option.<sup>10</sup> Regulatory Impact Assessments must:

- Clearly define the problem, and justify the need for government intervention.
- Clearly explain the objective of the regulation.
- Consider and discuss other options.
- Consider and discuss the effects of the regulation.
- Explain the preferred option.<sup>11</sup>

These are the same types of questions that would need to be considered to assess whether licensing is the most efficient way to address a problem.

However, the Regulatory Impact Assessment program only applies to *new* regulations, and not reviews of *existing* regulations (including business licensing schemes). The ERA's analytical framework and guideline are intended to address both circumstances.

The ERA seeks feedback on whether and how the existing Regulatory Impact Assessment program, and the ERA's analytical framework and guideline, could work together to assist state government agencies assess when business licensing is the most efficient way to address a problem.

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<sup>10</sup> Department of Treasury, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010.

<sup>11</sup> Department of Treasury, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010.

### Box 1: Regulatory Impact Assessments

State government agencies are required to prepare a Regulatory Impact Assessment for proposals to introduce new regulatory instruments, for example legislation.<sup>12</sup> The Regulatory Impact Assessment informs decision makers, for example the Minister, of the effect the proposed regulation will have on business, consumers and/or the economy.

The Regulatory Impact Assessment process 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 identifies 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.

To assess whether the regulation will have a ‘significant negative impact’,<sup>13</sup> the agency should consider:

- **Costs** – breadth of the cost effect, the relative cost effect compared to business size, and the frequency of the cost effect.
- **Restrictions on competition** – barriers to entry and exit, allocation of resources and effects on market function.

The Regulatory Gatekeeping Unit within the Department of Treasury reviews the Regulatory Impact Assessment documents to assess whether they have been correctly prepared and include the required information. The Regulatory Gatekeeping Unit does not consider whether the proposed regulation is suitable. Following comment from the Better Regulation Unit, the Regulatory Impact Assessment is provided to the decision maker for consideration.<sup>14</sup>

<sup>12</sup> The Treasurer can provide an exemption, which is only granted in exceptional circumstances including emergencies where immediate action is required and for some election commitments.

<sup>13</sup> A proposal is likely to have a significant negative impact if it (1) imposes controls that reduce the number of participants in a market or the incentive to compete in a market through the allocation of licences, rights, entitlements, quotas or franchises, or restriction of secondary markets; (2) substantially alters or limits the way the commercial activities of a business are undertaken, or resources in the economy are allocated in a market; or (3) substantially alters or limits the way commercial activities or a business are undertaken.

Department of Treasury, *Regulatory Impact Assessment Guidelines for Western Australia*, Government of Western Australia, Perth, 2010.

<sup>14</sup> Department of Treasury, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010.

### Question

- Is the existing Regulatory Impact Assessment program effective at ensuring new business licensing schemes are rigorously justified?
- Could the existing Regulatory Impact Assessment program, and the analytical framework and guideline that the ERA is developing, work together to assist state government agencies assess when business licensing is the most efficient way to address a problem? If not, why not? If so, in what ways and at what stage(s) of the Regulatory Impact Assessment process?

## 2.1.4 Assessing the cumulative burden of regulation

The cumulative burden of regulation is the costs of all regulations that affect an activity or industry. While the effect of a single business licensing scheme may be small, when combined with all the other relevant regulations the burden may be large. Examples of cumulative regulatory burden are:

- The Productivity Commission has found that the cumulative burden of regulation on farmers is substantial due to the number and complexity of regulations.<sup>15</sup> These include Australian Government regulation of national and interjurisdictional issues (such as biosecurity and access to agricultural and veterinary chemicals); State and territory government regulation of road transport, environmental protection, native vegetation management, land tenure and land use; and local government regulation of land use, planning, road use and (in some cases) environmental protection.
- In Western Australia, businesses sometimes need to deal with several state government agencies for their business licence requirements. For example, to transport dangerous goods a business needs to deal with the Departments of Health; Transport; and Mines, Industry Regulation and Safety. Each business licensing scheme may individually have low administrative and compliance costs. However, together the burden may be substantial if administrative processes are duplicated, or information requirements, licence conditions or compliance requirements are inconsistent.

Regulatory Impact Assessments should protect against additions to the cumulative regulatory burden. This is because the need for government intervention must be justified when introducing a new regulation, and each regulation that is introduced should create a net benefit. However, in practice, Regulatory Impact Assessments typically assess the costs and benefits of a regulation in isolation of the costs and benefits of other related regulations. For example, the obligation to wear seat belts may save 1,000 lives each year. Speed limits may also save 1,000 lives each year. However, the total number of lives saved each year may only be 1,500. This is because, for some accidents, the combination of wearing a seatbelt and obeying the speed limit will save the same life.

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<sup>15</sup> Productivity Commission, *Reducing the regulatory burden on agriculture, Inquiry report no. 79*, Commonwealth of Australia, Canberra, 2016.

Further, Regulatory Impact Assessments do not address the cumulative effects of the *existing* stock of regulation, including business licences, because they are used only when introducing new regulation.

The ERA's analytical framework will assist address the cumulative effects of both existing and new business licences. The ERA seeks-feedback about how the analytical framework can address this issue.

### Questions

- Does the Regulatory Impact Assessment program protect against the cumulative burden of regulation, including business licensing? If so, how? If not, why not?
- What mechanisms could be included in the analytical framework that the ERA develops to address the cumulative burden of both the existing stock of, and new, regulations and business licences?

## 2.2 Are the design elements of a licence consistent with its purpose?

Business licences should address a problem while minimising regulatory costs to regulated parties, government and consumers. Costs can be direct costs, such as lost time and other compliance costs, and indirect costs, such as restrictions on competition, reduced investment and innovation, and higher prices, less choice and lower quality goods and services for consumers.

Business licences typically have the following elements ('design elements'):

- Coverage – the products, people or places that must be licensed.
- Conduct rules – the rules about how the licensee must behave.
- Mandatory attributes – the characteristics the licensee must have (for example, qualifications).
- Duration – the length of time the licence is valid.
- Reporting requirements – the information the licensee must provide to the licence administrator.
- Fees and charges – payments to apply for, renew and/or comply with the conditions of the licence.

Business licences will be more likely to achieve their purpose, while minimising costs, if:

- The licence is required only by the product, person or place that causes the problem.
- Conduct rules are focussed on outcomes rather than prescribing particular behaviours, and are aimed only at addressing the problem.

- The characteristics the licensee must have will assist address the problem while minimising barriers to enter the market, and are clearly articulated and measurable.
- The duration of the licence takes into account the likelihood of material changes in the characteristics of licensees, or the rules and attributes required to address the problem.
- Reporting requirements focus on outcomes, rather than inputs, and the information requested is required, used and not reasonably available through other means.
- For licences that provide the licensee with access to a limited resource, fees and charges are set to reflect the value of access to the resource; and for licences that grant permission to undertake a certain activity, fees and charges are set to recover the costs of administration.

The ERA seeks feedback about these design elements, and what features they should have to ensure the design of a business licence is consistent with its purpose, while minimising costs.

The design of a licence should be appropriate, and minimise costs, on an ongoing basis. When a licence is originally implemented its design may achieve this objective. However, over time design elements can be changed. There is a risk the licence design will no longer be appropriate if state government agencies do not consider the analytical framework when changing design elements. This risk is reduced if the licence's design is reviewed periodically.

### Questions

- What elements of business licences should the ERA include as design elements?
- What features should the following design elements have to ensure the design of a business licence is consistent with its purpose, while minimising costs:
  - Coverage
  - Conduct rules
  - Mandatory attributes
  - Duration
  - Reporting requirements
  - Fees and charges
- What processes and approaches (for example, cost-benefit analysis, public consultation) should be used to both set and review business licence design elements?

## 2.3 The administration of licences

Business licences should be administered efficiently and effectively to ensure they achieve their objectives with the minimum necessary costs to the licensee and government. Administration refers to actions or activities that form the basis of how the business licensing scheme operates. It includes:

- Registering and licensing entities – for example processing applications, undertaking assessments and ongoing updates and renewals.
- Informing stakeholders – for example, education campaigns, interactions with licensees and consumer advice.
- Collecting information – for example, maintaining registers, sector research and analysis, analysing licensee or compliance information.
- Receiving and responding to complaints – maintaining contact mechanisms and providing avenues for dispute resolution.
- Monitoring and enforcing compliance – inspections, enforcement actions, use of administration sanctions and prosecutions.<sup>16</sup>

The administration of regulation has been the subject of several recent reviews. In Western Australia, these include the former Red Tape Reduction Group's Reducing the Burden Report in 2009,<sup>17</sup> the ERA's Microeconomic Reform Inquiry in 2014,<sup>18</sup> and the Department of Premier and Cabinet's Service Priority Review in 2017.<sup>19</sup> The Productivity Commission has also prepared several benchmarking reports considering how regulations are administered in each State and Territory.<sup>20</sup>

Some of these reviews have found there is scope to improve the administration of regulation in Western Australia, including business licences. In recent years, improvements have included a transition to online licence applications and greater transparency in decision-making. For example, the former Department of Mines and Petroleum released a 'Transparency Policy' and its online systems now allow applicants to submit and track mineral, petroleum and dangerous goods applications.<sup>21</sup>

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<sup>16</sup> Independent Pricing and Regulatory Tribunal of New South Wales, *A best practice approach to designing and reviewing licensing schemes – Guidance material*, report prepared by PricewaterhouseCoopers, 2013.

<sup>17</sup> Red Tape Reduction Group, *Reducing the Burden*, Government of Western Australia, Perth, 2009

<sup>18</sup> Economic Regulation Authority, *Inquiry into Microeconomic Reform in Western Australia – Final Report*, Government of Western Australia, Perth, 2014.

<sup>19</sup> Department of Premier and Cabinet, *Service Priority Service – Final Report*, Government of Western Australia, Perth, 2017.

<sup>20</sup> For example – Productivity Commission, *Regulatory Impact Analysis: Benchmarking*, 2012.

<sup>21</sup> Department of Mines, Industry Regulation and Safety, *Transparency Policy*, Government of Western Australia, Perth, <http://www.dmp.wa.gov.au/Documents/About-Us-Careers/Transparency-Policy.pdf>, [accessed 17 January 2018].

Department of Mine, Industry Regulation and Safety, *Online Systems*, Government of Western Australia, Perth, <http://www.dmp.wa.gov.au/Online-Systems-1527.aspx>, [accessed 17 January 2018].

Licensing schemes will be more effectively and efficiently administered if:

- The application process is as clear and concise as possible.
- There is effective communication between the state government agency and the licensee, including an effective inquiries and complaints process.
- Licensees are easily able to access information about their licence.
- Information requirements are the minimum necessary, and are not duplicated.
- Compliance is monitored and enforced using a risk-based approach.
- There is periodic review of the licensing scheme.<sup>22</sup>

When improving the effectiveness and efficiency of business licence administration, the objective is to minimise the total administration costs for businesses and government, rather than shift costs from one party to another.

### Questions

- What is needed for an application process to be clear and concise?
- What characterises effective communication between state government agencies and licensees?
- What are easy ways for regulated parties to access information about their business licences?
- How can information requirements and duplication be minimised?
- What are the essential features of a risk-based compliance and enforcement regime?
- How frequently should business licensing schemes be reviewed and what features should the review process have?
- Are there other aspects of the administration of business licenses that the ERA should include in the analytical framework?

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<sup>22</sup> Independent Pricing and Regulatory Tribunal of New South Wales, *Reforming licensing in NSW: Review of licence rationale and design*, Regulation Review – Issues paper, 2012.

## 2.4 Considering risk in designing and administering business licences

Risk-based regulation is proportionate to the risk of undesired outcomes or non-compliance. Regulators should consider risk when they design and administer business licences.<sup>23</sup> Risk-based regulation aims to direct resources to regulation or compliance in areas of highest risk, rather than using resources for regulation and compliance in cases where there is likely to be little or lesser benefit.

Risk-based regulation can take varying forms, such as:

- Regulation only of high-risk industries or activities.
- Regulation only of high-risk parties that operate within an industry or undertake an activity.
- Regulation of all parties operating within an industry or undertaking an activity, but focusing compliance on the parties of highest risk.

Risk can be taken into account in the design of business licences in different ways. For example:

- The coverage of a licence determines which industries, activities or parties the licence applies to — an environmental licence designed using risk-based principles may only apply to factories adjacent to waterways, or mining projects in environmentally sensitive areas.
- Mandatory attributes (for example, required qualifications) can be tailored to specific activities that a licence covers, as opposed to being required for all activities that a licence covers – for example, partial or restricted licences versus full licences.
- While an entire industry may be regulated, reporting requirements may be more stringent for high-risk parties.
- Monitoring compliance may be targeted at entities that have previously breached the licence conditions.

Risk-based principles can also be taken into account in the design of administrative processes. For example, enforcement action may vary depending on the nature of the conduct being addressed, or the number of times a licensee has breached their licence conditions. Information collection could be reduced for licensees that have a history of compliance.

Implementing risk-based regulation can be challenging, and may not be practical or effective in all circumstances. The ERA seeks feedback from stakeholders about whether and how risk-based regulation can be applied to the design and administration of business licences.

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<sup>23</sup> OECD, *Public Consultation on Best Practice Principles for Improving Regulatory Enforcement and Inspections: Draft report submitted to the public for comments*, OECD Publishing, 2013.

## Questions

- Should risk-based regulation be adopted when considering the design elements and administration of licences? Why/why not?
- If risk-based regulation should be adopted, how could it be reflected in each of the design elements of business licences?
- If risk-based regulation should be adopted, in what ways can it be reflected in the administration of business licences?

## 3. The guideline

The ERA has been asked to develop a guideline that departments can use to self-assess against the analytical framework. The intent of the guideline is to assist state government agencies assess the business licences they currently administer, or are considering introducing, against the analytical framework. The guideline will be a separate document that provides guidance notes to show how the analytical framework can be applied.

The ERA will develop the guideline at the same time as it develops the analytical framework. The framework and guideline will be released following consideration of submissions to the issues paper, and prior to publication of the draft report.

The ERA will develop a guideline that is useful, and easy to understand and apply. This will make it easier for state government agencies to undertake their roles as regulators. The ERA seeks feedback about the effectiveness of existing regulatory impact assessment and licence design guidelines, including the following:

- [\*The Australian Government Guide to Regulation\*](#)<sup>24</sup>
- [\*Regulatory Impact Assessment Guidelines for Western Australia\*](#)<sup>25</sup>
- [\*A best practice approach to designing and reviewing licensing schemes – Guidance material\*](#)<sup>26</sup>

<sup>24</sup> Department of the Prime Minister and Cabinet, *The Australian Government Guide to Regulation*, 2014.

<sup>25</sup> Department of Treasury and Finance, *Regulatory Impact Assessment Guidelines for Western Australia*, 2010.

<sup>26</sup> Independent Pricing and Regulatory Tribunal of New South Wales, *A best practice approach to designing and reviewing licensing schemes – Guidance material*, 2013.

### Questions

- What are the essential features the ERA's guideline should have for it to be useful to your agency?
- Do you find existing guidelines helpful, and easy to understand and apply? Why/why not?

## 4. Changing the culture of regulation

Several issues affect the appetite for, and pace of, reform of business licensing, including:

- A 'regulate first, ask questions later' culture created by society's desire to avoid risk.
- A tendency in government to favour strict and prescriptive approaches to lessen exposure to criticism, instead of educative and customer-service focussed approaches.
- The fact that business licensing schemes are often devised within individual agencies, instead of collaboratively.
- The incentives for businesses that are protected from competition by licensing to oppose changes to, or removal of, licensing schemes.

These issues are outlined in consultation paper 1.

One of the objectives of the analytical framework and guideline is to address these challenges, to encourage future reforms of business licensing. The ERA seeks views from stakeholders about how the analytical framework and guideline can address these challenges.

### Questions

- How can the analytical framework and guideline instil a good regulatory culture?
- How can the analytical framework and guideline encourage a coordinated approach to business licensing across the State Government?

## Appendix 1 Summary of questions

- What would make the framework and guideline useful for you?
- What would discourage you from using the ERA's analytical framework and guideline?
- What has deterred you from using existing frameworks and guidelines in the past?
- Do you use the Regulatory Impact Assessment program? Why/why not?
- Are there other analytical frameworks (e.g. from other jurisdictions) you find useful in considering whether business licensing schemes are the best way of addressing a problem? Why do you find these useful?
- What concepts should be used to assess whether business licensing is the best way to address a problem?
- Can these concepts be applied in the same way when introducing new, and assessing existing, business licensing schemes? If not, why not?
- Is the existing Regulatory Impact Assessment program effective at ensuring new business licensing schemes are rigorously justified?
- Could the existing Regulatory Impact Assessment program, and the analytical framework and guideline that the ERA is developing, work together to assist state government agencies assess when business licensing is the most efficient way to address a problem? If not, why not? If so, in what ways and at what stage(s) of the Regulatory Impact Assessment process?
- Does the Regulatory Impact Assessment program protect against the cumulative burden of regulation, including business licensing? If so, how? If not, why not?
- What mechanisms could be included in the analytical framework that the ERA develops to address the cumulative burden of both the existing stock of, and new, regulations and business licences?
- What elements of business licences should the ERA include as design elements?

- What features should the following design elements have to ensure the design of a business licence is consistent with its purpose, while minimising costs:
  - Coverage
  - Conduct rules
  - Mandatory attributes
  - Duration
  - Reporting requirements
  - Fees and charges
- What processes and approaches (for example, cost-benefit analysis, public consultation) should be used to both set and review business licence design elements?
- What is needed for an application process to be clear and concise?
- What characterises effective communication between state government agencies and licensees?
- What are easy ways for regulated parties to access information about their business licences?
- How can information requirements and duplication be minimised?
- What are the essential features of a risk-based compliance and enforcement regime?
- How frequently should business licensing schemes be reviewed and what features should the review process have?
- Are there other aspects of the administration of business licenses the ERA should include in the analytical framework?
- Should risk-based regulation be adopted when considering the design elements and administration of licences? Why/why not?
- If risk-based regulation should be adopted, how could it be reflected in each of the design elements of business licences?
- If risk-based regulation should be adopted, in what ways can it be reflected in the administration of business licences?
- What are the essential features the ERA's guideline should have for it to be useful to your agency?

- Do you find existing guidelines helpful, and easy to understand and apply? Why/why not?
- How can the analytical framework and guideline instil a good regulatory culture?
- How can the analytical framework and guideline encourage a coordinated approach to business licensing across the State Government?

## Appendix 2 Reference list

Council of Australian Governments, *Competition Principles Agreement – 11 April 1995*, <https://www.coag.gov.au/about-coag/agreements/competition-principles-agreement> [accessed 2 February 2018].

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