

DMIRS Response to Economic Regulation Authority

Draft Report – Inquiry into reform of business licensing

in Western Australia (Oct 2018)

7 Dec 2018

INTRODUCTION

The Western Australian Department of Mines, Industry Regulation and Safety (DMIRS) is a regulatory agency responsible to the Western Australian Minister for Mines and Petroleum; Commerce and Industrial Relations; Electoral Affairs and Asian Engagement. DMIRS is responsible for most of the State government business licensing schemes, providing licensing services for building, plumbing, gas, electrical, WorkSafe, dangerous goods, the mining and petroleum sector, and a range of consumer protection related licences (including property and motor vehicle industries).

DMIRS consists of six business groups comprising the:

- Corporate Services Group;
- Industry Regulation and Consumer Protection Group;
- Resource and Environmental Regulation Group;
- Safety Regulation Group;
- Service Delivery Group; and the,
- Strategic Business Innovation Group.

DMIRS is responsible for the administration of **ninety-four principal Acts** and supporting regulations. The Industry Regulation and Consumer Protection (IRCP) Group administer sixty-six of these Acts. The Resource and Environmental Regulation Group and the Safety Regulation Group regulate the WA mining and petroleum industry, the world's largest and most diverse resource sector.

The Service Delivery Group (SDG) is the heart of our business licensing service, administering WorkSafe, consumer protection, building, plumbing, electrical, gas and dangerous goods safety licensing requirements. Each year, the Department undertakes almost 300,000 licence transactions across more than 75 approval and licence categories.

Licensing activities are administered in accordance with legislative requirements and delivered through manual and automated business systems.

DMIRS has a range of continuous improvement activities to review and improve licensing services and reduce unnecessary regulatory burden for customers. These include business process re-engineering to reduce complexity and ambiguity, developing new customer ALERT messaging for expiring electrical training licences, simplifying the requirements for builder registrations, developing online submissions for dangerous goods vehicle licence applications and high-risk work licences and adopting digital and pay online services for DMIRS licensing. All key mining and petroleum applications can be lodged online and the status of assessment progress tracked by the applicant.

DMIRS RESPONSE TO THE DRAFT ERA BUSINESS LICENSING REVIEW

DMIRS welcomes the Economic Regulation Authority Western Australia (ERA) inquiry into business licensing. The ERA has identified a lack of continuous improvement and accountability in business licensing and opportunities for improvement. DMIRS agrees there are opportunities to remove or amend business licences and approvals that are not needed or not well designed, especially those that are likely to significantly impact economic growth. Table one provides a summary of the DMIRS response to the nine draft recommendations.

Table 1: Summary of DMIRS response to nine draft ERA Report recommendations

Recommendation	DMIRS position / comment
<p>1 Agencies should treat business licensing schemes as public assets and continually manage and improve these schemes. To support licensing agencies to do so, and also to hold these agencies to account, a governance framework for business licensing should be implemented across state government licensing agencies. This governance framework comprises the reporting, review, consultation, transparency and oversight measures outlined in the recommendations below.</p>	<p>Supported. DMIRS supports the principles of regulatory stewardship. Business licensing schemes and their supporting regulatory systems are public assets. DMIRS believes the concept of regulatory stewardship, properly implemented, will improve agency transparency and accountability. The concept is referenced in the Service Priority Review Roadmap for Reform under Community and Leadership.</p> <p>There is evidence, from other jurisdictions, that improvement in the design and administration of business licensing has the potential to save \$millions per year across the WA economy.</p> <p>Implementation of the draft ERA recommendations based on regulatory stewardship principles would be well supported by a formal endorsement by Government of the stewardship concept.</p>
<p>2 In order to encourage agencies to improve licensing schemes, agencies should report annually and publicly on:</p> <ul style="list-style-type: none"> • A program of business licensing scheme improvements the agency intends to implement in the next 12 months • A summary of changes to business licensing schemes made in the previous 12 months 	<p>Supported in principle. A separate DMIRS annual report for licensing schemes is not considered an effective use of agency resources. However, the 2018/19 DMIRS annual report could include a new section on licensing schemes that provides information on planned licensing scheme improvements and changes over the previous reporting period.</p> <p>This recommendation could also raise several problems:</p> <ul style="list-style-type: none"> • Annual reporting per licensing scheme could be very onerous for some agencies that administer large numbers of different licences. • Alternatively, if an agency reported on several licensing schemes that operate under the banner of one wider regulatory scheme, then it could be quite superficial. <p>The real question to keep asking goes back to the COAG regulatory principles: what is the problem being solved, and is the least intrusive and most cost effective solution being applied (note also text on draft ERA report page 18: 'In many instances, the reviews do not consider the underlying problem the licensing scheme was introduced to address').</p>
<p>3 To make reform and improvement of licensing schemes easier, the Government should:</p> <ul style="list-style-type: none"> • Introduce an omnibus bill each year to implement any legislative changes needed to improve licensing schemes 	<p>Supported. DMIRS supports the introduction of an annual omnibus bill that deals with amendments or technical adjustments. DMIRS supports the simplification of Parliamentary review processes.</p>

Recommendation	DMIRS position / comment
<ul style="list-style-type: none"> • Ensure that, when licensing schemes are introduced or reviewed by Parliament, primary legislation includes only the elements of licensing schemes that need parliamentary consideration (for example, their objectives), and does not prescribe the administrative and procedural requirements of licensing schemes • Consider including sunset clauses in the primary legislation for licensing schemes 	<p>Whilst the annual omnibus bill proposal has merit, there are limitations. These Bills typically only deal with technical amendments. This means they also get low priority for Parliamentary time and it can take several years for Bills to get through Parliament.</p> <p>As legislation has to include sufficient detail to provide a head of power for supporting regulations it is likely that primary legislation may not be able to be as broad as envisioned by the report. Even if the government of the day was comfortable with agencies managing a large amount of administrative detail, the Legislative Council is likely to oppose this given its current approach to the use of regulations.</p> <p>Another view is that Government controls priorities for legislation. Parliamentary convention is that substantive or non-minor amendments are not suitable for omnibus bills. Given amendments to licensing schemes will be minor, it is may be difficult to obtain priority to progress annual licensing omnibus bills.</p> <p>DMIRS does not support the use of sunset clauses in primary legislation for licensing schemes. Administering sunset clauses for large amounts of primary legislation would not be the best use of public resources. For example, the DMIRS Industry Regulation and Consumer Protection Group administer sixty six separate primary Acts many of which would not be in the public interest to repeal or abolish.</p> <p>The use of sunset clauses as a means to encourage legislative review is strongly opposed on the grounds of the amount of work it would generate.</p> <p>Thorough legislative reviews take time and if the issues are complex and stakeholders have differing views, review timelines can easily become protracted. Parliamentary time is also difficult to obtain and such a measure would unnecessarily increase Parliament’s workload. Alternatives such as routine five yearly reviews of legislation are also strongly opposed for similar reasons.</p> <p>Sunset clauses can be a useful tool for specific elements of a licensing scheme and DMIRS proposes such use in the review of motor vehicle dealer licensing. It is expected that Cabinet will approve the recommendations of this review before Christmas and that the details can be released publicly soon after this.</p> <p>Scarce review effort should be focussed on areas of identified problems and Government priorities – and prioritised accordingly (see also comments on Recommendation 9).</p>
<p>4 Agencies should improve consumer input into the design and management of licence schemes. The Department of the Premier and Cabinet should address this when it develops a whole-of-government strategy for community engagement, as recommended by the Service Priority Review.</p>	<p>Supported. DMIRS has a record of effective consultation with stakeholders in the development of regulations, licensing schemes, policies and guidelines. DMIRS is using various digital services and other community engagement methods to connect with customers. DMIRS also acknowledges the difficulty of obtaining consumer input and has found that no single method can provide this.</p>

Recommendation	DMIRS position / comment
<p>5</p> <p>The Better Regulation Unit in the Department of Treasury should:</p> <ul style="list-style-type: none"> • Report publicly on agency compliance with Regulatory Impact Assessment requirements in an annual report, in accordance with current Regulatory Impact Assessment guidance • Publish and maintain a central repository of agencies' Preliminary Impact Assessments (PIA's) and the Better Regulation Unit's responses. These documents should be published as soon as the Better Regulation Unit has provided its response to the agency • Publish and maintain a central repository of agencies' Consultation Regulatory Impact Statements, submissions to those statements, Decision Regulatory Impact Statements and the Better Regulation Unit's responses. Statements and Better Regulation Unit responses should be published as soon as they are completed, and submissions to Consultation Regulatory Impact Statements should be published when received. 	<p>Supported in principle. DMIRS recognises that this proposal will have resource implications for the BRU. These implications need to be considered before finalising a decision. Regarding a central repository of Preliminary Impact Assessments (PIAs) and their responses, DMIRS has no issue with establishing a central repository of PIA's. However DMIRS would not support the proposal to publish BRU's comments before all the matters under discussion had been settled. Upon publication, all BRU and agency comments could be published.</p> <p>The BRU is welcome to maintain a repository of CRISs, submissions to CRISs, DRISs and BRU responses to these but it is a lot of duplication. CRISs and submissions are published by agencies. Submissions are generally published after a consultation process has concluded (apart from those where the respondent has requested this not occur), hence DMIRS would reiterate that publication should occur after consultation has concluded and the agency has published submissions.</p> <p>DRISs cannot be released publicly until the Government makes its decision known in its final form. This can mean that a DRIS will not be published until a Bill is introduced to Parliament. Government may elect to release earlier than this.</p>
<p>6</p> <p>A Licensing Evaluation and Reform Unit should be established as part of the business licensing governance framework. Its purpose would be to help licensing agencies develop their capability in evaluating the performance of licensing schemes and to hold agencies to account in evaluating and improving licensing schemes. The Better Regulation Unit in the Department of Treasury would be a logical place to locate this unit.</p>	<p>Supported. DMIRS generally supports the view that Treasury be responsible for supporting and coordinating agency guidance material, preparing the Omnibus Bill and providing a central role in publishing / reporting agency reviews of licensing schemes.</p> <p>The new unit will need to be well resourced to enable it to effectively work across multiple agencies. Resourcing should take into consideration the Unit's role in education, coaching and active assistance.</p> <p>Consideration may need to be given to embedding BRU staff in agencies for extended periods. During 2018, Treasury initiated a shared resource strategy. A BRU officer spent 1-2 days a week at DMIRS during the first half of 2018 and a DMIRS officer spent 1-2 days a week at Treasury (BRU) in the second half of 2018. The shared resource strategy improved inter-agency communication and the sharing of knowledge.</p>
<p>7</p> <p>Agencies should report to the Licensing Evaluation and Reform Unit annually on the management of their licensing schemes using a performance checklist. This will hold agencies to account for evaluating whether licensing schemes are achieving their intended objectives, being administered in a cost-effective way and being complied with. These performance checklists should be published so that stakeholders can consider whether they agree with the assessments and provide feedback.</p>	<p>Supported in principle. Agencies require a clear picture of what an agency would be doing if it was managing its occupational licensing well as a public asset. Without such a picture it is not possible to self-assess or be externally assessed.</p> <p>DMIRS would like to see some changes to the checklist to make it more meaningful. In its current form, the following problems may arise:</p> <ul style="list-style-type: none"> • Its success relies on the willingness of agencies to honestly self-appraise. The proposed performance checklist as presented on page 24 simply invites a series of Yes answers (note also the concluding paragraph on page 13 of the report). • Annual reporting per licensing scheme could be very onerous for some agencies that administer large numbers of different licences.

Recommendation	DMIRS position / comment
	<ul style="list-style-type: none"> • Alternatively, if an agency reported on several licensing schemes that operate under the banner of one wider regulatory scheme, then the assessment would be quite superficial. • The checklist conflates the performance and success of a wider regulatory scheme with that of a licensing scheme where these could be quite independent. The performance of a licensing scheme could have little or no influence on the success of the overall scheme or vice versa.
<p>8 Agencies should review the outstanding review recommendations for the 65 licensing schemes that have been reviewed in the last five years but have not had recommendations implemented (listed in appendix C).</p> <p>Agencies should consider whether any of the recommendations should be implemented through the next omnibus bill.</p>	<p>Supported. It is to be expected that the more recent the review the more likely that recommendations will not have been implemented. Especially since there has been a recent change of Government with new priorities.</p> <p>If extensive recommendations for change have been made following an extensive review it is unlikely they would be suitable for an omnibus Bill.</p>
<p>9 Agencies should assess licensing schemes that have not been reviewed in more than 10 years (appendix B), to determine whether a major review is required.</p>	<p>Supported in principle. Nineteen licences administered by DMIRS are identified in Appendix B. The majority of these should not be listed for the following reasons.</p> <p>Petroleum licences BLR-282-PE, BLR-283-LI, BLR-284-LI, BLR-285-PE, BLR-286-LI, BLR-287-AT, BLR-288-LI, BLR-289-LI, and BLR-298-LI are incorrectly listed as not being reviewed in more than ten years. A comprehensive review of the <i>Petroleum and Geothermal Energy Resources Act 1967</i>, <i>Petroleum Submerged Lands Act 1982</i> and the <i>Petroleum Pipelines Act 1969</i> was conducted following the Varanus Island incident (2008) which resulted in the remaining parts of the <i>Petroleum Legislation Amendment and Repeal Act 2005</i> being proclaimed in May 2010 (less than ten years ago). Reviews are ongoing with future petroleum legislative amendments planned for 2020.</p> <p>Note: The date for when four onshore petroleum Acts were established are incorrect (page 74). The year should be 1967 (not 1969).</p> <p>Five offshore mineral business licences are identified in Appendix B. However, only exploration licence (BLR-230-LI) exists. This exploration licence is associated with the Cockburn Cement State Agreement Act. According to the ERA, Leases and State Agreements are not included in the definition of a licence so BLR-230-LI should not be included in Appendix B. The four remaining offshore mineral licences do not exist and should be removed. There is an opportunity for DMIRS to review the need for the <i>Offshore Mineral Act 2003</i> when the State Agreement expires in 2025.</p> <p>With regard to BLR-222-Li (Debt collectors licence), BLR-216.LI (Charitable collections licence), BLR-254-LI (Land valuers licence), BLR-295-LI (Permit to conduct a street collection) and BLR-728-LI (Retirement villages exemption certificate), the charitable collections, street collections and retirement villages exemption certificate are in DMIRS' view not strictly business licences. However, DMIRS acknowledges that the ERA cast a wide net in defining 'business licence'. Retirement village legislation has undergone extensive review over the past 10 years and the exemption certificate was introduced to the Act</p>

Recommendation	DMIRS position / comment
	<p>in 2012. The purpose of the certificate is to ensure people are not unjustly prevented from working as a retirement village manager due to criminal convictions.</p> <p>The legislation governing charitable collections has been correctly identified as requiring review.</p> <p>In relation to debt collection legislation, ERA has correctly identified this as an industry requiring legislative review. However, DMIRS, like other agencies, has finite resources and must apply discernment in allocating resources for review.</p> <p>In applying this discretion, DMIRS gives attention to factors such as risk, industry feedback and the priorities of the government of the day. In balancing these competing interests, debt collection has been determined a low risk area, with an associated low priority for review.</p> <p>Nevertheless during 2018 a check was done to see if there was capacity to transfer oversight of debt collectors to the Commonwealth. This was found not to be an option. While the <i>Land Valuers Licensing Act 1978</i> has not been reviewed, the Land Valuer's Code of Conduct was recently reviewed as part of a combined review of codes of conduct for property related industries.</p>

REGULATORY STEWARDSHIP

The ERA has identified a lack of continuous improvement and accountability in business licensing and opportunities for improvement. The ERA has adopted the concept of regulatory stewardship as a strategy for WA regulatory agencies to address these shortcomings. Regulatory stewardship principles are at the heart of this report and are reflected in most of the recommendations.

Regulatory stewardship treats business licensing schemes as public assets and promotes active management and continuous improvement of regulatory systems (legislation, regulations, policies, procedures and culture).

The ERA report recommendations reflect the Department of Premier and Cabinet's Service Priority Review "Roadmap for Reform" which refers to "Driving regulatory stewardship" under Community reform initiatives. The "Roadmap for Reform" is a central theme in WA agency strategic planning.

Explicit Government commitment to the concept of regulatory stewardship would help ensure that government agencies with finite resources commit to implementing ERA recommendations. DMIRS suggests the ERA, in consultation with the Department of Premier and Cabinet and the Department of Treasury, update the draft report to reference the Government's more recent "Streamline WA" regulatory reform objectives. A "fit-for-purpose" approach to assessing the health of regulatory systems and licensing schemes would be consistent with government reform objectives and better support the implementation of ERA recommendations.

DEFINITION OF BUSINESS LICENCE, SUBMISSIONS AND TERMS OF REFERENCE

The ERA has indicated that defining a licence is difficult. DMIRS agrees and is of the view that the definition of a licence for this review is too broad. A more technical interpretation of 'licence' or 'licensing scheme' may assist the ERA to narrow the focus to business licensing areas that warrant closer analysis. It is suggested that the ERA narrow the focus to occupational licences and residential/commercial works licences.

The ERA has indicated that the mining and petroleum sector is included in the scope of this review. However, the ERA has identified State Agreements as being outside of the scope of this review (Pages 2 and 3, ERA Overview Paper, February 2018). A significant proportion of Western Australian mineral production is generated under State Agreement Acts. Given that a large part of the WA mining and petroleum industry is outside the definition of a licence it would seem appropriate to revise the scope of this review.

There are questions about whether a mining lease should be included in the definition of a licence. A mining lease is granted by the Minister for Mines and Petroleum and is valid for 21 years. However, grant of tenure does not allow mining to commence. Other separate approvals are required. The grant of tenure does not fit easily into the traditional business licensing model.

It is notable that no submissions were received from the Chamber of Minerals and Energy, the Association of Mining and Exploration Companies or the Australian Petroleum Production and Exploration Association. It would seem that this industry sector has assumed the ERA review does not apply to them. There was only one submission (P. Young) listed in the category of mining licences and approvals (page 78), which raises questions about the extent of ERA consultation with this industry.

DMIRS notes the comment on page 4 about Roy Hill Holdings Pty Ltd taking almost five years to gain licences for a large iron ore project in WA. The ERA refer to the Roy Hill Holdings Pty Ltd submission to a Senate Select Committee on Red Tape (2017).

In Western Australia, Roy Hill Holdings Pty Ltd are subject to the same laws as other iron ore mining companies. DMIRS has detailed information regarding approval timelines for the Roy Hill Project. A total of ninety six mining applications for this project were submitted to DMIRS between 2009 and 2018. Eighty nine per cent of those were finalised within target timelines. The DMIRS approval performance target is to finalise more than eighty per cent of applications within target times. This target was achieved for the Roy Hill Project.

DMIRS' target timelines for mining and petroleum applications are listed on the website and the department's approval performance reports are published quarterly. The Productivity Commission has referenced DMIRS' approval performance reporting as leading practice (No. 65, 27 September 2013, pp 16-17).

The draft ERA report Terms of Reference (ToR) are listed in Appendix E on page 79. As part of review, the Treasurer has instructed the ERA to have regard to the approach, findings and recommendations of the NSW Independent Pricing and Regulatory Tribunal (IPART) Report - Reforming licensing in NSW (2014).

The IPART Report is a comprehensive review of the 769 licences administered by the NSW Government. These 769 licences were distilled down to a "Top 40" licence reform priority list. It was estimated that design improvements to these 40 licences would save at least \$212

million per year. Importantly, specific business licences were identified and detailed recommendations were made for each of these business licence schemes.

By contrast, the ERA has taken a different high-level approach to reform of business licensing. The ERA identifies “over 700 business licensing schemes” but does not identify which business licence schemes are considered a high priority. Indeed, on pages 4 and 5 of the draft report, the ERA decided not to “*assess in detail the effectiveness of each of Western Australia’s more than 700 State government business licensing schemes but rather focus on structural and systemic barriers to effective management of business licences*”.

This appears contrary to the ToR which, among other things, instruct the ERA to:

- assess high priority business licences against the analytical framework to determine whether individual licences are necessary, well designed and well administered; and,
- recommend reforms to specific business licences and licensing arrangements more generally that will produce net benefits for Western Australia.

No high priority business licences were assessed against the analytical framework. Nor were individual licences assessed to determine whether they were necessary, well designed or well administered. It could be argued that Appendices B and C represent individual licences that are not well administered, although the report notes that this may be outside of the control of agencies. Appendices B and C do not address whether they were necessary or well designed. Unlike the NSW review of licensing, no reforms to specific business licences that could produce net benefits for Western Australia were recommended.

DMIRS believes this is an opportunity lost.

COMMENTS REGARDING THE VARANUS ISLAND INCIDENT

On pages 4 and 11, the report makes statements about the Varanus Island gas explosion that DMIRS believes are misleading. In the Executive Summary, the draft report states that: “poor regulation, including a prescriptive licensing regime and inadequate pipeline licensing schemes contributed to the Varanus Island gas explosion” and references the Bills and Agostini 2009 Report commissioned by the, then, Minister for Mines and Petroleum. This is fundamentally correct. However on page 11 the report provides a misleading and overly simplistic interpretation of the Bills and Agostini Report.

The draft ERA Report states “*At worst, regulatory failure can lead to disaster. In Western Australia. An investigation into the 2008 Varanus Island gas explosion found that the State’s pipeline licensing scheme was inadequate and had contributed to the disaster. The explosion cost the State’s economy between \$2 billion and \$3 billion because it reduced the State’s gas supply by 30 per cent for close to two months.*” These are the ERA’s words and not quotes from the Bills and Agostini Report.

The leading sentence “*At worst, regulatory failure can lead to disaster*” implies that regulatory failure lead to the Varanus Island gas explosion. Not only is this misleading, it serves to undermine public confidence in the regulator. The Bills and Agostini 452-page report clearly identifies the principal cause of the Varanus Island gas explosion as a failure of cathodic protection resulting in excessive pipeline corrosion and structural failure. What the Bills and Agostini report actually said about the contribution of inadequate licensing to this incident was

that there were “poor and inadequate compliance penalties” (the maximum was a \$10,000 penalty), communication problems between Commonwealth and State regulators and shortcomings of legislation with respect to the Safety Case regime. The Bills and Agostini Report made no reference to regulatory failure in respect to the Varanus Island incident.

Misleading statements can undermine public confidence in the regulator. DMIRS requests the sentence “*At worst, regulatory failure can lead to disaster*” be revised or deleted. DMIRS also request the draft report be revised to clearly identify the **principal cause** of the Varanus Island gas explosion. It is noted that the Pike River example on the same page identifies the principal cause of the Tasmanian mine explosion but the Varanus Island incident commentary by the ERA does not.

Following the Varanus Island incident, the former Department of Mines and Petroleum, conducted a comprehensive review of WA petroleum legislation culminating in the remaining parts of the *Petroleum Legislation Amendment and Repeal Act 2005* (PLARA) being proclaimed in May 2010. This Act strengthened the safety case regime in the *Petroleum and Geothermal Energy Resources Act 1967* and the *Petroleum Pipelines Act 1969*. In addition, infrastructure licences were introduced to the *Petroleum Submerged Lands Act 1982*.

In Appendix B, business licences BLR-282-PE, BLR-283-LI, BLR-284-LI, BLR-285-PE, BLR-286-LI, BLR-287-AT, BLR-288-LI, BLR-289-LI, and BLR-298-LI are incorrectly listed as not being reviewed in more than ten years. As identified above, onshore and offshore petroleum legislation was reviewed with subsequent amendments in May 2010 (less than ten years ago) and reviews are ongoing with future amendments planned for 2020. The year the legislation was established on page 74 is incorrect. Onshore petroleum legislation was established in 1967 (not 1969).

Five offshore mineral exploration licences are identified in Appendix B. However, on closer inspection, DMIRS notes that only one mineral exploration licence (BLR-230-LI) actually exists. This exploration licence is associated with the Cockburn Cement State Agreement Act. According to Section 2.1 of the ERA Overview of the inquiry and consultation process (19 February 2018), State Agreements are not included in the definition of a licence. As BLR-230-LI is the tenure and basis of the State Agreement it should not be included in Appendix B. The remaining four offshore mineral licences do not exist. These should also be removed from Appendix B. There is an opportunity for DMIRS to review the need for the *Offshore Mineral Act 2003* when the Cockburn Cement State Agreement Act expires in 2025.

INFORMATION REQUESTS AND GENERAL COMMENTS

Page 13: *Generally, business recognise the need for government to regulate certain business activities and support the use of business licensing to do this. Some provide examples of unlicensed activities that they believed should be regulated.*

The motivation of some business or occupational groups to support licensing schemes may not necessarily be valid. For example, they may:

- wish to reduce competition by maintaining licensing entry barriers.
- be happy to pass the responsibility and cost to government for determining their employee’s credentials and probity.

- mistakenly believe that their licences are necessary and/or not something that could be removed and so want to even the playing field, when the real solution is to stop some licensing.

As a more general point, the business community generally has artificially low expectations about how far regulatory reform could go and hence may be seen to support the current schemes by tentatively offering suggestions for improvement rather than agitating vigorously for repeal.

Page 13: *It is mostly the operation of older licensing schemes that is creating problems for government, businesses and the broader community.*

This is a critical point. Most existing licensing schemes were never subjected to a rigorous regulatory impact assessment process and would not pass that test.

Information request:

There is a substantial amount of information on problems with state government business licensing. However, there is limited concrete evidence about what is causing these problems. The ERA invites stakeholders to provide information about the causes of problems with state government business licensing.

The problems include the following:

- The underlying rationale for the licence is not always clear.
- The information / evidence required to obtain a licence is commonly ill-defined and highly subjective, which may result in inconsistent and often escalating requirements for more information.
- Officers with an interest in reform may be too busy administering the current scheme to work on changes.
- Those with overall ownership of regulatory schemes may not have sufficient or active interest in licensing activities and so do not invest in improvements.
- Officers administering licensing schemes may become too ideologically or emotionally committed to their continuation and therefore unwilling or unable to objectively consider options to replace or improve them.
- Funding for IT systems within government agencies is limited and licensing systems are expensive to build (particularly for schemes with relatively low number of licence holders), so investment in these is insufficient and antiquated paper-based systems continue to operate.
- Even when IT funding is available, developing and implementing new systems is slow and ties up significant licensing resources.
- Changes of government and machinery of government changes can stop or add significant delays to reform (e.g. Bills lapse or the Minister's policy may change) and/or IT projects (e.g. funding might be cut or other priorities take over).
- Reliance on licensing fee revenue creates a perverse incentive for agencies to retain licensing schemes even though they may not be necessary.
- Business support for existing licensing schemes and opposition to reform/deregulation (as referenced above).

Page 25: *Performance dashboard – possible measures*

Note that some of the suggested measures have been publicly reported in Departmental annual reports over many years (as Treasury KPIs) without stimulating reviews of the underlying schemes, so reporting should not be expected to automatically lead to reform.

Information request:

How can government develop a culture of continuous evaluation and improvement of licensing schemes? What questions and measures should be included in the performance checklist and dashboard?

Achievement of a culture of continuous evaluation and improvement will probably need a significant initial investment of time from the proposed Licensing Evaluation and Reform Unit.

Information request:

How can agencies increase consumer input to reviews of licensing schemes?

Would establishing a body to represent the interests of consumers in business licensing review and reform processes be useful? If so:

- *How should it be funded?*
- *How should its leadership and membership be decided?*
- *Should it be part of, or independent of, government?*
- *Should it be a new body, or should the functions of an existing body be expanded?*

What should its functions be?

Increased consumer input can be encouraged by ensuring that reviews are a genuine process of exploring different ways to achieve the desired outcome and are not working to a pre-determined outcome. The range of external stakeholders with interests in licensing schemes is extremely large and diverse and no single body could hope to be adequately representative. A single body is therefore not supported. Many of these interests are represented by existing industry associations (e.g. Chamber of Commerce and Industry, Chamber of Mines and Energy) and community groups, so the question is really about how to get input from any other sectors of the community that is not highly partisan and unrepresentative.

Page 27: *Problems with compliance*

Compliance rates are an unreliable indicator of the success or otherwise of a regulatory scheme. Agencies with large enforcement capability are more able to identify non-compliances, particularly low level ones, but it does not follow that the regime is failing. Similarly, absence of information about non-compliance may simply mean that the agency is not looking hard enough.

Page 32: *The Licensing Evaluation and Reform Unit should coordinate an annual omnibus bill, to provide agencies with a mechanism through which they can change prescribed elements of licensing schemes, which may otherwise take years to change.*

Strongly supported.

Noting the limitations previously described above, the use of omnibus Bills to progress improvements in licensing schemes is strongly supported as the current PIA and regulatory

amendment processes become prohibitively onerous where the number of changes are small and deter continuous improvement in licensing administration.

Information request:

Should legislation include sunset provisions for licensing schemes? If so, how should the sunset clause mechanism operate? In particular, how could sunset provisions affect other processes such as Regulatory Impact Assessment?

No. The work required to continually reaffirm licensing schemes would create a significant administrative burden that would come at the expense of worthwhile reform activities.

Page 54: *“Australian Governments reported that reform to reduce occupational licensing was complete.”*

This comment raises the problem that exists for national schemes such as for dangerous goods driver and high risk work licences. These schemes tend to rely on model or consistent legislation across multiple jurisdictions and changes require assent and legislative amendments by all parties. Significant reform in these areas is almost impossible if the prevailing philosophy in one or more jurisdictions is averse to change. Recent actions to harmonise explosives laws and national occupational licensing provide similar examples. The processes ran for many years but did not result in any reform.

Information request:

Is harm being caused to the community, economy or environment because licensing conditions and requirements are not stringent enough? Please provide examples.

A common misconception by regulators and others is that a result will be achieved simply by imposing conditions on a licence – and that the regulator’s job is done. Without adequate compliance assessment and credible enforcement tools, compliance with conditions may become optional. It is better to build compliance into the approval than to retrospectively enforce it via licence conditions.

END