SERVICE PRIORITY REVIEW

BACKGROUND PAPER

COUNTERPRODUCTIVE RULES AND PROCESSES
This background paper was authored by the Service Priority Review secretariat in consultation with, and to inform the work of, the Service Priority Review Panel. Every effort has been taken to ensure accuracy, currency and reliability of the content. The paper is not intended to be a comprehensive overview of the subject nor does it represent the position of the Western Australian Government. Changes in circumstances after the time of publication may impact the quality of the information.

The following background papers are published in full on the Department of the Premier and Cabinet website: www.dpc.wa.gov.au

1. Agency capability reviews
2. Best practice regulation
3. Overview of the budget process
4. Counterproductive rules and processes
5. Digital transformation
6. Engaging with the community
7. Functional leadership
8. Government boards and committees
9. Government trading enterprises
10. Leader performance management and accountability
11. One sector workforce
12. Privacy and information sharing
13. Procurement of goods and services
14. Public sector employment framework
15. Role of the centre
16. Service design and delivery
17. Successful implementation of reform
18. Whole-of-government targets
Introduction

From the outset, this paper acknowledges that administrative rules are critical to the management of public sector organisations operating in a highly complex and uncertain environment. Effective administrative rules can assist decision makers in exercising discretion, while serving to mitigate legal and other system risks.\(^1\) A lack of good governance and accountability can lead to poor decisions and, in some cases, a loss of faith in both the public sector and government.\(^2\)

As observed by stakeholders during review consultations, the Western Australian public sector displays a proliferation of prescriptive internal systems, rules and processes – what Bozeman and Feeney define as “management subsystem red tape”\(^3\) – at both the central and operational levels. This is particularly evident in the areas of personnel, budgeting and procurement.

Specific examples raised include:

- the construction of, and administrative requirements related to, the annual budget bilateral process
- policy requirements and agency processes related to the management of buildings and works
- agency processes related to the allocation of government grants
- the prescription of whole-of-government policy directives in relation to workforce and other financial savings measures
- prescriptive human resources directives and processes in relation to recruitment and performance management.

The growth of internal red tape across public sectors internationally is largely attributable to increased risk aversion in administrative decision making.\(^4\) In addition to diverting scarce resources from the delivery of government services, unnecessary rules can also lead to confusion about objectives and processes\(^5\), while stifling public sector innovation and collaboration. They can also create additional burdens on external government clients in the form of increased waiting times, cumbersome processes and duplication or inconsistent requirements between agencies.

---

2 For example, see findings of the WA Inc. Royal Commission in 1992, or the investigation report into the acquisition and use of hospitality resources by Healthway in 2014.
It has been estimated that self-imposed rules within governments and businesses cost the Australian economy $21 billion in administration and $134 billion in compliance per annum. Addressing internal red tape has the potential to free up public sector resources and deliver improved performance.

**Background**

**The experience in other jurisdictions**

Most Australian governments have pursued ongoing red tape reduction programs focused on external-facing regulation. However, examples demonstrating whole-of-government efforts in relation to internal red tape are less readily available.

The Commonwealth jurisdiction is the one notable exception. In 2007, a management advisory committee identified that previous efforts to reduce bureaucracy within the Australian public service were typically ‘one-off’ exercises, and suggested that a more strategic, principle-based approach was necessary to achieve sustained reform. The committee focused on two problematic areas of public administration – procurement and recruitment – and developed whole-of-government policies focused on:

- identifying minimum legislative requirements
- meeting minimum policy requirements
- dispelling common myths.

The committee also pointed to the need for periodic review of both whole-of-government and agency administrative frameworks from the perspective of effectiveness, efficiency and benefit.

In 2010, the Advisory Group on Reform of Australian Government Administration recommended that the Commonwealth Department of Finance and Deregulation be given responsibility for “streamlining administrative and legislative compliance in areas such as financial management and corporate/human resources” and developing “mechanisms that ensure red tape is minimised”.

Nonetheless, in 2014, an Australian Public Service Commission survey indicated that most employees perceived a moderate to high level of red tape within their own agencies.

---

Separately, an independent review of the Australian public service in 2015\textsuperscript{11} found that the complexity of legislative requirements and guidance materials issued from central government, combined with risk-averse agency practices, were contributing to greater administrative burden – particularly in relation to recruitment and employee separations.

In 2015, the independent Belcher Review\textsuperscript{12} found that a culture of risk aversion within the Federal public sector had led to an overreliance on self-imposed regulation that was inefficient, unclear and inaccessible. Belcher concluded that agencies should adopt an approach to internal administration commensurate with the type of risk being managed, by:

- devolving accountability and decision making to the appropriate operational levels (rather than centralising decision making to the senior executive level)
- establishing less onerous reporting and other compliance requirements for smaller-sized and/or self-funding agencies
- avoiding the creation of additional regulations, either by enforcing existing ones or addressing the specific risk in other ways
- developing a culture of risk management that prioritises the management of significant risks, and responds to lower level risks in a measured way
- developing templates and precedent documents for higher and lower risk activities, particularly in procurement and human resources.

While the Belcher Review was endorsed by the Commonwealth secretaries committee on transformation and the secretaries board,\textsuperscript{13} it is not entirely clear how many of the 134 recommendations were implemented or whether efficiencies have been realised.

Key elements in addressing counterproductive rules and processes

Key elements in reducing internal red tape include a committed public sector leadership, taking a principled approach in developing and reviewing administrative rules, and commitment to periodic review.

Perceptions of red tape are primarily changed by transformational leadership – given its capacity to influence goal clarity – political support, and communication.\textsuperscript{14} This points to a need for proactive leadership from chief executives, who are ultimately responsible for how their agencies are arranged to meet organisational and government objectives.


Agencies with carriage for whole-of-government functions also have an obligation to ensure their respective policy frameworks and directives are simple to apply and enable sufficient flexibilities (to the extent possible under legislative requirements and other considerations). Further, central agencies should also be active in building sector capability and promoting best practice, which may help alleviate the predisposition of public sector employees to rely on process-driven rules.

The Belcher Review recommended the Australian public service adopt a principled approach when setting internal regulation (either centrally- or self-imposed), focused on being:

- the minimum needed to achieve policy (or agency) outcomes
- proportional to the risks to be managed and supportive of a risk-based approach
- coherent across government and not duplicative
- designed in consultation with stakeholders for clarity and simplicity in application
- reviewed periodically to test relevance and impact.\(^{15}\)

Elements of the principles for addressing self-imposed bureaucracy as championed by Deloitte\(^{16}\) may also have relevance at operational levels of the public sector, particularly fostering a culture focused on performance rather than compliance; ensuring agency rule-makers are aligned to its business goals; and auditing rules from the perspective of aligning strategy to risk appetite.

External periodic review and relevant benchmarking mechanisms focused on building agency capability, separate to the activities of the Ombudsman Western Australia (Ombudsman) and Office of the Auditor General (OAG), may help keep agencies focused on reducing unnecessary red tape.

**The situation in Western Australia**

Internal red tape is not a new phenomenon in the WA public sector. In 2009, the Economic Audit Committee formed a view that many perceived barriers (in respect of the *Public Sector Management Act 1994* (WA)) were “not created by the legislation itself, but by the subsidiary instruments that sit under the legislation and by overzealous agency self-regulation”.\(^{17}\) Further, unnecessary and burdensome regulatory controls placed on public servants in the name of accountability are similarly applied to community sector organisations and the private sector.\(^{18}\)

---

\(^{15}\) Belcher B. *Independent Review of Whole-of-Government Internal Regulation*.


\(^{18}\) Ibid. p1.
Several individual efforts have been made since that time, by both those regulating the public sector and individual agencies themselves, to reduce internal red tape. In 2015, for example, the Department of Treasury introduced a streamlined arrangement incentivising eligible agencies to bypass the normal budget process.\(^\text{19}\) Meanwhile, investigation and auditing activities of the Ombudsman\(^\text{20}\) and the OAG\(^\text{21}\) have identified several potential areas for administrative improvement within individual agencies.

In 2015, the Public Sector Commission conducted a review of specific public sector administrative compliance obligations imposed both by agencies responsible for overseeing reporting and by complying agencies themselves.\(^\text{22}\)

While it noted positive examples of attempts to reduce the compliance burden within the sector, it identified:

- further scope for responsible agencies to review some compliance obligations, with a view to streamlining or minimising them
- improved data-collection systems and analysis may improve efficiency and effectiveness for both responsible and complying agencies
- where appropriate, responsible agencies could improve timeliness of reporting, to enhance transparency and accountability
- there is scope for both responsible and complying agencies to analyse and use compliance information more broadly for sector-wide and organisational performance and planning purposes
- there would be greater ‘return on investment’ for complying agencies by information being made available and suitable for their own management activities, such as cross-sector benchmarking and comparison.

The Public Sector Commission recommended that:

- responsible agencies regularly review, and make improvements where possible to, the compliance obligations they administer using the good practice principles contained in its report
- before instituting new compliance obligations, responsible agencies should fully consider any alternative approaches. If a compliance obligation is proposed, it should be assessed against the good practice principles outlined in its report
- to better harness opportunities for improving efficiency and adding value to compliance activities, the good practice approaches outlined in the report should be considered by responsible and complying agencies.

---


It is difficult to ascertain, with any certainty and from central government, the extent to which these recommendations have been adopted.

In 2017, the State Government convened a CEO Working Group to identify ways of reducing “internal red-tape and its associated waste and inefficiency”. As at August 2017, the working group had identified several potential drivers of red tape within public sector agencies, including a traditional and risk-averse culture, inadequate awareness and capability, organisational constraints and misaligned incentives. Three priority areas for attention also emerged during the initial stakeholder consultation process – recruitment, procurement and financial reporting.

The working group’s final report will be forwarded to the Public Sector Commissioner by 31 October 2017. It is understood that the report will provide an overview of good regulatory principles, options to tackle the identified priority areas, and recommendations to drive cultural change and sustainable improvements.

**Options for reform**

The WA public sector clearly needs a framework of effective administrative rules that assist decision makers in exercising discretion, while serving to mitigate legal and other system risks.

Based on the observations made in this paper, options to ensure a stronger focus on reducing the unnecessary administrative burden include:

- establishing a public sector functional leader or advisory unit to build sector capability and/or provide strategic advice to agencies on best practice approaches to internal rules and processes
- requiring regulating agencies to periodically review their policy frameworks from a principles-based perspective similar to those identified in the Belcher Review
- expanding the Government’s current external regulatory reform agenda to include a focus on internal administrative processes.

---


References


