

Senate Employment, Workplace Relations and Education References Committee

Response to Terms of Reference

**Perth Area Consultative Committee
P O Box 346
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The effect of government regulation on employment in small business specifically local government and planning laws.

Area of Comment – Home Based Business

The growth of this sector has the potential to reduce economic leakage and increase employment self sufficiency by the capture of consumption expenditure leading to sustainable local growth from the power generated within the system.

The regulations and provisions for home business in Western Australia are under the Town Planning Amendment Regulations 1999 and are known as the Model Scheme Text provisions. Local governments are required to modify their town planning schemes to align with the Model Scheme Text when they undertake a review of their Town Planning Scheme. There are options to add or vary the provisions of the Model Scheme Text subject to the approval of the Minister for Planning and Infrastructure however essentially regulations are set at state level to be enforced at local government level.

Local government regulations vary from council to council with many imposing restrictions on home based businesses that control amenity and limit expansion opportunities. Town planning schemes contain specific provisions to control potential impacts that a home business may have on residential amenity to endeavour to achieve a compatible mix in a residential neighbourhood and ensure that the home business is an ancillary use to the residence.

These include:

- Road signage by-laws which limit the ability of a business to attract passing traffic and loss of business to more readily identifiable business locations.
- Limitations to the number of employees allowed in home-based businesses
- Size limitation on floorspace
- Parking restrictions and limitations on volume of traffic generated by home business
- Appearance of the dwelling, emissions and noise and storage of goods.

In some cases it is costly and processes are perceived as complicated to comply with local government regulations. The impact of regulations is difficult to assess, as many operators may not be aware of their existence or have successfully avoided or “got around” the restrictions to maintain their operations.

The following tables give an indication of the variance in home based business regulations for Western Australia, Victoria and Queensland and draws on a comparative study recently undertaken by the Department for Planning and Infrastructure in Western Australia.

Notes to the tables:

1. In Table One, the local planning provisions for Ipswich City Council have been used as a typical set of model provisions from Queensland and they are compared to the Model Scheme Text provisions of Victoria and Western Australia.
2. The various types of home based business have been shown in an increasing order of intensity in terms of floorspace, number of employees, number of parking bays and in terms of potential amenity impacts.
3. The WA provisions refer to the five types of home business defined in Section 3 while the Victorian provisions only refer to one type of Home Occupation but provide provisions for *As of Right* approvals and *Application Required* approvals. The Victorian provisions have been split into Home Occupation (1) and Home Occupation (2) to fit within the five West Australian breakdowns.
4. The WA Home Office category is of a very low intensity and has no amenity impact upon the residential environment and is therefore “As of Right”. The model provisions for Victoria and Queensland do not recognise this type of home based business.
5. Table Two is a summary of the provisions of Table One and outlines the minimum and maximum restrictions for home based business under the Model Scheme provisions.

Table 1 A Broad Comparison of Model Scheme Provisions for Home Based Business in Western Australia, Victoria and Queensland.

Category of Home Based Business and key criteria to be assessed	Western Australia Model Scheme Text	Victoria Model Provisions	Queensland Ipswich City Council
Type 1	Home Office	Not Specified	Not Specified
Number and type of employees	Only the resident of the dwelling to be employed		
Maximum floor area	Not stated		
“As of Right” or application required	As of Right		
Retail sale, display or hire of goods	Not permitted		
Signage	Not permitted		
Parking	Not stated as customers are not permitted		
Type 2	Home Occupation	Home Occupation (1)	Home Occupation
Number and type of employees	Only members of the occupier’s household to be employed	Not to employ more than 1 person who does not live in the dwelling	Those employed must be those who reside at the residence although Council may consider 1 person who does not reside at the residence to be employed
Maximum floor area	20 square metres	50 square metres gross floor area or one third of the gross floor area of the dwelling, whichever is the lesser. Area includes the storage of any materials or goods	50 square metres or additional area as approved by Council
“As of Right” or application required	Application required. The local govt can nominate that the use class be “as of right” in its own local town planning scheme	As of Right	Application required
Retail sale, display or hire of goods	Not permitted	Not permitted	Display or storage of goods not to be visible from beyond the site
Signage	Not to exceed 0.2 square metres	Not to exceed 0.2 square metres	One sign not to exceed 0.5 square metres
Parking	Parking in excess of the normal requirements for a single residence is not permitted	Responsible authority to consider where there is need for additional parking or loading facilities	Adequate car parking to be provided or to be available

Category of Home Based Business and key criteria to be assessed	Western Australia Model Scheme Text	Victoria Model Provisions	Queensland Ipswich City Council
Type 3	Home Business	Home Occupation (2)	Not Specified
Number and type of employees	Not to employ more than 2 people not members of the occupiers household	Not to employ more than 2 people who do not live in the dwelling	
Maximum floor area	50 square metres	100 square metres or one third of the gross floor area of the dwelling, whichever is the lesser	
“As of Right” or application required	Application required. The local govt can nominate that the use class be “as of right” in its local town planning scheme	Application required	
Retail sale, display or hire of goods	Not permitted	Not permitted	
Signage	Not stated	Not to exceed 0.2 square metres	
Parking	Specific number not stated, but must not result in traffic difficulties as a result of the inadequacy of parking or increase in traffic volumes in the neighbourhood	Responsible authority to consider whether there is a need for additional parking or loading facilities	
Type 4	Cottage Industry	Same as Home Occupation (2)	Home Industry
Number and type of employees	Only permitted to employ a member of the occupier’s household in a residential zone	Not to employ more than two people who do not live in the dwelling	The number of persons employed to be approved by Council
Maximum floor area	50 square metres. Conducted in an outbuilding compatible with the principal uses to which land in the zone may be put.	100 square metres or one third of the gross floor area of the dwelling, whichever is the lesser	100 square metres or such additional area as approved by Council
“As of Right” or application required	Application Required	Application Required	Application Required
Retail sale, display or hire of goods	Not stated	Not permitted	Display or storage of goods not to be visible from beyond the site
Signage	0.2 square metres	Not to exceed 0.2 square metres	One sign not to exceed 0.5 square metres.
Parking	Not stated. (The local govt would need to specify parking requirements in its town planning scheme)	Responsible authority to consider whether there is a need for additional parking or loading facilities	Adequate car parking to be provided or to be available

Category of Home Based Business and key criteria to be assessed	Western Australia Model Scheme Text	Victoria Model Provisions	Queensland Ipswich City Council
Type 5	Home Store	Not Specified	Not Specified
Number and type of employees	Operated by a person resident in the dwelling. (Any restriction on other employees is not stated)		
Maximum floor area	100 square metres		
“As of Right” or application required	Application required		
Retail sale, display or hire of goods	Retail permitted as the use class is regarded as shop		
Signage	Not stated		
Parking	Not stated. (The local govt would need to specify parking requirements in its town planning scheme)		
<i>Source: WA Govt, Victorian Govt, and Ipswich City Council 1999 Dept for Planning and Infrastructure, 2001</i>			

Notes:

1. The types of home business identified have been broadly categorised in an order of increasing intensity which refers to the size of home based business (floorspace, number of employees, number of parking bays) and also the potential amenity impacts. The same or closest equivalent use class matched with one of the types specified.
2. Considerations of residential amenity apply to Types 2 to 4
3. Limits are placed upon commercial vehicles for Types 2 to 4
4. The home occupation provisions in Victoria have been split into Home Occupation (1) and (2) as the provisions vary to cater for “as of right” approvals and “application required”
5. Type 5 - Home Store is only provided in WA and is the only category where retail sales are permitted. It is more closely aligned to a mixed use and or corner store and will be limited to locations which provide for passing trade.

Table Two

A Range Analysis of Model Provisions

A summary of the minimum and maximum restrictions for home based business under the Model Scheme provisions in Western Australia, Victoria and Queensland.

Category of Home Based Business and key criteria to be assessed	Provisions for Home Business Minimum Restriction Maximum Restriction
Type 2 – Home Occupation	
Number and type of employees	Min – only household members Max - additionally may employ one person not a member of the household
Maximum floor area	Min - 20 square metre Max – 50 square metres or such additional space approved by the Council
“As of Right” or application required	Min - application required Max – “as of right”
Retail sale, display or hire of goods	Not permitted
Signage	Min – not to exceed 0.2 square metres Max – not to exceed 0.5 square metres
Parking	Min – parking in excess of residential requirements not permitted Max – adequate car parking to be provided
Type 3 - Home Business	
Number and type of employees	Not to employ more than 2 people not a member of the occupiers household
Maximum floor area	Min – 50 sq metres Max – 100 sq metres or one third of the gross floor area of the dwelling, whichever is the lesser
“As of Right” or application required	Application required
Retail sale, display or hire of goods	Not permitted
Signage	Min – not stated Max - not to exceed 0.2 sq metres
Parking	Min – must not result in traffic difficulties or an increase in traffic volumes Max – Council to consider whether there is a need for additional parking
Type 4 – Cottage/Home Industry	
Number and type of employees	Min – only members of the household Max – number of persons employed to be approved by Council
Maximum floor area	Min – 50 sq metres of an outbuilding Max – 100 sq metres or such additional area approved by Council
“As of Right” or application required	Application required
Retail sale, display or hire of goods	Not permitted
Signage	Min – not to exceed 0.2 sq metres Max – not to exceed 0.5 sq metres
Parking	Min – not stated Max – adequate car parking to be provided

Key factors affecting the capacity of home based business to employ more people

Self-employment is now increasingly an alternative to traditional employment avenues and the take up of this is reflected in the rapid growth of home based and micro business.

Home based business is an important contributor to the economy, with an estimated 63% of all small business in Western Australia either operating from home or at home. Most home based jobs are currently in the property and business services, tourism, retailing and other service industries including information technology.

It is estimated that around 75% of small business is suitable for residential areas and these are predominantly within the knowledge and service based industry, the faster growing and biggest employing industries. This type of work requires small areas of workspace and has little impact on the amenity of residential suburbs however the potential for businesses to grow and employ is restricted by current Town Planning Regulations.

Studies done by City of Casey show that the average employment figure per business was 2.7 while ABS figures for Western Australia indicate that 27% of home based businesses employ between one and four people. When comparing these figures against Council regulations that allow only one or in some cases no employees, it is obvious that this sector will be hesitant to register their businesses with local council and have their activities restricted.

Other regulations and codes impacting on the facilitation and growth of home business are the Livable Neighbourhoods Code and Local Agenda 21 principles which both seek to promote employment generation from home based business opportunities. While local employment is a focus of both these regulations, home based businesses operating in a residential area must still comply with local Town Planning Schemes which in turn must be aligned with the state Government Town Planning Act.

4. Measures that would enhance the capacity of home based business to employ more people

Planning and Regulatory Issues - State Government

A review of state legislation to acknowledge the changing nature of small business and in particular home based business. This review would also enable Town Planning Regulations to reflect and facilitate the employment self sufficiency requirements of Local Agenda 21 and Livable Neighbourhoods.

Planning and Regulatory Issues – Local Government

A standard approach to home business regulations across councils would reduce the irregularities across council boundaries with the following issues as suggestions.

1. Retaining town planning scheme provisions controlling amenity which are common to all home based business, irrespective of the location of the home business
2. Providing some flexibility for those provisions controlling amenity which are not common for all home based business locations. (areas of lesser amenity)

3. Consistent provisions for *As of Right* across all councils.
4. Facilitating the development of home based business through a floor space limit to be *As of Right*, while controlling other aspects of scale through amenity provisions
5. Providing and publicising standardised mixed use zoning options as alternatives to residential areas or as a path for expansion of home based business.