

Inquiry into reform of business licensing in Western Australia

# Summary of recommendations

The Economic Regulation Authority's inquiry into reform of business licensing in Western Australia was completed on 22 February 2019. The ERA's final report contains 15 recommendations, which work together to create a governance framework for business licensing that aims to bring about accountability and cultural change at all stages of the licensing lifecycle, and at the ministerial and agency levels of government.

You can read the final report for the ERA's inquiry into state government business licensing at [www.erawa.com.au/licensinginquiry](http://www.erawa.com.au/licensinginquiry)

## Recommendations

**Recommendation 1:** Responsibility for cross-government business licensing policy, monitoring and performance improvement should be assigned to a senior minister. This minister would be accountable for implementing and reviewing the governance framework for business licensing, assessing duplication, regulatory gaps and the cumulative regulatory burden, and the overall performance of the licensing system.

This senior minister will seek to raise the priority given to improving business licensing in Cabinet and Parliament, help create a culture of continuous improvement and ensure that business licensing schemes are treated as a regulatory portfolio. This role would complement the existing responsibility for particular business licensing schemes that would remain with the ministers for the relevant portfolio agencies.



**Recommendation 2:** State government agencies should manage business licensing schemes as public assets and continually manage and improve these schemes. To support agencies to do so, and also to hold these agencies to account, a governance framework for business licensing should be implemented. This governance framework comprises the reporting, review, consultation, transparency and oversight measures outlined in the recommendations in this report. The government should review the effectiveness of the framework every five years.

**Recommendation 3:** The governance framework should include a mechanism that requires agencies to treat business licensing schemes as public assets and continually manage and improve these schemes. The Streamline WA steering committee should consider which mechanism would be most effective. Options include direct communication from Streamline WA to agency heads, instruction from the Premier, senior minister or Public Sector Commissioner, amending chief executive officer performance agreements, or legislation.

**Recommendation 4:** When agencies report on reform activities under Streamline WA, that reporting should include:

- Improvements to business licensing schemes that the agency intends to implement in the next 12 months.
- Changes to business licensing schemes made in the previous 12 months.

Under Streamline WA, this reporting will be presented as an annual Economic Reform Statement by the Treasurer to Parliament.

**Recommendation 5:** To make reform and improvement of business licensing schemes easier, government should:

- Require a central agency to coordinate an omnibus bill each year to implement legislative changes needed to improve business licensing schemes. It should establish a process for business licensing omnibus bills similar to the process established by Premier's Circular 2010/01 for Statutes (Repeals and Minor Amendments) Bills to assist the passage of these omnibus bills through Parliament.
- Ensure that, when business licensing schemes are introduced or reviewed by Parliament, primary legislation includes only the elements of schemes that need parliamentary consideration (for example, the objectives of the scheme, the power to grant, amend, suspend or cancel a licence, offences, the power to collect fees, and review or appeal rights), and does not prescribe administrative and procedural requirements.
- Amend primary legislation to remove any requirement to prescribe in regulations the forms (for example, application forms) for business licensing schemes, and instead, require that forms be approved by the relevant minister or director general.
- Consider using automatic repeal clauses in new legislation to assist with phasing out business licensing schemes (or aspects of schemes) that solve a time-limited problem, that may become outdated because of rapidly changing events or technologies, or when there is uncertainty about the outcomes the scheme might achieve when it is introduced.
- Develop guidelines on best practice legislative drafting that provides guidance on what aspects of business licensing schemes should be included in primary and subsidiary legislation.





**Recommendation 6:** In order to ensure agencies review whether older schemes are needed and remove redundant licensing schemes, Streamline WA should consider automatic repeal (sunset) legislation that operates for a limited time. The sunset legislation should apply to business licensing schemes that have not had the need for the scheme reviewed for over 10 years. Streamline WA should also consider circumstances for exemptions from the sunset legislation, and whether primary and/or subsidiary legislation should be included.

**Recommendation 7:** Agencies should improve consumer and licensee input into the design and management of business licensing schemes. To make engagement easier for consumers and businesses, and promote better outcomes in consultations about business licensing, the government should:

- Develop a central website that agencies can use to host consultation about business licensing and as a repository for submissions and completed reviews.
- Support the website with a clear set of guidelines for users about how to engage on the website, and educational material and training for agencies.

The Department of the Premier and Cabinet should include this recommendation in its plans when developing the whole-of-government strategy for community engagement (recommended by the Service Priority Review).

**Recommendation 8:** 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 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 final response to the agency. Publish and maintain a repository of agencies' Consultation Regulatory Impact Statements and submissions to those statements. Consultation Regulatory Impact Statements should be published as soon as the agency has completed them. Submissions should be published as soon as possible after the agency receives them.
- Publish and maintain a repository of agencies' Decision Regulatory Impact Statements and the Better Regulation Unit's responses. Decision Regulatory Impact Statements and the Better Regulation Unit's responses should be published as soon as possible after a decision about the regulation has been made, allowing for confidential information to be redacted and minor errors to be corrected.

**Recommendation 9:** As part of the business licensing governance framework, a unit within government should be given responsibility for helping agencies to develop capability in evaluating the performance of business licensing schemes and holding agencies to account in evaluating and improving business licensing schemes. The licensing support unit would have the following functions:

- To maintain a register of business licensing schemes and administering agencies.
- To provide a repository for existing guidance material, develop further guidance material where there are gaps, and train agencies in business licensing evaluation and improvement.
- To support and assist agencies in using common assessment tools when evaluating business licensing schemes (see Recommendation 10), and in applying the guidelines described in appendix A.



- To review and refine the common assessment tools to ensure they remain useful and do not create unnecessary reporting burden.
- To compile and publish annual State of Licensing reports based on agencies' reporting on business licensing schemes against the common assessment tools. The report should provide an assessment of the overall quality of business licensing in Western Australia and of agencies' performance in managing business licensing schemes. The report should also identify priority areas for reform. The reports should be provided to the Streamline WA steering committee. This will help to raise the priority given to improving business licensing schemes by government.

**Recommendation 10:** Agencies should report to the licensing support unit (see recommendation nine) annually on the management of business licensing schemes using the two common assessment tools set out in this report. This will hold agencies to account for evaluating whether business licensing schemes are achieving their intended objectives, being administered in a cost-effective way and being complied with. It will also assist the licensing support unit to identify priorities for reform. The common assessment tools are [available on the ERA website](#).

**Recommendation 11:** Agencies should review the outstanding recommendations for business licensing schemes that have been reviewed since 2013 (appendix D). The ERA recommends that agencies focus on schemes for which the review concluded more than 12 months ago, and that affect industries with a large effect on the Western Australian economy and/or protect against risks to safety. In particular, implementing recommendations from the review of dangerous goods licensing should be a government priority. Agencies should consider whether any of the recommendations could be implemented through the next omnibus bill.

**Recommendation 12:** Agencies should assess business licensing schemes that have not been reviewed in more than 10 years (appendix C), to determine whether a major review is required. The ERA recommends that agencies focus on schemes that affect industries that have a large effect on the Western Australian economy and/or protect against risks to safety. In particular, reviewing the waterways conservation licensing scheme, and security, investigator and crowd controller licensing schemes, should be a government priority.

**Recommendation 13:** To address a lack of transparency in compliance, agencies should create, or review and update, compliance and enforcement policies for business licensing schemes, and publish them on their websites. Compliance and enforcement policies should explain how the approach to compliance for different schemes reflects the consequences of non-compliance.

**Recommendation 14:** To address the slow rate of digitisation of administrative processes and reduce the administrative burden for licensees, government should target Information Communications Technology investment toward business licensing schemes that currently have no information about the scheme on any agency's website, and/or where online application processes are not available, only partially available or unclear (appendix E).

**Recommendation 15:** To assist agency staff to carry out their regulatory responsibilities effectively and efficiently, agency heads should ensure that capability gaps identified in this inquiry are addressed. Public Sector Roadmap for Reform initiatives to improve agency capability should address cross-agency skills gaps in assessing and prioritising the risks that different licensing schemes manage; analysing and drawing conclusions from large sets of data (for example, about compliance); understanding the role of a compliance officer; and providing legislative drafting instructions.

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