

12 December 2012

Independent Pricing and Regulatory Tribunal  
PO Box Q290  
QVB Post Office NSW 1230

Dear Sir/Madam,

## REGULATION REVIEW – LICENCE RATIONALE AND DESIGN

The NSW Business Chamber (NSWBC) welcomes the opportunity to provide a submission to the Independent Pricing and Regulatory Tribunal (IPART) Regulation Review – Licence Design.

The NSWBC is one of Australia's largest business support groups, helping around 30,000 businesses each year. Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, the NSWBC works with thousands of businesses from owner operators to large corporations, incorporating product-based manufacturers to service provider enterprises. The NSWBC is a leading business solution provider and advocacy group with strengths in workplace management, occupational health and safety, industrial relations, human resources, international trade and improving business performance.

Operating throughout its network in metropolitan and regional NSW, NSWBC represents the needs of business at a local, state and federal level, advocating on behalf of its members to create a better environment for commerce and industry.

The NSWBC takes a balanced approach to the issue of licensing. It is important to minimise compliance burdens wherever possible and any unnecessary licences should be removed completely. However, the NSWBC also acknowledges that licensing is often necessary to protect the interests of consumers or third parties. Appropriately targeted and designed licences can actually assist the business community by promoting consumer confidence and distinguishing appropriately qualified businesses. The key to getting the design and enforcement of licensing regimes right is recognising the commercial incentives for business to do the right thing regardless of the regulatory regime.

A copy of the NSWBC's 2012 Red Tape Survey, which will be referred to throughout this submission, has been attached for your information. The remainder of the submission addresses specific questions that were posed in the Issues Paper.

### 1 Which licences have the greatest effect on business (including small business) and the community?

The NSWBC's 2012 Red Tape Survey indicated that around 86 per cent of businesses surveyed have to deal with licensing issues. However, this may understate the true figure as many businesses would not have considered the full range of approvals and registrations that fall within the definition of licensing adopted by IPART.

Among those who had to deal with licences 74 per cent said the complexity of doing so was high (24 per cent) or moderate (50 per cent). Among the 43 per cent of respondents that had to deal with building approvals 83 per cent found the complexity of doing so was high (46 per cent) or moderate (37 per cent). Around 70 per cent of respondents reported dealing with environmental compliance, with 57 per cent reporting that the difficulty of doing so was high (31 per cent) or moderate (27 per cent).

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When businesses were asked about specific examples of over-regulation, complicated licenses were among the most common complaints. Around 14 per cent of respondents indicated licensing to be the most difficult regulatory issue that they faced. Within this group, many referred to the overall burden of licensing, but the main specific concerns were licences for building, liquor, environmental protection, gaming, real estate and dangerous goods and chemicals.

This list is likely to identify some of the licensing requirements that have a large impact on individual businesses. However, as noted above, many of the regulatory instruments that fall within the IPART's definition of licensing would not necessarily have been considered a 'licence' by businesses. It also may not capture the licences that have smaller impacts on a large number of businesses.

There are several ways that IPART could begin identifying the licences that impose the greatest burden. Clearly, the simplest step is to count the number of licensees both in aggregate (to measure the total impact of requirements associated with a licence) and annually (to measure the administrative costs associated with reapplying for the licence). There are also aspects of the regulatory burden that are, to varying degrees, easy to measure that could be used to rank licences – though this may be less feasible for licences that are administered at a council level.

- Aggregate annual licence fees could be calculated for each licence, ideally this would also include other fees imposed on licensees as part of the regulatory regime (e.g. inspection or administration charges).
- Average processing times could be used to measure the delay time, and may provide a rough indication of the complexity of the requirement.
- Measuring the length of licence forms may provide a relatively simple measure of administrative burden – though the length of applications may be a better indication of the complexity of the requirements.
- The length of training required for each qualification could also be used to compare the burden of different requirements.

Consideration should be given to adding an optional question to existing licence forms asking about the time taken to (1) understand the requirements (2) collect the information and complete the form.

Even if IPART cannot gather this information itself, it should recommend that the Government do so as part of ongoing red tape reduction efforts.

While identifying the licences that impose the greatest burden is important, it is also important to remember that much of the regulatory burden comes from accumulated effects of low impact requirements. There are limits to a manager's span of control. Similarly, there are limits to the number of regulatory requirements that an individual business owner or manager can understand and comply with without having to outsource compliance or hire specialist personnel. This is a particular problem for small businesses.

As such, the NSWBC supports the development of a list that sets out all existing licences. IPART should also recommend that the Government develop a process to ensure that all licences on the list are subject to at least some scrutiny, even if they are not on the initial list of high priority reforms.

## **2 Which factors or criteria can we use to identify licences that should be removed or reformed?**

The NSWBC broadly supports the principles outlined in the Issues Paper. One additional way to identify targets for reform is benchmarking against other states. Licences where requirements or fees are more onerous than other states and Territories should be reformed unless there is strong empirical evidence that the additional requirements deliver net benefits to NSW. IPART should recommend that all NSW agencies benchmark their licence requirements against other states.

## **3 Which specific licences are unnecessary? Why?**

It is difficult to provide a comprehensive list of the licences that are unnecessary without a comprehensive understanding of the regulatory regime in which the licence applies.

**Registration of food businesses with councils:** Often the problem is simply that a licence is duplicative or could be subsumed under a more generic licence. For example, many local councils require food businesses to register with them in addition to notifying the NSW Food Authority. As not all councils require notification, it appears possible for councils to source information on new food businesses from the Food Authority. This should become standard practice.

An indicative estimate of the saving per business is \$14 and \$75. This figure was calculated by combining estimates of the time taken for registration and estimates of average salaries and on-costs. Work by the Productivity Commission suggests the time to understand the requirements, fill and lodge the forms and provide payment is 20 to 60 minutes in NSW and around 20 to 25 minutes in SA (which had similar requirements and online lodgement systems).<sup>1</sup> The Productivity Commission figures for other states suggest that hard copy forms take longer and time taken can run into hours if a business has trouble finding the information. Standard wage plus on-costs vary from \$75 for managers to \$43 for staff according to the Better Regulation Office (BRO) guidelines for estimating savings under the \$750 million red tape target.

Rough calculations suggest the overall annual savings may be over \$400,000. According to the NSW Food Authority 2011/12 Annual report there are over 55,000 food businesses. The number of new notifications could not be found and it is unclear how many councils impose their own registration requirements. However, ABS figures suggest around 5,500 new food business entries in 2010/11 – this does not include news agents, pharmacies and petrol stations that may have to notify/register if they sell packaged food.

**Notification and inspection of low-risk food businesses:** Sometimes the businesses are unnecessarily caught within the regulatory net. For example, the requirement of low risk food businesses (such as Newsagents selling chips and chocolate) to notify the NSW Food Authority of their operations and register with the local councils appears unnecessary. The NSW Food Authority website says that low risk food businesses are only inspected in response to complaints. However a brief investigation by the NSWBC suggests a number of councils still impose regular inspections on low risk businesses (e.g. Mosman and Wingecarribee Shire Council). If there is no need for regular inspections then notification and/or registration serves no purpose.

Being relieved of the requirement for notification produces direct savings of \$14 to \$75 (as per the aforementioned discussion). The costs of notification estimated by the Productivity

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<sup>1</sup> Productivity Commission 2008, *Performance Benchmarking of Australian Business Regulation: cost of business registrations*, Canberra.

Commission in 2008 may well have increased now because businesses will also need to check whether they need to employ a food safety supervisor, but the impact is likely to be minor. Businesses that would have notified in hard copy would also save an additional \$55 fee.

A rough calculation suggests total savings of \$25,000 to \$240,000 per year. According to 2010/11 report on the food regulation partnership there were 38,475 high and medium risk food businesses. If there are 55,000 food businesses this suggests there are around 16,525 low risk food businesses or around 30 per cent of food businesses. If the rate of entries is similar to the rough estimate of all food businesses this suggests around 1,833 businesses would benefit.

There are also savings from reduced administrative and inspection charges at the local council level. As not all councils conduct inspections and fees vary substantially these savings are difficult to estimate. The lowest total annual fee observed in a brief investigation of council fee schedules was around \$90 in Wingecarribee Shire Council for one inspection with no annual administrative charge. Mosman Council charged \$215 with no separate administration fee. Some inspection fees and administration fees were significantly higher. For example, in the City of Sydney the annual administration fee for food businesses with 5 to 50 employees was \$555 plus an inspection fee of around \$100. While Wingecarribee Shire Council and Mosman Council are both explicit about inspecting low risk businesses, it is not clear how many other councils have similar practices.

If there are around 16,525 low risk businesses, the total saving from annual administrative and inspection fees could be anywhere from close to zero to close to \$11 million (though this would require all councils to apply the fees charged in the City of Sydney). A reasonable estimate might be around \$2 million a year – this assumes half the low risk businesses were charged fees in line with Mosman.

These are just two examples of unnecessary or duplicative licences – undoubtedly more will be identified through the review process.

#### **4 Which licences include unnecessary or excessive requirements? Why are they unnecessary or excessive and how should they be reformed?**

The scope for modification of existing licences is probably greater than the scope for wholesale removal. The following list of issues includes some examples where there is a clear case for reform. In other instances, there are merely question marks that the responsible agency may be fully capable of satisfactorily addressing.

**Development approvals:** A key area that is ripe for reform is the development approvals process. The NSWBC's submission on the Planning Green Paper welcomed the initiatives it identified to de-politicise decision making within the planning system. The NSWBC strongly supports the introduction of independent panels and experts to ensure that decisions are made on clear and transparent planning principles.

A common frustration with the current planning system has been that development that is consistent with priorities under a strategic plan has often been subjected to the same level of scrutiny and assessment as development that is inconsistent with a strategic plan. The proposals to develop a Strategic Compatibility Certificate, supporting development consistent with Sub-regional Delivery Plans and increasing the amount of code assessable development are as such very much welcome. The proposed steps to subject only those components of a development proposal that is outside the precinct envelope to merit assessment will help to narrow the issues in development assessment and reduce the cost to business.

There is also scope for reforming the multitude of other approvals and authorisations administered at the council level to at least provide greater consistency.

**Liquor and gambling licences:** Liquor and gambling licences impose significant restrictions on business and should be examined to ensure that the fees and conditions do not do so unnecessarily. In 2011/12 there were 15,686 businesses with liquor licences, but only seven licences were cancelled and there were only two disciplinary actions. In the previous year there was no disciplinary action. Given this apparently high level of compliance, there may be scope to reduce the level of enforcement activities, which may in turn allow for lower licensing costs.

Applications for liquor licences generally involve substantial consultation requirements with a large number of local and state level stakeholders. There should be an investigation of how often these consultations actually lead to a licence being rejected. This may allow less onerous requirements to be applied without leading to inferior outcomes.

While restaurants do not generally have to go through the same level of consultation to receive a liquor licence, it is unclear that the level of risk that a restaurant serving drinks poses to the community warrants the payment of a \$500 application fee. For restaurants, notification alone may be sufficient.

**Regulation of complying food businesses:** In relation to food businesses more generally, it seems appropriate that high and medium risk businesses continue to notify the NSW Food Authority, and the notification process appears to have reasonably low impacts. However, there is room to reduce the regulatory burdens for businesses with a strong history of compliance through less regular inspections and addressing food safety supervisor requirements.

The aim of regulating food businesses is to reduce the incidence of foodborne disease. In estimating the scale of the problem, the NSW Food Authority typically refers to estimates that there are about 5.4 million cases of foodborne disease in Australia each year, with costs estimated to be \$1.2 billion.<sup>2</sup> This suggests the average cost of each case of foodborne disease is \$222, which translates into \$265 in 2012 at a 3 per cent rate of inflation (ignoring any discounting associated with increased consumption levels and diminishing marginal utility). If this estimate is correct, then the cost per case of foodborne illness is less than half the combined inspection and administration fees applied by Sydney City Council and just under three times the \$90 inspection fees charged by Wingecarribee Shire Council.

The high cost of inspections relative to the cost of foodborne illness suggests the current inspection regime is unlikely to be cost effective unless the rate of non-compliance is very high. In fact, the compliance rate for food safety inspections reached almost 95 per cent in 2010/11 and was over 90 per cent in the previous two years. Food businesses have strong reputational and direct financial incentives to comply with food safety standards. If a food business demonstrates a strong history of compliance, it seems likely that it will continue to comply in the future. Certainly it seems unlikely that inspecting businesses with a strong history of compliance would be cost effective enough to be justified.

As such, the regularity of inspections for food businesses with a strong history of compliance should be significantly reduced. Further work would be needed to determine the level of past compliance that should be required before businesses qualify for reduced inspections and what the rate of inspections for qualifying businesses should be. However, a starting

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<sup>2</sup> For the original report see Abelson P, Forbes M P & Hall G 2006, *The annual cost of foodborne illness*, Commonwealth Department of Health and Ageing, Canberra.

point might be that businesses with two years of compliance move to biannual inspections. The regularity of inspections could be further reduced if businesses continue to comply.

There are around 55,000 food businesses and 38,475 high and medium risk food businesses. There are around 61,000 inspections per year, but it is not clear how many involve low risk businesses. Assuming low risk food businesses have been removed and that previously one in two low risk food businesses were inspected the number of inspections of high and medium risk food businesses is around 1.4 per business. After subtracting the 6,600 high and medium risk businesses that have entered in the past two years and do not qualify yet, there are around 32,000 businesses that may qualify for a reduced inspection regime. If a number of the inspections are of low risk businesses the compliance rate among medium and high risk businesses may be lower, say 80 per cent for indicative purposes. This yields around 25,000 businesses with 1.4 inspections each at \$90 per inspection and \$160 in administrative fees for a total cost of \$340 per business per year. Halving this by moving to biannual inspections would save around \$4 million per year.

In addition to the inspection regime, many food businesses must have at least one employee with a food safety supervisor certificate. This involves a full day of training and a course fee which appears to be at least \$140 (including a \$30 certificate fee from the NSW Food Authority) which must be renewed every five years. Given a business would have to get a new supervisor if the employee leaves it is likely that most supervisors will be managers.

The food safety supervisor requirement was only introduced in October 2011 and compliance levels were already over 90 per cent prior to its introduction. If businesses are already complying it seems unnecessary to introduce further qualifications, particularly if they need to be renewed every five years regardless of past compliance.

Because of this, requirements around food safety supervisor certificates should be relaxed for businesses that comply with standards during inspections. Unless there is good evidence to do otherwise, food safety supervisors should only be required for businesses that breach food safety standards. At minimum, refresher courses should not be required for businesses that have complied with the standards in inspections.

Using the default costs in the Better Regulation Office guide the six hours of training would cost \$448 if it were undertaken by a manager. Assuming the training was undertaken by a less highly paid worker the cost may be closer to \$260. This comes to a total cost per certificate of \$668 to \$400 including the course fee. This comes to an annual cost of around \$108 to \$65 at a 7 per cent discount rate. According to the NSW Food Authority Annual Report 40,000 certificates have been issued since the scheme became compulsory in October 2011. Once again assuming the compliance rate is around 80 per cent once any low risk businesses have been removed, there would still be around 32,000 qualifying businesses. This suggests that only requiring the certificate for non-complying businesses would deliver savings of \$2 million to \$3.5 million a year.

**Regulation of other complying businesses subject to regular inspection:** Hair dressers, nail salons, tattoo parlours and other businesses that are subject to regular inspections should also be examined and inspections should be reduced for complying businesses in line with the recommendations for food businesses.

**Food licences:** Consideration should also be given to applying similar arrangements to the 14,000 premises that require a food safety licence, noting that although the risk to public safety from these businesses may be higher, so too is the level of compliance, with audits uncovering only 12 breaches in 2011-12. Steps should also be taken to ensure that fees for food safety licences are in line with those applied interstate. For example, in NSW it costs \$307 per vehicle per year to licence a food transport vehicle. In Victoria, it only costs \$105.

With 6,622 food licenced food transport vehicles, matching the fees charged in Victoria would save businesses \$1.3 million per year.

**Vehicle Safety Checks:** In relation to transport more generally, the requirement for vehicles that are more than five years old to undergo annual vehicle safety inspections to be registered should be reconsidered. A 1999 study for the Federal Office of Road Safety found that applying the NSW scheme, which at the time required annual inspections of vehicles more than four years old, had a benefit cost ratio of 0.22 to 0.38, that is the benefits were substantially lower than the cost.<sup>3</sup> A more recent study for the New Zealand government found the benefits of moving to an inspection regime based on change of ownership (which currently applies in most Australian States) delivered significantly higher net benefits than an annual inspection regime.<sup>4</sup> The requirement for a safety check for registrations of vehicles previously registered interstate (which appears to apply in all states) also seems odd and consideration should be given to whether mutual recognition would be possible.

**Dangerous goods and other chemicals licences:** Member feedback suggests that the administration of dangerous goods and other chemicals licences are imposing increasingly onerous requirements on licensed businesses. While industry accepts the need for such an important issue to be tightly regulated, there is concern that regulators, such as the Environmental Protection Authority and WorkCover, are demanding large amounts of information and imposing long and intrusive inspections on companies that already have a strong history of compliance. More importantly, it is not clear that this additional regulatory burden has delivered any noticeable improvements in safety. The concern is that cost recovery arrangements effectively provide regulators with a blank cheque and companies have limited options for questioning the obligations being imposed on them leading to hundreds of thousands of dollars of unnecessary compliance costs for larger companies

A specific concern is the reporting requirements that were introduced in the wake of the Orica- Kooragang Island incident. Under these arrangements, in the event of an incident occurring companies must report the incident to five separate regulators and provide updates 'as soon as possible' as the situation changes. This forces companies to divert attention to the coordination of government agencies, when they should be focused on managing the situation at hand. Many of the problems with the reporting regime stem from a failure to adequately consult with industry before implementing the changes. A simple, less burdensome and more sensible approach would be to designate a central authority for coordinating such incidents. This would produce superior results from a community safety perspective, encourage greater interagency communications and reduce duplication and the regulatory burden on companies.

## **5 Which licences are not efficiently administered? How can administration be improved?**

The effective administration of licences can significantly reduce the regulatory burden. The 2012 Red Tape Survey suggests 44 per cent of businesses are at least somewhat affected by poorly enforced regulations. There were a wide range of specific concerns ranging from

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<sup>3</sup> Keatsdale 1999, *Cost Effectiveness of Periodic Motor Vehicle Inspection: A Report for the Federal Office of Road Safety*, Accessed 11 December 2012 at [http://www.cita-vehicleinspection.org/Portals/cita/autofore\\_study/LinkedDocuments/literature/Cost%20effectiveness%20of%20PMI.PDF](http://www.cita-vehicleinspection.org/Portals/cita/autofore_study/LinkedDocuments/literature/Cost%20effectiveness%20of%20PMI.PDF).

<sup>4</sup> Allison N, Leung J & Parker C 2012, *Interim Cost Benefit Analysis Report: Warrant of Fitness Reform Options*, Accessed 11 December 2012 at [http://www.transport.govt.nz/ourwork/Land/documents/VLR-Cost-Benefit-Analysis-Report\(1\).pdf](http://www.transport.govt.nz/ourwork/Land/documents/VLR-Cost-Benefit-Analysis-Report(1).pdf).

inconsistencies in assessment and interpretation of regulations to a lack of trust from regulators for businesses to act correctly.

A particular complaint among many businesses is the need to provide the same information to multiple government agencies. According to the 2012 NSWBC Red Tape Survey, one in every five businesses is experiencing some degree of duplication in regulatory compliance and around 75 per cent believe that information sharing would be at least moderately effective in reducing the regulatory burden. The survey also suggested a number of businesses had reservations about information sharing across different levels of government, but most were supportive or just unsure.

A related issue is the lack of any reliable consolidated source of information about licensing requirements. It is far too hard to identify and complete licensing requirements and it seems unreasonable to ask businesses to comply with licences, but not require agencies to make it clear what those licences are. In relation to regulatory changes, the Red Tape Survey suggests that around 55 per cent of businesses either do not know about state and local level regulatory changes or must spend a lot of time searching in order to stay up to date. Over 82 per cent of businesses believe better communication would be at least slightly effective in decreasing the regulatory burden and over 61 per cent believe it would be extremely or very effective.

The work being conducted by Service NSW to produce a single reliable source of online information is a key step in improving government communication, but it is important to get the execution right.

Over a number of years, government agencies have demonstrated a willingness to put information online. Unfortunately, navigating this information can be quite onerous with there usually being several different websites (and multiple similar pages within a single website) that provide overlapping information. This can make it very difficult for businesses to get a clear picture of regulatory requirements. In theory, the Australian Business Licence and Information Service (ABLIS) website provides a central repository of licensing information. However, it falls down in practice with problems with the functionality of the website as well as the clarity and comprehensiveness of the information provided. For example, inquiring into the licensing requirements for a restaurant brings up 28 different items, many of which may be irrelevant or duplicated. The council level items provide little information and simply direct the user to contact the council. The requirement for a food supervisor certificate did not have its own listing or any indication that a restaurant that wishes to serve alcohol requires a liquor licence. In many ways Licensing NSW may be more functional, but it is not comprehensive.

## **6 Would PwC's draft framework and guide be effective in:**

- identifying or preventing unnecessary licences**
- ensuring that licences are well designed**
- ensuring that licences are efficiently administered?**

The proposed framework is a significant improvement on current arrangements, with stages two and three in particular providing guidance on licensing that was not previously available. However, most of the questions are difficult to answer without a more rigorous approach to measuring the costs and benefits of different regulatory actions.



## 8 What improvements can be made to PwC's draft framework and guide?

The key to making the framework effective will be ensuring that the preliminary assessment of licences suggested in step one of stage four is sufficiently rigorous.

Part of this preliminary assessment should include providing evidence linking the regulatory action to the original problem. It is important to avoid presenting regulatory benefits (such as increased compliance with standards) with real benefits (such as decreased rates of foodborne illness). To address this issue, the framework should involve setting out the causal chain by which licensing produces the proposed outcome and providing empirical evidence to support each link in this chain. Where there is an absence of empirical evidence (or contrary evidence) a trial may be preferable to full implementation of the proposed regulation.

Even if a link can be established there should always be a process for measuring the benefits. Quantification may not always be feasible or cost-effective. However, some standardisation could be achieved by developing a list of examples that could be used to benchmark the burden imposed by a regulatory regime against the problem that it addresses.

Ideally there should also be a simplified and standardised framework for measuring costs. At minimum, the suggestions outlined above for measuring the licences that have the greatest impact may provide a useful checklist. There is a highly developed literature for measuring the time and cognitive burden involved in answering survey questions. It would be surprising if the advertising industry did not have mechanisms for measuring the length of time it takes to understand a section of text or product description. However, there does not appear to have been any attempt to develop a systematic framework for measuring the time associated with understanding regulatory requirements or providing information to regulators. Even if it is not feasible for IPART to develop such a framework as part of this review, it may be worth considering as a future project.

The default preference for full cost recovery for regulators may also be inappropriate where regulators have significant flexibility to impose additional requirements on business, such as in relation to dangerous goods and other chemicals. As noted above, a full cost recovery model provides regulators with little incentive to maximise efficiency and effectiveness. This can lead to gold plating, regulatory creep and cost padding.<sup>5</sup> If full cost recovery arrangements are applied, it is important to ensure that mechanisms are in place to minimise the risk of inefficiency, including efficiency dividends, benchmarking and market testing and third party competition. The NSWBC's recent report on Diversity and Contestability in the Public Service Economy provides further guidance on the importance of contestability.<sup>6</sup>

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<sup>5</sup> Productivity Commission 2001, Cost recovery by Government agencies, Report no. 15, AusInfo, Canberra, p. 97.

<sup>6</sup> Sturgess G L 2012, Diversity and Contestability in the Public Service Economy

Once again, thank you for the opportunity to provide input to this Review. Please contact Tim Hicks of the NSWBC's Policy unit via email at [tim.hicks@nswbc.com.au](mailto:tim.hicks@nswbc.com.au) or by phone on 9458 7259 should you have any queries about this submission.

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton". The signature is written in a cursive, slightly slanted style.

Paul Orton  
**Director, Policy & Advocacy**