

# Inquiry into reform of business licensing in Western Australia

Overview of the inquiry and consultation process

19 February 2018

Economic Regulation Authority

WESTERN AUSTRALIA

## Economic Regulation Authority

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# 1 Inquiry into reform of business licensing in Western Australia

The Treasurer has asked the Economic Regulation Authority (ERA) to undertake an inquiry into reform of state government business and occupational licensing. This paper provides an overview of the inquiry and the ways you can provide your views.

Licences are used by government to achieve its economic, social and environmental objectives – they can therefore deliver great benefit. For example, occupational licences can protect the public's health and safety by increasing the quality of services, through requiring licence holders to have particular qualifications.

However, there must be a clear need for a licence and it must be well designed and efficiently administered, to ensure the costs of licensing do not outweigh benefits to the community.

Historically, businesses have been frustrated with the administration of licensing in Western Australia. Further, licensing schemes in some industries have been perceived to restrict business activity with no clear offsetting benefit. The effects on innovation and investment are reflected in the prices, quality and choice of goods and services available to Western Australian consumers.

The State Government has responded to concerns about the regulatory burden in recent years. However, there is probably scope for further reform. Some state government agencies are currently reviewing and reforming their licensing schemes. This inquiry will complement this work, and maintain the momentum of reform.

The ERA has been asked to identify opportunities to improve licensing arrangements generally, and priority areas for reform. The ERA will also develop an analytical framework and guideline that state government agencies can use to assess whether licences are needed, well designed, and efficiently administered.

The full terms of reference for the inquiry are available on the ERA's [website](#).

## 2 State government business licences

This inquiry is about state government business and occupational licensing. Throughout the inquiry, 'business and occupational licensing' will be referred to as 'business licensing'.

Business licensing is just one type of regulation the State Government places on businesses and individuals. The lines between different types of regulation are, however, not always clear. This section of the paper explains the regulations included in the scope of this inquiry.

## 2.1 What is a 'licence'?

A 'licence' is a requirement from government that has all of the following characteristics:<sup>1</sup>

- Notification – specified information is required to be supplied to a regulator.
- Approval – approval is obtained from a regulator to undertake a prescribed activity.
- Standards – a minimum level of standards is specified.
- Enforcement – requirements are legally enforceable and allow for the application of sanctions.

This definition is intended to capture licences, registrations, notifications, authorisations, accreditations, permits, approvals and certifications.<sup>2</sup> It is *not* intended to capture the following:

- Requirements from government that apply generally – for example, road rules and laws to combat crime.
- Requirements that are agreed between government and business – for example, in leases and State Agreements.

## 2.2 What is a 'business' licence?

It is difficult to identify strict criteria for deciding whether a licence is a 'business licence', given the many different types of licences.<sup>3</sup> At this stage, the ERA has asked the following questions to decide whether a licence is a business licence:

- Could a business need this licence to conduct their business operations?
- Could an individual need this licence to work in a particular occupation?

If the answer to either of these questions is yes, then the licence is a business licence.

Licences needed by Government Trading Enterprises<sup>4</sup> are included in the scope of the inquiry; but requirements the State Government *only* imposes on its own service delivery

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<sup>1</sup> Bureau of Industry Economics, *Business licences: International benchmarking*, Commonwealth of Australia, Canberra, 1996.

<sup>2</sup> Notifications do not strictly require approval to undertake a prescribed activity, however, the ERA is including them in the scope of this review. 'Checks' – such as the Working with Children Check – might also sometimes fall within the ERA's definition. Checks will be considered on a case-by-case basis.

<sup>3</sup> Categorising a licence as a 'business' licence can be complex. Some licences are required to work in a particular occupation, but are also required in a personal capacity. For example, a driver's licence is required to become an Uber driver, and is also required by anyone who wants to drive a car. Some licences are required before a business can start to operate, whereas others are required in the course of operating a business. For example, an architect cannot start to operate until they are registered with the Architects Board of Western Australia, whereas development approvals are only required for a builder or property developer to undertake a particular project, and only in certain circumstances.

<sup>4</sup> Government bodies whose prime source of revenue is selling goods/services in a commercial environment.

are excluded. For example, a licence to establish a private hospital is included, but requirements imposed on public hospitals are excluded.

The ERA will consider licences needed by not-for-profit organisations and charities, and volunteer workers. These organisations and individuals play an important role in the Western Australian community, and are affected by requirements from the State Government in the same way as businesses and paid workers.

## 2.3 What is a ‘State Government’ business licence?

The ERA has categorised a business licence as a ‘State Government’ business licence if the obligation to administer the licence comes from state government legislation or state government subsidiary legislation.<sup>5</sup> Business licences where aspects of their administration are delegated to local government by state government legislation are therefore included in the scope of the inquiry.

Business licensing schemes created by Commonwealth legislation, Local Government laws or voluntary industry arrangements, will not be considered, except when examining the cumulative regulatory burden of state government business licensing schemes.

### Licence

An impost or requirement from government characterised by: notification, approval, standards and enforcement

- ✓ Licences, registrations, notifications, authorisations, accreditations, permits, approvals and certifications
- ✗ General requirements (e.g. laws against crime)
- ✗ Agreed requirements (e.g. leases, State Agreements)

### Business

A business could need the licence to conduct its business operations, or an individual could need the licence to undertake a particular occupation

- ✓ Government Trading Enterprises (e.g. Western Power, Water Corporation)
- ✓ Charities, not-for-profit organisations, volunteers (e.g. the Salvation Army)
- ✗ Requirements specific to government services (e.g. public health)

### State Government

The obligation to administer the licence comes from State Government legislation or State Government subsidiary legislation

- ✓ State legislation requires local government to administer the licence
- ✗ State legislation provides local government the power, but not obligation, to licence
- ✗ Created by Commonwealth legislation or voluntary industry arrangements

<sup>5</sup> Business licensing schemes administered by the ERA are included in this inquiry. This includes the electricity licensing schemes established by the *Electricity Industry Act 2004*, the gas licensing schemes established by the *Energy Coordination Act 1994*, and the water licensing schemes established by the *Water Services Act 2012*. The ERA’s functions under the *Electricity Networks Access Code 2004*, the *National Gas Access (WA) Act 2009*, and the *Railways (Access) Code 2000* are excluded. A review of these access regimes is beyond the scope of the terms reference for this inquiry.

### 3 Current state government business licences

The ERA has identified all state government business licences by reviewing all state government legislation and subsidiary legislation, and cross-checking against the Small Business Development Corporation's Business Licence Finder database.

700 different types of state government business licences have been identified. Licences are the most common instrument, followed by permits, approvals, registrations, notifications, certifications, authorisations and accreditations.

#### Clearing permits

*Clearing permits are required to clear native vegetation – clearing includes killing, removing, severing or ringbarking of trunks or stems, or doing any other substantial damage to native vegetation. They are needed by businesses in many sectors of the economy.*

State government business licences affect virtually every sector of the Western Australian economy: from agriculture, forestry and fishing, to healthcare and social assistance; and from mining to accommodation, food, arts and recreation.

Over 40 state government agencies implement and administer state government business licences. The Department of Mines, Industry Regulation and Safety is responsible for the most state government business licensing schemes.

Several other state government agencies also have responsibility for a large number of business licensing schemes — for example, the Department of Health, the Department of Primary Industries and Regional Development, the Department of Local Government, Sport and Cultural Industries, the Department of Biodiversity, Conservation and Attractions and the Department of Water and Environmental Regulation.

#### Registering as an architect

*Only architects registered by the Architects Board of Western Australia may describe themselves as architects. Corporations describing themselves as architects must also be licensed with the Architects Board of Western Australia.*

#### Street collection permits

*Street collection permits are required to sell buttons, badges, tokens, or similar things to raise money in a public street or thoroughfare in the Perth metropolitan area.*

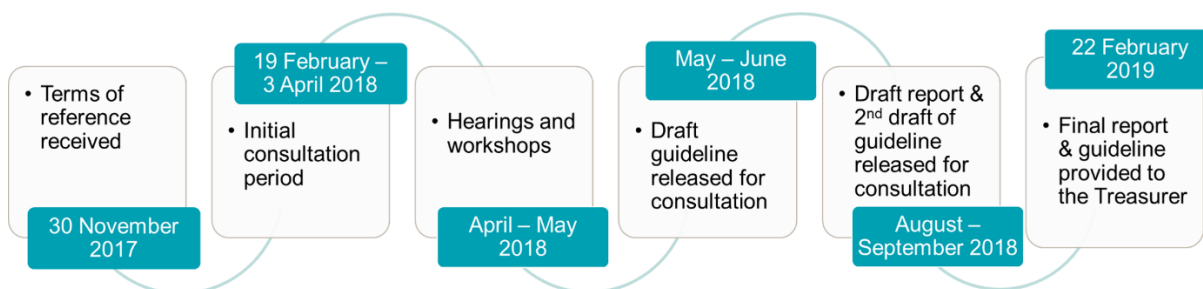
The ERA's preliminary identification of state government business licences can be viewed on the ERA's [website](#).

State government agencies have been sent a questionnaire about these business licences to further cross-check the ERA's preliminary identification.

The ERA welcomes information from all interested parties about whether there are any state government business licences missing from this list, or whether the list includes licences that are not state government business licences.

## 4 How to tell us your views

The ERA will consult with state government agencies, businesses and consumers, including in regional areas. Important inquiry dates are shown in the figure below.



### 4.1 Initial consultation

The ERA has released two consultation papers with this overview:

- **Consultation paper 1: Identifying priority areas for reform** – provides guidance about how the ERA will do the following:
  - Identify priority areas of reform for business licensing.
  - Decide which high priority business licences to assess against the analytical framework.
- **Consultation paper 2: Analytical framework and guideline** – provides guidance about how the ERA will develop the analytical framework and guideline that state government agencies can use to assess whether business licences are needed, well designed, and efficiently administered.

These consultation papers are available on the ERA's [website](#).

Interested parties are invited to make submissions to the consultation papers by **4:00 pm (WST) TUESDAY, 3 APRIL 2018** via:

- Our website: <https://www.erawa.com.au/consultation>
- Postal address: PO Box 8469, PERTH BC WA 6849
- Office address: Level 4, Albert Facey House, 469 Wellington Street, Perth WA 6000
- Fax: 61 8 6557 7999

Business licence holders and members of the public can also provide their views by responding to the questions on the ERA's [website](#), until **4:00 pm (WST) TUESDAY, 3 APRIL 2018**.

State government agencies have been sent a questionnaire about the licences they administer, to assist with the ERA's identification of all state government business licences and priority areas for reform. Responses to the questionnaire are due by **4:00 pm (WST) TUESDAY, 3 APRIL 2018**.

Details of hearings and workshops will be provided once the above consultation period has closed. Interested parties can request a meeting with the ERA at any time.



## 4.2 Consultation on draft documents

The ERA will consult on a draft of the analytical framework and guideline shortly after the initial consultation period closes.

It will also release a draft report, along with another draft of the analytical framework and guideline, in August – September 2018. Interested parties will be able to provide further submissions at this time.

The final report will be provided to the Treasurer by 22 February 2019.

### CONFIDENTIALITY

All submissions from interested parties will be treated as being in the public domain and placed on the ERA's website. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed, and specify in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the provisions of the *Economic Regulation Act 2003*.

The publication of a submission on the ERA's website shall not be taken as indicating that the ERA has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority.

## 4.3 Contacts

If you would like further information or to request a meeting, please call or email one of the contacts below.

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