

# *Understanding business needs in regulatory approval processes*

*Department of State  
Development, Business  
and Innovation*

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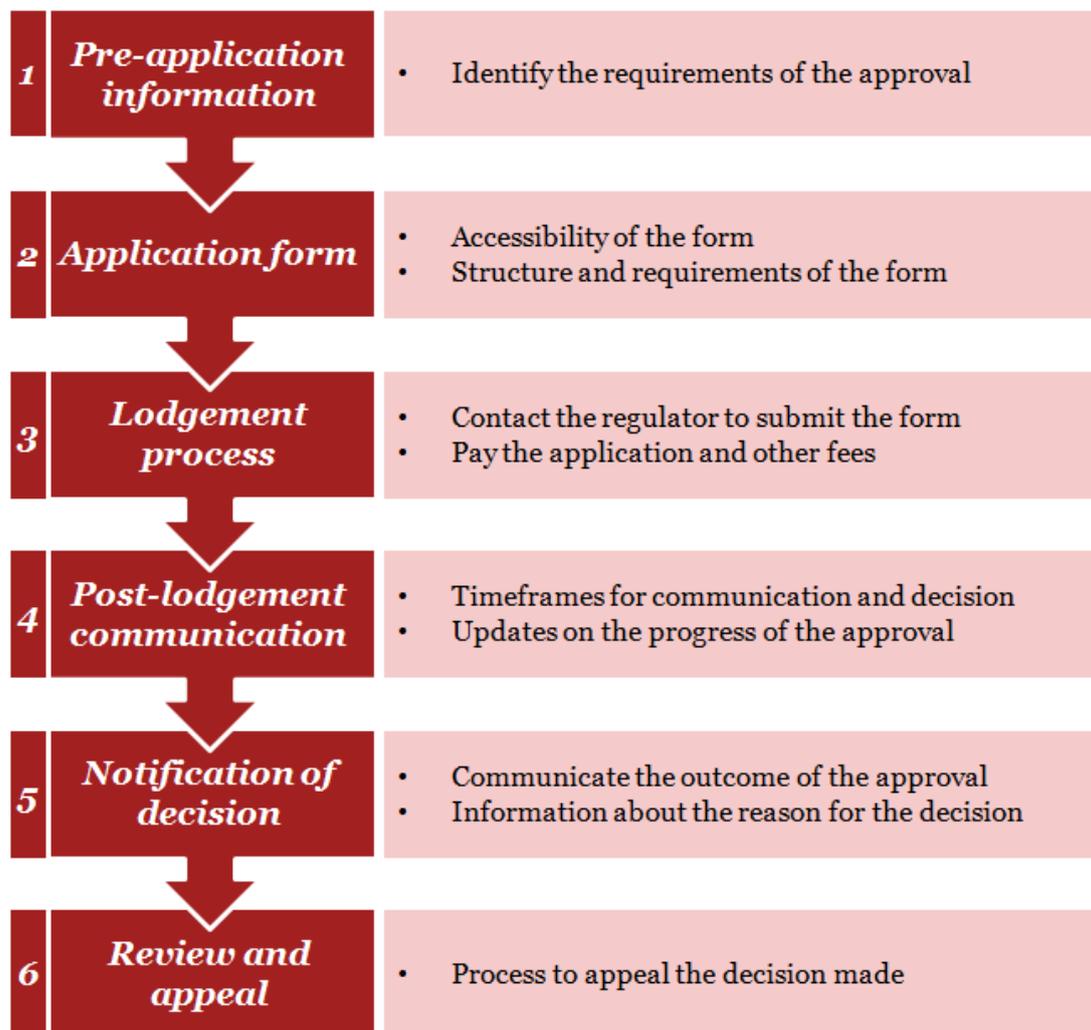
# Executive summary

PwC was engaged by the Department of State Development, Business and Innovation (DSDBI) to undertake a project to identify how Victorian regulatory approval processes could better meet the needs of business. The findings of the project will help government departments and agencies to understand what represents 'best practice' for regulators in administering approval processes and engaging with business.

Approval processes are the steps that a business (or individual) progresses through in order to obtain permission from government to undertake a particular business (or other) venture or activity. Common forms of approvals include licences, permits, registrations and authorisations.

This report is structured around what we consider to be the key steps that apply to a typical approval process. These steps are outlined in Figure 1.

**Figure 1: Standard approval process framework**



In conducting the study, we engaged with 14 businesses and industry associations across the business community. These businesses provided feedback on a range of approval processes<sup>1</sup> and identified which aspects of the process worked well and which aspects didn't work well.

Existing approval processes in Victoria are well established. The feedback identified a number of positive features of existing approval processes, including:

- application forms that are readily accessible and easy to understand
- availability of electronic lodgement and payment options
- examples where regulators met the stated timelines for processing applications.

Based on the discussions with businesses, the findings from a literature review and previous business feedback provided to DSDBI, we have identified a number of elements that would enable regulatory approval processes to better meet the needs of business. Some elements are more applicable to complex approval processes where the process duration is weeks or months (e.g. planning approvals), rather than to simple approvals that can be completed within a few hours or days (e.g. business name registration).

The four key elements identified below are relevant to most approval processes and, if implemented, are likely to provide tangible, practical benefits to businesses. Based on our discussions with business, we consider they would substantially improve the experience of businesses engaging in regulatory approval processes.

- 1 Providing clear and **consistent advice and practical examples on how business can comply** with regulatory requirements – for example, providing guidance material on what arrangements would be deemed to comply.
- 2 **Communicating by telephone or in-person with regulatory staff** to guide the business through the approval process – for instance, assigning a case manager to the business for more complex approval processes.
- 3 Setting and communicating **clear timelines at the start of the process** on how long it will take the regulator to process the application and communicate a decision.
- 4 Ensuring feedback provided by **the regulator is constructive and focuses on solutions** to address any issues with the business' approval application.

Other key elements that are also expected to contribute to improving business' experience with approval processes include:

- Provision of **consolidated information in a single location** that details all the approval requirements that may be needed to undertake a particular business activity.
- **Regular updates on the processing status** of an application should be provided by the regulator, particularly where delays to the final decision are expected.
- Any **follow-up information is requested promptly by the regulator** (following the lodgement of the business' application) and the use of 'stop the clock' provisions is minimised.

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<sup>1</sup> These included planning-related approvals, EPA works approvals, Major Hazard Facility approvals, forklift operator's licences, liquor licences, gaming licences, waste water permits, building permits, food business registrations, VCE training registrations, permits for oversized transport and crane operator's licences.

- **Any conditions imposed or adverse decisions should be transparent**, with the regulator providing written advice outlining the reasons.
- **Publicly reporting on actual processing times** compared with target timelines, including detailing the impact of any ‘stop the clock’ provisions applied.

These elements can be implemented by regulators through changes to culture and existing processes and systems.

Some businesses raised broader issues with approval processes that went beyond issues within the direct control of regulators. These additional issues would require legislative or regulatory changes in order to be implemented:

- Several businesses raised issues around appeals made by third parties in respect of the business’ approval application. Appeals have the potential to impose greater costs on business than the actual approval process itself due to delay and legal costs. A business suggested that creating disincentives for individuals to lodge frivolous appeals would reduce the adverse impacts on business – for example, introducing a provision within the appeals framework to enable certain costs to be pursued against parties lodging frivolous objections.
- According to businesses consulted, adverse decisions by councils in relation to land rezoning applications are not able to be reviewed or appealed within the approval framework. As a general principle, review and appeal processes should be available for any regulatory approval decision.

The findings of the literature review were broadly consistent with the feedback received from Victorian businesses. However, the business feedback generally placed greater emphasis on:

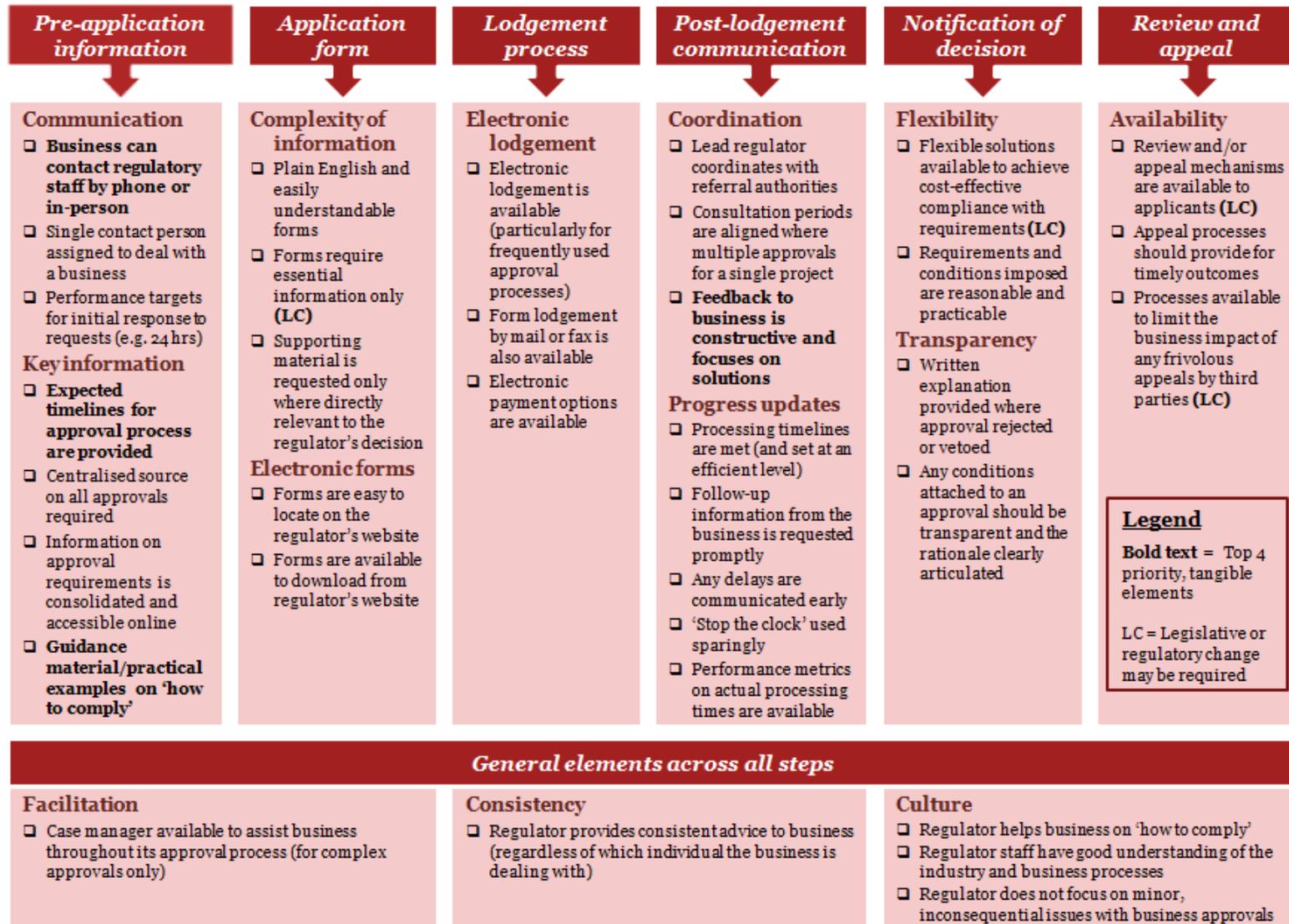
- the culture of regulators and the importance of regulators assisting businesses to comply with approval requirements – for instance, the provision of clear guidance on what approaches would be deemed to comply and applying a more proactive, solutions-focused approach to engagement with business
- the detrimental impacts of review and appeal mechanisms, as discussed above.

Interestingly, there were no significant differences in the feedback provided by businesses of different sizes or those that operate in multiple jurisdictions compared to those that operate in Victoria only. The differences in business perspectives were more likely to relate to the type of approval sought and, in the case of planning-related applications, the nature and location of the business’ proposed development.

Figure 2 (on the next page) provides an expanded set of elements that would enable regulatory approval processes to better meet the needs of business. The elements are categorised against the relevant stage of the approval process to which they apply. The elements are designed to be applicable to any approval process; however, some elements are likely to provide greater benefits when applied to more complex approval processes.

The feedback provided by business indicates that the benefits of applying these elements includes increased business certainty with which to plan business and investment decisions, more predictable and shorter approval timeframes, and less rework and re-engineering of solutions to satisfy approval requirements.

Figure 2: Checklist of approval process elements to better meet business needs



# **1 Background**

## **1.1 Scope**

PwC was engaged by the Department of State Development, Business and Innovation (DSDBI) to undertake a project on how Victorian regulatory approval processes could better meet the needs of business. The project was informed by consultations with 14 businesses and industry associations representing a broad cross-section of the business community in Victoria.

The intent of the project is to:

- Understand the needs of businesses when they are engaged in regulatory approval processes
- Identify what works well and what does not
- Develop best practice elements of approval processes based on feedback from businesses and literature
- Identify best practice elements of approval processes that can be applied to all or most approval processes.

This report is not intended to focus on any particular approval process. It does not seek to identify issues that are specific to a particular regulator or concerns that may be specific to a particular business' circumstances. It is intended to provide observations and recommendations about regulatory approval processes as a whole.

## **1.2 Structure of this report**

This report comprises the following sections:

- Section 2 of the report describes the approach to undertaking the study and the business consultation process.
- Section 3 provides a summary of a targeted literature review focused on government inquiries and business submissions to those inquiries.
- Section 4 briefly outlines previous relevant feedback provided by business to DSDBI's Business Development Managers.
- Section 5 details the feedback provided by a cross-section of businesses on their recent experiences with Victorian regulatory approval processes.
- Section 6 provides a summary of the findings.

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## 2 Approach

### 2.1 Overview of our approach

The aim of this report is to identify key elements of government approval processes that will reduce the regulatory burden and better meet the needs of businesses. To do this, we need to understand the experiences of businesses in terms of:

- the needs of businesses when interacting with regulators through an approval process
- the key issues or problems they have experienced with approval processes
- which aspects of an approval process work well and which do not
- the opportunities for improvement that exist.

To understand the experience of businesses in regulatory approval processes, we have drawn on three sources of information:

- **Literature** – We have undertaken a targeted review of literature. This focused on business submissions to government inquiries that identify issues experienced by businesses and opportunities to improve regulatory approval processes. We have also reviewed studies relevant to existing regulatory frameworks by bodies such as the Productivity Commission and the Victorian Competition and Efficiency Commission. The literature review drew on both Victorian, inter-state and National literature.
- **Previous business feedback** – We have reviewed comments and feedback provided by businesses to DSDBI's Business Development Managers (BDMs). Feedback on approval processes is collected by BDMs on an ad hoc basis and recorded in DSDBI's internal database. PwC reviewed a report extract from DSDBI's internal database.
- **Consultation** – Consultation was undertaken with a cross section of Victorian businesses to understand their views and experiences in completing regulatory approval processes.

To structure the information gained from literature and consultation, we have developed and applied a framework that reflects the key steps in an approval process.

### 2.2 Consultation with businesses

Consultation was undertaken with 13 businesses and one industry association via face to face and telephone interviews. The interviews were conducted by PwC with a relevant representative from DSDBI in attendance (the Business Development Manager and/or a member of the Regulatory Policy Branch) for most interviews.

To obtain a broad range of representative views, we consulted with a cross section of businesses that represented a series of different cohorts. Businesses were segmented based on the following cohorts:

- various business sizes
- businesses that operate in different industries
- businesses that have applied for different types of government approvals.

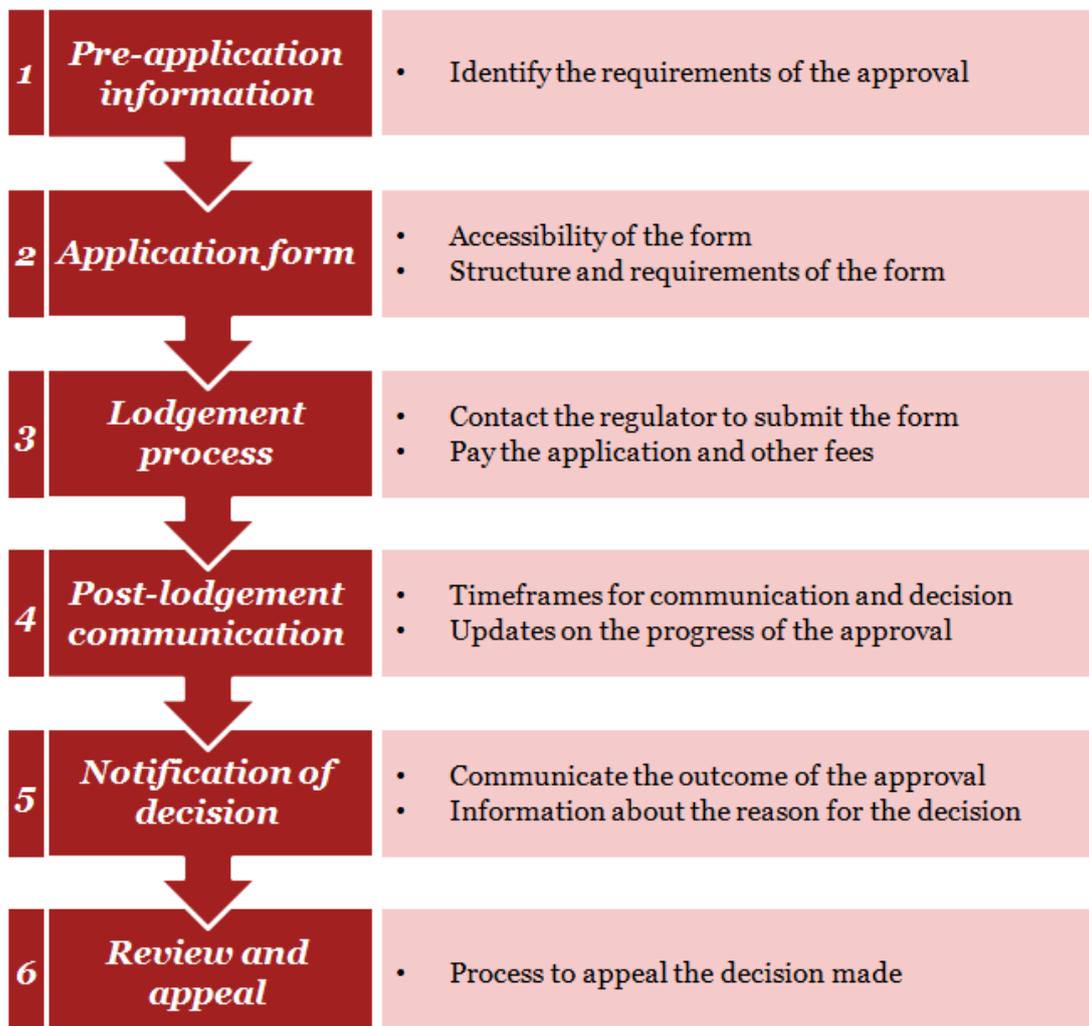
The initial list of businesses for consultation was facilitated through DSDBI’s Business Engagement Model (BEM). The BEM enabled DSDBI to identify suitable businesses for the initial list. From this list, PwC worked with DSDBI to identify a cross-section of businesses that represented the cohorts outlined above.

### 2.3 Steps in an approval process

An approval process represents the steps that a business (or individual) is required to undertake in order to obtain permission from a government agency to engage in a particular business (or other) activity. Common forms of approvals include business licences, permits, registrations and authorisations.

We have structured our approach around what we consider to be the key steps of a standard approval process. The framework in Figure 3 illustrates the steps in the process that a business would generally need to go through to complete a regulatory approval. This framework has been used to structure our consultations with businesses and group our findings.

**Figure 3: Standard approval process framework**



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## 3 Findings from literature review

There have been several inquiries into the regulatory framework and associated approval processes in Victoria and other Australian jurisdictions. The reports resulting from these inquiries, as well as the submissions by businesses to those inquiries, offer some insight into what businesses expect from their engagement with regulators on approval processes, and some best practice elements of approval processes.

The findings from this literature review have been structured according to the steps in an approval process, as per the framework outlined in Figure 3. The literature drawn on for the review includes reports and inquiries undertaken by the:

- **Productivity Commission**, including their study on regulator engagement with small business and their performance benchmarking study into the cost of business registration.
- **Organisation for Economic Co-operation and Development (OECD)**, including their Guiding Principles for Regulatory Quality and Performance and the Recommendation of the Council on Regulatory Policy and Governance
- **Victorian Competition and Efficiency Commission (VCEC)**, including their Inquiry into Victoria's Regulatory Framework and their Inquiry into the Regulation of Food.
- **Independent Pricing and Regulatory Tribunal (NSW)**, including their review of licence rationale and design.

### 3.1 Pre-application information

Before a business begins the approval application process, it needs to understand the requirements of the approval it wishes to obtain. This would normally involve searching for and collating information on the regulatory requirements and the process the business needs to go through to obtain its licence, permit, registration, authorisation, etc. In some instances, the business may also need to contact the regulator to obtain advice or guidance.

#### Finding information to identify the approval requirements

The first step most businesses will need to take is to locate information that will help them to understand the requirements to obtain an approval and the various elements of the approval process.

##### Key issues and best practice elements:

- Small businesses do not know where to find the relevant information
- Regulator websites can be difficult to navigate
- Information on approval requirements is not provided in a consolidated manner
- Provision of consolidated, online information would generally reduce the burden on businesses.

Previous studies have noted that businesses have raised concerns that information on approval requirements is not always simple, clear, accurate, consolidated or comprehensive. Businesses have also raised concerns with the level of access to this information.

Small businesses sometimes have difficulty finding the information they need to understand the regulatory requirements placed on them. In a submission to the Productivity Commission's study into regulator engagement with small business, the Chamber of Commerce and Industry of Western Australia (CCI) advised that their small business members are often unsure of where to find relevant information. According to CCI, their members also experience difficulty navigating regulator websites in order to answer their questions or concerns.<sup>2</sup>

This issue was also raised in response to the review into licence rationale and design by the Independent Pricing and Regulatory Tribunal (IPART) in NSW. In their submission to the review, the NSW Business Chamber indicated that it is difficult to source information about licensing requirements. Their issue related to the "lack of any reliable consolidated source of information".<sup>3</sup> They also confirmed the difficulty in navigating regulator websites, suggesting that there are often several websites that provide overlapping information, as well as multiple pages that refer to similar information within a single site. Concern was also raised regarding the functionality of these websites.<sup>4</sup>

When considering the cost of business registrations, one of the findings by the Productivity Commission was that online provision of information is a key factor in reducing the degree of difficulty for businesses.<sup>5</sup> Similarly, one of the guiding principles for regulatory quality and performance identified by the OECD includes making electronic access and interactive websites a priority.<sup>6</sup> As identified above however, online information needs to be produced in a way that can be used effectively by businesses.

Difficulty in identifying requirements could also relate to the number and complexity of the Acts and Regulations that apply to the approval. This was recognised by the VCEC in its 2007 Food Inquiry. In their submission to the Inquiry, George Weston Foods noted that "the increasing number of Acts and Regulations make it hard for businesses to identify relevant laws, understand their practical application and know whom to deal with".<sup>7</sup>

### **Communication with regulators**

To identify approval requirements and understand the approval process, businesses may need to contact the regulator or engage with them to obtain advice or guidance.

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<sup>2</sup> Chamber of Commerce and Industry of Western Australia, 'Regulator Engagement with Small Business: Submission to the Productivity Commission', March 2013.

<sup>3</sup> NSW Business Chamber, 'Regulation Review – Licence Rationale and Design', Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, 12 December 2012, page 8.

<sup>4</sup> NSW Business Chamber, 'Regulation Review – Licence Rationale and Design', Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, 12 December 2012.

<sup>5</sup> Productivity Commission, 'Performance benchmarking of Australian Business Regulation: Cost of business registrations' Research Report, November 2008.

<sup>6</sup> OECD, 2005, 'OECD Guiding Principles for Regulatory Quality and Performance'.

<sup>7</sup> Victorian Competition and Efficiency Commission, 'Simplifying the Menu: Food Regulation in Victoria', Final Report, September 2007. Reference made to submission 52, page 5.

**Key issues and best practice elements:**

- The format of communications does not meet business needs, with limited access to face-to-face or telephone communication with regulators.
- Communication from the regulator is not always easy to comprehend and is not presented in the context of the business' everyday operations.
- Some businesses would prefer more access to face-to-face communication with regulators, whereas others would prefer communication to be directed through industry associations.

When engaging with regulators, an issue raised by businesses relates to the format of communication between regulators and businesses. In a submission to the Productivity Commission's study into Regulator Engagement with Small Business, the WA Chamber of Commerce and Industry identified that businesses find it difficult to get face to face contact with regulators. Their submission notes that businesses would prefer to receive guidance and advice through face-to-face or telephone means rather than written correspondence.<sup>8</sup>

Some businesses have a different perspective however. In Business SA's submission to the Productivity Commission's study, they indicate that businesses are often hesitant to obtain information directly from the regulator. A survey undertaken by Business SA found that almost 40 per cent of businesses would prefer to receive information about changes to regulation from their industry association or state or local chamber of commerce.<sup>9</sup> A submission from Master Electricians also suggested utilising industry associations as an alternative approach to communicate with businesses. They believe that industry associations are "better placed to provide targeted information about regulatory responsibilities directly to small businesses in a manner they can easily comprehend and apply to their everyday operations".<sup>10</sup>

### **3.2 Application form**

Once a business understands the requirements of an approval and is ready to apply, the first step will often be to complete the application form. This includes locating the form and filling out all of the required information fields.

#### **Format and location of application forms**

The format of the application form can have an impact on how easily a business can access it and how it fills it in. This includes whether the form is in physical form only or is available online and the range of different forms available for different purposes.

**Key issues and best practice elements:**

- Offering online application forms would reduce the burden on businesses
- Website links to application forms should be provided directly from the 'homepage' or be located in an easy-to-find webpage link.
- Creating tailored forms that apply to different business types would prevent unnecessary fields being filled out.

As with the provision of information, the Productivity Commission found that offering access

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<sup>8</sup> Chamber of Commerce and Industry of Western Australia, 'Regulator Engagement with Small Business: Submission to the Productivity Commission', March 2013.

<sup>9</sup> Business SA, Submission to the Productivity Commission study into Regulator Engagement with Small Business, 15 March 2013.

<sup>10</sup> Master Electricians Australia, Submission to the Productivity Commission study into Regulator Engagement with Small Business, 15 March 2013.

to forms online is a major factor in reducing the degree of difficulty for businesses.<sup>11</sup> As outlined above however, online resources need to be provided in an effective manner. In assessing the level of difficulty experienced by businesses in finding forms, the Productivity Commission characterised a ‘very easy’ experience by:

- a very intuitive website
- links to the forms provided off the homepage, or self explanatory links to the forms
- no problems in downloading the form.<sup>12</sup>

A very difficult experience for businesses was characterised by no intuitive means of finding the forms, having to contact the authority about the form and once the form is located, taking considerable time to download it.<sup>13</sup>

The Productivity Commission, in its Issues Paper on Regulator Engagement with Small Business, suggested that the compliance burden on small businesses could be reduced by offering more than one version of application forms and paperwork so that they are designed for different sized businesses. This may prevent businesses needing to provide unnecessary information.<sup>14</sup> They acknowledge however, that tailoring these aspects would lead to administrative costs for government, meaning this approach needs to be balanced against the benefits that would be gained by businesses.

### **Duplication of information**

When a business is completing application forms for more than one approval, they may be required to input the same information across several forms.

#### **Key issues and best practice elements:**

- Providing the same information to multiple agencies is time consuming for businesses
- Businesses would support more information sharing between regulators to reduce the burden on business.

One of the common complaints raised by businesses is the need to provide the same information to multiple government agencies.<sup>15</sup> In their submission to the VCEC’s Inquiry into Victoria’s Regulatory Framework, the Construction Materials Processors Association (CMPA) notes that, in relation to the work authority approval process, additional time and costs are involved in satisfying the requirements of referral authorities. They suggest that referral agencies seek information from businesses that is simply a variation of existing information already provided. As well as having to provide the information twice, the CMPA indicate that additional work is also undertaken by business to re-work or re-badge the information.<sup>16</sup>

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<sup>11</sup> Productivity Commission, ‘Performance benchmarking of Australian Business Regulation: Cost of business registrations’ Research Report, November 2008.

<sup>12</sup> Productivity Commission, ‘Performance benchmarking of Australian Business Regulation: Cost of business registrations’ Research Report, November 2008.

<sup>13</sup> *Ibid.*

<sup>14</sup> Productivity Commission, ‘Regulatory Engagement with Small Business’, Issues Paper, January 2013.

<sup>15</sup> NSW Business Chamber, ‘Regulation Review – Licence Rationale and Design’, Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, 12 December 2012.

<sup>16</sup> Construction Materials Processors Association, ‘Submission by CMPA to VCEC by Construction Materials Processors Association (CMPA) – In search of ‘balanced regulation’’, Victorian Competition and Efficiency Commission Inquiry into Victoria’s Regulatory Framework, Submission RF-20, 20 October 2010.

Duplication of information was also recognised by the Productivity Commission in their performance benchmarking report that looks at the cost of business registrations. They identify that businesses are required to provide names and addresses to both levels of government. They also acknowledge that the same pieces of information are sometimes required for different approvals. To this end, they explain that “many businesses raised the issue of duplication between registrations” and that “duplication has also been raised in a number of previous reports, including the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006)”.<sup>17</sup>

One approach to minimise duplication is to establish information sharing mechanisms across different regulators or different levels of government. This was raised as an approach by the NSW Business Chamber in their submission to IPART’s Review of Licence Rationale and Design. In 2012, the NSW Business Chamber Red Tape Survey found that 75 per cent of businesses “believe that information sharing would be at least moderately effective in reducing the regulatory burden”.<sup>18</sup>

### Engaging with multiple regulators

Businesses are sometimes required to apply for approvals from more than one regulator or organisation to obtain all of the necessary approvals relevant to their business.

#### Key issues and best practice elements:

- Engaging with multiple regulators to obtain approvals is time consuming and costly for businesses
- Improved co-ordination between agencies may improve the experience of businesses.

A concern raised by businesses is the need to engage with multiple agencies to obtain their approvals. For example, the Bus Association Victoria and the Victorian Taxi Association have identified that a bus, coach and taxi operator is required to engage with six different organisations to apply for the licences and accreditations that must be held before they can commence employment (this includes a training firm, VicRoads, the Victorian Taxi Directorate (was replaced by the Taxi Services Commission on 1 July 2013), Victoria Police, a Medical Practitioner and the Department of Justice).<sup>19</sup> They are concerned that this engagement increases the amount of time to apply for approvals and they “suggest there are too many stakeholders in the mix to get a driver on the road and deliver the contracted service”.<sup>20</sup>

This issue was also recognised by the Victorian TAFE Association, which identified a ‘duplication’ of approval processes. In relation to TAFEs, their recommended approach is to implement a cross sectoral provider registration process. If a provider meets the requirements for one sector, they would automatically be qualified for others. While

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<sup>17</sup> Productivity Commission, ‘Performance benchmarking of Australian Business Regulation: Cost of business registrations’ Research Report, November 2008.

Regulation Taskforce 2006, Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business, Report to the Prime Minister and the Treasurer, Canberra, January.

<sup>18</sup> NSW Business Chamber, ‘Regulation Review – Licence Rationale and Design’, Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, 12 December 2012.

<sup>19</sup> Bus Association Victoria and the Victorian Taxi Association, ‘VCEC Submission - Inquiry into Victoria’s Regulatory Framework’, Victorian Competition and Efficiency Commission Inquiry into Victoria’s Regulatory Framework, Submission RF-14, 23 September 2010.

<sup>20</sup> Bus Association Victoria and the Victorian Taxi Association, ‘VCEC Submission - Inquiry into Victoria’s Regulatory Framework’, Victorian Competition and Efficiency Commission Inquiry into Victoria’s Regulatory Framework, Submission RF-14, 23 September 2010.

additional processes may still be necessary to some extent, they believe this would prevent full duplication of the approval process.<sup>21</sup>

Having to deal with multiple points of contact was also identified as an issue in the food sector. In their Food Inquiry, the VCEC recognised that “some food businesses may have to deal with multiple regulators” and indicated that some business submissions proposed a single regulator approach to address this issue. The VCEC was not convinced however, that consolidating food authorities was the best approach to address this problem. The alternative approach proposed was to improve co-ordination among existing regulators by:

- having an effective memorandum of understanding among regulators
- setting up service agreements between state and local government
- strengthening advisory and governance elements of the regulatory framework.<sup>22</sup>

### **3.3 Lodgement process**

Once all of the required information has been collected and application forms are ready to be submitted, a business must go through a lodgement process. This generally includes sending forms and information to a regulator, but in some cases, may also involve contact with the regulator in person.

#### **Lodgement activities**

The type of activities involved in lodging an application affect the amount of time taken by the business to complete this part of the process.

#### **Key issues and best practice elements:**

- Interviews with regulators, where required, represent a high level of burden for businesses in relation to approval processes.
- Online lodgement of application forms would reduce the burden on businesses

As well as the provision of information and forms online, the Productivity Commission indicated that offering online lodgement of applications is a factor in reducing the degree of difficulty for business in approval processes.<sup>23</sup>

In addition to lodging a form, regulators may require businesses to undergo other activities before their approval can be granted. In assessing the cost of business registrations, the Productivity Commission found that attending an interview as part of the registration process was the most difficult activity that business had to undertake.<sup>24</sup> This suggests that avoiding this requirement where it is not necessary to achieve the objectives of the regulatory intervention would bring substantial benefits to business.

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<sup>21</sup> Victorian TAFE Association, Submission to Victorian Competition and Efficiency Commission Inquiry into Victoria’s Regulatory Framework, Submission RF-28, November 2010.

<sup>22</sup> Victorian Competition and Efficiency Commission, ‘Simplifying the Menu: Food Regulation in Victoria’, Final Report, September 2007.

<sup>23</sup> Productivity Commission, ‘Performance benchmarking of Australian Business Regulation: Cost of business registrations’ Research Report, November 2008.

<sup>24</sup> Productivity Commission, ‘Performance benchmarking of Australian Business Regulation: Cost of business registrations’ Research Report, November 2008.

### **Consistency and transparency**

When completing the lodgement process for an approval, the requirements placed on one business should be the same as those for another business with similar circumstances. That is, the process should be transparent to businesses, and each business should be dealt with in a consistent manner.

#### **Key issues and best practice elements:**

- Lodgement processes and requirements should be transparent and non-discriminatory
- Businesses expect to be treated in a consistent manner when lodging applications.

From an overarching perspective, one of the OECD's guiding principles for regulatory quality and performance is to ensure that "procedures are transparent and non-discriminatory".<sup>25</sup> In their Recommendations on Regulatory Policy and Governance, they also recommend that regulatory authorities only exercise their authority within the scope that their legal power permits and that like cases are treated in a like manner.<sup>26</sup>

In line with this concept, an issue raised by business during previous inquiries is the level of consistency in the approval process and the information the regulator requires from businesses. For example, in response to VCEC's Inquiry into Victoria's Regulatory Framework, the Housing Industry Association raised concern that their members often report differences in the level of information required by different Councils and individual officers when lodging approval applications.<sup>27</sup>

### **Access to the regulator or processing centre**

To lodge an application for some regulatory approvals, contact must be made with the regulator and/or the business may need to attend a physical location to have its approval processed.

#### **Key issues and best practice elements:**

- Businesses expect regulators to clearly communicate their opening hours and to be available during normal business hours.
- Regional businesses do not always have adequate access to regulators or processing centres, meaning they incur a higher burden to lodge their application.

Where contact or engagement is required, businesses expect there to be reasonable access to regulators and/or processing locations. There are two issues raised by businesses in this regard. Firstly, businesses have experienced issues with regulators not being available during normal business hours or their opening hours not being communicated effectively. For example, in New South Wales, the Liquor Stores Association expressed concern that the Office of Liquor, Gaming and Racing changed their opening hours such that they were closed prior to 12pm each day. At that time, this caused inconvenience for businesses because they had not been informed of the change and had no means of contacting the regulator.<sup>28</sup>

The second issue is the level of access provided to regional or rural businesses. In New South Wales, the Liquor Stores Association, Master Grocers Australia and Liquor Retailers

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<sup>25</sup> OECD, 2005, 'OECD Guiding Principles for Regulatory Quality and Performance'.

<sup>26</sup> OECD, 2012, 'Recommendation of the Council on Regulatory Policy and Governance'.

<sup>27</sup> Housing Industry Association, Victorian Competition and Efficiency Commission Inquiry into Victoria's Regulatory Framework, Submission RF-29, 14 December 2010.

<sup>28</sup> Liquor Stores Association NSW, 'Submission – Reforming licensing in NSW', Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, December 2012.

Australia all identified this as an issue for rural businesses. To obtain a photo competency card in relation to a Responsible Service of Alcohol (RSA) qualification, individuals must attend a participating Australia Post outlet to have their card processed. In rural areas however, the closest participating outlet is, in some cases, more than 50 or 100 km away. These associations believe that this does not provide adequate access and imposes significant burden and inconvenience on regional and rural businesses and their staff.<sup>29</sup>

### **3.4 Post-lodgement communication**

Once an application has been lodged, it is processed by the regulator. As an approval application progresses, the regulator may communicate with the business about its progress and the estimated timeframe for a decision to be made on the application.

#### **Timing of decision**

One of the common issues raised by businesses is the amount of time taken for regulators to process their application and come to a determination about whether the approval will be granted.

#### **Key issues and best practice elements:**

- Some approval processes have no clear timelines set for application processing and determination
- Applications are not always processed in a timely manner
- Feedback on the appropriateness of an application (for example, feedback that certain information is missing or the application is not valid) is not communicated to a business in a timely manner.
- Approval timeframes should be set at an efficient level, particularly for those approval processes that are required to start a business operation.

There are two key issues in relation to timing of application processing and decision making. Firstly, businesses have demonstrated concern about there being no clear timelines set for regulator processing and determination of the approval outcome. In response to IPART's Review of licence rationale and design, the Liquor Stores Association expressed concern that "there are no clear timelines for when applications are to be determined".<sup>30</sup>

The OECD supports the idea of setting defined timelines. Their Recommendations on Regulatory Policy and Governance include the "establishment of fixed time limits within which an authority should be expected to give notice of a decision".<sup>31</sup> Good practice in relation to setting timeframes and communicating with businesses about progress is summarised by the OECD in the following passage:

*"It is acknowledged that exceptions from standard time frames are likely to be necessary to allow for special and complex matters. However, good practice is facilitated by identifying a narrow list of areas where exceptions may be applied and, even in such cases, applicants should expect to receive notice of the progress of their administrative matter."*

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<sup>29</sup> Liquor Stores Association NSW, 'Submission – Reforming licensing in NSW', Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, December 2012.

Master Grocers Australia & Liquor Retailers Australia, 'Reforming licensing in NSW', Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, 11 December 2012.

<sup>30</sup> Liquor Stores Association NSW, 'Submission – Reforming licensing in NSW', Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, December 2012.

<sup>31</sup> OECD, 2012, 'Recommendation of the Council on Regulatory Policy and Governance'.

The second issue raised by businesses relates to the amount of time that regulators take to process their applications. Businesses appear to be concerned that their applications are not being reviewed and assessed in a timely manner. Housing Industry Association (HIA) raised this concern in their submission to the VCEC's Inquiry into Victoria's Regulatory Framework. In relation to planning regulation, HIA believe that one of the most significant impacts on the cost for business is the delay in obtaining planning permits due to the flow through impact on holding costs and loss of income.<sup>32</sup> The time to obtain approvals was also identified as an issue in the VCEC's Food Inquiry. In their submission to the Inquiry, the Australian Industry Group commented that the "process for approving new activities can be protracted and take a number of years".<sup>33</sup>

The Productivity Commission, in their Performance Benchmarking study into the cost of Business Registrations, confirmed that delays in processing can increase the burden on business. They suggest that "where waiting means a business is deferring the commencement of its operations, this can have real costs for the firm".<sup>34</sup>

Under the 'application form' step in the approval process, it was identified that businesses are sometimes required to engage with multiple agencies and this can increase the time taken to apply for approvals. In their submission to the VCEC, the Bus Association Victoria and the Victorian Taxi Association indicated that this can also lead to a long processing time.<sup>35</sup>

In their Guiding Principles for Regulatory Quality and Performance, the OECD suggests that procedures should "not unduly delay business decisions".<sup>36</sup> Similarly, in their Recommendation on Regulatory Policy and Governance, they recommend that there should be fast resolution of all approval processes that are necessary to start a business.<sup>37</sup>

Another issue identified by some businesses is the length of time before regulators provide feedback on an application. In their submission to VCEC's Inquiry into Victoria's Regulatory Framework, the Housing Industry Association suggested that feedback on the appropriateness of an application is provided too late. Their submission reflects on the experience of businesses for development approvals – "Councils frequently state that the level of detail provided by applicants is inadequate and all too often this is well after the application has been lodged".<sup>38</sup>

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<sup>32</sup> Housing Industry Association, Victorian Competition and Efficiency Commission Inquiry into Victoria's Regulatory Framework, Submission RF-29, 14 December 2010.

<sup>33</sup> Victorian Competition and Efficiency Commission, 'Simplifying the Menu: Food Regulation in Victoria', Final Report, September 2007. Reference made to submission 32, page 2.

<sup>34</sup> Productivity Commission, 'Performance benchmarking of Australian Business Regulation: Cost of business registrations' Research Report, November 2008.

<sup>35</sup> Bus Association Victoria and the Victorian Taxi Association, 'VCEC Submission - Inquiry into Victoria's Regulatory Framework', Victorian Competition and Efficiency Commission Inquiry into Victoria's Regulatory Framework, Submission RF-14, 23 September 2010.

<sup>36</sup> OECD, 2005, 'OECD Guiding Principles for Regulatory Quality and Performance'.

<sup>37</sup> OECD, 2012, 'Recommendation of the Council on Regulatory Policy and Governance'.

<sup>38</sup> Housing Industry Association, Victorian Competition and Efficiency Commission Inquiry into Victoria's Regulatory Framework, Submission RF-29, 14 December 2010.

### 3.5 *Notification of decision*

#### **Key issues and best practice elements:**

- Approval decisions should be transparent and the regulator’s rationale for the decision clearly articulated.
- Publicly-available databases of regulator decisions, where applicable, need to be kept up-to-date and contain accurate information.

#### **Clear and transparent decisions**

The OECD, in their Recommendation on Regulatory Policy and Governance, suggest that regulators should have justifiable reasons for their decisions, and for any departure that they make from regular practice.<sup>39</sup> The Liquor Stores Association, in their submission to IPART’s Review of Licence Rationale and Design, expressed concern over the transparency of decisions and determinations.<sup>40</sup>

#### **Accurate and up to date information**

In responding to IPART’s Review of Licence Rationale and Design, the Liquor Stores Association also expressed concern over the accuracy of information provided about decisions. The Licence Applications Noticeboard (online resource) used by the OLGR records the current status of all applications. The Liquor Stores Association was concerned however, because they believed it was “inaccurate and cannot be relied upon effectively”.<sup>41</sup>

### 3.6 *Review and appeal*

#### **Key issues and best practice elements:**

- Approval processes should provide independent mechanisms for businesses to appeal decisions.
- Appeal mechanisms should be easily accessible and provide timely outcomes.

The OECD provides guidance on appeal processes. In its Guiding Principles for Regulatory Quality and Performance study, it suggests that regulatory procedures should include appeal processes.<sup>42</sup> In its Recommendation on Regulatory Policy and Governance study, the OECD indicates that access to appeal processes should be swift, should not be complicated and should be accessible without excessive legal costs. They also indicated that “providing for effective appeals processes prevents abuse of discretionary authority, and preserves the integrity of the regulatory system”.<sup>43</sup>

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<sup>39</sup> OECD, 2012, ‘Recommendation of the Council on Regulatory Policy and Governance’.

<sup>40</sup> Liquor Stores Association NSW, ‘Submission – Reforming licensing in NSW’, Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, December 2012.

<sup>41</sup> Liquor Stores Association NSW, ‘Submission – Reforming licensing in NSW’, Submission to the Independent Pricing and Regulatory Tribunal for the Review of Licence Rationale and Design, December 2012.

<sup>42</sup> OECD, 2005, ‘OECD Guiding Principles for Regulatory Quality and Performance’.

<sup>43</sup> OECD, 2012, ‘Recommendation of the Council on Regulatory Policy and Governance’.

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## **4 Observations from business engagement model**

As part of its Business Engagement Model, DSDBI has a large network of Business Development Managers (BDMs). This network engages with businesses on a regular basis to assist them with government related processes, including approval processes. Through this engagement, BDMs have collected intelligence and feedback from businesses about a range of business activities and their interactions with government departments and regulators. While the feedback is not restricted to approval processes, DSDBI has provided PwC with a sample of comments that include business perspectives on approval processes.

Based on the information provided to us, we have identified some key themes that businesses have raised with BDMs in respect of regulatory approval processes:

- Statutory time limits for processing approvals are not always met, with examples cited of Local Governments not providing planning and other permits within the required timelines.
- Regulators were not always transparent about how long it would take to process an approval application.
- Timelines for approvals can be lengthy. When permits are eventually issued with no objections or conditions attached, it is not always clear to business why the application required a relatively lengthy timeframe to be processed.
- The limited duration of licences and permits was questioned where these licences/permits related to ongoing business activities. A business expressed frustration at the requirements and costs associated with renewing these approvals and suggested that licences/permits for ongoing business activities should be perpetual.

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# 5 *Findings from consultation*

Consultations were undertaken with businesses to understand their experiences with government approval processes. PwC, with assistance from DSDBI, consulted with 14 business-related stakeholders, comprising 13 businesses and one industry association. This represents a sub-set of the 25 businesses that were contacted by PwC and DSDBI to request a business interview. All businesses consulted undertake work in Victoria and had applied in recent years for at least one Victorian government approval to operate a component of their business.

The list of businesses was compiled to ensure that the selected businesses represented a broad cross section of businesses operating in Victoria. The businesses interviewed reflected different:

- industries/sectors
- approval types required to conduct their business
- oversight and engagement with different regulators
- business sizes
- business locations.

While not a statistically representative sample of businesses across Victoria, the businesses consulted provided a broad range of experiences. A full list of the businesses consulted is provided in Appendix A.

The businesses interviewed operated in the following broad areas:

- Retail
- Property development
- Manufacturing
- Food production
- Sporting activities and recreation
- Oil and gas
- Construction-related activities
- Education
- Tourism
- Cafes and restaurants
- Waste processing and contamination rectification

To facilitate the meetings, businesses were provided with a one-page consultation guide to focus the discussion on approval processes. The consultation guide is provided at Appendix B.

Consultations were structured around the six key steps in the approval process. As such, the key findings from the business consultation have been summarised in this format, allowing also for a general category that reflects those components of the business feedback that related to multiple steps in the approval process.

## **5.1 General elements across all steps of the approval process**

Businesses raised during the business interviews a range of overarching issues that they considered were important drivers of their overall experience with the approval process. The areas raised by several businesses related to facilitation of the overall approval process, the consistency of the approach provided by the regulator's staff, and the overall culture of the regulator.

Many of the approval processes that were put forward by businesses as specific examples had durations of several months and sometimes even several years. In these cases, in particular, the extent of facilitation and consistency were often cited as key factors that, when present, resulted in the needs of the businesses being better met.

### **Facilitation**

Facilitation refers to the broad, co-ordinating assistance provided by the regulator or a third party to help the business navigate through the approval process. Where approval processes have complex requirements and/or involve a number of referral authorities, facilitation by the regulator or a third party was considered to improve the business' experience of the approval process.

What businesses said:

#### *What worked well*

- A number of businesses indicated that DSDBI's Business Development Managers had provided them with facilitation assistance to help them navigate through complex approval processes. The assistance enabled them to better understand the requirements they needed to satisfy, with businesses citing the key benefits of facilitation being an increased level of certainty and a shorter approval process. Examples included DSDBI setting up meetings between the relevant regulators and the business (involving around 15 people across all relevant areas) to identify what approvals and requirements would be required for the business in order to undertake a new activity and how the application requirements would need to be sequenced.
- Some businesses undertaking complex approval processes such as EPA Works Approvals had engaged engineering and other consulting firms (as independent advisors) to undertake technical work and help guide them through the approval process. They noted that these third party firms had sound knowledge of the approval process requirements and understood the workings of the relevant regulators. As such, the business was able to anticipate particular issues that may arise during the approval process and undertake steps to mitigate the risk of those issues affecting the timeframe and outcome.

#### *What didn't work*

- Some businesses considered that where there was no case manager or central contact point within the regulator to coordinate the various elements of the approval process, including managing the business' application with referral authorities, delays were more likely to occur. It was considered that a source of these delays was the business,

at times, not understanding what application forms and information needed to be provided to which regulator and at what stage of the overall approval process.

- A business noted that when going through an approval process that involved a new technological approach, the lack of a case manager or single contact point within the regulator who understood the specific circumstances of the business' proposal meant that the application process was slowed down. This was because different staff at the regulator had to familiarise themselves with the complex nature of the approval. It also meant that the business did not receive clear advice from any one person within the lead regulator on the range of approvals that it needed to obtain.

### **Consistency**

To provide sufficient certainty to businesses undertaking regulatory approvals, businesses with similar circumstances should be treated in the same manner by the regulator. A business should also receive consistent advice from a regulator throughout the steps of the approval process.

During the business consultations, consistency was raised as a key issue that, when present, enabled businesses to make investment decisions with a greater degree of confidence. Businesses expect that information and advice provided by a regulator can be relied upon to inform the business' decision on whether or not to pursue a particular regulatory approval. Where there is inconsistency in advice provided by regulators (or regulatory decisions are inconsistent), it can have an adverse effect on business' willingness to seek new approvals.

The business interviews provided several examples where the business considered it had received inconsistent treatment from the regulator. The examples related to:

- Inconsistent advice across different stages of the approval process
- Different information provided to the business depending on which individual within the regulator provided the information
- the business receiving different regulatory decisions for multiple applications with a similar set of circumstances.

What business said:

#### *What worked well*

- Businesses cited examples where a regulator had provided clear guidance at the start of the approval process on what the business needed to do to obtain its approval and, when the approval application was prepared in line with the regulator's advice, the business obtained its regulatory approval. These examples tended to involve approval processes where the business had a regular contact within the regulator and/or where the business was familiar with the regulator and its staff through previous regulatory approvals.

#### *What didn't work*

- Some businesses highlighted examples where they believed that inconsistent advice provided by the regulator had led to delays and additional costs being incurred to meet what was seen as a 'moving goalpost'. These cases tended to relate to advice provided by multiple people within the regulator at different times. For instance, due to varying interpretations of 'best practice' requirements or ways to meet particular standards (e.g. noise standards - 'no net increase in noise' or emissions standards), different information was provided by different staff within the regulator.

Inconsistency of advice can lead to increased costs for businesses through delays in meeting the approval requirements and, at times, the need to shift from pursuing one technological solution to a different approach to satisfy changing advice from the regulator. Businesses

considered that these issues could be somewhat mitigated if they were able to deal with the same person within the regulator throughout the approval process.

### **Culture of the regulator**

The culture of the regulator in terms of how it viewed its role and relationship with businesses was cited as a key determinant of the business' overall experience with the regulatory approval process.

- Regulators that did not generally provide advice to businesses to assist them to comply were more likely to have rigid attitudes to regulatory requirements, a limited appreciation of business realities, and take an adversarial approach to their interactions with business.
- Regulators that better met the needs of business were more likely to view businesses as a partner or client. These regulators worked with the business to assist it to understand and comply with the regulatory requirements. In these regulatory interactions, businesses felt they received clear advice from the regulator during the early stages of the approval process on what actions they needed to take to satisfy the regulatory requirements.

What business said:

#### *What worked well*

- Regulators that took a proactive, constructive approach to explaining to the business 'how to comply' with the regulatory approval requirements resulted in increased certainty for business on whether to proceed with a particular regulatory approval.
- Businesses appreciated regulator staff that understood the business' circumstances and applied a flexible approach (within the legislative framework) to help the business meet the regulatory approval requirements.
- Where regulatory approval decision-making was outsourced to a private, third-party, the business observed that it received significantly improved service and communication about the regulatory process. In the example provided, the interaction related to obtaining an audit in order to have an existing licence renewed. Issues raised by outsourced parties tended to focus on objective matters, rather than minor issues that were inconsequential to the business' ability to meet the regulatory requirements. Examples were provided of minor issues that had been raised previously by the in-house regulator staff, including typos in the application form and supporting information, incorrect page numbers and references on supporting information, etc. The business considered that the more professional and pragmatic approach by the third-party assessors could reflect that many assessors had worked previously in the industry and had a better understanding of the genuine issues that businesses face.

#### *What didn't work*

- Regulators that made the business 'feel like a criminal' for seeking a particular regulatory approval. Businesses felt they were made to 'jump through multiple hoops' to satisfy requirements that were not always clear. Businesses acknowledged that the onus was on them to comply with the requirements, but questioned the seemingly adversarial approach of some regulators.
- Regulators that took an adversarial approach to their interactions with business were more reluctant to provide advice on how to comply, possibly out of concern that their advice may not be definitive and could be inappropriately applied by the business. In these cases, the business was forced to make its own interpretation of the legal requirements or to seek third-party advice.

### **Key findings that apply across all steps in the approval process:**

#### **Facilitation**

- Case managers within government agencies (or third parties engaged by business) can assist businesses to understand and navigate through complex regulatory approvals in a more timely manner.

#### **Consistency**

- Receiving inconsistent advice from regulatory staff creates uncertainty for business and can lead to increased costs through approval delays and reworking the business' approach to meet the regulatory requirements.
- Businesses value the consistency of advice that comes from dealing with a primary contact person within the regulator for their particular approval.

#### **Culture**

- Regulators that work proactively with businesses to help them understand 'how to comply' with approval requirements reduced the uncertainty businesses experienced.
- Regulatory staff that applied flexible approaches to help businesses comply (within the bounds of the regulatory requirements), led to more cost-effective outcomes.
- Regulatory staff that have a good understanding of the industry and business processes they are regulating can engage more effectively with business.

## **5.2 Pre-application information**

As discussed in section 3, before a business commences the approval application process, it needs to understand the requirements of the approval (or approvals) that it needs to obtain. Businesses indicated during the interviews that, at this early stage of the approval process, they value being able to communicate directly with regulator staff and being provided with accurate, clearly articulated information.

### **Communication with regulators**

A key need of business was the ability to contact the regulator directly to learn about the requirements they had to meet and the range of approvals required. This was particularly relevant for complex approval processes such as planning-related approvals that could trigger requirements for an EPA works approval, traffic flow assessments, native vegetation requirements, etc. Businesses valued the ability to have someone to speak with via a telephone or in person.

Some businesses considered that regulators that provided contact options only through a generic email address or indirectly through a general phone number were sometimes not able to provide the timely and case-specific information that they needed.

What business said:

#### ***What worked well***

- Businesses valued the ability to have someone to speak with via the telephone or in person to obtain clear advice on the regulatory requirements. The advantages were that they felt they were able to better explain the nature of their particular situation and obtain regulatory advice that was tailored to their situation. It also meant the business could raise any follow-up questions with the same contact person in the regulator, without having to re-explain their particular situation to a different person each time they contacted the regulator. It also meant they received consistent information from the regulator.
- A business noted that "having a direct line into the regulator was crucial for complex planning applications" to avoid delays and unpleasant surprises.

- Regulators visiting the business' physical site, where appropriate, (e.g. EPA works approval permits, planning permits), to understand the business' circumstances and clearly explain what the business would need to do to meet the approval requirements was seen as contributing to a more timely approvals process.

#### *What didn't work*

- Generic email addresses had caused issues due to delays in the business receiving a response (or even an acknowledgement of the communication) from the regulator. Requests sent to the regulator's 'general inbox', had not received a response within one or two days. It was only after a further two emails that the business eventually received a response from the regulator. This led to unnecessary delays in the business lodging its approval application.

Business had the perception that generic emails meant that no one within the regulator was accountable for dealing with the issue in a timely manner. Part of the issue with generic email addresses seemed to be an underlying concern and uncertainty that the businesses query had been missed and may not be addressed. This uncertainty could be mitigated if the regulator provided a response within a certain time period – for example, within 24 hours or 48 hours. Where this is not practical, a holding response could be sent to the business within those timeframes to advise when the business was likely to receive a more detailed response.

#### **Clarity of information and timelines**

Businesses require access to relevant information to be able to make decisions about preparing approval applications and sequencing their business activities (such as hiring additional staff and undertaking marketing activities in anticipation of obtaining a regulatory approval).

For businesses, uncertainty can lead to unnecessary costs being incurred. Therefore, actions that regulators can take during the pre-application stage to increase certainty for business will deliver benefits. Providing greater certainty generally relates to the provision of information, specifically:

- **Access** to sufficient information to understand requirements and the process to gain approvals (i.e. existence of guidelines, information on websites)
  - Understanding what approvals are required or what is needed to apply
- The **quality** of information and the level of clarity in the guidance that is provided (i.e. not being open to interpretation, providing examples)
- Provision of **clear timeframes** on how long each step of the approval process is expected to take.

What business said:

#### *What worked well*

- Regulators providing a clear timeline of how long the application would take to process allowed the business to plan its resources and minimise the costs associated with delays.
- Websites that provided guidance material or worked up examples on how to comply with the approval requirements. A particular Council website was cited as a good example for outlining planning permit requirements.
- It was noted that escalating issues to more senior people within the regulator could lead to the provision of definitive information on what the business needed to do to obtain its approval.

### *What didn't work*

- Websites that provided information on a regulatory approval process in multiple locations on the website. A business commented that a regulator's website had information that was out-of-date and apparently contradictory information was provided in different areas of the website.

#### **Key findings for pre-application information:**

##### **Communication with regulators**

- Businesses value the ability to have someone to speak with via a telephone or in-person to obtain clear advice on the regulatory requirements.
- Dealing with a single contact within a regulator was considered preferable to dealing with multiple individuals on different occasions.
- Where generic email addresses are used, regulators should have in place performance targets for responses to be provided within a set time. (Businesses suggested within 24 hours for an initial response – for example, a personalised acknowledgement that the application has been received.)

##### **Clarity of information and timelines**

- Approval processes should have clear timeframes set - either a statutory time-limit or a processing target set by the regulator that is communicated to the business.
- A central source of information should be available to outline the range of regulatory approvals that may be required to undertake particular business activities (for example, establishing a manufacturing operation in a green fields location)
- Information on regulatory approvals should be consolidated and readily accessible on the regulator's website – for example, within one or two 'mouse clicks' of the home page.
- Provision of guidance material and/or practical examples on what would be 'deemed to comply' is relevant for more complex approval requirements.

## **5.3 Application form**

Most businesses interviewed did not raise significant concerns with the application forms they were required to complete as part of their regulatory approvals.

This could reflect the fact that Victorian government departments and regulators have in recent years focused on improving application forms. In particular, the Business Victoria Online (BVO) project and the Standards for Forms (SFF) project led to a large number of forms being placed online and a standard form format being adopted.

The other factor that could explain why businesses were generally comfortable with the application stage of the approval process is that filling in the application form often represents a relatively small part of the overall approval process and therefore the issues experienced may not have had a significant effect relative to those experienced at other stages of the approval process.

The few issues raised related to the complexity of the information requested and whether or not the form was available electronically. Interestingly, no comments were made regarding the business' ability to locate and access the forms. This contrasts with other studies, such as

the Productivity Commission study<sup>44</sup> that found that accessing a form could be an issue for some businesses.

### **Complexity of information required**

Complexity relates to the information required by the regulator and the extent to which the information is considered to be necessary for a particular approval process.

What business said:

#### *What worked well*

- Where multiple approvals were required, businesses observed that the relevant regulators tended to refer to each other's application forms and supporting material, rather than each requesting overlapping information from the business.
- Information requirements for a particular planning and works approval-related permit process were considered to be reasonable, despite the relatively extensive requirements. In the example cited, the business had used a consultant to assist with the process which may have influenced its positive experience.

#### *What didn't work*

- Businesses that engaged in complex approval processes such as planning applications and EPA works approvals often required third party experts (e.g. engineering and planning consultants) to complete application forms and prepare any supporting material due to the complexity of the requirements. However, most businesses recognised the inherent complexity of the overarching legislation and acknowledged that the application form was simply a reflection of that complexity.
- A business that completed a planning and works approval-related permit process itself considered that the requirements were excessive. The form took several days to complete. The requirements were made more onerous because the regulator did not accept internationally-sourced information on design specifications for the particular piece of plant. The regulator required the business to undertake Australian tests of the plant's specifications as part of the supporting material for its application.
- Businesses noted that the additional reports and testing required with some approval processes imposed additional costs and it was not always clear that the requests for this additional information were directly relevant to the approval decision.

### **Electronic forms**

The availability of electronic forms that can be downloaded and printed or filled out directly from regulator websites provided time-savings and increased flexibility to business.

What business said:

#### *What worked well*

- EPA application forms were available online and were downloaded easily. The form itself was easy to complete.
- The process to register as a food business was considered to be simple.

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<sup>44</sup> Productivity Commission, 'Performance benchmarking of Australian Business Regulation: Cost of business registrations' Research Report, November 2008.

- Payment methods were considered appropriate – electronic payments in some cases and payment by cheque in other cases. Payments by cheque were not seen as onerous as the business indicated it attached the cheque to the application form and supporting material that was posted to the regulator in hardcopy.

#### *What didn't work*

- No material issues raised.

#### **Key findings for the application form:**

##### **Complexity of information required**

- Application forms should be written in plain English and be easily understandable.
- Application forms should only require information that is directly relevant to the regulator making its assessment of the business' approval request.
- Supporting information as part of an application should be required only where it is directly relevant to informing the regulator's decision.

##### **Electronic forms**

- Forms should be easy to locate on a regulator's website
- Forms should be able to be downloaded easily from a regulator's website.

## **5.4 Lodgement process**

The lodgement process is the shortest step in the approval process and involves providing the application forms and any supporting material to the regulator, as well as the business paying the application or other related fee to the regulator.

### **Electronic lodgement and invoicing**

What business said:

#### *What worked well*

- Lodgement of the form by either email or fax was found to be convenient.
- Electronic lodgement of forms was particularly helpful where the business was required to complete multiple applications each year. The business had a pre-filled electronic application on its computer that it simply updated each time it needed to apply for a new approval permit.
- For more complex forms with supporting information such as planning-related applications, some business advised that they lodged the material in hardcopy by mail.
- Electronic payment options work well, where available. These options were particularly useful where the businesses obtained regulatory approvals on a regular basis.

#### *What didn't work*

- No material issues raised.

### **Key findings for the lodgement process:**

#### **Electronic lodgement and invoicing**

- Lodgement of the application form by email or fax is preferred.
- Lodgement by mail should also be available.
- For approval processes that are undertaken regularly by a business, having an electronic lodgement option removes the need for the business to fill-in the form from scratch each time.
- Electronic payment options provide efficiencies.

## **5.5 Post-lodgement communication**

Communication with the regulator following the lodgement of applications for approval received significant comments from business. The timeline for this stage can often be drawn out and was flagged as a key area where regulators could improve how they approached their interaction with businesses. The communication aspects of most interest to businesses related to how regulators communicated with each other and the regulator's communication with business on timeframes for processing applications, and provision of progress updates on processing applications. The comments received by business were largely consistent with the matters that we identified through the literature review in section 3 of this report.

### **Co-ordination and communication between (and within) regulators**

Businesses noted that where complex approval processes required decisions by referral authorities, coordination between regulators could prevent overlapping, follow-up information being requested from the business and could reduce overall delays in the decision-making process. More effective coordination is also about regulators better sequencing their inter-dependent activities to provide a more seamless service to businesses.

What business said:

#### ***What worked well***

- Having a lead regulator overseeing the business' application and coordinating with the 'sign-offs' with each relevant referral authority was seen as an efficient way to manage complex application processes.
- Planning approval 'call-in' processes were put forward as a good example of a coordinated approach. The process enabled a number of approvals to be considered together and avoided the need for the business to engage with multiple regulators, including local government authorities. It was noted that the 'call-in' process had saved at least six months in process delays and delivered significant cost savings to the business.

#### ***What didn't work***

- Regulatory approvals relating to the same project were advertised for public consultation at two different times – one consultation period was for the EPA Works Approval and a separate public consultation period was established for the planning-related approvals. The business considered that this 'double-up' not only delayed the project's commencement, but also had the potential to cause confusion to the public who were asked to engage on different aspects of the project at different times. Better coordination between the two regulators could have resulted in a single, streamlined public consultation process and potentially a faster approval process.
- Several businesses provided examples where an application had not been processed because the responsible person within the regulator had been on holiday or on extended sick leave. These applications had apparently 'sat in the pile' waiting for the person to return to work, rather than the regulator having a system to ensure that, in these cases, applications are referred to a different person for action. A business

indicated that this had led to a 3 to 5 month delay and additional business costs being incurred.

### **Timeframes and progress updates**

The importance of providing certainty to businesses has been discussed earlier in the report. An important source of certainty for business is regulators having set timelines for processing applications and advising these to business. Regulators adhering to these timelines allows businesses to make other business decisions that are dependent on obtaining the regulatory approval (to the extent that a favourable outcome is likely). For instance, hiring staff to work in the new business venture, engaging tradespeople to undertake the fit-out for a new business premises, coordinating the connection of utilities given the necessary lead times, and undertaking marketing activities in preparation for the new business commencing its operations.

PwC acknowledges that resourcing and other constraints experienced by regulators may contribute to longer application processing times than might be expected by businesses. However, business uncertainty and the related costs incurred can be reduced simply by providing businesses with realistic timelines for processing their applications and providing an early warning of any expected delays.

What business said:

#### *What worked well*

- Approval processes that had statutory timeframes for a decision provided a degree of certainty to businesses.
- A business commented that the council had provided it with an accurate timeline for processing its approval application and had met this timeline. This was a fundamental part in the business considering that its needs had been met by the regulator.

#### *What didn't work*

- Uncertainty of timelines for approval processes was a significant issues for a number of businesses, particularly those that engaged in planning-related approvals that required significant upfront capital investment resulting in the business incurring significant holding costs while its application was being considered.
- Regulatory decisions were sometimes significantly delayed and compromised the business' normal operations (examples of delays of over 12 months were provided). A business commented that some of its competitors simply worked around the regulatory approval requirements by not seeking the necessary permission to undertake the business activity as the lengthy approval process did not align with their operational needs. That is, by the time the approval was likely to be obtained, the need for the approval would have passed.
- Regulators often did not communicate proactively with businesses to advise them of delays in processing their application. In some instances, businesses contacted the regulator several weeks or months after lodging their application, only to be informed that 'it was still in the queue' and had not yet been looked at by the regulator.
- Where a regulator requires additional information from a business, the regulator should follow up with the business early in the process. Several businesses commented that requests for additional information were made very late in the approval process and sometimes just before the statutory time limit for processing the application had been reached. Businesses considered that 'stop the clock' provisions were used on occasion to buy more time for the regulator to make a decision, particularly where further information was sought by the regulator one or two days before the deadline.

- A regulator did not communicate with the business that it was intending to reject the business' application. The business found out through the council website. Had the regulator notified the business of its recommendation to reject the application, the business would have had the opportunity to put forward a case to respond to the issues raised. (In this particular example, the business did obtain its approval after discussing the issues directly with the councillors who were responsible for making the decision.)

#### **Key findings for post-lodgement communication:**

##### **Co-ordination and communication between (and within) regulators**

- A lead regulator to coordinate the approval process with relevant referral authorities was seen as an efficient way to manage complex application processes.
- Public notification and consultation periods should be aligned, where practical, in cases where multiple approvals relate to a single business project.
- Feedback and communication provided by regulators should be constructive and focus on solutions, rather than identifying problems.

##### **Timeframes and progress updates**

- Regulators should adhere to the processing timelines advised to businesses.
- Where a processing delay is expected, the regulator should provide early communication to the business on the nature and extent of the delay.
- Where additional information is required from the business, the regulator should seek this information as soon as possible after the initial application has been lodged.
- 'Stop the clock' provisions should be used sparingly as they reduce certainty for business and can offset the benefits of statutory timeframes for approval processes.
- Regulators should produce transparent metrics on actual timeframes for processing applications relative to the target timeframes. This could include reporting on the use of 'stop the clock' provisions.

## **5.6 Notification of decision**

Businesses generally did not raise significant issues with how they were notified of decisions by regulators at the conclusion of the approval process, but some concerns were raised with the decision-making process itself.

### **Flexibility of decision-making**

Flexibility of decision-making can allow regulators to take into account the specific circumstances of an application and any mitigating circumstances they may be relevant to the business meeting the regulatory requirements. Any discretion applied by the regulator clearly needs to be within the requirements of the underlying regulatory framework. In applying discretion in considering regulatory approvals, regulators must ensure that they apply a consistent approach across parties with similar circumstances and characteristics.

Businesses felt that, in certain cases, some regulators did not appear to exercise their available discretion within the regulatory framework when making decisions on regulatory approvals. Businesses considered that greater flexibility would enable approval decisions to better reflect the operational realities faced by business and minimise the imposition of perceived unnecessary requirements or conditions as part of a licence/permit approval. This could involve applying a test for the reasonableness and practicability of how regulatory requirements are met, rather than necessarily seeking a best-practice outcome that maximises the regulatory benefits.

What business said:

### *What worked well*

- A business commented that the regulator had worked constructively to help it meet particular plant specification requirements. The regulator provided practical solutions to assist the business address issues with its initial engineering solution to meet noise regulation requirements.

### *What didn't work*

- A regulator requested the business to pursue a particular technological solution, even though an alternative, lower-cost technology would achieve the same outcomes. The regulator was apparently less familiar with the business' proposed solution and this led to significant delays and additional costs being incurred before a solution was agreed and the approval granted.
- A regulator would not take into account previous experience and qualifications obtained in another jurisdiction (European Union) and required the business' operators to go through the full approval process (as if they had no experience in undertaking the activity) before the operator's licence was granted.
- The regulator required the business to make certain changes in order to obtain its regulatory approval. The business considered the requested changes to be beyond what was required to meet the regulatory requirements.

## **Transparency of decisions**

As indicated in section 3, approval decisions should be transparent and the rationale for the decision clearly articulated.

What business said:

### *What worked well*

- Where approvals were obtained and did not have any conditions attached, businesses did not raise any material issues with the transparency of the decision.

### *What didn't work*

- A planning-related application was vetoed by a particular local government authority, with no reasons for the decision provided to the business.
- Some businesses that have experience with multiple approvals over time commented that decisions can be inconsistent depending on which regulator staff member deals with the application. Greater transparency of reasons for conditions being imposed or applications being rejected (including direct links to the legislation and regulations) should be provided.

#### **Key findings for notification of decision:**

##### *Flexibility of decision-making*

- Regulators should allow for flexible solutions (where allowed by regulations) to enable businesses to meet the approval requirements in a cost-effective manner.
- Requirements and conditions imposed by regulators should be reasonable and practicable and not necessarily seek to achieve the highest possible regulatory outcome.

##### *Transparency of decisions*

- Approval decisions should be transparent. A written explanation should be provided to the business when an application has been rejected or vetoed.
- Any conditions imposed on an approval should have a clear rationale provided to the business in writing, including clearly linking the condition to the underlying regulatory requirements.

## 5.7 *Review and appeal*

In discussing their experience with review and appeal mechanisms, several businesses raised issues around appeals made by third parties in respect of the business' approval application. The businesses interviewed did not raise significant issues with the review and appeal mechanisms for them to challenge a regulator's decision. The exception to this related to applications to re-zone land.

### **Provision of appeals process**

What business said:

#### *What worked well*

- A business commented that being able to use the Victorian Civil and Administrative Tribunal (VCAT) major cases list enabled it to minimise delays to its approval.

#### *What didn't work*

- For rezoning applications, there is no review or appeal process available to applicants (within the approval framework) if the relevant council rules against the application. As a general principle, review and appeal processes should be available for all regulatory approval decisions.
- A member of the public lodged what was seen by the business to be a frivolous appeal against a planning application. The individual lived more than 10kms from the proposed development. The appeal was struck out by VCAT, but the business still incurred a three month delay to its project and additional costs of several hundreds of thousands of dollars.

Appeals have the potential to impose greater costs on business than the actual approval process itself, particularly in terms of delays to the business obtaining a final decision on its approval application. A business subjected to a frivolous objection suggested that creating disincentives for individuals to lodge frivolous appeals would reduce these impacts on business - for example, introducing a provision within the appeals framework to enable certain costs to be pursued against parties lodging frivolous objections.

#### **Key findings for review and appeal:**

##### *Provision of appeals process*

- Review and/or appeal mechanism should be available to applicants. (Several businesses noted this was not the case for re-zoning application decisions.)
- Appeal processes should be designed so that frivolous appeals by third parties do not unnecessarily delay projects and lead to additional costs incurred by business.
- Appeal processes should provide for timely outcomes – for example, the VCAT fast track process (major cases list) helps to reduce approval delays.

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## 6 *Elements of best practice approval processes*

Based on the discussions with businesses and literature, we have identified a number of elements that would enable regulatory approval processes to better meet the needs of business. Some elements are more applicable to complex approval processes, rather than to simple approvals.

The four key elements identified below are relevant to most approval processes and, if implemented, are likely to provide tangible, practical benefits to businesses. Based on our discussions with business, we consider they would substantially improve the experience of businesses engaging in regulatory approval processes.

- 1 Providing clear and **consistent advice and practical examples on how business can comply** with regulatory requirements – for example, guidance material on what arrangements would be deemed to comply.
- 2 **Communicating by telephone or in-person with regulatory staff** to guide the business through the approval process – for instance, assigning a case manager to the business for more complex approval processes.
- 3 Setting and communicating **clear timelines at the start of the process** on how long it will take the regulator to process the application and communicate a decision.
- 4 Ensuring feedback provided by the **regulator is constructive and focuses on solutions** to address any issues with the business' approval application.

Other key elements that are also expected to contribute to improving business' experience with approval processes include:

- Provision of **consolidated information in a single location** that details all the approval requirements that may be needed to undertake a particular business activity.
- **Regular updates on the processing status** of an application should be provided by the regulator, particularly where delays to the final decision are expected.
- Any **follow-up information is requested promptly by the regulator** (following the lodgement of the business' application) and the use of 'stop the clock' provisions is minimised.
- **Any conditions imposed or adverse decisions should be transparent**, with the regulator providing written advice outlining the reasons.
- **Publicly reporting on actual processing times** compared with target timelines, including detailing the impact of any 'stop the clock' provisions applied.

In addition, some businesses raised broader issues with approval processes that went beyond issues within the direct control of regulators. These additional issues would require legislative or regulatory change in order to implement:

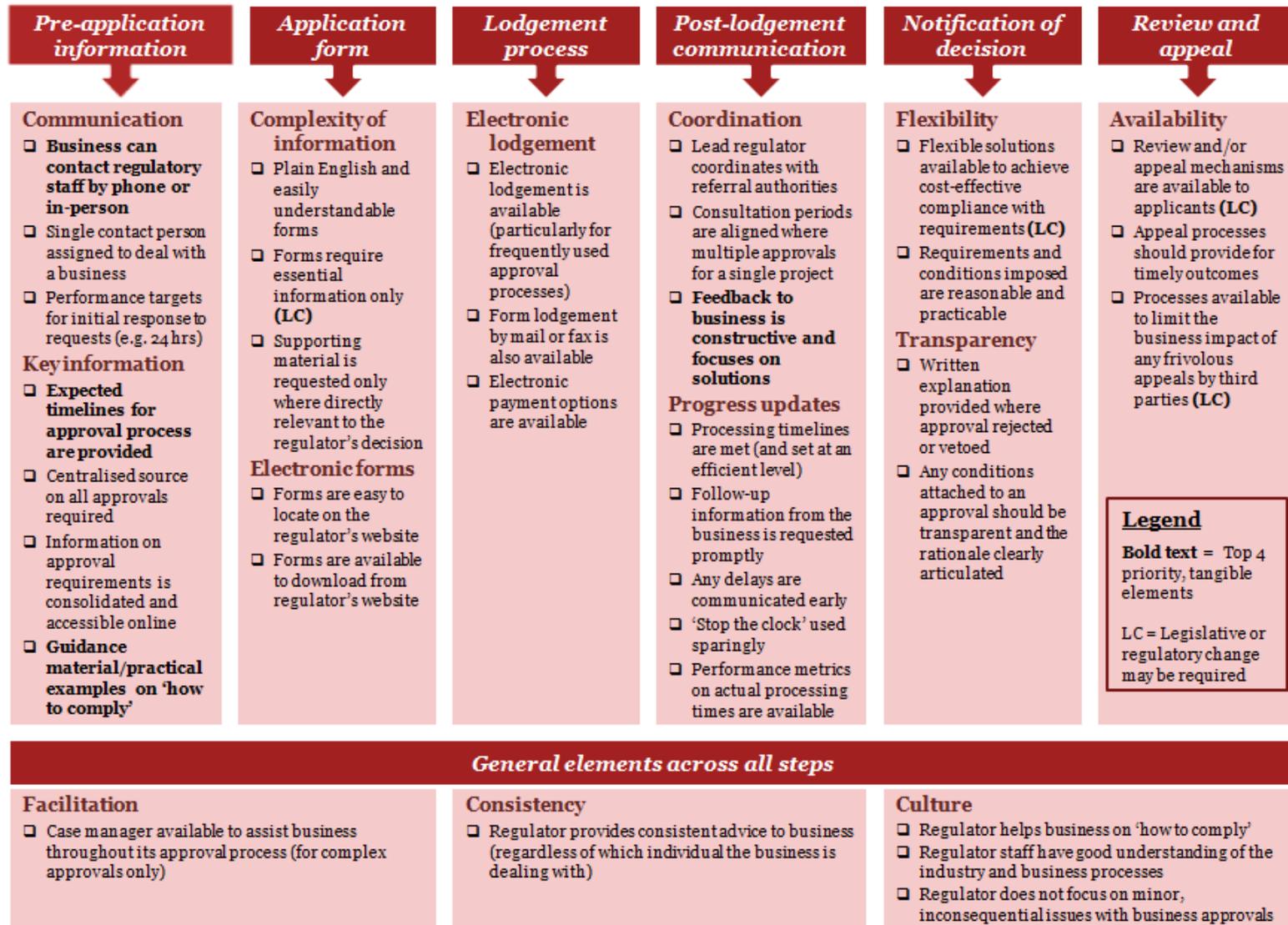
- Several businesses raised issues around appeals made by third parties in respect of the business' approval application. Appeals have the potential to impose greater costs on business than the actual approval process itself due to delay and legal costs. A business suggested that creating disincentives for individuals to lodge frivolous appeals would

reduce the adverse impacts on business - for example, introducing a provision within the appeals framework to enable certain costs to be pursued against parties lodging frivolous objections.

- According to businesses consulted, adverse decisions by councils in relation to land re-zoning applications are not able to be reviewed or appealed within the approval framework. As a general principle, review and appeal processes should be available for any regulatory approval decision.

Figure 4 (on the next page) provides an expanded set of elements that would enable regulatory approval processes to better meet the needs of business. The elements are categorised against the relevant stage of the approval process to which they apply. The elements are designed to be applicable to any approval process; however, some elements are likely to provide greater benefits when applied to more complex approval processes.

Figure 4: Checklist of approval process elements to better meet business needs



## **6.2 Summary of key findings**

### *General elements*

#### *Facilitation*

- 1 Case managers within government agencies (or third parties engaged by business) can assist businesses to understand and navigate through complex regulatory approvals in a more timely manner.

#### *Consistency*

- 2 Receiving inconsistent advice from regulatory staff creates uncertainty for business and can lead to increased costs through approval delays and reworking the business' approach to meet the regulatory requirements.
- 3 Businesses value the consistency of advice that comes from dealing with a primary contact person within the regulator for their particular approval.

#### *Culture*

- 4 Regulators that work proactively with businesses to help them understand 'how to comply' with approval requirements reduced the uncertainty businesses experienced.
- 5 Regulatory staff that applied flexible approaches to help businesses comply (within the bounds of the regulatory requirements), led to more cost-effective outcomes.
- 6 Regulatory staff that have a good understanding of the industry and business processes they are regulating can engage more effectively with business.

### *Pre-application information*

#### *Communication with regulators*

- 7 Businesses value the ability to have someone to speak with via a telephone or in-person to obtain clear advice on the regulatory requirements.
- 8 Dealing with a single contact within a regulator was considered preferable to dealing with multiple individuals on different occasions.
- 9 Where generic email addresses are used, regulators should have in place performance targets for responses to be provided within a set time. (Businesses suggested within 24 hours for an initial response – for example, a personalised acknowledgement that the application has been received.)

#### *Clarity of information and timelines*

- 10 Approval processes should have clear timeframes set - either a statutory time-limit or a processing target set by the regulator that is communicated to the business.
- 11 A central source of information should be available to outline the range of regulatory approvals that may be required to undertake particular business activities (for example, establishing a manufacturing operation in a green fields location)
- 12 Information on regulatory approvals should be consolidated and readily accessible on the regulator's website – for example, within one or two 'mouse clicks' of the home page.
- 13 Provision of guidance material and/or practical examples on what would be 'deemed to comply' is relevant for more complex approval requirements.

## *Application form*

### *Complexity of information required*

- 14 Application forms should be written in plain English and be easily understandable.
- 15 Application forms should only require information that is directly relevant to the regulator making its assessment of the business' approval request.
- 16 Supporting information as part of an application should be required only where it is directly relevant to informing the regulator's decision.

### *Electronic forms*

- 17 Forms should be easy to locate on a regulator's website
- 18 Forms should be able to be downloaded easily from a regulator's website.

## *Lodgement process*

### *Electronic lodgement and invoicing*

- 19 Lodgement of the application form by email or fax is preferred.
- 20 Lodgement by mail should also be available.
- 21 For approval processes that are undertaken regularly by a business, having an electronic lodgement option removes the need for the business to fill-in the form from scratch each time.
- 22 Electronic payment options provide efficiencies.

## *Post-lodgement communication*

### *Co-ordination and communication between (and within) regulators*

- 23 A lead regulator to coordinate the approval process with relevant referral authorities was seen as an efficient way to manage complex application processes.
- 24 Public notification and consultation periods should be aligned, where practical, in cases where multiple approvals relate to a single business project.
- 25 Feedback and communication provided by regulators should be constructive and focus on solutions, rather than identifying problems.

### *Timeframes and progress updates*

- 26 Regulators should adhere to the processing timelines advised to businesses.
- 27 Where a processing delay is expected, the regulator should provide early communication to the business on the nature and extent of the delay.
- 28 Where additional information is required from the business, the regulator should seek this information as soon as possible after the initial application has been lodged.
- 29 'Stop the clock' provisions should be used sparingly as they reduce certainty for business and can offset the benefits of statutory timeframes for approval processes.
- 30 Regulators should produce transparent metrics on actual timeframes for processing applications relative to the target timeframes. This could include reporting on the use of 'stop the clock' provisions.

## *Notification of decision*

### *Flexibility of decision-making*

- 31 Regulators should allow for flexible solutions (where allowed by regulations) to enable businesses to meet the approval requirements in a cost-effective manner.
- 32 • Requirements and conditions imposed by regulators should be reasonable and practicable and not necessarily seek to achieve the highest possible regulatory outcome.

### *Transparency of decisions*

- 33 Approval decisions should be transparent. A written explanation should be provided to the business when an application has been rejected or vetoed.
- 34 Any conditions imposed on an approval should have a clear rationale provided to the business in writing, including clearly linking the condition to the underlying regulatory requirements.

## *Review and appeal*

### *Provision of appeals process*

- 35 Review and/or appeal mechanism should be available to applicants. (Several businesses noted this was not the case for re-zoning application decisions.)
- 36 Appeal processes should be designed so that frivolous appeals by third parties do not unnecessarily delay projects and lead to additional costs incurred by business.
- 37 Appeal processes should provide for timely outcomes – for example, the VCAT fast track process (major cases list) helps to reduce approval delays.

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# *Appendix A Business consultations*

PwC undertook consultations with representatives from the following 13 businesses:

- ALDI
- Australian Paper Maryvale Mill
- Australian Tartaric Products
- Box Hill Golf Club
- ExxonMobil<sup>45</sup>
- Innova Soil Technologies
- Masters
- National Crane Hire
- Silk Education
- Stotts Colleges
- Winslow
- Woolworths
- Yarra Valley Chocolaterie

We also consulted with a representative from the Australian Council for Private Education and Training.

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<sup>45</sup> We advise that PwC is the internal auditor for ExxonMobil.

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# ***Appendix B Consultation guide for businesses***

## ***Understanding business needs when engaging in regulatory approval processes***

### ***Interview Guide Overview***

#### ***Background***

The Department of State Development, Business and Innovation (DSDBI) has engaged PwC to undertake a project to better understand the needs of business when applying for regulatory approvals. The findings of the project will help to inform government departments and agencies to understand what represents best practice for regulators in administering approval processes and engaging with business.

The scope of the project is limited to the approval processes of Victorian regulators.

#### ***Purpose***

The purpose of this consultation is to gain insights from business on the extent to which Victorian approval processes are meeting their needs and what improvements could be made to ensure that these processes better meet the needs of business.

#### ***Discussion topics***

1. Introductions
2. Understanding your business
3. Understanding what regulatory approvals your business requires
4. Observations on your recent approval process experience
  - Provision of pre-application information to businesses
  - Application form (structure and requirements)
  - Lodgement process
  - Post-lodgement communication by the regulator
  - Notification of decision
  - Review/appeal processes



