

# Over-ruled

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How excessive regulation  
and legislation is holding  
back Western Australia

Chris Berg &  
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## Executive Summary

- The global financial crisis and economic downturn makes a review of Western Australia's regulatory burden urgent.
- Over the past decade, the amount of new legislation has increased by an average of 158 pages per year. This increase is substantially faster in Western Australia than in any other state, even after controlling for economic growth and population.

Figure 1: Average yearly increase in pages of new legislation, 1998-2008



Source: Institute of Public Affairs

- Western Australia has developed an international reputation as the most over-regulated Australian state.
- Over-regulation has significant financial, social and indirect costs to Western Australians. There are also substantial hidden costs.
- On average, the compliance cost of regulation in Western Australia is the equivalent of 2 per cent of gross state product, or \$2.1 billion a year.
- Poor regulation often exacerbates the social and economic problems it was enacted to solve, and it can also become entrenched as deregulation harms businesses that have based their business plans and structure around regulations which shelter them from competition.
- Western Australia has lagged behind other Australian states on reforming its regulatory process and institutions. As a consequence, Western Australia has neglected to make the changes necessary to reduce red tape and regulation.
- The Western Australian government is to be commended for undertaking new reforms to combat red tape, however, its model is by no means 'best practice.'

## Project Western Australia

### The need for a new approach

The need for a new approach to policy formulation in Western Australia is abundantly clear. If Western Australia is to fully profit from the opportunities presented by its natural wealth and the rise of the Asian economies, then a new attitude is needed. Project Western Australia is a forward-looking joint program of the Mannkal Economic Education Foundation and the Institute of Public Affairs, Australia's leading free market think tank. Project Western Australia is aimed at stimulating policy discussion and development.

### The project

Research experts in a wide range of fields have developed original and innovative policy papers to provide a blueprint for forward-looking governments. The challenges facing Western Australia are many. Topics which have been covered include:

- The importance of property rights in Western Australia,
- City and Urban Development;
- Education.
- Health provision

In August 2008, Project Western Australia released *A Reform Agenda for Western Australia* (available at [www.ipa.org.au](http://www.ipa.org.au))

Any errors and omissions are entirely the responsibility of the authors.

## About the authors

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His monograph, *The Growth of Australia's Regulatory State: Ideology, accountability and the mega-regulators*, was published in 2008, and co-edited book (with Andrew Kemp) *100 Great Books of Freedom: Australian liberals, conservatives and libertarians on individual liberty and prosperity* will be published by Connor Court Press in 2009.

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## Over-ruled: Regulation in Western Australia

South Australia—most exploration and mining approvals are dealt with in time frames that are meaningful in the commodity cycle, unlike WA [Western Australia] where processes and applications are bogged down in endless green, red, and black tape.

—Manager of a mining consulting company<sup>1</sup>

The biggest problem in WA is (getting) access to the ground. The procedures you've got to go through to get out there are just enormous and when people find that out they think, 'Well, bloody hell, this is too hard'.

—Sean Ashcroft, Amalgamated Prospectors and Leaseholders Association<sup>2</sup>

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<sup>1</sup> *Fraser Institute Annual Survey of Mining Companies, 2008/2009*, Fraser Institute, 2009

<sup>2</sup> 'Gold caught in red tape', *Australian Mining*, 17 April 2009

## 1.0 The need for regulatory reform

### 1.1 Economic growth at risk

When the Institute of Public Affairs released *A reform agenda for Western Australia* in August, 2008, we argued that the Western Australian government had, at the time, been:

living off the economic prosperity caused by the mining boom without committing to the low tax rates and low regulatory burdens that are the prerequisite for independent long term growth. Without broad based reform, Western Australia is vulnerable to economic downturn. It is the view of the IPA that Western Australia needs to reform in the good times, rather than wait to be compelled to do so either by slowing economic growth or federal interference.

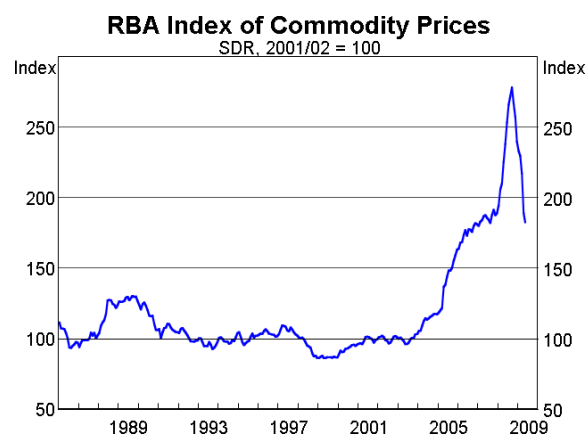
That assessment was prescient. In the second half of 2008, signs were emerging in the domestic and international economy of a future downturn. There were some worrying indicators for the Western Australian economy. For example, labor productivity was declining, yet being matched by increasing wage pressure.

But now in 2009, the global financial crisis has hit Western Australia hard. Western Australian treasury expects GSP to contract by 1.25% in the 2009-2010 financial year. The mining boom, which disproportionately supported the state's economy to its benefit, looks to have dissipated. While Western Australia will contract slightly less than the global economy – the IMF predicts a global contraction of 1.3% - the state is particularly exposed to the international downturn.

While the IMF predicts a return to growth in Western Australia's key export markets in 2010, the Western Australian treasury is cautious, pointing out that if the global downturn is longer or deeper than estimated, the consequences for Western Australia could be severe.

As the Treasury writes: "the risks to the economic outlook for Western Australia are more significant than has been experienced in many decades." Commodity prices have sharply declined in the 2008-09 financial year, and if they continue this precipitous decline, this will have knock-on effects for the Western Australian economy. (See Figure 2.)

Figure 2: Commodity Prices



Even before the global financial crisis, it has been easy to assume that because Western Australia is well endowed with productive export sectors it has no need to compete with other

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regulatory environments. However, Western Australia competes both domestically and internationally for foreign investment.

Along with taxation and infrastructure, regulation is one of the most important areas by which state governments can impact economic growth. And although the Western Australian economy has in the past performed well, the state is constrained by poor regulatory process and burdensome regulation.

On the international scene, Australia has a competitive regulatory framework. ResourceStocks 2008 World Risk Survey, which surveys 3000 mining, oil and gas executives for their views on the regulatory environment of different mining jurisdictions, ranked Australia the fourth least risky country for resources development. (Figure 3) However Western Australia was ranked the most risky investment destination in Australia.

Figure 3: World Risk Survey

2008 World Risk Survey (Australian states and territories)												
Investment risk categories	Sovereign risk	Land access	Green tape	Land claims	Red tape	Social risk	Infrastructure	Civil unrest	Natural disasters	Labour relations	Weighted totals	
Investment risk weighting (0 = unimportant, 6 = most important)	4	4	3	3	3	3	3	3.25	2	2.5		
Region	Country	Risk levels: 0 = No risk, 6 = Maximum risk										
Europe	Finland	1	1	2	2	2	1	1	0	0	2	7.4
Australia	South Australia	0	1	2	2	2	1	2	0	1	2	7.0
North America	Canada	0	2	3	2	2	1	2	0	1	1	8.6
Africa	Botswana	1	1	2	1	2	2	2	1	1	1.5	8.8
Australia	Northern Territory	0	2	2	3	2	1	2	0	1	2	9.0
Australia	New South Wales	1	2	3	2	2	1	1	0	1	2	9.2
Australia	Tasmania	1	2	3	2	2	1	1.5	0	1	2	9.5
Europe	Sweden	1	2	3	2	2	1	1	1	1	2	9.9
North America	United States	0	2	3	2	3	2	1	1	1	2	10.3
Australia	Queensland	1	2	3	3	2	1	2	0	1	2	10.4
Australia	Victoria	1	3	3	2	3	1	1	0	1	2	10.0
Australia	Western Australia	1	2	3	3	2.25	1	2	0	1	2	10.0
Europe	Greenland	1.5	2	2	2	2	1	3	1	1	2	10.9
Europe	United Kingdom	1	3	3	2	3	1	1.5	0	1	2	10.9

As the Association of Mining and Exploration Companies chief executive, Justin Walawaski, points out: “The explosion of red and green tape combined with difficult indigenous affairs in WA has seen its former reputation as Australia’s mining capital collapse to become the most risky jurisdiction in the country”.

Western Australia’s poor showing on the World Risk Survey is supported by a yearly survey which monitors the reputation of a wide range of jurisdictions for mining regulatory policy, produced by the Canadian think tank The Fraser Institute. As the Fraser Institute’s survey reveals, relative to other Australian states, Western Australia has declined in reputation amongst resource firms for its policy settings covering metal mining and exploration. (See Figure 4)

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Figure 4: The Fraser Institute 'Room to Improve' Policy Ranking 2007/2008 (WA, QLD, SA & NT)

Relative Fraser Institute Ranking	2004-05	2005-06	2006-07	2007-08	2008-09
1	WA	SA	SA	SA	NT
2	NT	WA	QLD	NT	QLD
3	SA	QLD	WA	QLD	SA
4	QLD	NT	NT	WA	WA

Source: Adapted from *The Association of Mining and Exploration Companies Inc. Briefing Paper: Resource Exploration Acceleration Plan, 2008*; *Fraser Institute Annual Survey of Mining Companies, 2008/2009*, Fraser Institute, 2009



## 2.0 Western Australia's regulatory burden is heavy and increasing

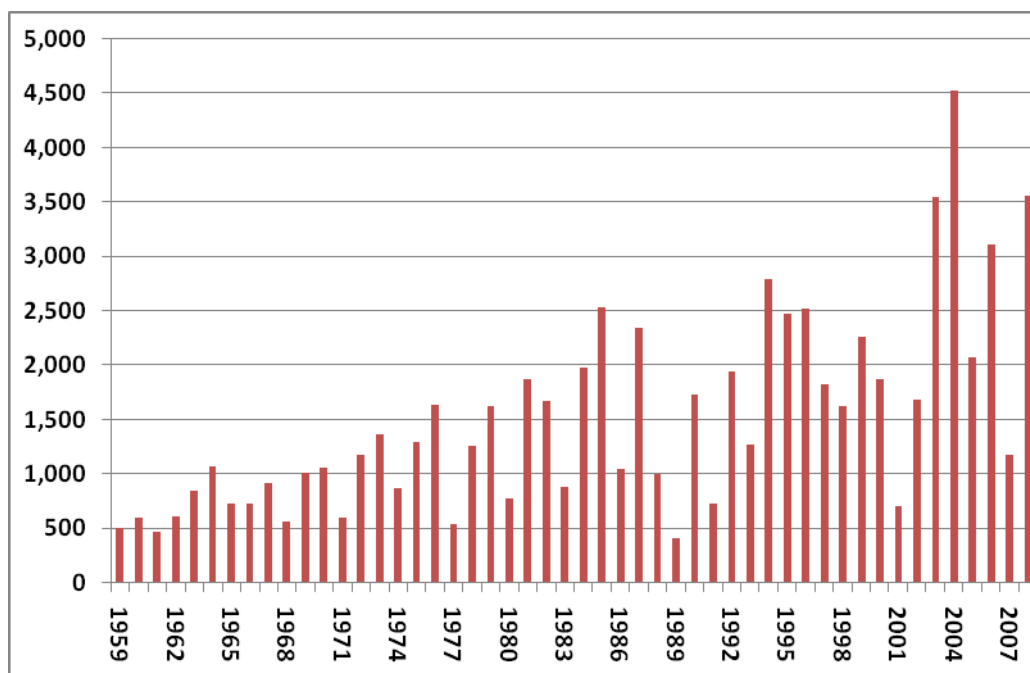
"The increasing volume, complexity and opaqueness of much modern regulation far outstrips the capacities of most businesses and citizens to understand their obligations".<sup>3</sup>

Western Australia has fully participated in broad changes of governance and regulation that have been a major part of the last two decades of Australian government. As with governments across the nation, the Western Australian government has been imposing an increasing legislative and regulatory burden upon the economy and society.

### 2.1 A growing burden

One way we can detect changes in the regulatory burden over time is by looking at a standard proxy for regulation – the yearly record of pages of legislation passed. As Figure 5 shows, we can see a marked increase in legislation passed over the last half century in Western Australia.

Figure 5: Pages of Western Australian legislation per year, 1959-2009



Source: Institute of Public Affairs

Pages of legislation is, certainly, a highly imperfect proxy measure. (For discussion about the benefits and pitfalls of this measure, see Chris Berg, *The Growth of Australia's Regulatory State*, p10-17) Furthermore, unlike most other states, the Western Australian government does not publish its subordinate legislation in a consolidated form, which prevents us from measuring that slightly more direct proxy.

Since 1959 the Parliament of Western Australia has passed 75,505 pages of new legislation, an average of 1510 new pages a year. Since 1998, the number of new pages of legislation passed

<sup>3</sup> Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, OECD, 2002, P67

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per year has increased on average by 158 pages each year, this is significantly higher than all other states including NSW (-158 pages), SA (-49 pages), VIC (14 pages), TAS (-92)<sup>4</sup>, and QLD (-50 pages). This means that during the last ten years, the pages of new legislation passed by Western Australian parliament, was, on average, 158 pages higher than the previous year.

**Figure 6: Average yearly increase in pages of new legislation, 1998-2008**



*Source: Institute of Public Affairs*

To take into account population change, the data was converted into 'new pages of legislation per 1,000 capita' using ABS estimates of state population for each year since 1998.<sup>5</sup> In this way the effect of differential population growth between states is eliminated. This revealed that since 1998, pages of new legislation per 1,000 capita has grown on average by 5.66 pages per year compared to NSW (-3 pages), SA (-4 pages), VIC (-1 pages) and QLD (-4 pages).

To also take into account differences in economic growth between states, the data was standardised to new pages of legislation per \$1 billion Gross State Product.<sup>6</sup> Western Australia is the only state in which pages of new legislation per \$1 billion is growing. Since 1998, pages of new legislation per \$1 billion GSP increased on average by 0.15 pages per year compared to NSW (-1 pages), SA (-1 pages), VIC (-1 pages) and QLD (-2 pages)

While pages of new legislation is an imperfect measure of regulatory burden, the data presents a consistent picture in which Western Australia continues to outstrip QLD, NSW, SA and VIC in the area of regulatory and legislative growth.

A 2006 survey by the Chamber of Commerce and Industry of Western Australia of its members shows how significantly the state's regulatory burden weighs on business.<sup>7</sup> The survey found that for Western Australian firms the most concerning aspect of regulation was the number of applicable regulations (See Figure 7), an observation which is consistent with similar surveys in other states and supported by the raw data on pages of legislation passed per year.

<sup>4</sup> Tasmanian figures not including 2007-2008 data

<sup>5</sup> "Australian Demographic Statistics: Estimated Resident Population, States and Territories, Australian Bureau of Statistics, 3101.0.

<sup>6</sup> State Accounts: Gross State Product -Chain volume measures "Australian National Accounts: State Accounts" Australian Bureau of Statistics, 5220.0.

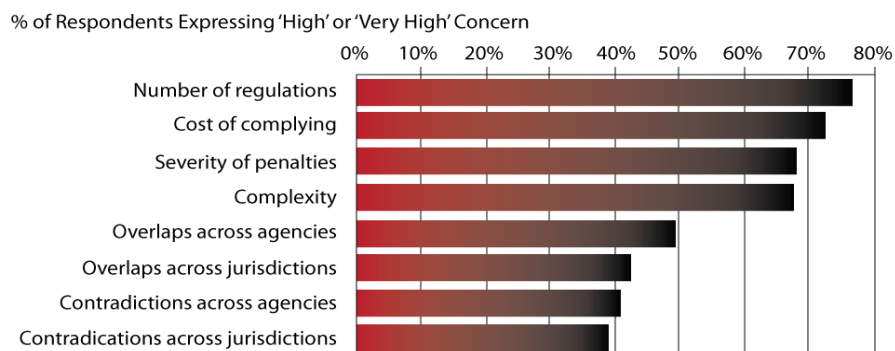
<sup>7</sup> *Regulation and Compliance: A Discussion Paper*, Business Leader Series, Chamber of Commerce and Industry of Western Australia, November 2006

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The number of regulations a firm has to comply with varies by size, and accordingly large businesses rated the number of regulations as a higher concern than did their small business counterparts. About 93% of large businesses and 83% of medium business responded that the number of regulations was high or very high. Those small business who did so was less (75%), but even in this category, concern with the number of regulations still exceeded other possible concerns.

This is because while large businesses are more exposed to a range of regulations than small businesses, the universal nature of the vast majority of Western Australia's and the Commonwealth's regulatory burden applies to all businesses no matter the size.

**Figure 7: Most concerning aspects of regulation**



*Source: Regulation and Compliance: A Discussion Paper, Business Leader Series, Chamber of Commerce and Industry of Western Australia, November 2006*

Small businesses are, however, disproportionately affected by over-regulation. Small business lacks the resources to invest in regulatory expertise. Large firms can employ regulatory specialists on staff. However, even when the regulatory burden is proportionally equivalent between large and small business, small business can often only afford to dedicate a few hours a week to regulatory compliance issues. The rapid change in regulation seen over the last few decades has contributed greatly to this problem.

Furthermore, small businesses are unlikely to be able to exert any influence over the regulatory policy process. Lacking the substantial regulatory affairs resources of larger firms, small business are underrepresented in debate of policy change; this is most clearly manifested in debates over industrial relations changes, which are dominated by large firms and unions, regardless of the impact changes may have on the small business sector. Studies in the United States have found that costs of regulation are significantly higher for small businesses, measured by the incidence of regulatory burden per employee.<sup>8</sup>

The Western Australian Farmers Federation has shown that farmers – from small, family-held farms, to large corporate farms - in 2007 had to comply with 30 state Acts and no less than 86 state regulations, on top of its federal and local government regulatory requirements.<sup>9</sup>

<sup>8</sup> W. Mark Crain and Thomas D. Hopkins, 'The Impact of Regulatory Costs on Small Firms', The Office of Advocacy, U. S. Small Business Administration, RFP No. SBAHQ-00-R-0027

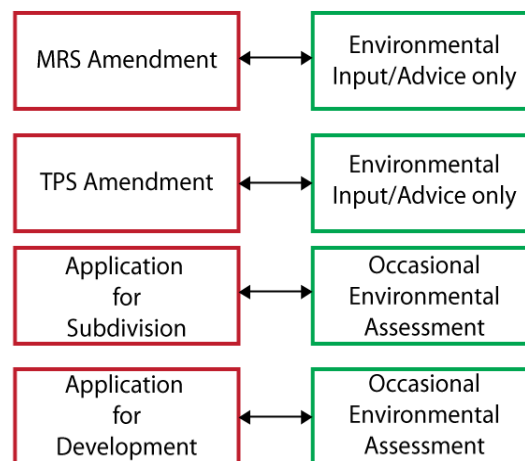
<sup>9</sup> The Western Australian Farmers Federation, Submission to the Productivity Commission, Annual review of Regulatory burdens on business; Primary Sector, June 2007

## 2.2 Increasing regulatory complexity

As Figure 7 demonstrates, nearly 70% of CCIWA respondents cited regulatory complexity as a high or very high concern. Regardless of the content or purpose of regulation, regulatory complexity creates its own problems, often reducing or nullifying the possible benefits of the regulation itself. Regulatory compliance depends on the knowledge of the regulated entity about their requirements. But regulators or legislators assume that the mere publication of rules or regulatory changes is sufficient to ensure understanding and, subsequently, demand compliance. As the OECD has pointed out, “this is increasingly unlikely to be the case in an environment of regulatory inflation, in which the number and complexity of regulations, as well as their rate of change, continually increase.”<sup>10</sup> Between 60 to 80% of small and medium businesses across the OECD reported problems understanding regulations and responding to unpredictable regulatory change.<sup>11</sup>

Regulatory complexity is not merely a reflection of the number of regulations a firm has to comply with. The bureaucratic hoops which firms have to navigate in order to be compliant with regulation can be a major drain on economic activity. There is evidence to suggest that in many areas, particularly in the realm of environment and planning, the complexity of compliance procedures is increasing in significance for Western Australian businesses. As the Urban Development Institute of Australia of Western Australia (UIDA) has pointed out, Western Australian planning approval processes have dramatically increased in procedural complexity over the last few decades. In the early 1990s, planning approvals and environmental approvals were separately administered. (See Figure 8) But the merging between environment and planning processes has, contrary to the original intention of the reform, added cost, complexity and time to approvals. The resulting, highly convoluted process can be seen in Figure 9.

**Figure 8: Regulatory Complexity: Planning and Environmental Approval Process in the early 1990s**



Source: UIDA WA 2007

High levels of complexity can greatly add to individual and business investment uncertainty. Confusing and complicated processes leave individuals and firms uncertain as to whether their activities are compliant with the full body of regulation. Further uncertainty can emanate from the role of bureaucratic discretion in assessing compliance – in other words, the bureaucratic

<sup>10</sup> Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance, OECD, 2002, P67

<sup>11</sup> Ibid, p165

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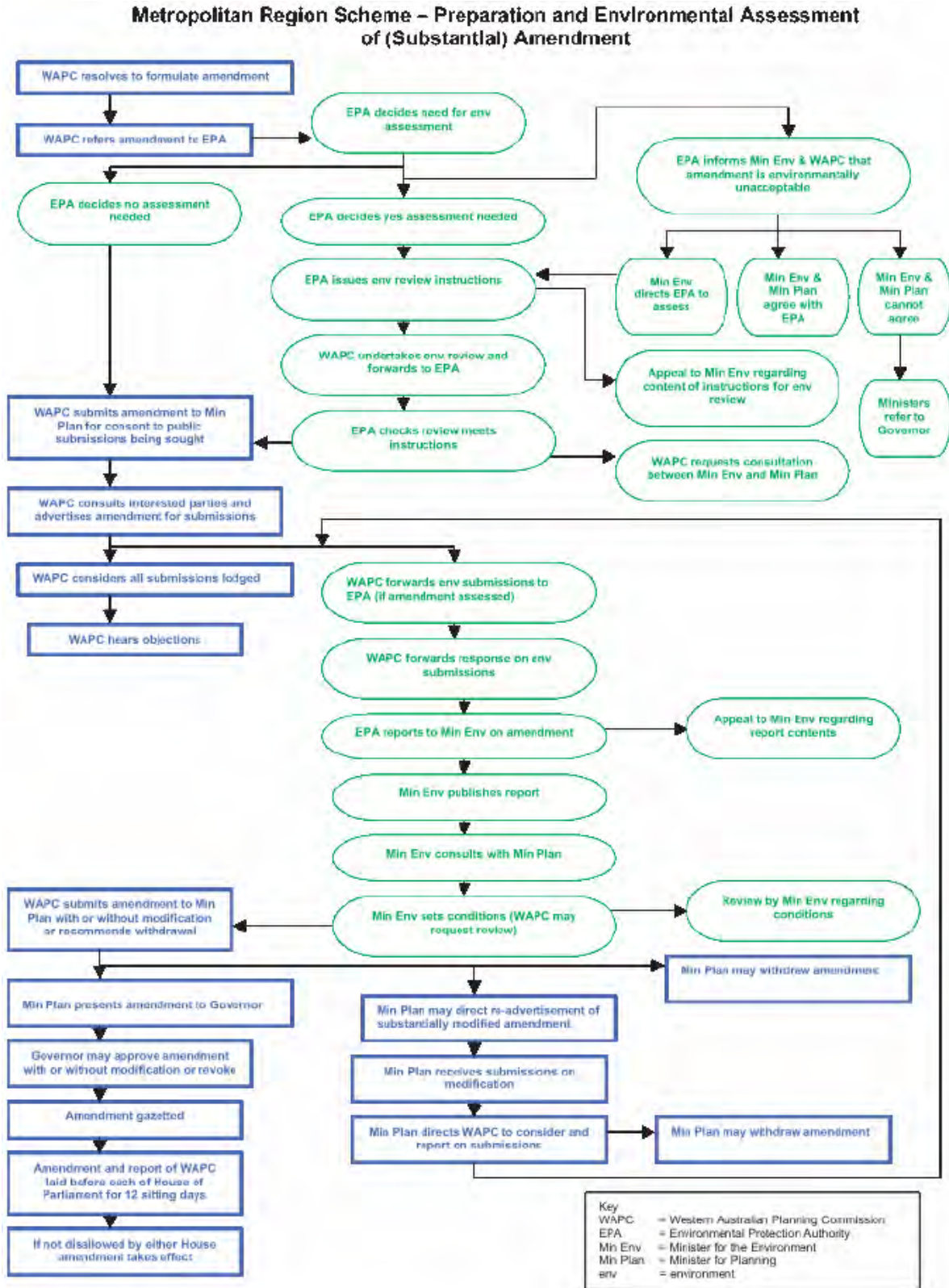
assessment by which firms are considered compliant or non-compliant - or from uncertainty about future regulations to be imposed. Given the fact that the profitability of enterprises is dependent not just on contemporary, but also on future regulatory frameworks, the possibility of legislative or regulatory changes can be a significant dampener on investment.

In many cases, where this uncertainty is significant, those firms or individuals will avoid action that may be beneficial to the economy or society. Economists have tracked the negative consequences of uncertainty, including economy-wide lower levels of investment.<sup>12</sup>

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<sup>12</sup> See Berg, *The Growth of Australia's Regulatory State*, p45

Figure 9: Regulatory Complexity: Planning and Environmental Approval Process in 2007



Source: UIDA WA 2007

## 2.3 Increasing costs

Regulation imposes costs on a number of levels.

Regulation imposes direct costs in the form of administration and compliance. Regulation requires administration on the side of both firms and government. Governments need to manage regulatory processes – develop standards and processes and provide ongoing support for those standards and processes – as well as monitor compliance, and if necessary, act to punish firms for non-compliance.

But estimating the cost of regulatory administration on the government side is surprisingly challenging. Western Australia does not have a body comparable to the Victorian Competition and Efficiency Commission which monitors the regulatory sector in a manner similar to the Federal Productivity Commission. In Victoria, the state's sixty-nine regulatory bodies employ 34,000 people and have a combined budget of over \$1billion.<sup>13</sup> It is a reflection of Western Australia's lagging regulatory oversight that there is no comparable estimate available. Despite this, there is no good reason to suggest that Western Australian administration is substantially dissimilar.

For firms, the administrative costs can be significant. Given the large volume regulation and rapid pace at which it is altered, simply identifying regulations relevant to an individual business is a substantial task. Staff time has to be devoted to regulation issues, and senior management are often diverted to regulatory and government administration.

The CCIWA study found that on average, Western Australian businesses spent 5.6 hours simply researching and monitoring changes to the regulatory environment.<sup>14</sup> This figure parses out at 4.1 hours per week for small businesses, and 6.1 hours and 11.1 hours for medium and large businesses respectively. Adjusting processes and internal systems to fit those changes was also a significant time drain, taking small businesses 4.1 hours per week, medium sized businesses 5.2 hours per week and large firms around 16 hours per week. Of course, the largest proportion of time taken is on regulatory compliance issues. Large firms spent an average of 43.1 hours per week complying with existing regulations. Medium firms spent an average of 15.1 hours, and small businesses spent 10.3 hours per week on regulatory compliance.

The CCIWA study estimated that the total cost of regulatory compliance for Western Australian firms was \$2.1 billion, or 2 per cent of total gross state product.

The cost of compliance is a well-recognized one. Compliance costs such as these – popularly known as 'red tape' – are a regular feature of debate over regulation and over-regulation in Australia. But of particular interest from the CCIWA study is the time firms spent on regulation research and monitoring. This has been of particular importance in recent years, as the reform to industrial relations has been subject to political whims. As one small business reported to the CCIWA in 2006,

My biggest bugbear has been the introduction of Workplace Agreements followed by their abolition, followed by the huge workload and short introduction of Work Choices, and now the threat of their removal if the Federal Government changes again.

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<sup>13</sup> Berg, *The Growth of Australia's Regulatory State*, p20

<sup>14</sup> "Regulation and Compliance: A Discussion Paper" Business Leader Series, Chamber of Commerce and Industry Western Australia, November 2006

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Many assessments of regulatory costs are likely to be significantly understated when the cost of regulation is borne across the entire firm. A 2001 study in *Accounting Review* looked at the case of environmental regulation, and found that for every \$1 in visible compliance and regulatory costs, there was an identifiable \$9.68 extra of 'hidden' costs.<sup>15</sup> While the visible \$1 cost was accurately reported in the firm's accounts, the extra \$9.68 was not, leading to an underreporting of the cost of environmental regulation to government and in debate over environmental regulation. The 2001 study specifically looked at the case of steel mills, and found hidden costs in changes in production processes and materials used, and increased use of energy. The study also found that regulatory administration was typically not reported as a cost of environmental regulation, as the cost of obtaining permits, licenses and similar tasks was classed as general and administrative costs. Given how pervasive regulatory issues can be to a firm's decision making and production structure, these results are not surprising – parsing out what is a 'regulatory' cost has little meaning if regulation is a dominant part of a firm's business.

A 1997 Canadian study by the Fraser Institute attempted to quantify compliance costs to household level. (Figure 10) Canada has a roughly analogous legislative and regulatory framework to Australia. The Fraser Institute study found that embedded regulatory compliance costs could be considered the third highest household expenditure, being only surpassed by the cost of shelter and taxation.<sup>16</sup>

Figure 10: Average expenditures per household, Canada, 1997



Source: Laura Jones & Stephen Graf, 'Canada's Regulatory Burden: How Many Regulations? At What Cost?', Fraser Institute, 2001

Embedded regulatory compliance costs are regulatory costs incurred by producers which are passed onto consumers in the form of higher prices. This finding from the Fraser Institute emphasizes that regulatory costs should be seen as a quantifiable cost of government on individuals, in the same manner we can identify the government's tax take relative to our income. The Fraser Institute also makes the important point that resources dedicated to lobbying for preferential regulatory treatment are also a direct cost of a nation's regulatory environment – the 'gamesmanship', or 'cat-and-mouse' game between regulator and regulated entity imposes its own costs.<sup>17</sup>

<sup>15</sup> Satish Joshi, Ranjani Krishnan & Lester Lave, 'Estimating the Hidden Costs of Environmental Regulation', *Accounting Review*, Vol. 76, No. 2 (Apr., 2001)

<sup>16</sup> Laura Jones & Stephen Graf, 'Canada's Regulatory Burden: How Many Regulations? At What Cost?', Fraser Institute, 2001

<sup>17</sup> See Berg, *The Growth of Australia's Regulatory State*.



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These are however only the direct costs of regulation. Gary Banks, chairman of the Productivity Commission, has pointed out that "regulations not only create paperwork, they can distort decisions about inputs, stifle entrepreneurship and innovation, divert managers from their core business, prolong decision making and reduce flexibility." The indirect costs of regulation are, in many sectors, much more significant than the compliance costs. Strict and regressive licence schemes prevent entrepreneurs from entering markets, preventing the benefits that those entrepreneurs could bring to the sector and to consumers. Excessive regulation can prevent investment or innovation, as one CCIWA member reported in 2006:

Trying to be issued with a building licence for our new premises was a debacle. The council has made this process difficult and frustrating to the point that we were not going to proceed.

These costs can be difficult to estimate. However, for certain industries, we can assess delays caused by regulatory processes. Many Western Australia industries have complained about seemingly excessive delays from poor bureaucratic procedures. Some developers have complained of delays of up to five years for planning approvals, exacerbated by the complexity of planning and environmental regulation seen in Figure 9, as well as the interaction with heritage approval laws.<sup>18</sup> As the *WA Business News* reported in October 2008:

Edge Group hotel developer, Jon Jessop, said the industry critically needed new and updated accommodation. He said current developments were being stalled by over-regulation and restrictions on the use of strata-titled properties, while finding suitable development sites was also an issue. Mr Jessop said a group of 24 developers in WA had calculated that about \$3 billion worth of tourism developments were stalled because of these issues.

"All of these issues and more result in developments never getting off the ground, developers being delayed and frustrated with lack of government understanding, and purchasers of strata apartments finding it difficult to get funding for their investments because of complicated and restricted uses," he said. "Developers, in the end, have lack of, or nil profit, and leave the tourism accommodation development industry to move into residential or commercial developments."<sup>19</sup>

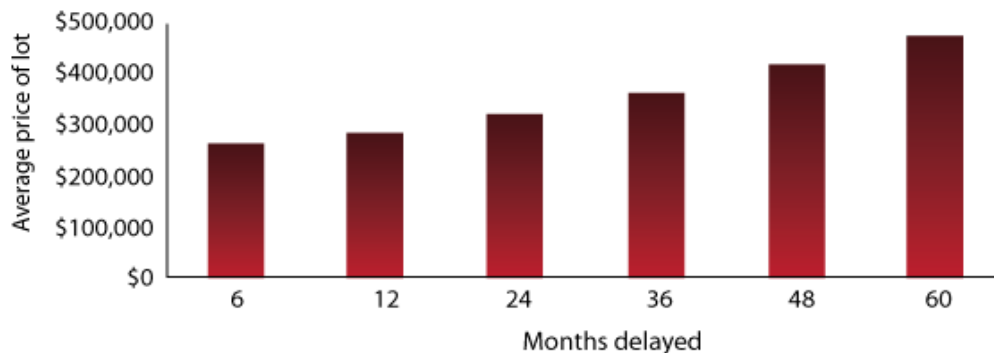
The UDIA(WA) has quantified the cost of planning delays on average home lots. Their study found that a six month delay increased the price of an average lot by 13 per cent, and a four year delay increased the price by 68 per cent. (Figure 11) These sorts of delays are being reported widely throughout the state. Developers have reported delays of up to five years in gaining approvals to use land.

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<sup>18</sup> Submission to Productivity Commission Inquiry into Conservation of Historic Heritage Places, WA Division of the Property Council of Australia, August 2005.

<sup>19</sup> Janelle Macri "Call for government action", *WA Business News*, 16 October 2008

Figure 11: Effect of Approval Delays on Average Lot Price



*UDIA (WA) Submission to the Senate Select Committee on Land and Housing Affordability.*

Planning delays do not only negatively effect the property sector. As one agricultural firm told the CCIWA:

Planning approvals and building licences require speedy reform – approval processes are currently too... slow. Approval processes for dangerous goods licences are also too slow.

As a state government administered program, planning policies allow us to look at concrete example of how indirect regulatory costs manifest themselves.

### 2.3.1 Indirect costs: house and land regulation<sup>20</sup>

Western Australia governments administer a complex and highly restrictive system of land-use regulation. Unlike other Australian states, the Western Australian planning scheme is highly centralized.<sup>21</sup>

The 'Network City' strategic framework for planning decisions is designed to direct growth for Perth and Peel in a structured direction to 'to meet the challenges of climate change, water, oil and resource depletion, at the same time catering for the demands of rapid population growth driven by a strong economy and increased affluence.'<sup>22</sup> To do so, the Network City plan aims to limit urban sprawl, which according to former Planning Minister Alannah MacTiernan, impacts the state government's finances and has environmental consequences.

With a growing city, the demand for land is increasing. However, policies designed to restrain sprawl, such as the implicit urban growth boundary, and protect environmental regions, such as the 'Bush Forever' plan for the Swan Coastal Plan area in Perth, restrict the supply of new land. When the demand for land is increasing, but the supply is artificially restricted by land regulation, the consequences are predictable – the cost of land to homebuyers increases dramatically.

Planning delays and urban growth boundaries are not the only regulations which add indirectly to the cost of housing in Western Australia. Across Australia, energy efficiency requirements are being incorporated into minimum building standards. In 2007, the Western Australian

<sup>20</sup> Much of this section is drawn from Alan Moran & Julie Novak, 'The great lock out: The impact of housing and land regulations in Western Australia', Institute of Public Affairs, April 2009.

<sup>21</sup> Ray Stokes, 'The WA Model: What makes the WA planning system different?', 2006

<sup>22</sup> 'Welcome to Network City', Department of Planning and Infrastructure

government mandated a 5 Star Plus energy rating for new homes. This requirement, according to the Property Council, adds \$3,500 to each new home built in the state. Local governments impose their own requirements, covering both aesthetic criteria – such as height restrictions, and room and balcony size requirements – as well as additional energy efficiency requirements, which, according to some studies, could add another 14% to home building costs. The Institute of Public Affairs has concluded that these regulations, as well as excessive and inefficient land and infrastructure taxes, add 38% to the cost of an average new home.<sup>23</sup>

### 2.4 Regulatory process

Western Australia has a legacy of poor performance in regulatory process. A 2007 report by the Business Council of Australia (BCA) rated Western Australia the worst jurisdiction for red tape. On three of the four measures used Western Australia was rated the worst in Australia. Of note was a lack of transparency in the consultation process and lack of an independent assessment agency. Other concerns were the lack of sunset clauses in Western Australian regulations which increase the risk of regulation becoming outdated. The BCA was also critical of Western Australia's lack of a prescribed consultation period in which firms could comment on regulatory impact statements.

#### 2.4.1 Recent reform

In January 2009, Western Australian Treasurer, Troy Buswell, announced a government initiative to cut red tape. The plan involves

- a Red Tape Reduction Group.
- a system for ministers to refer specific regulations for review by the department of Treasury and Finance.
- a gate keeping unit within the Department of Treasury and Finance to screen all new regulations.<sup>24</sup>

The Red Tape Reduction Group (RTRG) was created to reform the existing stock of regulation by consulting with small business whereas the Department of Treasury and Finance will minimize the regulatory burden of new regulations. The RTRG has completed a round of consultations with small businesses across Western Australia and is in the process of accepting written submissions from small business operators.

The RTRG is being led by Ken Baston MLC and Liza Harvey MLA who will prepare a report for the Treasurer and the Economic and Expenditure Reform Committee.

While the Western Australian Government is to be commended on the formation of the Red Tape Reduction Group it appears to be adopting a very narrow approach to calculating the cost of regulation; paperwork and delays to small business are only some of the costs regulation has on the Western Australian economy.

The new Regulatory Gatekeeping Unit (RGU) takes a slightly broader view, assessing the impact of new regulations and amendments on business, consumers and the economy. The RGU administers a Regulatory Impact Assessment Process, whereby all regulatory changes undergo a Preliminary Impact Assessment (PIA). If the PIA reveals significant adverse impact, a Regulatory Impact Statement (RIS) is required. The RIS consists of a Consultation RIS, which is

<sup>23</sup> Alan Moran & Julie Novak, 'The great lock out: The impact of housing and land regulations in Western Australia', Institute of Public Affairs, April 2009.

<sup>24</sup> <http://www.mediastatements.wa.gov.au/Lists/Statements/DispForm.aspx?ID=131233>

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released inviting submissions and public comment, and a subsequent Decision RIS for presentation to the decision maker.<sup>25</sup>

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<sup>25</sup> <http://www.dtf.wa.gov.au/cms/content.aspx?id=2171>

## 3.0 Case studies: Regulation and its consequences

### 3.1 Heavy Vehicle Regulation

“This economy runs on wheels and the industry that transports produce to market is what keeps this State ticking.” -Western Australian Transport Minister Simon O’Brien<sup>26</sup>

The over-regulation of the transport industry can be particularly troublesome; the compliance costs of transport regulations are passed on to other industries relying on freight services.

Over the last few years, the West Australian road freight industry has raised a number of concerns over changes to the Road Traffic (Vehicle Standards) Regulations 2002. The Australian Livestock Transporter Association and the Country Bulk Carriers Association are particularly concerned by the introduction of new load height restrictions and axle-spacing requirements on class 2/3 restricted access vehicle (RAV) period permits.<sup>27</sup>

The responsible regulator, Main Roads Western Australia, proposed the changes following a study which found that some vehicles with a high centre of gravity and a short wheel base were more likely to roll under certain braking and cornering conditions. As such the transport industry was given until 1 October 2008 to comply with new axle spacing requirements.

In May 2008 Main Roads abandoned the October deadline and declared the implementation period was under review in response to industry concern the deadline was too onerous. Grant Robins, president of both the Australian Livestock Transporter and the County Bulk Carriers Associations said the overall cost of compliance with the new regulations could run into hundreds of millions of dollars across WA.<sup>28</sup>

The existing fleet of class 2 and 3 vehicles includes road trains, b-double, livestock carriers but excludes agricultural machinery. Under the proposed change, they would require axle relocation of up to 1.2m in some circumstances or complete replacement where axle relocation is not possible.

Regardless of the merits of these regulations, the implementation process has been extremely poor. There appears to be a lack of industry consultation and an underestimation of the compliance burden. Regulations are easy to change on paper but the regulatory impact on heavy vehicle operators is huge when they are told they must relocate the wheels of their vehicles.

The cancellation of the implementation plan creates even more uncertainty; operators will avoid purchasing new rigs or modifying their current equipment until they know whether their purchase will be compliant. In a regulatory environment where a statewide fleet of a class of heavy vehicle can be made unroadworthy by a single regulatory change, fleet operators will be reluctant to invest to expand services.

#### 3.1.1 Federal Regulation of freight

A National framework for the Regulation, Registration and Licensing of Heavy Vehicles has been proposed by the Australian Transport Council. In their joint submission, Main Roads Western Australia and the Department for planning and Infrastructure WA expressed concerns that a

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<sup>26</sup> “O’Brien to take knife to WA transport red tape” Countryman, 23 April 2009.

<sup>27</sup> “Bulk carriers want a say,” Countryman, 11 September 2008.

<sup>28</sup> “Truck safety cost carrier,” Countryman, 8 May 2008.

national framework would not be in Western Australia's best interests. Reasons included the loss of stamp duty revenue, the loss of sovereignty over WA roads, and the necessity of adopting other national road safety objectives.<sup>29</sup>

Their most credible argument is the necessary adoption of stricter regulation, which disallows certain highly productive heavy vehicle combinations to operate which are not allowed in other states. While the National Framework RIS refers to the introduction of Local Productivity Variations there is no guarantee these will reduce the red tape of a national framework on WA operators.

There are considerable benefits of a National Framework, the current regulatory system makes interstate road freight a regulatory nightmare. Several submissions highlighted the regulatory hassle of cross border freight. Oversized heavy vehicles require both police and small vehicle escort in some states, arranging escort changeovers at state borders is particularly burdensome while regulatory variations mean the convoy must be arranged differently in each territory crossed.

While there are likely to be considerable benefits for interstate operators, this uniformity should not come at the cost of an increased regulatory burden for intrastate operators. Main Roads Western Australia estimates in their submission that as little as 1.5% of the Western Australian heavy vehicle fleet engages in interstate transport. Imposing the same regulations on agricultural, mining, recreational and short range road freight as their long range counterparts would impose unnecessary red tape.

To ameliorate this problem, the Department for Infrastructure and Planning WA, recommended increasing the definition of a heavy vehicle for purposes of the National Framework to only include vehicles with a carrying capacity of 12 tonnes or more to only capture large interstate freight trucks. While this approach is tempting in theory, it fractures the law, creating too regulatory regimes whereby it has the potential to distort the freight market towards uneconomical consequences. The size of transporter used should correlate to the load carried not which set of regulations are most favorable.

While it may not be in Western Australia's best interest to adopt the national framework in its current form this is no excuse for complacency regarding its own regulatory system. Heavy vehicle regulation in Western Australia is by no means best practice. The attempt to change axle location requirements is an excellent example of a lack of transparency and consultation. A lack of consultation left several industry associations unable to contribute to the process, while the failure to make public the report which triggered the new regulations invited criticism of transparency.

### **3.2 Wheat: after the single desk**

How regulation can develop consequences unintended by their designers has been illustrated by a recent Western Australian example. Following the national deregulation of wheat marketing by the federal government, Cooperative Bulk Handling Limited (CBH) applied for, and was granted, an exclusive dealing notification by the Australian Competition and Consumer Commission (ACCC). This arrangement gave CBH exclusive control over grain storage and handling between local silos and ports.

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<sup>29</sup> "A National Framework for Regulation, Registration and Licensing of Heavy Vehicles Consultation Regulatory Impact Statement April 2009, Submission by Department for Planning and Infrastructure and Main Roads West Australia.

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In granting CBH their monopoly, the Chairman of the ACCC claimed that “there are likely to be significant efficiency benefits under Grain Express as a result of the central coordination of grain storage, handling and transportation in Western Australia”, arguing that the potential increase of accredited exporters seeking to make their own storage and handling arrangements could create great inefficiencies and add to industry costs.<sup>30</sup> CBH argued that efficiencies would be found in both the usage of the rail network, and Western Australian ports as a consequence of their monopoly control over the wheat logistics.

As the Institute of Public Affairs argued at the time, such justification for monopoly is unwarranted. Markets function best when entry and exit are unrestricted by the state; the pressure created by existent or possible competitors disciplines firms to improve and maintain their products or services. In the case of Western Australian grain, any possible efficiencies created by industry consolidation would be vastly outweighed by the negative consequences of protecting CBH from competitive pressure.

Regulation may be well intended – the aim of the ACCC was to increase efficiency, not reduce it – but the result of the CBH arrangement has been significantly adverse. As the *Australian Financial Review* noted in April, the CBH arrangement has forced all Western Australian grain onto an outmoded and increasingly uncompetitive rail network. As a consequence, exports to international wheat buyers have been substantially delayed at port. As Louise Staley has written:

Had there been normal competition, instead of a single operator trying to second guess future volumes, more grain would have gone by road straight to port, and rail limitations would have been far less critical.

CBH has proved itself incapable of running the monopoly it convinced the ACCC to grant it.... A direct result of the removal of competition in the WA supply chain was significant delays at ports, to the extent that the shipping stem was suspended for a month to clear the backlog. This led to the real risk of crippling demurrage charges that could severely test the financial viability of some exporters.

Reports also suggest the WA shipping stem has been altered to advantage some buyers. If this is proven, there is a risk of long-term damage to our export reputation, loss of custom to Canada and other exporters, and adverse renegotiation of current contracts.<sup>31</sup>

The problems caused by CBH’s monopoly also illustrate another important aspect of the regulatory burden. Often many policy problems in Australia – from social issues, to market inefficiencies, to infrastructure – have, as root causes, regulatory origins. The superficial cause of the problems in wheat logistics in Western Australia is an outmoded rail network, and if our analysis was left here, the appropriate political response would be infrastructure spending to upgrade the network. However, as we have seen, the actual cause of the problem is the incentives faced by the monopoly provider, and the inability for wheat exporters to take their business elsewhere.

The regulatory origin of many policy problems is readily observable across many areas, including water, energy, telecommunication and infrastructure, but is vastly understated in public and political debate.

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<sup>30</sup> “ACCC decides not to oppose WA grain logistics system”, Media Release, 8<sup>th</sup> September, 2008

<sup>31</sup> Louise Staley, “ACCC in dangerous game of monopoly,” *Australian Financial Review*, 22 April 2009.

### 3.3 Retail Trade Restrictions

A discussion about regulation in Western Australia would not be complete without considering retail trading hour restrictions.

Western Australia and South Australia are the last states to cling to strict regulatory restrictions governing when stores can and can't open their doors to the public. While other states have deregulated retail trading hours, Western Australia has made little progress. Though reform appears to be back on the agenda after WA Premier, Colin Barnett, announced he would pursue extended weekday trading, but not Sunday trading, in the near future.<sup>32</sup>

Currently the *Retail Trading Hours Act 1987* distinguishes shops by four categories; special retail shops, small retail shops, service stations and general retail shops. General retail shops may only trade from 8am until 6pm on weekdays, but may trade until 9pm on Thursdays, 8am to 5pm on Saturdays and must be closed on Sundays and all public holidays. Small retail shops must hold a certificate from the Department of Consumer Employment Protection in order to trade seven days a week. Service stations are also free from the regulations though there are strict regulations on what they may and may not sell. Special retail shops may trade between 6am and 11:30pm, seven days a week if they hold a certificate from the Department of Consumer and Employment Protection.

The Act does not apply north of the 26<sup>th</sup> parallel of south latitude. The Minister for Consumer and Employment Protection may publish an exemption in the Government Gazette; tourist precincts in Perth and Fremantle are exempt in such way.

The two most cited reasons for retaining trade hour restrictions are to shelter small businesses from large chains and to preserve work life balance, Sunday being a time for families and religion. In regard to small businesses, there is a belief that if deregulated, smaller businesses will not be able to compete with the larger chains, smaller proprietors will have to deal with the additional stress of longer hours, hire more staff and no longer benefit from exemptions that allow them to remain open when the larger chains are closed. Larger chains will hence become more competitive and profits will flow out of the state to global and national shareholders while the local battlers will suffer and be forced to close their shops.

This view, though commonly held, is not supported by evidence. Evidence from other states indicates that small business growth increases over periods of deregulation. Kiel and Haberkern<sup>33</sup> found that the number of small traders increases with extended trading hours. As IPA research fellow Louise Staley points out, "It is no accident that the states with the greatest growth in small retail numbers are those with the most liberal shop trading hours."<sup>34</sup>

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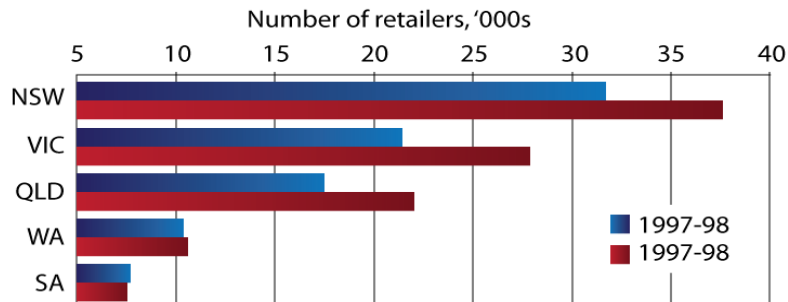
<sup>32</sup> Joe Spagnolo Extended trading hours back on Govt agenda 14 May 2009 PerthNow

<sup>33</sup> The Impact of the Deregulation of Retail Trading Hours in Australia G Kiel, G Haberkern - 1994 - Marketshare, Brisbane

<sup>34</sup> Louise Staley, Case is overwhelming to extend shop hours, the West Australian , 3 October 2008.



Figure 12: Increase in small retailers, WA and other states



The exemptions for small retail shops may have the undesired consequence of actually preventing the expansion of successful small businesses. To qualify as a small retail shop, a business may be owned by no more than 6 people who operate more than six shops where in any shop no more than ten employees work at one time. This exemption creates a disincentive to hire casual staff or expand operations while limiting capital to only six owners discourages investment and entrepreneurship.

As Milton Cockburn, executive director of the Shopping Centre Council of Australia, has said “The Retail Trading Hours Act is a law that actually forces small retailers to stay small. It is therefore an anti-growth law in a state that prides itself of promoting economic development.”<sup>35</sup>

The small businesses that are likely to suffer are those that have built their entire business plan upon the existence of the restrictions. Service stations and small retail shops that charge consumers a premium to purchase goods outside regular trading hours will lose this regulatory advantage.

Consumer surveys show that while residents are reluctant to deregulate, once retail restrictions are removed consumers quickly take advantage of longer trading hours.<sup>36</sup> As Louise Staley argued, “In every place shop trading hours have been liberalized there would be an outcry and electoral oblivion if major restrictions were reintroduced.”

Extended trading hours have gained popularity in other states as changing social conditions generate demand for late night and Sunday trading. The increase in female labor force participation and double income families have made traditional retail hours impractical. Australians are also working longer hours. The standard working week is no longer universal; the proportions of the population working longer hours and shorter hours have both increased.<sup>37</sup> Archaic Sunday trading restrictions unnecessarily burden double income families, students and single families thereby defeating the work-life balance objectives that retail trade restrictions supposedly embody.

<sup>35</sup> Milton Cockburn, The impact of trading hours regulation, Inside Retailing, 1 May 2005

<sup>36</sup> Review of Retail Trading Hours- Public consultation paper, Government of Western Australia, 2003

<sup>37</sup> 4102.0 - Australian Social Trends, 1999 Previous ISSUE Released at 11:30 AM (CANBERRA TIME) 24/06/1999 abs

### 3.4 Small bars

As well as economic costs, red tape can have profound social costs on Western Australian communities. Liquor licensing reforms introduced to revitalize small bar culture in Perth are being constrained by local council red tape. Small bar owners are being squeezed by cross-governmental conflict between the Department of Liquor, Racing and Gaming and local councils determined to resist the reforms.

The reforms, introduced by the Carpenter Government in 2006, permitted Sunday trading for liquor stores, allowed restaurants to serve alcohol without a meal, created a new small bar license and introduced a number of other measures to reduce red tape.

Despite these reforms, take-up of the small bar license has been modest. Only 18 bars having opened as of April 2009.<sup>38</sup> While the small bar license costs \$2,025, applicants must undergo a public interest assessment which can prove to be long and expensive.

Applicants must compile a PIA submission and supporting documentation. This documentation must identify 'at risk' groups that may frequent the locality of the proposed bar. 'At risk' groups include families, people from rural communities, aboriginals, miners, low-socioeconomic citizens, migrants, tourists and children. Bar owners are expected to preserve and contribute to the amenity of the local area and investigate the nature and character of the local community and the quality of life of its residents. They must consult with local government and highlight the positive recreational, cultural, employment and tourism benefits they will bring to the community. Applicants must also address the issues of nuisance to neighbors, crime and vandalism, streetscape, noise, public transport, taxi services and parking spaces.

Small bar owners must conduct a letter drop for 200m around the proposed premise and allow 28 days for the community to respond. They must also serve notice on all hospitals, schools, police stations, childcare centers, aged care facilities and churches in the area. They are then required to lodge copies of their House Management Policy, Code of Conduct and Management Plan with the Department of Racing, Gaming and Liquor.<sup>39</sup>

This process is made more difficult by uncooperative councils. As Dan Mossenson of the Small Bar Association of WA put it, "some councils are receptive to the introduction of new licenses and others are rather obtrusive and unhelpful." One applicant, Rosie Small, revealed she had spent over \$6000 on different applications to Fremantle council when interviewed by Stateline Western Australia.<sup>40</sup> While a small bar license has been created, local council town planning schemes don't differentiate small bars from taverns or pubs, subjecting them all to the same requirements.<sup>41</sup>

Small bars have considerable benefits; they act as a substitute to louder and busier pubs and attract new customers who would prefer to stay at home than visit a larger establishment. Small bars do not exert as many adverse consequences on the surrounding community and are much safer. As is the case in Melbourne, small bars can diversify to cater for different tastes creating benefits for consumers.

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<sup>38</sup> See Beatrice Thomas, 'Small-bar industry gets a new voice to help cut government red tape, The West Australian, 30 April 2009.

<sup>39</sup> See Public Interest Assessment: Pursuant to section 38 of the Liquor Control Act, Department of Racing, Gaming and Liquor, WA. [Available at: [http://www.rgl.wa.gov.au/ResourceFiles/Policies/Public\\_Interest\\_Assessments.pdf](http://www.rgl.wa.gov.au/ResourceFiles/Policies/Public_Interest_Assessments.pdf)]

<sup>40</sup> [Available at: <http://www.abc.net.au/stateline/wa/content/2006/s2029942.htm>]

<sup>41</sup> See Daniel Hatch, Councils block push for lively small bars, The West Australian, 30 September 2008.

### 3.5 Taxis

Historically all Australian jurisdictions have heavily regulated taxi services. Taxi regulation commonly comprises a quota system of taxi plate licenses, fare setting and safety regulations. Taxi plate licenses act as a barrier to entry limiting the supply of taxis while fare regulation acts as a price ceiling restricting the ability of taxi operators from extracting monopoly profits. In this way the number of taxis is artificially restricted by the government while prices are kept low. This induced scarcity is reflected in the appreciation of taxi plate values, as demand expands from growing cities and population growth. This makes taxi plates an excellent investment; demand for taxis continues to grow steadily while supply is fixed.

This creates incumbent taxi plate owners who have already invested heavily in taxi plates; total deregulation would almost completely devalue their investment by removing barriers to entry. This is why deregulation is heavily resisted by existing taxi plate owners. Fare setting is also inefficient as it fails to take into account the fluctuating demand for taxis. Demand fluctuates from hour to hour. At peak times taxi drivers are unable to keep up with demand whereas when demand is low taxis are left lined up at ranks. Peak hour charges only partially replicate the price variation of a competitive market. Additional peak hour licenses can be introduced but these leave productive vehicles lying still during non-peak hours.

Taxi regulation is a sandwich of inefficient regulatory tools thrown together to replicate a working market. Taxi licenses create a shortage of supply and monopoly profits, fare setting is used to reduce monopoly profits but creates short term shortages and surpluses. Rather than deregulate, additional layers of regulation are introduced which create their own problems.

Western Australia is suffering all the basic economic symptoms of taxi regulation discussed above. However Perth is in a significantly better position to deregulate compared to other states, the introduction of new peak hour licenses has partially addressed the undersupply of taxis. As IPA Research Fellow Richard Allsop states "As a result of the Government's measures, between 2003 and 2006 there was a 27 per cent increase in taxi numbers meaning that, as of March 2007, there are 1,398 metropolitan taxis and 447 country taxis." He continues, "the taxi industry regularly complains about the leasing of plates, but the Minister points out that they have little to complain about as values have continued to increase from \$202,796 to \$229,936 since leasing was introduced."<sup>42</sup> While leasing arrangements help address the problem of appreciating plate values, they are still a barrier to entry and create further complexity. For instance, Transport Minister Simon O'Brien, recently cut the number of peak hour plates in half:

Peak period plates that end in an odd digit will only be permitted to operate on those weekday mornings that carry a calendar date, which is an odd number. Peak period plates that end in even numbers will work on even numbered calendar days.<sup>43</sup>

Full deregulation would involve the cancellation of all licences and leasing arrangements with or without compensation. The only Australian jurisdiction to successfully achieve this is the Northern Territory which deregulated the Darwin taxi market in 1999. In Victoria, taxi licenses are listed on the stock exchange and are estimated to total over \$1 billion in value, fortunately Perth is much better placed to buyback or devalue existing licenses with further plate releases. Perth's taxi industry is in a state of perpetual regulatory sickness, nothing short of full deregulation will cure it.

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<sup>42</sup> Richard Allsop, Moving in the right direction: Transport reform in Western Australia, IPA Occasional Paper, June 2007.

<sup>43</sup> Media Statement, "Fare balance for customers and the taxi industry," Department of Planning and Infrastructure, 31 March 2009.

## 4.0 Bringing regulation forward for Western Australia

Western Australia may lag behind other Australian states in its regulatory design and management, but that lag has its benefits - the last two decades has seen a significant development of what constitutes regulatory 'best practice', and, as a consequence, Western Australia is now in a position to design their regulatory framework optimally.

Most discussion focusing on regulatory burdens and regulatory process focuses on national governments. Yet, given Australia's federal system and the extensive powers retained by the states to impose regulation, the principles which apply to national governments can be applied to the states.

### 4.1 Tackling compliance burdens: the Dutch model

Like many national governments, the Dutch government has, over the last two decades, embarked on a significant regulatory reform designed to reduce the impact of regulations on business. The Dutch example is somewhat unique however because of its focus – in an effort to 'depoliticize' the process of regulatory reform, since the induction of the Slechte Committee in 1998, the government has limited its approach to the compliance burden of regulation.<sup>44</sup> The Dutch approach bucks the international trend towards broader cost-benefit analysis of proposed and existant regulation, but instead expends its energy on the bi-partisan goal of reducing the cost of red tape.

Despite the narrowness of this approach – focusing on compliance costs and administrative simplification is, as we have seen, a small portion of the total costs incurred by regulation – the Dutch government has had remarkable success, and can provide some guidance for Western Australia. According to the OECD, the Dutch government has achieved an economy-wide 25% net reduction in regulatory burdens. Having achieved this concrete goal, the Dutch government has set another the target of another 25% reduction in administrative burden by 2011.

The OECD has identified six critical elements of the Dutch government's approach.

**Measurement:** A method for measuring the total administrative burden and for mapping the distribution of burdens on individual regulations and ministries has been developed. This Standard Cost Model (SCM), which has been taken up by a high number of countries and the European Commission, enables a targeting of simplification efforts for the most burdensome regulations and makes it possible to monitor the development of overall administrative burdens.

**Quantitative target:** By establishing a quantitative, ambitious and timebound target, and communicating this widely, the government accepted to be held accountable on a highly prioritised policy goal. The target has been divided among ministries and over years, thus providing a strong instrument for steering and monitoring simplification efforts across the administration.

**Strong co-ordinating unit at the centre of government:** The inter-ministerial project team (IPAL), located in the Ministry of Finance, provided a coherent co-ordination of the programme across ministries. IPAL ensured methodological consistency, common and co-ordinated reporting and use of instruments such as risk assessment to increase the likelihood of successful implementation of the many initiatives to simplify the regulatory framework.

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<sup>44</sup> OECD, Cutting Red Tape Administrative Simplification in the Netherlands, 2007, p17

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**Independent monitoring:** The Advisory Board on Administrative Burdens (Actal) played the role of independent watchdog, monitoring progress towards meeting the reduction target and assessing the initiatives of individual ministries. Actal assisted in guiding and advising ministries and provided independent and horizontal advice to the Cabinet on ways and means to strengthen the programme. From the outset, the possibility of abandoning the programme in times of difficulty was removed, or at least made very costly. This independent body contributed to ensure sustained attention and support for the programme.

**Link to the budget cycle:** Reporting to Cabinet and Parliament on plans for and progress on the burden reduction programme has been linked to well-established reporting procedures related to the budget. This led to unavoidable deadlines for reporting and ensured recurring attention from the Cabinet and Parliament. It also made clear to ministries that performance on the programme would be of relevance in budget discussions with the Ministry of Finance and its minister.

**Political support:** The programme for the reduction of administrative burdens has had clear and sustained political support from the Cabinet, expressed from in the Coalition Agreement and onwards. The programme enjoyed support of the responsible minister in dealing with colleagues and has also been backed by Parliament and relevant civil society organisations. This broad and sustained support protected the programme from being politicised or slowed down, e.g. from institutional inertia or unwillingness to change.

Furthermore, the OECD notes that “a change of administrative culture may be a precondition for obtaining a regulatory regime, in which regulation is justified, proportionate and evidence-based.”<sup>45</sup>

The evidence from the Netherlands suggests that inculcating such a cultural change has been at least partly successful. One major study looked at attitudes towards business regulation and the public servant understanding of the cost such regulation imposed.<sup>46</sup> The study found a high correlation between ‘knowledge’ of the impact of the regulatory burden, and ‘attitude’ towards regulation, suggesting that the challenge of inducing a culture within the public sector of regulatory minimization is less an ideological one than an educational one. Given the information necessary to assess the impact of their actions on the private sector and individuals, public servants will tend to independently try to reduce unnecessary burdens.

### 4.2 Regulatory best-practice

Regulation should be designed and implemented according to international best practice.

Before introducing new regulations, the problem that the regulation is intended to solve needs to be defined clearly. Its cause needs to be carefully identified. The opportunity cost of the implementing the regulation needs to be discerned – how costly would not regulating be, when compared to the cost of regulating? Regulation needs to be transparent and consultative – all interested parties need to be aware, informed, and have had an opportunity to inform the policy process. With the problem clearly defined, the purpose and goal of the regulations need to be clearly defined – what are the criteria by which the regulation may be judged to have succeeded or failed? In Figure 13, the OECD provides a guide to regulatory decision making.

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<sup>45</sup> OECD, Cutting Red Tape Administrative Simplification in the Netherlands, 2007, p17

<sup>46</sup> Zosja Berdowski, Koos van Dijken & Natasha Stroeker, ‘Internalisation of administrative burdens: Co-ordinating report’, Institute for Research on Public Expenditure, August 2005

Figure 13: The OECD Reference Checklist for Regulatory Decision-Making

1. Is the problem correctly defined?
2. Is government action justified?
3. Is regulation the best form of government action?
4. Is there a legal basis for regulation?
5. What is the appropriate level (or levels) of government for this action?
6. Do the benefits of regulation justify the costs?
7. Is the distribution of effects across society transparent?
8. Is the regulation clear, consistent, comprehensible and accessible to users?
9. Have all interested parties had the opportunity to present their views?
10. How will compliance be achieved?

*OECD Reference Checklist for Regulatory Decision-Making,*  
<http://www.oecd.org/dataoecd/20/10/35220214.pdf> [accessed 27 May, 2009]

### 4.3 Regulatory impact statements

As part of the 2008 reforms to regulatory process, new and amended Western Australian regulations will be subject to a two stage impact assessment process. All regulatory proposals will be subject to a Preliminary Impact Assessment. If the results of the initial assessment conclude that the proposal's impact will be "adverse and significant",<sup>47</sup> a full Regulatory Impact Assessment is required, which will incorporate the production of a consultation document.

The success of this process will greatly depend on how effective the determination of significance and adversity is during the Preliminary Impact Assessment process. The reforms to regulatory process are welcome, but subsequent years will likely show that there is much opportunity to improve. The current reforms will cover new and amended regulation, but the vast stock of current Western Australian regulation will go largely unexamined. OECD Best Practices urge jurisdictions to apply Regulatory Impact Statements to existing as well as new regulation. Furthermore, the success of the new processes will also rely on how deeply integrated into the policy-making process the regulatory oversight is, as well the use of government-wide data collection. On these metrics, the Western Australian reforms are a good start, but will not be sufficient to significantly reduce the growth of regulatory burden in the state.

### 4.4 Institutional changes to regulatory oversight

A critical element in implementing a broad regulatory reduction program is institutional reform. There is no single model for developing a regulatory oversight agency, but Australian and international examples provide a variety of models. Individual institutions are tailored to the purposes of regulatory reduction, political necessities, and institutional circumstances. Here, we look at three models – two regulatory reform agencies, the Victorian Competition and Efficiency Commission and the more purpose-built Dutch Advisory Board on Administrative Burdens, and a private sector approach to economy-wide regulatory oversight, The Board of Swedish Industry and Commerce for Better Regulation. Other possible models, including temporary or permanent external committees (such as the Commonwealth Government's 2005 Reducing

<sup>47</sup> Regulatory Gatekeeping, <http://www.dtf.wa.gov.au/cms/content.aspx?id=2171>

Regulation Taskforce), and entities contained within ministries, such as the US Small Business Administration, or Western Australia's own Small Business Development Corporation, are canvassed in the OECD document *Cutting Red Tape: National Strategies for Administrative Simplification*, 2006.

One model that would greatly enhance regulatory oversight in Western Australia is the Victorian Competition and Efficiency Commission (VCEC). Established in 2004, the VCEC was designed to remove regulatory oversight functions scattered throughout government departments into a single dedicated body, resourcing the new agency to scrutinize individual RISs, and undertake inquiries into regulatory issues. The VCEC is able to benchmark regulatory processes against best practices, impose and manage mandatory time limits for those processes, manage mutual recognition, and coordinate the major Victorian regulatory agencies.

The Dutch regulatory oversight agency is the Advisory Board on Administrative Burdens (Actal) which acts as a regulatory watchdog, simplification administrator, and assessor. It has a relatively small staff of just 13 personnel. In accordance with the unique Dutch approach to reducing compliance costs, it has a specific goal to affect a cultural shift in the public sector. Doing so, in the Dutch view, will make regulatory burden reduction self-reinforcing: "Policy officers should consider the effects for [administrative burden] on their own initiative."<sup>48</sup>

Private initiatives from the business community can have an impact developing the regulatory process. Another model of regulatory oversight is provided by a private coalition of Swedish firms, The Board of Swedish Industry and Commerce for Better Regulation (NNR). An umbrella organization of 300,000 Swedish companies, and funded entirely by its members, the NNR specifically focuses on how regulation affects the business community, giving it both an economy-wide focus and avoiding the dilution of purpose that industrial peak-bodies have when dealing with government. The NNR provides private sector oversight of the costs and consequences of Swedish and European regulation, as well as overviews of the regulatory burden as a whole.

The NNR scored a significant victory in 2008 when the Swedish government implemented mandatory regulatory impact statements across all regulatory agencies. A new government board to oversee regulatory reform, the Swedish Better Regulation Council, provides not just regulatory impact analysis, but aims to assess regulation as it effects business competitiveness with other jurisdictions.

Western Australia has so far chosen to adopt a Regulatory Gatekeeping Unit within Treasury. While many other jurisdictions have similar organisations, they are most successful when matched with an external oversight agency, like the VCEC or Actal. If the state wants a best practice regulatory oversight process, it will need a dedicated agency, specializing in oversight and investigation into the efficacy and efficiency of existing regulation.

### 4.5 From producer-side to consumer-side

One change in the Western Australian government philosophy towards regulation which could have significant practical benefits can be described as a reorientation of regulations from favoring producers to favouring consumers.

Employed individuals acting in an economy are simultaneously both producers and consumers.

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<sup>48</sup> Presentation: "The Dutch Advisory Board on Administrative Burden (Actal)" March 5 2008, available at [www.oecd.org/dataoecd/45/63/40313681.ppt](http://www.oecd.org/dataoecd/45/63/40313681.ppt) [accessed 29 May 2008]

## Over-ruled: Regulation in Western Australia

All else being equal, regulations should favour the interests of consumers – who are interested in lower prices, higher quality goods, and wider availability – than producers, whose interests in the regulatory sphere are not necessarily aligned with consumers – for example, protection from competition, and the subsequent maintenance of artificially high prices. Unfortunately in Western Australia, much regulation is orientated towards producer interest.

One case in point is a Western Australian licence scheme, the mandatory registration of hairdressers. The website of the Hairdressers Registration Board of Western Australia claims that one of the benefits of its compulsory hairdressing licence is to prevent “unqualified people from opening a salon next to you and practising as a hairdresser in an attempt to impact on your established clientele.” By limiting the amount of competition in the market for hairdressing, this policy artificially raises prices, penalizing consumers at the expense of consumers.

Such unbalance is seen in many areas of the Western Australian regulatory framework. The high cost and low availability of taxi licenses keep Western Australia’s taxi service poor, from the perspective of consumers. Shop trading hours designed to favour the interest of retail employees reduce the availability of retail to consumers. Removing these regulations – that is, favouring the interests of consumers over producers – would have significant welfare-enhancing benefits from both an economic perspective and to reinvigorate Western Australia’s social and cultural milieu.



## 5.0 Conclusion: reducing the burden

There are no easy fixes to over-regulation. Regulatory reduction requires concerted effort at all levels of government and on both sides of parliament to ensure that regulation, when drafted, is targeted, evidence-based and has minimal unintended consequences. As we have seen, such an approach will require a significant institutional change. Some of the required institutional changes have already been announced by the Western Australian government, but there are significant reforms needed. These include:

- Regulation Impact Assessments need to be rigorous. Assessments also need to be applied to the stock of existing regulation in order to reduce the existing regulatory burden
- Western Australia needs a separate regulatory oversight institution which can coordinate regulatory reform, assess progress of current reform, conduct inquiries into existing regulation, and collect data. This institution could be based on a number of Australian and international models, particularly the Victorian model.
- Regulatory focus needs to shift towards favouring producers to favouring consumers. Policy-makers should ensure that regulations do not result in higher prices or less access for consumers, and that regulations are not skewed away from the interests of consumers.

This is a critical time for the Western Australian economy. Only by maximizing its competitiveness and reducing administrative overload will it be able to ride out the global financial crisis and ensure that it has a strong institutional and regulatory framework to grow its economy in the mining boom and beyond.