

12 December 2012

Regulation Review – Licence Rationale and Design
Independent Pricing and Regulatory Tribunal of New South Wales
PO Box Q290,
QVB Post Office NSW 1230

Dear IPART

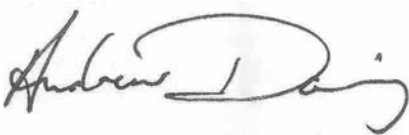
The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *Reforming Licensing in NSW Issues paper*.

The Australian Sustainable Business Group (ASBG) is a leading environment and energy industry representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 150 members comprising of Australia's largest manufacturing companies. Members were fully involved in the development of this submission and ASBG thanks them for their contribution.

This submission has been prepared with the assistance of the members of ASBG's Policy Reference Group who comprise some of Australia's leading environmental managers dealing with major industrial sites and others from SMEs.

Should you require further clarification on the contents of this submission, such as in any future public forum or otherwise please contact me.

Yours sincerely



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Submission on IPART's
Reforming Licensing in NSW

December 2012

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EXECUTIVE SUMMARY

Focusing on the environmental licensing issues ASBG has highlighted some of the concerns and possible solutions to improving red tape in this costly area. Firstly ASBG supports the adoption of the PwC Guidelines for the assessment of licensing. However, it is concerned that the legislation creating the licence itself can be the root cause of the red tape.

ASBG does not call for removal of licensing or of certain legislation, rather the issue is one of making efficient regulation and following that efficient and effective licensing. Some issues are complex and require a high level of skills within Government to best manage and regulate. However, there is always scope to review legislation and licensing to improve its cost effectiveness. Unfortunately some red tape once embedded creates its own profession and has support within and outside Government for it to continue. So good initial design of regulation and licensing is better and more effective than later corrections.

Key recommendations and considerations in this report include:

- The NSW Government should continue to prevent duplication of regulatory and licensing functions through the various COAG committees, with a particular emphasis on energy reporting and management.
- NSW Environmental licenses are high cost instruments which have scope for improvements.
- A risk based approach and use of risk index for Environment Protection Licences (EPL) is warranted to generate a more professional regulation of these licenses.
- The structure of environment licenses requires a review to consider if different layers are required to administer them more efficiently from both a Government and licensee perspective.
- NSW adopt the Victorian Corporate Licensing system to reduce the administrative burden on EPL holders and Government.
- Add-on *ad hoc* additions to NSW EPLs are full of red tape issues and require to be addressed soon to prevent these becoming entrenched. These require urgent review to prevent the process being embedded.
- The Environmentally Hazardous Chemicals Act be incorporated under the POEO Act with its licensing functions to be transferred to EPLs where appropriate.

The above recommendations and concerns are explained in the submission below.

RECOMMENDATIONS

- R1 ASBG recommends the NSW Government continue to push for removal of duplication of energy reporting and assessment programs between jurisdictions and avoid introduction or reintroduction of such schemes in NSW.
- R2 ASBG recommends that a publically available and calculable risk index approach be adopted by the EPA for EPLs to establish:
- The environmental risks posed for that activity based on scale and type
 - Which regulator should oversee this licence type (e.g. EPA or Local Government)
 - The local environmental risks the activity poses taking into account its scale and the local environment in which it is located
 - Will set the monitoring régime for the site, including types of monitoring, frequencies and percentiles
 - Will set the inspection frequency for the site
 - The amount of add-ons to EPL requirements
- R3 ASBG recommends that corporate licensing be adopted in NSW along similar lines to that of the Victorian Corporate Environmental Licensing.
- R4 ASBG recommends the add-on requirements to EPL holders be reviewed with an emphasis on adherence to the PwC Guidelines, the costs of compliance, liabilities vs the scale of the risk of the site it is imposed upon.
- R5 ASBG recommends the Environmentally Hazardous Chemicals Act 1985 be incorporated under the POEO Act so its licensing functions placed within Environment Protection Licences.

1 INTRODUCTION

The Australian Sustainable Business Group (ASBG) welcomes the opportunity to comment on the *Reforming Licensing in NSW Issues paper*.

The Australian Sustainable Business Group (ASBG) is a leading environment and energy industry representative body that specializes in providing the latest information, including changes to environmental legislation, regulations and policy that may impact industry, business and other organisations. We operate in NSW and Queensland and have over 150 members comprising of Australia's largest manufacturing companies. Members were fully involved in the development of this submission and ASBG thanks them for their contribution.

ASBG strives to assist regulatory agencies to prepare more efficient regulatory process, with the outcome of achieving practical, efficient, low cost solutions to achieve high environmental outcomes. Licences relating to environmental issues are a significant cost with some imposing millions of dollars on a few licence holdings to comply with annually.

ASBG welcomes the opportunity to comment on *Reforming of Licensing in NSW*, and looks forward to positive outcomes from this process. IPART has been give two main areas in which the Review will focus:

- Development of tools and guidance for NSW government agencies to improve their practices
- Identify areas and provide recommendations to make reductions to red tape.

While supporting the tools to design better licenses, the issue here is the enforcement of agencies to effectively use such tools. There are many examples where such good intentions are paid lip service as the process may undermine an agency's activities.

ASBG notes use of IPART for this review type is a novel approach to dealing with the red tape surrounding licensing. ASBG looks forward to IPART's approach and outcomes leading to real changes and reduction in red tape, though it is concerned the review is not broad enough.

Environmental regulation and licensing is a complex process. Regulators must deal with the full spectrum of industry types and the massive range of different pollutants and different ways in which the environment can be harmed. Strong political views also dominate the environmental area. Given such strong views on the subject means the likelihood for poor legislation is high. As a consequence, the regulator should be more vigilant in putting in place practical and efficient mechanisms under such legislation. Unfortunately this is not always the case.

2 RED TAPE – REDUCTION PROCESS AND RESISTANCE

Red tape is well defined in the literature:

Red tape is excessive regulation or rigid conformity to formal rules that is considered redundant or bureaucratic and hinders or prevents action or decision-making. It is usually applied to governments, corporations and other large organizations. One definition is the "collection or sequence of forms and procedures required to gain bureaucratic approval for something, especially when oppressively complex and time-consuming". Another definition is the "bureaucratic practice of hair splitting or foot dragging, blamed by its practitioners on the system that forces them to follow prescribed procedures to the letter".¹

Red tape for licenses has its root in poorly drafted legislation, which commonly results in inefficient licensing being installed. Hence, to properly review licensing means also reviewing and revising its legislative basis. Consequently, ASBG is concerned that the IPART Review may lack sufficient scope to review the regulatory basis for many poorly performing licenses.

Poorly drafted legislation tends to have a genesis associated with hot political issues at the time of creation. Media frenzy tends to be followed by knee-jerk political reaction. Government is rushed to prepare a quick fix, driven by public demand to do something. As a consequence, the more topical the issue, the less time there is to prepare effective and well consulted legislation. This is an outcome of the modern democratic system and affects most developed countries across the world. Government agencies are under considerable pressure to prepare new legislation with little time for formal public consultation and interdepartmental review of the process. In fact, most of these are given the short shift, with the agency developing the new laws or amendments dominating the process with few broader views being considered. A quick fix legislative change is very much driven by apparent public sentiment, but the outcome is often poor legislation, but made with good intentions. However, the outcome often becomes inefficient legislation which leads to poor licensing.

An example of this is the introduction of the new environmental legislation amendments in NSW in late 2011 with details guidelines continuing until March 2012². (see 4.2.4 Add-on Licence Issues)

Correcting the above cycle is the Regulatory Review system, which has more power to correct inefficiencies after the heat of the issue in a political sense has cooled. It is noted that it is rare for a bold regulatory review body to hinder new legislation when its political masters are desperate for a quick fix. As a consequence, review processes such as the *NSW Subordinate Legislation Act 1989*, revisit regulations every 5 years for review. 5 years is about the right time for a very hot issue to cool down, but may be too long and can permit the inefficiency to become embedded.

The problem with poor legislation is that, unless corrected, it first becomes ingrained and embedded within the agency and then over time with a new specialized private service sector to manage it. So older red tape is harder to revise, as both the public and certain private sectors benefit from it who then support its continuation. Improving the efficiency of poorly drafted legislation tends to be naturally opposed by those whose job it becomes to process and enforce it. Government agencies tend to be reluctant to such efficiency measures due to:

- A reluctance to change – doing the same thing is easier

¹ http://en.wikipedia.org/wiki/Red_tape

² [Protection of the Environment Legislation Amendment Act 2011 No 63](#)

- Changes will lead to less activity and justification of less resources and funding
- Potentially reducing the power of the agency / individuals

Duplication, micromanagement and delays are the common areas where inefficient regulation abounds. The design of the Australian constitution is partly to blame in establishing multiple layers of duplication. The Coalition of Australian Governments (COAG) main task is arguably to reduce red tape by attempting to provide nationally consistent regulation across Australia.

Examples include:

- Electricity networking pricing and standards — monopoly interests were permitted to set their prices, standards and service levels.
- National Energy Initiative where 35 duplicated—at the Federal level— state programs were reduced to 7 programs with no reduction in administrative resources from the original 35.

From a business perspective the issue is firstly the level of costs that the licence imposes. Secondary is the efficiency of its implementation or the administrative costs to Government. Complex regulatory issues can require more skills and expertise from the Government to achieve lower costs for business. Again the writing of good regulation starts with good legislation and policy. There is always a balance between fairer, but more complex regulation and one which is simpler, but blunter in its application. An example of this is the difference between the Reserve Bank cash rate and taxation law. Less complex instruments also require less Government resources to manage them, but will lead to more winners and losers than a more complex system.

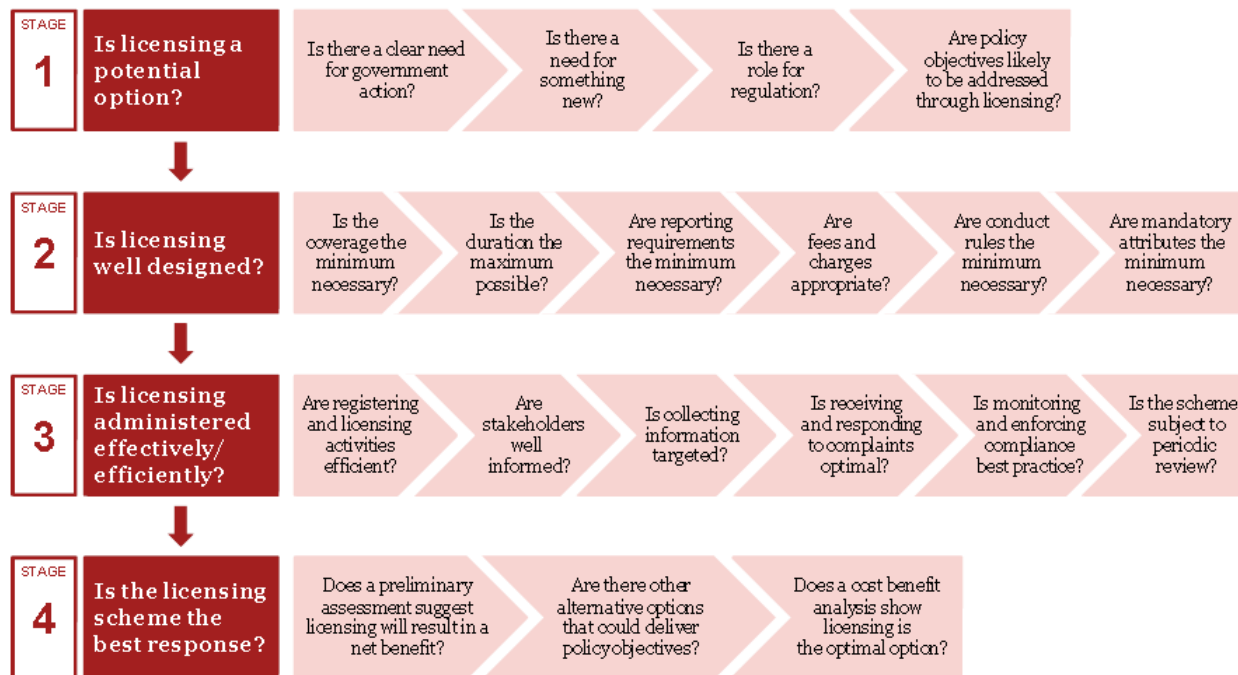
Decision making for granting licenses and their conditions is a function of the agencies' internal skills and expertise. Removal or underfunding of such skills can end up with an under skilled and risk adverse decisions being made. Hence poor resourcing can result in poor decisions where decisions are delayed or possibly worse refused due to poor skills and lack of understanding of the risks associated with the decision.

In summary efficient regulation and licensing is a complex process requiring high level of skills to prepare the rules for an efficient outcome for both Government and for the licensees. Poorly made regulation is difficult to rearrange into a more efficient process due to built up vested interests. Poorly resourced regulation and licensing processes can also lead to unnecessarily conservative decisions and delays, which undermines the economy.

3 SUPPORT FOR THE PWC GUIDANCE MATERIAL

ASBG has reviewed the PwC document *A best practice approach to designing and reviewing licensing schemes* (the Guidelines) and supports its use and general uptake by the NSW Government. For the purposes of reference the Guidelines figure 2 the framework structure is included below:

Figure 2: Framework structure – review of existing and proposed licensing schemes



The Guidelines agree with ASBG’s discussion above, that solving red tape within licenses must commence with the legislation, and then move onto the design and administration of the licence in question. A clear need for government action will include political reactions to various topical hot issues. So by the way a democratic system operates, new legislation will be born from political will. A purpose of the PwC Guideline use is to try to ensure appropriate further thought is incorporated into the design process of new legislation so that an efficient administration of the new legislation can be installed.

From ASBG’s perspective and focus on environmental issues, the second stage of licensing design is where most issues and conflicts arise. However, there is a problem with the first stage. Dealing with knee-jerk Government responses to media lead issues appear somewhat unable to be dealt with using the Guidelines. Governments will invariably produce reactive legislation to current hot issues. Hence, application of the Guidelines should apply soon after the heat has gone from the issue and cooler heads dominate. Then Government, with stakeholder engagement can remedy at least some of the red tape issues which fail the Guidelines.

4 ENVIRONMENTAL LICENCES AND RED TAPE

Environmental legislation is one of the most rapidly changing areas of law in Australia. Consequently the pace and the intensity of the issues lead to many examples of poor legislation and licensing.

4.1 Energy Reporting

About 4 years ago there was considerable duplication between NSW and Federal Government reporting requirements especially on energy use matters. Fortunately, the legislation requiring *NSW Energy Savings Plans* was not renewed. Nevertheless, the duplication of energy related reporting is still prevalent across Australia especially between state and Federal levels.

While a Federal issue considerable duplication on greenhouse and energy reporting exists at the Federal level. Duplication between the National Greenhouse and Energy Reporting (NGER) requirements and the Energy Efficiency Opportunities (EEO) obligations are obvious examples. Both systems require auditing and considerable resources expended to meet both separate pieces of legislative requirements. However, while NGER requirements are linked directly to greenhouse reporting and the Carbon Pricing Scheme, EEO is not.

EEO has expanded into requiring organisations to prepare detailed management systems to the design of the Department of Resources Energy and Tourism (DRET). Detailed audits of the EEO system are similar if not more detailed than if organisations adopted the ISO 50001 Energy Management System. Unfortunately the outcomes of the EEO process—implementing energy efficient programs—take second place to the activities of complying with a complex documentary system. For example, ticking off internal processes such as the transport manager was not present at an energy ideas meeting, appears more important than the outcomes. This is perhaps the leading case of Government micro managing the internal workings of companies.

While NSW is performing better in the energy reporting area than other states, it nevertheless has an influencing role under COAG committees such as the *Select Committee on Climate Change* to promote removal of such duplication.

R1 ASBG recommends the NSW Government continue to push for removal of duplication of energy reporting and assessment programs between jurisdictions and avoid introduction or reintroduction of such schemes in NSW.

4.2 Environmental Licences

NSW Environmental Protection Licences (EPLs) are highly variable in cost and complexity across all licence holders. They can apply from small companies, storing more than 5 tonnes of liquid wastes, to major steel works and oil refineries. Overall the EPL system works due to its negotiable flexibility in that each licence holder has the ability to negotiate the conditions of the licence. This makes it a specific and sharp regulatory instrument as local environmental issues and site specifics can be taken into account when preparing and reviewing the license.

Holding EPLs are generally expensive. Their costs can be divided into:

- *Fees and charges*
The 2012-13 Budget estimates Environment Protection and Regulation states that all licenses permits etc collected \$33,194,000 in 2011-12, the majority of this is from EPL fees
- *Internal compliance costs*
Generally an intangible cost, and highly variable according to each site and their emissions. Capital tied up in pollution control equipment is estimated in NSW to be well over \$500 m. This would not include sewage treatment or other non-licensed activities. Running costs for monitoring, skilled staff and other ancillary expenses would be similar to the fees charged by the EPA.

While the basic structure of the EPL is considered good regulatory practice there are some areas where improvements can be made:

- Types of activities in which the licence applies — the POEO Schedule 1
- Negotiation of licence conditions — need for a publically available risk index ranking
- Use of Corporate Licences
- Add-on requirements for EPL holders
- Fees and charges
- Environmentally Hazardous Chemicals

4.2.1 Types of Activities

Schedule 1 of the POEO lists the types of activities and their thresholds that trigger the need for an EPL. This was designed to align with Schedule 3 of the Environment Planning and Assessment Regulation, which deals with designated developments³. However, there has been a divergence with many smaller activities being added, such as Chemical Storage prescribed waste of > 5 tonnes, sterilisation activities using ethylene oxide and prescribed waste transporters.

There is also a mismatch between Schedule 1 and Major Hazard Facilities (MHF) as well. MHF is covered under the Work Health and Safety legislation. MHF is based on the amount of hazardous chemicals stored at a site. Most MHFs have EPLs, but some do not. ASBG is aware of mismatches where the some MHFs — eg arsenic storage, do not require to hold an EPL.

A few years ago the smaller activities of cement and asphalt batching plants were removed from the schedule and added under the *POEO (General) Regulation* and called *EPA-non-scheduled activities*. So these activities lose their individual ability to negotiate a set of conditions, but do not need to hold an EPL. Hence the conditions under the regulation are negotiated for that industry sector. In general this is a good approach for very similar industrial activities with similar environmental risks.

The problems associated with having an EPL or not includes:

- The add on conditions – this is dealt with later
- Requiring the environmental performances to be regulated by Local Government

Having an EPL or an *EPA-non-scheduled activity* means the site is regulated by the EPA. EPA has the resources and expertise to make informed and scientific decisions on environmental issues about the site. In contrast, Local Government has a much varied ability to deal with environmental issues. Councils tend to lack skills and expertise to make informed decisions and

³ Designated Developments are those requiring the full Environmental Impact Assessment process

properly regulate the non EPA controlled sites. A few members of ASBG have changed their operations to ensure they come under the control of the EPA, because they do not trust the Local Government to regulate them effectively. A lack of knowledge and skills in environmental matters tends to make a regulator risk adverse. Rejection of proposed new, expanded activities or clean up operations on environmental grounds due to a risk adverse nature of lack of knowledge, even fear, have major impacts on the economic health of a community. Clean up projects to improve the environment, new employment opportunities, or changes to enable struggling companies to continue are rejected or delayed or end up with other impractical conditions. Similarly the day-to-day operations of a site can be called into question by a poorly informed official from Council. This has resulted in considerable resources spent on educating the official or business interruptions.

Examples include the management of contaminated land. Most other jurisdictions have the environmental regulator dealing with contaminated land issues rather than Local Government.

Overall there is a case to revisit how the environmental licensing system operates; the types of licenses, how much risk they pose and who should regulate them. ASBG would argue for a few different levels of licenses. These can be layered by the proposed risk based approach to licensing where multiple levels of licenses are available and better allocated to the appropriate regulator. Additional reasons for such a review are discussed below.

4.2.2 Negotiating Licence Conditions

Under the POEO Act licence conditions are a negotiated outcome between the EPL holder the EPA. ASBG has seen many times the negotiating process vary considerably depending on the EPA inspector and the skills and expertise of the EPL holder. Considerable and costly variations between licence conditions of similar activities result due to the differences between these, usually opposing positions. Conflict between the EPL holder and the EPA boil down to that both wish to protect the environment and minimise harm, but the EPA is not concerned about costs on the EPL holder. Naturally costs are very important to the EPL holder who wishes to pursue the best environmental outcomes for the lowest costs. Poor negotiation can lead to high costs with little environmental gain. Examples ASBG has seen include:

- Excessive monitoring conditions — continuous monitoring requiring 100 %tile compliance with 99% up time
- Excessive studies, generally in the form of Pollution Reduction Programs, where vicinity health monitoring requirements are added in
- External monitoring requirements – where the site is responsible for local area ambient air monitoring conditions
- Refusal of the EPA to set a concentration limits – this has lead to 3rd party prosecutions where no limit becomes a legally arguable issue for the courts to solve
- Major differences in monitoring and reporting within industry sectors e.g. one reporting on 3 monitoring points and another >20 points

A similar problem existed within Sydney Water under its enforcement of its Trade Waste Policy in the 1990s. The considerable discretionary range permitted to inspectors resulted in large differences in enforcement. Some inspectors were too light and others very tough. Sydney Water responded to customer complaints at the time by introducing its Risk Index. Sydney Water's Risk Index is:

- Publically available so trade waste dischargers can calculate their index and see what they have to do to reduce their ranking
- Used to set monitoring régime and frequency
- Used to set inspection frequency

In contrast the EPA uses an internal risk ranking system, but this is not public or available to specific EPL holders.

ASBG considers the variations between individual EPA inspectors are too large and considered unprofessional by our members. There are many examples available to reflect this. The Sydney Water Risk Index has worked well to reduce these personnel differences and a similar approach is recommended.

R2 ASBG recommends that a publically available and calculable risk index approach be adopted by the EPA for EPLs to establish:

- *The environmental risks posed for that activity based on scale and type*
- *Which regulator should oversee this licence type (e.g. EPA or Local Government)*
- *The local environmental risks the activity poses taking into account its scale and the local environment in which it is located*
- *Will set the monitoring régime for the site, including types of monitoring, frequencies and percentiles*
- *Will set the inspection frequency for the site*
- *The amount of add-ons to EPL requirements*

Similar concerns have been raised with the application of Water Licences by the Office of Water.

4.2.3 Use of Corporate Licences

Both the Victorian and Queensland Governments have undertaken ‘green tape’ reviews on their licensing systems. One welcomed outcome of the Victorian review was the introduction of Corporate Licensing.

A Corporate Licence reduces the red tape for corporations and organisations with multiple sites within the State. It combines all the sites under one licence, with each site having a section dedicated to it. Red tape reduction results as there is only one annual return, one invoice and one CEO or director sign off for all the sites covered.

R3 ASBG recommends that corporate licensing be adopted in NSW along similar lines to that of the Victorian Corporate Environmental Licensing.

4.2.4 Add on requirements for EPL holders

While there are advantages to holding an EPL, there is an increasing trend for the NSW Government to lump community outrage issues onto selected or all EPL holders. Being an EPL holder is an easy target for add-on requirements to be attached some with little justification. Some recent additions include:

- Local Environmental Monitoring Requirements
- Publication of Monitoring Data
- Preparation of Pollution Incident Management Plans
- Pollution Reduction Programs

Example Local Air Monitoring Requirements

In the Upper Hunter area an increasing level of disquiet from communities regarding dust around 14 coal mines led the EPA to establish a series of ambient air monitoring stations. It was agreed by the coal mines to pay for this monitoring. However, the Government of the day enacted the *Protection of the Environment Operations Amendment (Environmental Monitoring) Act 2010*. This permits the EPA to single out groups or all EPL holders to undertake ambient monitoring of environmental quality. In addition to the Upper Hunter coal mines area the:

- Lower Hunter is also commencing the process of undertaking such ambient air quality monitoring.
- Western Sydney waste facilities are to undertake an odour study with each EPL to contribute \$12,500.

Where an environmental issue does occur in a community, it is easy for the regulator to first point to the EPLs holders in the area. This can lead, via the above mechanism, to the cost born by the EPLs to investigate whether they are the source or not. A problem arises when the EPLs are not the main source of dust or noise, which may be local traffic or other diffuse sources, such as local dirt roads. ASBG is concerned the outcomes of such studies paid for by EPLs where they are not the source tend not to resolve community concerns.

The Local Monitoring process is one driven by community concern, requiring the EPLs to prove they are innocent. Even if the outcomes prove this is the result there is no guarantee that community members will believe this outcome.

Example – Publication of Monitoring Data and PIRMPs

As a result of considerable media coverage on the small leak of hexavalent chromium⁴ from Orica's Stockton Plant in August 2011 a series of legislative changes were introduced that directly impacted holders of Environmental Protection Licences (EPL). These include:

- Publication of Monitoring Data (PMD) [s66\(6\)](#) Protection of the Environment Operations Act 1987
- Duty To Prepare And Implement Pollution Incident Response Management Plans (PIRMP) Part 5.7A [\(s153A-F\)](#) Protection of the Environment Operations Act 1987

Publication of Monitoring Data

The amending legislation was introduced in December 2011 and PMD was required to commence with data collected from 31 March 2012. PIRMPs were required to be completed before 1 September 2012.

PMD requires EPL holders to publish their monitoring data in a prominent position on the company website. This requirement replicates the already existing [s320 POEO Act](#) which permits any member of the public to approach the EPA and request such information. Use of

this section by the general public was rare. Current hit rates and inquires regarding ASBG member's data has been very small. In fact no members have reported public inquiries in relation to the data.

At least 4 members report that PMD costs greater than \$100,000 p.a. to collect, collate and publish the data on their website in the formats required by the EPA.

PIRMPs

The requirement for all EPL sites to prepare PIRMPs is less controversial. However, the smaller EPL holders, such as storage of prescribed waste up to 100 tonnes and prescribed waste transporters and others, the application can be considered somewhat unfair. Prescribed waste transporters consider singled out among the transport industry as having to legally prepare these plans which contain a \$2 million liability if they are not implemented fully. Around 150,000 tonnes of prescribed wastes are moved annually in NSW, but this is a small fraction of the millions of tonnes of the Dangerous Goods and other pollutants transported.

ASBG considers the above *ad hoc* additions to EPL holders are contrary to the PwC requirements, specifically:

- *Are reporting requirements the minimum necessary?* – PMD reporting is redundant as there is already a mechanism for public access, which has been rarely used.
- *Are the mandatory attributes the minimum necessary?*
The PIRMP requirements are the first to legislate environmental training and are unique for NSW. They are required on all EPLs regardless of their size. Perhaps they could be required, but the liability associated with preparing a PIRMP - \$1m and failure to implement it (properly) - \$2m is considered too heavy handed for the smaller EPLs.

Pollution Reduction Programs

Pollution Reduction Programs (PRPs) are common and can be a very costly requirement imposed on EPL holders. They are an add-on additional requirement allocated on individual EPL holders.

Generally PRPs are imposed on EPL holders for a variety of reasons. For example, odour complaints can lead to a PRP requiring an odour study be undertaken by an independent consultant, with the report's recommendations requiring adoption. Some PRPs are aligned with a CAPX at a site to further push for reductions in the mass of pollutants emitted. But many are applied for unclear reasons or to simply reduce pollution.

ASBG is not aware of any internal or external guidance criteria for the use and extent of PRPs. Hence, their application appears arbitrary, and also appears as a common KPI the EPA uses to demonstrate its work in achieving pollution reduction.

The following table from various annual reports from the EPA and its prior entities shows the cost impacts of PRPs over time.

Table 1 Pollution Reduction Programs – Value and Number 2007–12

Year	2007–08	2008-09	2009–10	2010-11	2011-12
Number	77	66	80	70	398
Value \$m	21	360	78	40	364.9

Over the 5 year time period the PRP process has imposed \$863.9 m on NSW EPL holders.

ASBG would like to see a publically available document which specified when PRPs should be used. Additionally, the PRP should be in proportion with environmental risks the site poses. Negotiating a reasonable PRP is a difficult process which can be financially fraught, having the same problems discussed in s 4.2.2. Again a risk based approach to PRP application and design should assist with fairer and better balanced outcomes for both the EPL holder and the environment.

R4 ASBG recommends the add-on requirements to EPL holders be reviewed with an emphasis on adherence to the PwC Guidelines, costs of compliance, liabilities vs the scale of the risk of the site it is imposed upon.

4.2.5 Fees and charges

As discussed above EPL holders pay around \$30 million p.a. in licence fees. Fees are divided into two categories:

- Administrative costs
- Load Based Licensing (LBL)

ASBG's main concerns with these charges lie with the Load Based Licensing area. This system has been in operation for over 10 years. It is a charge based on the quality and the quantity of contaminants discharged into the environment. Specific contaminants which are charged for are listed according to the activity type and documented under the [POEO \(General\) Regulation 2009](#).

ASBG has always had concerns over this process, such as the price set for a particular pollutant, for example oxides of nitrogen (NO_x) is set at a rate the industry can pay rather than what the cost of reduction would be. The reason for this is simple. If the cost of reduction was used the site would be commercially unviable.

Nevertheless, the EPA must cover its operational costs in some form or another and LBL is its second major instrument⁵ to do this. This is a concern as Shell has closed its refinery and Caltex is to do so by 2016. Additionally, many more major EPL holders will be or have closed or down sized. This is reflected in the 2012-13 Budget shows a licence revenue drop from \$30 m in 2011-12 to \$24m in 2012-13. ASBG is concerned that the EPA will wish to shore up its budget revenue and increase licence fees across the board as it did in 2008.

In 2008 the Regulatory Impact Statement for the POEO (General) Regulation 2008 increased many of the technical charges for Load Based Licensing. A major change was the halving of the Fee Rate Threshold this doubled the \$/kg rate for many of the larger EPL holders. ASBG recalls one member complaining that their licence fees increased by \$600,000 with little warning to budget for such a large increase. Other larger EPLs had increases over \$1 million p.a.

The review also introduced LBL onto carbon black manufacturing in 2009, resulting in an additional \$328,000 p.a. in LBL fees in 2010-11 for the single NSW site. This site has since closed its operations due to poor economic conditions.

⁵ The NSW Waste and Environment Levy is the largest environmental revenue earner (with EPL fees being second)

ASBG is concerned that the Government at the time was looking to raise revenue rather than base the licence charges on scientifically based justifications. The costs estimated in the RIS at the time were considerable underestimates for certain EPL holders. Estimation of the impact of the technical changes are complex and were done entirely internally by the regulator. Perhaps an independent review of such changes would be more appropriate.

4.2.6 Environmentally Hazardous Chemicals

The Environmentally Hazardous Chemicals Act 1985 includes licensing and other controls for a list of specific persistent organic pollutants. Its licensing activities can be more efficiently administered under the POEO Act.

R5 ASBG recommends the Environmentally Hazardous Chemicals Act 1985 be incorporated under the POEO Act so its licensing functions placed within Environment Protection Licences.

5 CONCLUSION

Reviewing the structure of EPL licensing and division between Local Government and the EPA should generate better outcomes for the Government and those licensed. A layered approach is one possible outcome where there are better distinctions between EPLs with substantially different environmental risks. This may also permit add-on conditions to be more strategically placed on differing layers of EPLs.

Use of a risk based approach to firstly the types of environmental licenses available and then to the monitoring and inspection frequency will provide a lower cost outcome for holders of EPL and a more efficient regulation as resources are allocated in proportion to the risks.

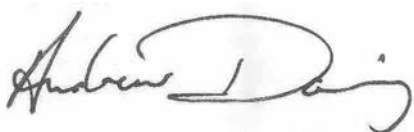
Adoption of Corporate License will greatly cut red tape in the number of annual returns and CEO sign-offs for EPLs.

A review of the 'add-ons' to EPL licenses either within conditions or under legislation should generate a fairer system where these additional requirements are more strategically applied.

Incorporation of the licensing function of the *Environmentally Hazardous Chemicals Act* under the EPL system will provide efficiency gains for the EPA, licence holders and improve administration of these old licenses.

Should you require ASBG to clarify or elaborate on the above matter please contact me.

Yours Sincerely



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