



Chamber of Commerce
and Industry WA

LOCAL GOVERNMENT ACT REVIEW PHASE 2

**Submission by the Chamber of Commerce and Industry of Western
Australia**

28 March 2019

Introduction

The Chamber of Commerce and Industry of Western Australia (CCIWA) appreciates the opportunity to make a submission to Phase 2 of the State Government's review (Review) of the *Local Government Act 1995* (Act) that is being coordinated by the Department of Local Government, Sport and Cultural Industries (Department). Given the frequent and important interactions between councils and businesses, it is crucial that Western Australia has a capable and efficient local government sector that can effectively deliver services, fulfil its legislative functions and facilitate business activities in the community.

Our submission in response to Phase 1 of the Review focused on the issues of red tape, regional subsidiaries, training and access to information. CCIWA welcomes the outcomes of Phase 1 of the Review, which largely aimed to improve the training and capability of public officials and facilitate better access to information for stakeholders at the local government level.

CCIWA still considers that many of the issues the Review is seeking to address could be resolved by reducing the number of local governments in Western Australia. While noting that amalgamations are not within the scope of this Review, any consideration of options for improving the efficiency, effectiveness and sustainability of local governments is incomplete without discussing the number of local governments in the State and the need for achieving better economies of scale. CCIWA therefore urges the State Government to not exclude the prospect of reducing the number of local governments in WA as part of a future local government reform program once this Review is completed.

Recommendation: The State Government should remain open to considering reducing the number of local governments in Western Australia as part of a future reform program.

The focus of this submission

CCIWA's submission to Phase 2 of the Review focuses primarily on:

- **Beneficial enterprises:** CCIWA members have expressed concerns about the potential for the proposed beneficial enterprise (also known as council-controlled organisations) model to enable local governments to directly compete with private businesses. Our submission highlights some of the risks associated with beneficial enterprises and discusses circumstances where government intervention may or may not be appropriate. We also discuss some of the lessons from recent investigations into government-owned entities, which we urge the State Government to consider as part of its deliberations on the proposed beneficial enterprises model.
- **Administrative efficiencies:** The efficient administration of regulations and services at the local government level is crucial for enabling business activities within the community. The issue of 'red tape' is a perennial problem for CCIWA members that can be a significant source of frustration and unnecessary cost. Our submission discusses how to define red tape and how it can be differentiated from regulations designed to achieve a public interest. We also present the views of businesses regarding their interactions with local governments.
- **Rates, fees and charges:** Local government rates fees and charges have a substantial effect on the cost of doing business and the amount of disposable income households can spend in the local economy. We raise some concerns about recent rapid growth in local government rates and how this can be addressed.

Beneficial Enterprises

CCIWA urges the State Government to exercise extreme caution when considering the introduction of powers under the Act that will enable local governments to form independent corporations, known as beneficial enterprises or council-controlled organisations.

Enabling local governments to establish corporations presents multiple risks that must be carefully considered by the State Government. It can lead to local governments inappropriately competing with the private sector to provide goods and services. Government ownership of businesses can also give rise to a multitude of governance issues and conflicts of interest. There are also questions about the capability and capacity of local governments to manage commercial risk, as well as investigate and establish commercial ventures while continuing to efficiently and effectively deliver core services and fulfil legislative functions.

The local government sector is advocating for the ability to establish beneficial enterprises for the purposes of managing a local government's existing business activity or pursuing new commercial opportunities. The sector argues that these powers are required to achieve the following outcomes:

- Providing local governments with a more efficient mechanism for servicing communities.
- Providing services to the community where the private sector or State Government are unable or unwilling to do so.
- Addressing a 'market failure' that has resulted in the closure of community businesses.
- Driving the growth of small regional towns.¹

The State Government should assess whether beneficial enterprises are the most efficient mechanism for achieving the outcomes sought by the local government sector. In considering the merits of beneficial enterprises, State Government should consider the relative costs and benefits of various methods for achieving the above-mentioned outcomes sought by the local government sector. CCIWA also urges the State Government to reflect on recent investigations that have highlighted systemic issues with government-owned businesses, leading to sub-optimal outcomes.

Consideration should also be given to whether existing powers, such as the ability to establish Regional Councils and Regional Subsidiaries, are currently sufficient or can be adapted to achieve the desired outcomes of the local government sector.

Also concerning is the intention to use beneficial enterprises as a driver of growth in small regional towns. The current lack of scale, tenuous financial position and limited capability of many councils in regional areas suggests that the pursuit of commercial ventures as an avenue of growth is fraught with danger. Instead, efforts should be focused on pooling resources between smaller councils, achieving scale and effectively delivering services to the local community. There are many reasons for a lack of growth in small regional communities, many of them driven by social and economic forces that are well beyond the influence of a local government. Rather than trying to force growth by undertaking commercial ventures, local governments would be better off focusing on facilitating economic development and investment. This will create jobs, attract new residents and drive the growth of regional communities.

Recommendation:

The State Government must question the rationale for using beneficial enterprises as a strategy for driving growth in small regional towns.

The State Government should assess alternative options for improving the efficiency of local government service delivery, addressing market failures and driving growth in small regional towns – including the relative costs and benefits of these options – before enabling the establishment of beneficial enterprises.

¹ Department of Local Government, Sport and Cultural Industries (2018). Discussion Paper: *Beneficial Enterprises*. Accessed from: <https://www.dlgsc.wa.gov.au/resources/publications/Pages/ViewPublicationNewStyle.aspx?DocID=1538>.

Addressing market failure

CCIWA considers the establishment of a beneficial enterprise by a local government to be a form of market intervention. This interpretation is supported by the local government sector's desire to use beneficial enterprises as a mechanism for addressing market failures. CCIWA therefore urges the State Government to clearly and correctly define the term 'market failure' and apply it when considering whether to grant local governments the power to establish beneficial enterprises. If the State Government proceeds with introducing these powers, they must be limited to instances where market failure is occurring. If a market failure is present, local governments should not use beneficial enterprises as a default or 'go-to' option and consider the relative costs and benefits of options for correcting the market failure.

Market failure must be tightly defined and regulated as an economic concept that can be used to justify substantial interventions in a market. It should not be subject to interpretation.² For example, the failure of a business is often described as a market failure – this is incorrect. The failure of a business should not be used by local governments as justification for intervening in a market and establishing a beneficial enterprise.

The WA Department of Treasury's *Regulatory Impact Assessment Guidelines for Western Australia* provides some guidance on the definition and causes of market failure:

"Market failure occurs when the market alone does not efficiently organise production or allocate goods and services for consumers."

Unpacking this definition further, the Department of Treasury lists reasons for market failure, including³:

- **Provision of Public Goods:** Public goods and services are often not provided or are under-provided by the private sector. This generally occurs when goods and services are non-rivalrous or non-excludable in consumption. Importantly, the Department of Treasury highlights that when considering intervention in these situations, governments must determine the underlying reasons for the non-provision or under-provision of goods and services. If the private sector does not provide a good or service due to the high cost of provision or demand that does not justify its provision, this should not be considered a market failure and governments should not regulate (or intervene) to provide an inefficient good or service that the market is not willing to supply.
- **Externalities:** The presence of externalities in a market produces positive or negative side effects to parties not involved in the consumption or production of a good or service. Externalities are not reflected in the price of goods and services and can therefore drive inefficient consumption. In such instances, government intervention can potentially be justified to 'internalise' the external costs or benefits of a good or service. However, the Department of Treasury also notes that in instances where the cost of internalising an externality exceeds the benefits, governments should consider non-regulatory solutions.
- **Information asymmetry:** This occurs when market participants do not have access to adequate information about the price, quality or availability of a good or service to make a decision that is in their best interest. Information can often be easily addressed by businesses improving the provision of information to customers, but government intervention is sometimes required to ensure consumers are adequately informed about a good or service.
- **Market power:** Market power occurs when a lack of competition enables a firm to raise prices above competitive levels. This can happen when a firm controls a large portion of a market, enabling anti-competitive conduct and the creation of barriers to entry for potential competitors. Another anti-competitive behaviour that may arise due to the presence of market power includes squeezing out smaller competitors by lowering prices below the cost of production. Markets where government-owned entities compete with the private sector are especially at risk of creating market power if competitive neutrality principles are not adhered to.

Classifying something as a 'market failure' is not sufficient for demonstrating that government intervention is optimal or justified. The New South Wales Government's *Market Failure Guide* provides further guidance to governments on testing if government intervention is warranted. In addition to a market showing characteristics of market failure, the following conditions should be met:

- it must be technically feasible to address and overcome the market failure;

² Government of Western Australia, 2010. *Regulatory Impact Assessment Guidelines for Western Australia*. Accessed from: https://www.treasury.wa.gov.au/uploadedFiles/Site-content/Economic_Reform/RIA_Program/ria_guidelines.pdf

³ Ibid.

- the benefits of intervention must outweigh the costs; and
- non-government means must be unable to resolve the market failure in an equally effective manner.⁴

When assessing the costs of intervention in response to market failure, governments must also consider the potential for 'government failure'. This occurs when an effort by a government to address a market failure imposes unintended consequences and costs on the economy. Inefficiencies arising from government failure generally occur when a government should not have intervened in the first place or when it could have solved a market failure more efficiently.⁵

Recommendations:

Beneficial enterprises should not enable local governments to compete directly with the private sector.

If addressing market failure is to be used as a justification for allowing local governments to establish corporations, this decision must be based on a clear and correct definition of the term 'market failure'.

A clear market failure must be demonstrated to justify intervention by local governments, whether it be via the establishment of a beneficial enterprise or other mechanisms.

The use of beneficial enterprises should be limited to instances of market failure and when the benefits of intervention outweigh the costs.

Competitive Neutrality

The Department's Beneficial Enterprises Discussion Paper⁶ correctly highlights potential implications for competitive neutrality arising from a local government establishing a corporation.

The objective of competitive neutrality is to eliminate the distortionary effect publicly-owned businesses have on resource allocation within the economy. An overarching principle of competitive neutrality is ensuring that government-controlled businesses do not enjoy competitive advantages relative to the private sector by virtue of being publicly owned or accessing finance at government rates. In short, government businesses should not have a competitive advantage over the private sector as a result of being publicly owned. Another key principle of competitive neutrality is ensuring a government business is subject to full Commonwealth, State and Territory taxes or tax equivalent systems.⁷

Local government-run enterprises could derive an unfair competitive advantage over private enterprises in the provision of commercial services if they are able to obtain finance at the same rate as State Government-owned enterprises. An implication of not maintaining competitive neutrality is that the establishment of a beneficial enterprise to provide a commercial service would crowd out private sector providers in the future.

It is therefore crucial that any provisions allowing local governments to establish beneficial enterprises must preserve competitive neutrality principles to ensure government-owned entities do not have an unfair advantage over the private sector.

Recommendation: The State Government should preserve competitive neutrality principles when considering the introduction of powers that enable local governments to establish a corporation.

⁴ NSW Department of Industry, 2017. *Market failure guide: A guide to categorising market failures for government policy development and evaluation*. Accessed from: <https://www.opengov.nsw.gov.au/download/17004>.

⁵ AEI-Brookings Joint Center for Regulatory Studies, 2006. *Government Failure vs Market Failure*. Accessed from: <https://www.brookings.edu/wp-content/uploads/2016/06/20061003.pdf>.

⁶ Ibid

⁷ Government of Western Australia, 1996. *Policy Statement on Competitive Neutrality*. Accessed from: https://www.treasury.wa.gov.au/uploadedFiles/Site-content/Economic_Reform/Regulatory_Reform/policy-on-competitive-neutrality.pdf.

Poor governance and conflicts of interest

In August 2018, Queensland's Crime and Corruption Commission (CCC) tabled its report⁸ following the completion of an investigation into the Ipswich City Council. The investigation was undertaken in response to allegations of misconduct in the Council and resulted in 15 people being charged with criminal offences, including two mayors, two Chief Executive Officers and a Chief Operating Officer.

The investigation and subsequent charges arose from improper dealings between a local government and the private sector, particularly property developers and contractors. It was found that the use of council-controlled entities (similar to beneficial enterprises) by the Ipswich City Council gave rise to a number of serious risks and enabled the Council to avoid being fully transparent and accountable.

Subsequently, the CCC recommended that the Queensland State Government re-examines the need for local governments to utilise beneficial enterprises and review the related provisions in Queensland legislation. It was also recommended that the review of existing provisions should consider further controls and regulation to ensure beneficial enterprises do not expose local governments to greater risks of misconduct. Furthermore, the CCC considered that beneficial enterprises should be deemed to be units of public administration in order to bring them within oversight of the CCC and subject them to Queensland's equivalent of WA's freedom of information provisions.

Another governance issue arising from the formation of beneficial enterprises is the potential for conflicting and competing interests between the regulatory functions of local governments (e.g. planning and zoning, health approvals and other permits) and the commercial interests of a government-owned business. Such functions could potentially be leveraged by a local government to facilitate the business activities of one of its beneficial enterprises and give it an unfair advantage over private enterprises. To control against this risk, there should be a process that formally separates a beneficial enterprise from the regulatory arms of the responsible local government. Controlled entities should also be transparently subject to the same regulatory approval process as privately-run organisations. This will help reinforce competitive neutrality principles under a beneficial enterprise regime.

Recommendations:

The State Government should minimise the risk of misconduct and conflicts of interest by public officials when considering granting powers that enable local governments to establish a corporation.

The State Government should ensure beneficial enterprises (if enabled) are subject to the same regulatory approvals process as privately-run organisations by formally separating a beneficial enterprise from the regulatory arms of the responsible local government.

Learning from the GTE experience

There are many parallels between the proposed beneficial enterprise model and the WA State Government's Government Trading Enterprises (GTEs). Like beneficial enterprises, GTEs are public corporations with commercial objectives that derive their primary revenue from the sale of goods and services in a commercial environment.⁹ Beneficial enterprises and GTEs also have independent boards that report to their controlling shareholder (the relevant Council in the case of beneficial enterprises and the relevant State Government Minister in the case of GTEs).

The *Special Inquiry into Government Programs and Projects* (also known as the Langouant Inquiry) was commissioned by the WA State Government to understand the drivers and failures that contributed to the State's recent large operating deficits and unsustainable debt, including the conduct of some GTEs when undertaking specific programs and projects. The findings of the Langouant Inquiry should serve as a cautionary tale for the State Government as it considers granting powers enabling local governments to establish corporations.

⁸ Crime and Corruption Commission Queensland, 2018. *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)*. Accessed from: <http://www.ccc.qld.gov.au/news-and-media/ccc-media-releases/ccc-finalises-ipswich-city-council-investigation-and-tables-report-in-parliament-14-august-2018>.

⁹ Public Sector Commission, 2018. *Special Inquiry into Government Programs and Projects: Volume 1*. Accessed from: https://publicsector.wa.gov.au/sites/default/files/documents/special_inquiry_into_government_programs_and_projects_volume_1.pdf.

The Langoulant Review highlighted multiple systemic deficiencies across GTEs and their interface with government and the broader public sector, including incomplete documentation, poor planning and project management, unsatisfactory governance, a lack of transparency and inadequate contract management.

Other issues identified by the Langoulant Inquiry included poor compliance with procurement practices, inadequate consultation with Treasury and other government stakeholders, as well as a failure to provide information to their relevant Minister and Parliament. Poor and non-existent business cases, as well as a failure to consider a range of options or have proper analysis conducted were also identified as problems by the Inquiry. Concerningly, the Inquiry also highlighted that the appointment of directors to GTE boards has long been an exercise in 'political patronage'.

Many issues identified by the Langoulant Inquiry were attributed to the lack of clarity (and subsequent tension) around the requirement for GTEs to act like a commercially-focused business while also being transparent and accountable to the State Government as controlling shareholder. Some GTEs were initially designed with a view to privatising these businesses, particularly those operating in the electricity sector. However, since privatisation efforts have largely stalled in recent years, these government businesses have been left in somewhat of a 'limbo', where they are expected to act as both a commercial business and an arm of government.

Following the Langoulant Inquiry, the State Government has committed to a reform program for strengthening the governance and accountability of GTEs. The purpose of discussing GTEs in this submission is to highlight the difficulty in government-owned corporations delivering efficient outcomes while maintaining adequate governance practices, transparency and accountability. In considering the merits of beneficial enterprises, the State Government must consider the capability of local governments to navigate the difficulties and complexities of pursuing commercial outcomes while maintaining the level of governance, accountability and transparency expected of government.

Recommendation: State Government should refer to the findings of the Langoulant Inquiry and apply these lessons when considering the merits of allowing local governments to establish a corporation.

Administrative Efficiencies

Making it easier to do business

Local governments have a key role in facilitating an environment for people to invest in new projects, start businesses and drive economic growth. People and businesses are best placed to use their knowledge to identify and pursue new opportunities for starting a business or project by directing resources to profitable venture. In turn, this will create new jobs, help to diversify the economy and drive prosperity.¹⁰

It is important for somebody who is contemplating a new investment or starting a business to identify how much the venture will cost, how long it will take to determine if the investment is viable, how much finance they need to secure and if they are better off investing in another project. An early rejection is helpful in these situations because it enables a proponent to disqualify a project and commit resources to profitable, viable projects.

However, people often encounter barriers when starting up a new business or project. These issues particularly affect new pioneer businesses that are looking to do something different that has not been contemplated by a state agency, local government or existing regulations. This causes substantial delays and creates a first-mover disadvantage. Subsequently, investment will either be delayed or diverted to other local government areas, states or countries with a more favourable business environment.¹¹

It is useful to focus on making it easier for individuals and businesses to start their operations and projects in WA. Policies that make it difficult for small business to start, operate and scale-up will dampen economic diversification, competition and the emergence of new industries in WA.

It would therefore be useful for the Review to:

- identify and summarise problems that businesses have raised with the Review (in a deidentified way) and their causes; and
- make practical recommendations that address the causes of issues raised by businesses and not-for-profits (e.g. actions that reduce regulatory inconsistency and red tape).

Defining red tape

Most regulation is implemented with the intent of achieving a public interest, such as safe food and a safe workplace. This is typically defined as objectives of an Act or regulations that provide for licensing or permitting. Businesses agree with these public interests and must meet regulated standards on an ongoing basis to operate.

Government agency and council staff play an important role in administering regulation on behalf of the State to achieve the public interest. The core job for State agencies and council staff who oversee business licensing includes: administering the rules, providing clear guidance and education on the rules to regulated parties, enforcing the rules and ensuring compliance, reviewing operations and making changes to create efficiencies across all these areas. It should be business-as-usual activity for an agency or council to seek feedback, review their operations and undertake continuous incremental improvement, just as it is for any other organisation or business in WA.

There is also a public interest in jobs and investment, but this is not usually an objective of an Act or regulations.

Businesses identify red tape as an unnecessary and excessive burden that is imposed on regulated parties by either the regulation itself or the way it is administered by public agencies, which does not achieve a public interest. For example, agencies can impose delays that are not necessary and add to lead times that negatively affect projects and business activities. This directly harms investment, employment, productivity and the public interest in jobs and investment.

It is possible to fix some red tape issues simply by recognising that it is possible to achieve the public interest outlined in the objectives of an Act and the public interest of jobs and investment. In other words, a reduction in red tape need not occur at the expense of the public interest.

¹⁰ Hayek, 1945. The Use of Knowledge in Society.

¹¹ For example, see the Business Council of Australia: <https://www.bca.com.au/competitive-project-approvals>.

Identifying red tape

The Department's Administrative Efficiencies discussion paper¹² states that:

"Distinguishing red tape from vital checks which ensure our government acts in a fair manner, members of the community are protected and that everyone abides by the law, can be difficult..."

It is possible to distinguish red tape from vital checks by asking if an issue described by a business achieves a public interest or not, or if there is a more effective way of achieving the public interest. If the issue described by the business does not achieve a public interest, it is red tape.

Some examples of red tape issues that do not achieve a public interest include:

- excessive paperwork;
- delays in approvals;
- excessive or unnecessary information requests;
- duplicated requests for similar information by different regulators or agencies;
- excessive regulatory rules and complicated processes that stop you getting things done;
- inconsistent and overlapping approaches by regulators; and
- poorly-designed regulations.

To fix onerous red tape identified by businesses, it is important to first identify whether it is being caused by an Act, regulations, local laws, national standards or the way the requirements are interpreted and to group common problems. Identifying common and reoccurring red tape issues will help ensure the Government is able to better target its efforts to reduce red tape across agencies. To further enhance collaboration across government, CCIWA recommends that any information collected as part of the Review is shared with the State Government's Streamline WA unit.

Recommendation: The Department of Local Government, Sport and Cultural Industries should share information from the Review with Streamline WA to help identify common and reoccurring red tape issues.

Inconsistency

The Administrative Efficiencies discussion paper¹³ indicates that many submissions to the Review have raised inconsistency across and within local governments as an issue and links this to problems with local laws. The proposed ideas for change to address these issues include: "provide more consistency in local laws between districts" and "require local governments to have their local laws certified by a legal practitioner".

Many issues that affect businesses and not-for-profits are not however caused by local laws and are instead caused by interpretation. This includes inconsistent requests and requirements across different councils that administer the same state regulations on behalf of a State agency. Many of these "local specials" are not outlined, gazetted or approved. However, a business is expected to meet all these requirements and conditions to start or operate a business.

Some of these issues are national problems. To address issues of inconsistency among different local governments, others have outlined that government agencies must make the regulation clear:

"The legal position in respect of some aspects of [regulation] may require clarification by way of a legal opinion to make absolutely clear the scope and some of the powers of the Act, and whether some changes in regulation are needed to put the intended policy beyond argument in order to limit the discretion of local government to customise their implementation of the Act. Currently some differences in interpretation

¹² Department of Local Government, Sport and Cultural Industries, 2018. *Administrative Efficiencies*. Accessed from: <https://www.dlgsc.wa.gov.au/resources/publications/Pages/ViewPublicationNewStyle.aspx?DocID=1540>.

¹³ Ibid.

exist in practice... this customisation leads to inconsistency as well as in some cases inappropriate reliance on obsolete standards.”

Victorian Red Tape Commissioner, 2017¹⁴

Recommendations:

List out each specific red tape issue raised by businesses and not-for-profits. This should include: issues raised in discussions in forums and meetings, as well as correspondence and submissions; and identify the cause of the problem and the impact on the business.

Focus reform efforts on issues that are commonly raised. This will deliver the best return on the Government’s efforts.

Government actions should directly address the issues raised by businesses. Some recommendations that might address inconsistency around the requirements and requests to start a business include: clarify the rules, remove obscure requirements, clarify the scope of a decision, improve reporting to the CEO of the local government and improve the collection of data.¹⁵

Business interaction with local governments

What businesses say

In CCIWA’s latest Business Confidence Survey¹⁶, 237 businesses responded to the question: “How easy is it for your business to interact and work with local councils?” The results of this survey question are summarised in Figure 1, below.

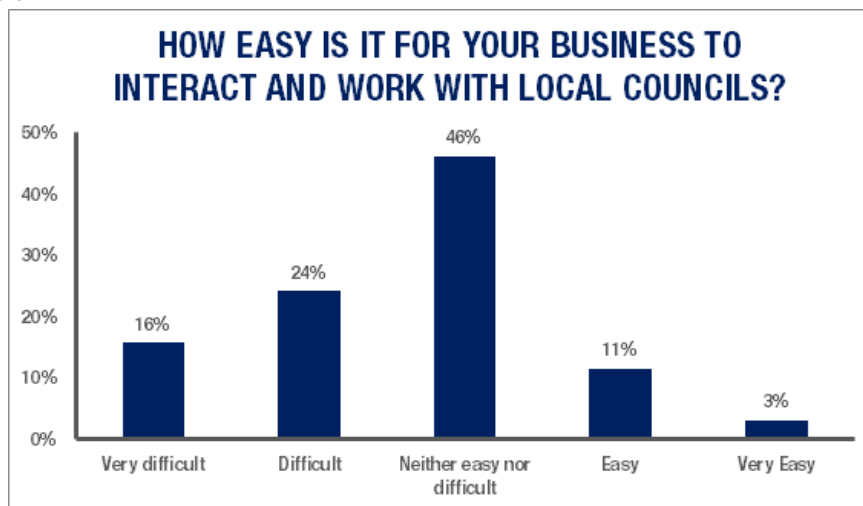


Figure 1: Ease of interacting and working with local councils

Forty per cent (40%) of responding businesses indicated that it is either very difficult or difficult to work with local councils, while 14 per cent of businesses indicated that it is easy or very easy to work with local councils.

Businesses raise many specific examples over time with other businesses, industry groups, councils, Ministers and in local and international media. These issues can be very specific and it is useful to go through and identify each problem and its cause.

¹⁴ Red Tape Commissioner, 2017. Submission to Retail Review https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/5415/1571/2940/Red_Tape_Commissioner.pdf

¹⁵ Some recommendations are outlined in CCIWA’s submission to the ERA Inquiry into Reform of Business Licensing: [https://www.erawa.com.au/cproot/19932/2/\[2017LicInq\]%20%E2%80%94%20Public%20Submission%20on%20Draft%20Report%20E2%80%93%20CCIWA.pdf](https://www.erawa.com.au/cproot/19932/2/[2017LicInq]%20%E2%80%94%20Public%20Submission%20on%20Draft%20Report%20E2%80%93%20CCIWA.pdf)

¹⁶ CCIWA Business Confidence Survey, March Quarter 2019.

Some specific issues described by businesses in response to the CCIWA survey include¹⁷:

- “It is impossible to deal with [councils] at all. Local council delays, lack of interest and totally blasé attitude has meant that completion of a simple warehouse has taken almost 3 years. Never again will we build - simple as that.”
- “An immediate example that has just happened: in our efforts to save costs we are installing solar panels on our commercial building. There is NO REQUIREMENT for local shire approval to do this on a residential property, just your standard Western Power and electrical approvals as you would expect, but there is new legislation just introduced now that even if you install one solar panel you now require to submit, pay and have the shire approve the solar panel installation. There appears to be two sets of rules.”
- “Another example is a duplex block. If you sell the two blocks separately the purchaser can build a standard house. But as the original owner you are considered a developer and if you built and then sold the finished product you fall under the developer legislation. In this example the seller had to install two \$10,000 commercial soak wells and a driveway drain to contain all run of water, to no end financial benefit.”
- “...I have recently obtained some public data on the local shire here around Bunbury regarding their revenue data and staffing levels. I am led to believe that Shire CEO incentives are based not on performance so much, but their bonus/remuneration structure is based on the number of employees not so much efficiency.”
- “There appears to be a lack of communication within the Shire. Another recent case was an application to the Shire for a commercial fit-out, with the response stating from a Shire officer that an approval was not required due the fit-out being under minimum spend. Subsequently, the building inspector came onsite requesting a copy of the building approval. After following back through the system they openly stated that planning doesn't liaise with building and that it is a separate submission.”
- “...it is becoming harder and harder to obtain a written opinion from a Shire officer and they are now deferring requests to formal planners or engineers rather than responding with zoning guidelines, making it more costly to clients and perhaps delaying small-to-medium projects.”

Analysis of business licensing issues¹⁸

The problems that businesses raise with councils have multiple causes that go to the design of regulation by national bodies and state agencies and how these issues affect councils and businesses on the ground. As the council is often the regulatory body who is charged with administering an area of regulation drafted up by other government agencies, it must deal with various issues.

There are four key themes in the specific examples raised by business, across most areas of regulation:

- (1) There is poor access to information on regulatory requirements in plain English. Agencies and councils do not make the rules and their requirements sufficiently clear to help regulated parties understand the requirements at the outset of an investment decision.
- (2) There are unnecessary approvals for minor changes such as normal business activities on land that has been designated for commercial, industrial and agricultural uses. These minor changes trigger lengthy and uncertain approval processes.
- (3) Agencies and referral authorities repeatedly request further information and excessive levels of detail, consultant reports, documentation and changes to plans. This causes large delays to projects.
- (4) Agencies impose unnecessary and costly requirements (red tape issues).

There are several causes of these problems:

- (1) Agencies publish little information on regulatory requirements in plain English for a small business audience. This is a national problem which begins with the level and type of information published on national standards that apply in State law (e.g. national building standards and national standards for a food premises). There are also problems with the clarity of state requirements and additional council-specific requirements are often not clear upfront.
- (2) Some legal terminology in legislation, regulation and national standards is not clear. This creates wide scope for interpretation and entrepreneurs, agencies, councils, regulators and consultants interpret the legal terminology differently. This causes inconsistency and different agencies and councils have different requirements.

¹⁷ Some responses have been edited slightly to correct spelling and grammatical errors, or to improve clarity.

¹⁸ This represents a summary of CCIWA analysis provided to the Economic Regulation Authority for its business licensing review.

- (3) Due to poor information on the rules, entrepreneurs rely on guidance and advice from agencies, councils and consultants but this guidance may be poor. Some agencies state that it is against policy to provide information and advice and the regulatory process requires businesses to apply for a licence or planning permit (after they have invested in a site) and pay a fee and go through the approval process.
- (4) As a result, there is an overreliance on lengthy approval processes that require agencies to consider each business in detail after it has invested in a commercial or industrial site, with the scope of a decision and its timeframe unclear. Councils and referral authorities repeatedly issue requests for further information, which is the mechanism to request new details, consultant reports and plans, and impose these changes as conditions on a permit.
- (5) Accountability. Agencies including councils do not have clear rules of engagement for how they will engage with regulated parties and are not held to these.
 - a. Councils are required to report data on planning permit applications, however the data that is reported does not reflect the actual time experienced by a business to go through the planning process (up to eight years).
 - b. Departments do not ensure that councils, regulators and referral authorities are accountable for administering requirements consistently.
- (6) Cost recovery can provide incentives for councils and agencies to introduce new approval processes and requirements and increase fees. Many agencies provide little transparency around how their cost recovery model operates. There is no incentive for an agency to become more efficient under the current cost recovery arrangement.
- (7) There is no mechanism to gain feedback on problems businesses and not-for-profits experience with business licensing at the coalface and to provide feedback to agency heads who can respond to the issues on an ongoing basis and remedy issues with inconsistency.

In many cases, it is presently within the existing mandate of the heads of agencies and regulators and the council CEO to make incremental changes and fix these issues.

Rates, fees and charges

It is important that local governments exercise responsible financial management. When higher rates and new fees and charges are imposed by local governments, individuals and businesses have less disposable income to invest in projects or to spend in the local economy.

Rates are a tax that local governments levy on property. Local governments increase rates when they plan for additional capital and operating expenditure that exceeds their income, including from fees and charges and local government grants.

The average rate growth and median rate growth for Western Australia is shown in the table below. This illustrates that rates have grown at 6-8 per cent per year on average from 2014-15 to 2016-17. This suggests that local governments are budgeting for additional projects above their available revenue by around 6-8 per cent per year.

Table 1: Growth in local government rates, Western Australia¹⁹

	2014/15	2015/16	2016/17
Average rate increase	7.9%	6.1%	8.4%
Median rate increase	6.9%	5.0%	4.9%

Australian Bureau of Statistics (ABS) estimates of disposable income in WA help to understand changes in peoples' financial circumstances and their ability to pay.²⁰ ABS data shows that over the year to 2015-16, rates growth was around 20 percentage points higher than growth in disposable income. The latest ABS estimates show that mean income per week fell by 14 per cent between 2013-14 and 2015-16.

Compounding annual growth in rates and other council fees and charges mean that people have less money to spend on goods and services and businesses have less money to invest in projects in WA.

¹⁹ Department of Local Government, Sport and Cultural Industries, 2017. Accessed from: <https://mycouncil.wa.gov.au/Council/CompareAllCouncil>.

²⁰ This does not help to understand peoples' 'willingness-to-pay' for council goods and services.

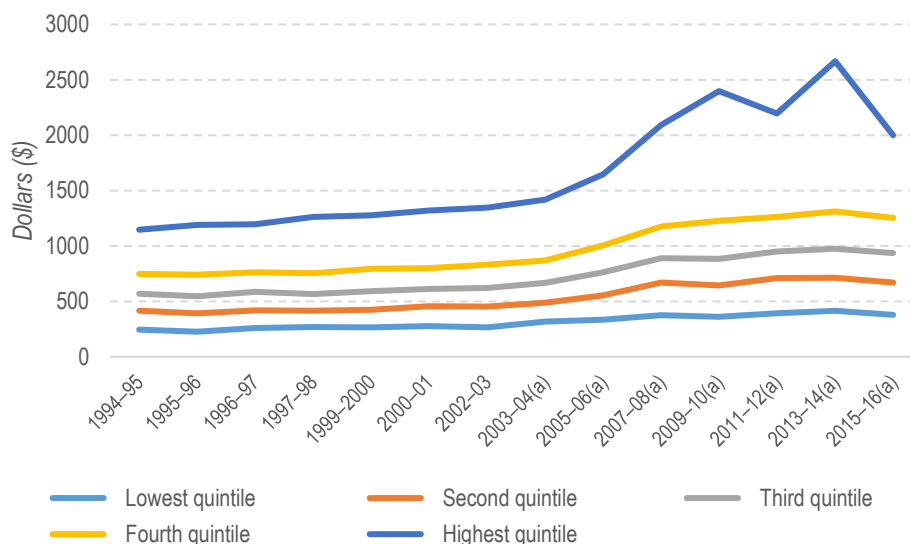


Figure 2: Equivalent disposable income, Western Australia²¹

CCIWA considers the practice of local governments determining the level of services they intend to provide, then setting rates at a level required to address their budget deficit to be a major contributor to excessive rates growth. This practice is not conducive to budgetary discipline and efficient service delivery as local governments do not bear the cost of their decisions – they merely pass them onto residents and businesses by increasing rates. These ratepayers have no alternative but to pay.

The inability of local governments to set all of their own fees and charges has also contributed to rates growth. If fees and charges do not reflect the cost of service provision, local governments are incentivised to cross-subsidise the provision of services via rates increases. This distorts price signals for local government service provision and leads to inefficient outcomes.

The current framework for setting fees, charges, rates and council budgets is imposing excessive costs on residents and businesses. With cost-of-living pressures being the biggest concern for households and increasing operational costs being a major issue for businesses, the State Government must consider options for putting downward pressure on local government rates, fees and charges. The issues of excessive year-on-year budget expansion, high rates growth and cross-subsidisation in the local government sector must be addressed.

Councillors and local government staff must be incentivised to exercise budget discipline, minimise the growth of rates, fees and charges while having the flexibility to ensure the price of service provision reflects the cost of supply. The ability to recover the cost of service delivery must be contingent on ensuring local government processes and services are efficient and not imposing unnecessary costs on residents and businesses.

CCIWA therefore recommends that the State Government considers commissioning a review by the Economic Regulation Authority into the setting of local government budgets, fees, charges and rates. The review should also investigate the contribution of inefficient processes and practices within local governments that are contributing to increasing costs.

Recommendation: The State Government should consider a comprehensive review by the Economic Regulation Authority aimed at reducing costs, and identifying improvement opportunities that examines processes, practices and issues affecting local government budgets, fees, charges and rates.

²¹ ABS cat. 6523