



Environmental regulation reform

CCIWA submission

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Introduction

The Chamber of Commerce and Industry of Western Australia is the peak body advancing trade and commerce in Western Australia. We are fundamentally committed to using our insights to develop and advocate for public policies that will help realise our vision to make WA the best place to live and do business.

We welcome the opportunity to provide comment on this important reform process. The breadth and diversity of our membership base reflects that of the WA business community at large, and the proposed changes have the potential to affect them in different ways. We appreciate the Department's commitment to understanding their perspectives.

This submission provides our feedback on the following areas:

- The guiding principles for the review
- The proposed 'hierarchy of control' framework
- The 'one sector' approach
- Regulating new and emerging activities
- The four proposed fee models

The guiding principles for the review

The guiding principles for the review are reasonable and appropriate.

However, we would like to see an additional three guiding principles incorporated, specifically that:

- No new or additional regulatory burden is placed on businesses without proper regulatory impact assessment being undertaken.
- The reforms consider the variable capacity and capability of different sized businesses to comply with proposed requirements.
- There is an ongoing commitment to transparency and accountability to demonstrate regulatory efficiency.

With respect to the last point, we are concerned that there might be a trend toward recovering more of the costs of regulation from industry, without robust mechanisms to guarantee that regulators will continually improve their approach to regulating. It is a significant risk for organisations operating in WA and the State's competitiveness when cost recovery and the delivery of efficient regulatory services are viewed as being mutually exclusive, rather than interconnected policy outcomes.

The proposed 'hierarchy of control' framework

Under the current framework, businesses that operate a 'prescribed premises' which releases industrial emissions and discharges must have a works approval and/or licence to do so. Under the proposed new framework, prescribed *activities* (as opposed to premises) would be regulated. Only businesses engaging in high risk and complex activities would need to apply for a licence; while lower risk activities would be subject to industry specific regulation or general provisions.

In principle, we support a framework which sees lower risk and less complex activities being subject to regulations and higher risk and more complex activities being subject to licensing. This is a positive step toward a risk-based approach to regulation and reducing restrictive red-tape. It would enable activities with well understood and effective controls in place to manage risks, for example, concrete batching plants, to be subject to less onerous instruments.

Beyond this, it is difficult for us to comment on whether we support the specific framework being proposed. Our support for the details of the proposal ultimately depend on the extent to which new or additional regulatory burden would be placed on the business community; and whether this is outweighed by the reduction in regulatory burden from less licensing transactions.

We understand the shift to activity-based licensing for the six main industry categories would lead to a 10–15 per cent reduction in licensing transactions; and that the total reduction in licensing transactions from moving to the hierarchy of control framework could be up to 40 per cent.

However, it would also be helpful for the Department to provide information about the extent to which the new framework would impose new requirements on businesses whose activities become subject to regulations. For example, would businesses currently not required to do the following, be required to do so under the new framework:

- Prepare and report against Environmental Management Plans
- Install and use equipment to prevent pollution or environmental harm
- Meet better practice standards
- Maintain recordkeeping, reporting and environmental management systems.

While large businesses are likely to have the skills and resources to meet requirements like these, many small and medium businesses simply do not. The shift to a hierarchy of control framework must be cognisant of the differential impacts on businesses of different sizes.

We have so far identified bulk granular material loading or unloading at ports as an activity that we think would be subject to additional requirements under the new framework.

It is critical that the government works with industry to understand the impact of this regulatory change – as for example, restrictions on grain loads at ports could impact trading obligations. Regulatory impact assessment provides an opportunity to work through such issues.

A 'one sector' approach

We strongly support reforms that ensure activities are regulated by the most appropriate agency and common application processes and supporting information requirements across regulatory agencies.

This would address the duplication of risk assessments that currently exists for:

- Mining applications (*Mining Act* and Part V): Potential hydrocarbon contamination to soil and water; airborne dust; excessive noise and land erosion and sedimentation; and
- Development applications (*Planning and Development Act and Part V*): Environmental noise
- Mining applications (*Rights in Water and Irrigation Act*).

Further opportunities to achieve a 'one sector' approach include:

- Decreasing duplication between DWER and Local Government
- For projects of significance (such as concrete batch plants and quarry operations), DWER could consider providing their environmental approvals before Local Government considers the development application. Local Government should then be required to give due consideration to DWER assessment and conditions in their assessment and only set complimentary, aligned conditions.

Regulating new and emerging activities

In deciding whether and how to regulate emissions and discharges from new and emerging activities (e.g. battery technologies and manufacturing), the usual weighing up of costs and benefits of introducing new regulation must be undertaken. There must be a systematic evaluation of the impacts of the proposed regulation, accounting for all the effects on the community and economy. This is particularly important in the context of our State needing to diversify its economy. It will only do this through a regulatory approach which performs favourably compared to other jurisdictions and therefore attracts rather than repels business investment.

It is also worth noting that markets — financial, supplier, customer and labour — are imposing their own Environmental, Social and Governance requirements on businesses. These requirements are only likely to increase over time, creating increasingly stronger restraints on businesses' behaviour, and reducing the need for a regulatory response.

With any reform related to the regulation of greenhouse gas emissions into the future, the aim should be to avoid duplication and ensure alignment with existing Commonwealth and State mechanisms intended to reduce emissions.

Proposed fee models

In principle, CCIWA does not oppose industry contributing toward some of the costs of regulatory processes. The four fee models proposed in the Discussion Paper each have different implications for the extent to which different parties contribute to recovering the Department's regulatory costs (e.g. low polluters versus high polluters), and when that contribution occurs (e.g. up-front in a licence application fee or annually over time). Assessing the merits of each fee model is made more complex by:

- The prospective change in the number and nature of parties that will be required to hold a licence under the hierarchy of control framework.
- Prospective changes in the Department's regulatory costs resulting from the shift to the hierarchy of control framework.

Our preliminary feedback on each of the fee models is outlined in Attachment A. However, we cannot come to a final position without further information about the above issues. We suggest the Department conduct a more thorough review of fee models once the shift in overarching regulatory approach is settled.

Irrespective of which fee model is ultimately taken forward by the Government, it needs to be supported by a robust transparency framework which demonstrates that the Department is not over-recovering the costs of regulation from industry. This should include reporting details of the costs incurred by the Department and revenues generated from industry.

We strongly support the Department's intention to conduct a thorough investigation into the Part IV cost recovery process and its outcomes, with a commitment to apply critical learnings. We encourage the Department to consider interjurisdictional analysis, including for example, demonstrating how WA compares with other States in terms of the complexity of licencing processes, cost of environmental approvals, the timeliness of processing and other regulatory efficiency KPIs.

Attachment A: CCIWA preliminary views on fee model proposals

Proposal	Pros	Cons
<p>1. Fee model similar to current approach</p> <p>Licence application plus annual fees. Includes:</p> <ul style="list-style-type: none"> > A premises component fee (based on the premises' production or design capacity). > The sum of any applicable waste components (these vary by type of premises and volume of waste) and any applicable discharge components (these vary by type of discharge and volume of emissions). <p>Works application fees are determined based on the cost of the works.</p>	<p>Encourages businesses to reduce emissions and discharges because part of the fees they pay are tied to the quantity produced.</p> <p>The mix of up-front application and ongoing annual fees means businesses are less likely to be discouraged from investing in projects in WA due to relatively high up-front costs compared to other jurisdictions.</p> <p>Retaining a similar fee model to that currently adopted could minimise fee 'shocks' and in turn make the transition to the new 'hierarchy of control' regulatory framework smoother from a change management perspective.</p>	<p>Declining quality of regulatory service if the Department is not recovering sufficient costs overall to be able to process applications in a timely way. This could however be addressed by ensuring the overall revenues from fees reflect the overall pool of costs that are appropriate to recover from industry.</p>
<p>2. Pure cost recovery model</p> <p>Fees are based on the cost to the Department to deliver the service.</p> <p>For example, licence application fees would be based on the cost to the</p>	<p>Could improve the quality of regulatory service, as the Department is guaranteed to recover the costs of delivering services. However, as noted above, this is not the only approach that can ensure this.</p>	<p>Does not encourage businesses to reduce emissions and discharges as it is not tied to the quantity produced.</p> <p>Given the current fee model is a mix of up-front application and ongoing annual fees, shifting to Proposal 2 has the</p>

Proposal	Pros	Cons
<p>Department of processing the particular application.</p>		<p>potential to increase the level of up-front licence application fees.</p> <p>Depending on the increase, this could discourage investment in new projects in WA, as proponents opt to invest in other jurisdictions with lower up-front regulatory costs.</p> <p>The increase in fees could also be different for different businesses. We are particularly concerned about the potential effects on SMEs, who are already facing significant cost pressures.</p>
<p>3. Cost recovery + polluter pays hybrid</p> <p>Fees are set to recover a target cost base; with licensees releasing high and/or harmful emissions and discharges paying higher fees.</p>	<p>Encourages businesses to reduce emissions and discharges because the fees they pay are tied to the quantity produced.</p> <p>Could improve the quality of regulatory service, as the Department is guaranteed to recover the costs of delivering services.</p> <p>If the approach is consistent with that adopted in other jurisdictions, this allows for easier benchmarking of how WA's regulatory costs and fees compare, and</p>	<p>Given the current fee model is a mix of up-front application and ongoing annual fees, shifting to Proposal 3 could also increase the level of up-front licence application fees. Retaining a fee model in which a proportion of the revenues needed to recover costs are generated in up-front licence fees, and the remainder in annual, ongoing fees, would alleviate this issue.</p>

Proposal	Pros	Cons
	<p>in turn, a better understanding of how this could be affecting investment decisions.</p>	
<p>4. Cost recovery, but deferred</p> <p>Fees are based on the cost to the Department to deliver the service but are set to recover those costs over time rather than up-front.</p> <p>For example, the cost of assessing a licence would be spread over the life of the licence. Hence, a proportion of the assessment cost would be recovered at the assessment stage and the remainder over the life of the licence in annual fees.</p>	<p>Could improve the quality of regulatory service, as the Department is guaranteed to recover the costs of delivering services.</p> <p>The mix of up-front application and ongoing annual fees means businesses are less likely to be discouraged from investing in projects in WA due to relatively high up-front costs compared to other jurisdictions.</p>	<p>Does not encourage businesses to reduce emissions and discharges as it is not tied to the quantity produced.</p>