Business licences

International benchmarking

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Moving towards the Productivity Commission

The Federal Government, as part of its broader microeconomic reform agenda, is merging the Bureau of Industry Economics, the Economic Planning Advisory Commission and the Industry Commission to form the Productivity Commission. The three agencies are now co-located in the Treasury portfolio and amalgamation has begun on an administrative basis.

While appropriate arrangements are being finalised, the work program of each of the agencies will continue. The relevant legislation will be introduced soon. This report has been produced by the Bureau of Industry Economics.

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Foreword

In this report a set of best practice design criteria is developed which provides a basis for benchmarking the effectiveness of business licensing arrangements in Australia and overseas. A companion volume, *Business licences and regulation reform*, examines cases in which regulatory objectives in some countries are addressed using regulatory forms other than licensing. Together, these volumes represent the first application of the BIE's international benchmarking program to regulatory framework services provided by governments to industry.

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A/g Director

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Ministry for the Environment
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United States

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Summary

The Bureau of Industry Economics' (BIE) international benchmarking program originated in the then Prime Minister's 1991 statement, *Building a Competitive Australia*. Originally focussed on infrastructure services, the program was extended to include general government services to industry.

Many government services contribute to Australia's traded goods sector and play a key role in determining Australia's international competitiveness. However, these services are frequently not subject to direct competition because of natural monopoly elements and regulatory barriers to entry. Consequently incentives to improve efficiency of service provision are weakened and actual performance may diverge significantly from best practice. Benchmarking enables the performance of governments in providing such services to be compared with best practice. It acts to highlight progress on microeconomic reform and allows identification of opportunities for improvement.

Governments provide direct services to business such as quarantine and inspection services. Governments also provide the regulatory framework within which business operates. This report, *Business licences — International benchmarking*, extends BIE's international benchmarking program to framework services for the first time. The purpose is to compare Australian business licensing arrangements and those in selected overseas jurisdictions with best practice, and to identify areas for improvement.

A second volume, *Business licences and regulation reform*, asks whether there are alternatives to licensing better able to achieve specific social and economic objectives. This approach reflects the fact that much of the impact of regulation on economic welfare arises from its influence on business and consumer decisions, rather than through the internal efficiency or productivity of the agencies engaged in regulation.

Both volumes complement general reviews of licensing and licensing simplification programs currently being conducted in a number of Australian states and territories.

Benchmarking business licensing

In this report a new approach to benchmarking, called framework benchmarking, is developed and applied. The earlier infrastructure benchmarking studies used best *existing* practices as benchmarks, based on various measures of efficiency. By contrast, in this report a checklist of best practice design criteria are developed, and Australian and overseas licensing arrangements are compared against this set of best *possible* benchmarks. The checklist relates to the key features of licences: notification, prior approval, standards and enforcement or compulsion. The approach is more qualitative than that of the infrastructure studies, and the resulting rankings of the performance of the jurisdictions considered are indicative rather than definitive. However, it has the advantage of suggesting means to improve, even in cases where Australia may be currently 'best' compared with other countries.

International comparisons are made with Canada (British Columbia), Japan, Malaysia (Selangor), New Zealand, the United Kingdom and the United States (Washington State). These countries were selected on the basis of their current or potential economic importance for Australia as trading partners or international competitors. Case study businesses are used to collect and compare specific licence and permit information. The businesses studied include foundries, seafood processors, retail bakeries, meat processors, petrol service stations and pharmacies.

Licences and notifications studied in this report include planning and building approvals; licences and permits to manufacture, import, export or sell particular types of goods or services; workplace registrations; permits to use equipment and use or store materials, including hazardous substances; pollution licences; business name and company registrations; and taxation registrations.

Overview of results

By international standards, Australian licensing arrangements in several areas appear to be reasonably efficient and effective in terms of achieving their objectives at reasonably low cost to the community at large. However, there are opportunities for improvement in some other areas.

Numbers of licences and applications

Comparisons are made of the minimum numbers of licences, the number of separate applications needed to commence any business, and the numbers of licences and

applications needed for three of the case study businesses — a foundry, a seafood processor and a retail bakery. These comparisons provide an indication as to whether overseas jurisdictions are as reliant on the notification property of licensing as Australian jurisdictions.

Minimum number of licences and applications

The minimum number of licences and applications needed by any Australian business is similar to that required in Malaysia, New Zealand and the United Kingdom. It is less than in British Columbia (Canada), Washington State (United States), and Japan where there tend to be more business operating licences and licences involving employment conditions. Businesses in Washington State and those not operating outside the borders of British Columbia have the fewest applications, reflecting their use of master licence systems (discussed below). Australia, Malaysia, New Zealand and the United Kingdom have a slightly higher minimum number of applications. Japan has the most applications.

Business case studies

Additional licences specific to a particular business are often needed. For example, foundries often require additional occupational health and safety, environmental and hazardous substance licences. In the three case study businesses examined, Australia has relatively few licences and applications compared with the other jurisdictions considered. There are comparatively larger numbers of licences for pollution control and hazardous substances in the United States and Canada, and for operating equipment in Japan, than in Australia. The potential to reduce the numbers of licences is addressed in the companion volume, *Business licences and regulation reform*.

Licence approval

There have been a number of important developments in licence approval systems in recent years. These include master licensing and integrated approval systems, alternative dispute resolution procedures such as mediation and facilitation, and the introduction of competition and/or contestability among licensing agencies as a means of improving efficiency.

Master licensing systems

The Australian Business Licence Information Service (BLIS) is the most comprehensive one-stop information facility available in any of the jurisdictions studied in this report and is a model of Commonwealth, state and territory government cooperation in this area. The service is being expanded to include municipal licences.

However, there may be scope for further improvement by moving towards a master licensing service. Such a system involves a single consolidated application or renewal form for many licences and notifications and a single renewal payment each year. The system is managed by a separate, coordinating agency which treats the affiliated licensing agencies and the licensees as its 'clients'.

The Washington State Master License Service, which simplifies application and renewal procedures for a large number of state government licences and notifications, might provide a model for improving Australian licence application arrangements. Washington State has considerably more licences and notifications than any Australian jurisdiction, but the system allows the number of *applications* to be reduced, in some cases, to less than are needed in Australia.

Master licensing is limited to simple application procedures involving little discretion on the part of licensing agencies. More complex application procedures may be simplified using integrated approval systems discussed below. Less comprehensive approaches which involve one-stop application procedures for groups of similar licences are being tried in Australia and overseas.

Integrated approval systems

Complex licence arrangements may be simplified through integrated approval systems involving a number of agencies dealing with different aspects of the application. One existing agency (such as a local council or environmental protection agency) with appropriate expertise 'manages' the application through various stages. The approval processes are effectively integrated under the auspices of this designated public approvals manager.

Some states in the United States are developing integrated environmental approval systems. In Australia, the Commonwealth is promoting better coordination of planning approval systems and Queensland is developing an integrated approval system which may provide a model for other jurisdictions.

The BLIS might provide the basis for a comprehensive, nationally uniform *Business Activity Approval Package*. This would provide each new business with a

comprehensive approvals package for its nominated industrial activity. The package would require delegations within and between different levels of government, centralised licence payment facilities, the use of a single business account and the rationalisation of application forms and procedures.

Although the BLIS could provide the foundation for a comprehensive business activity approval package, many potential problems would need to be addressed. Master licensing, integrated approval and business activity approval packages shift the burden of obtaining approval from private applicants to an intermediate public body which acts as a clearing house for approvals and there is no guarantee that this will improve efficiency overall. It is also necessary to consider whether fees should be charged to recoup the cost of the system, including fees for providing licensing information.

Integration of approval systems is an expensive and costly exercise and needs to be justified on benefit–cost grounds. Applicants may prefer the flexibility of determining the sequence in which approvals are obtained. Integrated approval systems should allow applicants to receive approval for separate stages of larger, more complex projects.

Approval duration

The duration of a licence influences the amount of resources investors are willing to dedicate to the licensed activity. There is a tradeoff between a licence duration long enough to give some certainty to investors and short enough to provide flexibility to regulators to change the terms of the licence (for example, when more information about the regulated problem comes to hand). Good regulatory design can reduce the tension between investors' desire for certainty and the regulator's need for flexibility. For example, the New South Wales fishery licence system combines both a degree of flexibility for the regulator with greater certainty for licence holders. It provides a guaranteed right of renewal before the completion of the full term of the licence in exchange for potentially re-negotiated conditions. This might prove a useful model which could be applied in other situations.

Dispute resolution

Some of the Australian land planning and development arrangements surveyed have adopted relatively innovative procedures for resolving disputes about applications for planning permits among applicants, agencies and third parties. These include the use of mediators and facilitators as alternatives to more formal hearings and appeal processes. Other countries are also adopting these approaches.

Competition in the supply of licensing services

The actual or threatened introduction of competition in the provision of licences may improve the administrative efficiency of licensing agencies. However, there must be safeguards to discourage corrupt practices and to prevent licensing agencies competing by being excessively lenient.

A major innovation by Australian regulators has been the introduction of competition among building surveyors in issuing building permits. A number of Australian jurisdictions allow private building surveyors to compete with or replace local council operations in this area in order to improve efficiency. In Victoria this has reduced building approval times from 4–6 weeks to 7–10 days and there have been similar improvements in the Northern Territory. Victoria is one of the few jurisdictions in the world to have 'run-off' insurance for building surveyors, which continues after the surveyor leaves the industry, providing consumers with a financially viable defendant. Without adequate insurance arrangements, private provision of building surveyor services would be less likely.

It is not yet clear whether building fees are likely to rise as a result of the introduction of competition (fees may be higher because any implicit subsidy from municipal rates has been removed, but competition among building surveyors may serve to push fees down). It is also too early to gauge whether safeguards to protect the public interest are adequate. However, this innovative development is well in advance of almost every other overseas jurisdiction in this study.

In general, licensing agencies should recover their operating costs from user charges, but costs need to be restrained by competition (actual or threatened) or by use of performance indicators.

Licence standards

Excessively prescriptive standards may impede adoption of innovative techniques by business and, thereby, create costs in terms of efficiency and competitiveness. Their effects on business costs and efficiency may be passed on to consumers. Many Australian licensing arrangements deliver, or are currently being reformed in order to deliver, greater flexibility to businesses. However, New Zealand has probably made the largest advances of any of the countries surveyed.

Licence enforcement

Licence suspension alone is unlikely to provide a credible deterrent to breaches of licence standards or conditions. A hierarchy of enforcement measures, which may include warnings, notices, on-the-spot fines and prosecutions, is likely to be more effective.

There may be a case for a general requirement for licensing and other regulatory agencies to publish their enforcement policies, setting out the penalties to be imposed for specific breaches of standards. As well as providing greater certainty to business as to the consequences of their actions, this would compel agencies to review and improve their enforcement strategies. The Victorian Environment Protection Authority has published its enforcement policies for some years.

In the United Kingdom, a published code for enforcement agencies sets out enforcement principles for central government agencies and is available for adoption by local authorities. Each enforcement agency now has to publish statements about how it implements the principles set out in the code.

Performance incentives, such as reduced licensing or inspection fees for businesses with better compliance records, are likely to be more effective than command and control regulation.

Licence rationalisation

Another means of simplifying licensing systems is to remove those systems which cannot be justified or replace them with more appropriate methods of regulation. These issues are dealt with in the companion volume, *Business licences and regulation reform*.

Small business implications

In many countries, small business is regarded as bearing a disproportionately large regulatory burden. For example, some studies have found that environmental regulations have inhibited the formation of small firms by requiring greater capital investment. Licensing fees often have a relatively greater incidence on small firms (workplace registration and building permit fees are examples). Concern about the particular problems faced by small business has led to the requirement in the United Kingdom that the views of small business must be sought and taken into account when new regulations are proposed.

Master licensing and integrated approval systems or a comprehensive business activity approval package would be likely to significantly benefit small businesses because they often lack the resources available to larger firms needed to administer numerous applications and renewals. Similarly, more effective dispute resolution procedures should disproportionately benefit small businesses which lack access to in-house legal expertise. Improvements in licensing agency efficiency may benefit businesses regardless of size.

Optional prescriptive standards or codes of conduct can be helpful for small businesses which may not have sufficient resources to develop their own compliance procedures. These are an increasingly common feature in many areas of licensing. For example, builders in New Zealand may develop their own techniques to satisfy the specified outcomes of the building code, or adopt an approved technique published by the regulatory authority.

In the field of food safety regulation, it has been suggested that smaller firms may use traditional technical standards to ensure food hygiene standards are met, while larger businesses can be allowed to show they have developed an equally effective means of compliance through quality management systems.

Summary

Some aspects of Australian licensing arrangements compare well in international terms. However, this report highlights a number of opportunities for improvement, particularly in the areas of integration and coordination of licence approval procedures, introduction of competition and/or contestability in the supply of licensing services and provision of regulatory flexibility.

Other countries are proceeding with various licensing reforms and Australia needs to keep pace. Australian business licensing arrangements need to continue to undergo reform and improvement to maintain and enhance the competitiveness of Australian business and the overall efficiency of the Australian economy.

1 Introduction

The 1994 *Working Nation* white paper extended the Bureau of Industry Economics' (BIE) international benchmarking of infrastructure services program to include general government services to industry.

Many government services contribute to Australia's traded goods sector and play a key role in determining Australia's international competitiveness. However, these services are frequently not subject to direct competition because of natural monopoly elements and regulatory barriers to entry. Consequently incentives to improve efficiency of service provision are weakened and actual performance may diverge significantly from best practice. Benchmarking enables the performance of governments in providing such services to be compared with best practice. It acts to highlight progress on microeconomic reform and allows identification of opportunities for improvement.

Government services can be broadly divided into direct government services and 'framework' issues. Direct services are those services used directly by business such as quarantine and inspection, tax administration and investment promotion. Framework services refer to government-imposed regulations and standards and their administration which define and influence the business environment. Examples include environmental regulation, the patents system, corporate governance and business licensing.

This report, *Business licences — International benchmarking*, extends BIE's international benchmarking program to the regulatory framework for the first time. The purpose is to compare Australian business licensing arrangements and those in selected overseas jurisdictions with best practice, and to identify areas for improvement.

A companion volume, *Business licences and regulation reform*, has a broader focus. It examines situations in which different instruments are used in different countries to achieve similar regulatory objectives and addresses the issue of whether licensing is the most appropriate means of achieving specific social and economic objectives.

General reviews of licensing or licensing simplification programs are currently being conducted in New South Wales, Victoria, Queensland and the Australian Capital Territory. These BIE reports complement this review process by providing interstate and international comparisons of licensing and its alternatives in practice.

Licences studied in this report include planning and building approvals; pollution discharge licences; licences for retailers, traders and manufacturers; shop and factory registrations; equipment licences; workers' compensation insurance and social security registrations; and business name and company registrations.

The approach to benchmarking the regulatory framework developed and applied in this report is discussed in section 1.1. Pressures for reform and recent policy developments relevant to licensing are discussed in section 1.2. Section 1.3 contains an outline of the report.

1.1 Benchmarking the regulatory framework

The costs and benefits of many government services are difficult to measure directly. Hence, an alternative approach to assessing the likely effects of licensing on economic welfare is needed. Unlike infrastructure benchmarking, it is not possible to quantify productivity or profitability. Instead, a new approach, called framework benchmarking, is developed which focuses on the appropriateness and design of government regulatory services.

The earlier infrastructure benchmarking studies used best *existing* practices as benchmarks, based on various measures of efficiency. By contrast, in this report a checklist of best practice design criteria is developed, and Australian and overseas licensing arrangements are compared against this set of best *possible* benchmarks. The approach is more qualitative than that of the infrastructure studies, and the resulting rankings are indicative rather than definitive in nature. However, it has the advantage of suggesting means to improve, even in cases where Australia may be currently 'best' compared with other countries.

The checklist of best practice design criteria for business licensing arrangements covers aspects of licence applications, the standards associated with licences and licence enforcement. The numbers of licences and applications needed to conduct particular business activities in Australia and overseas are also compared.

The approach used for benchmarking business licensing addresses the issues of whether or not an agency is adopting the most effective approaches and whether or not the design of its policies and instruments matches current views about best practice regulation. It can perhaps be expressed as a cost-effectiveness approach:

given the need to correct for certain market failures, how can this be done at lowest cost to the community as a whole?

The checklist reflects the costs and benefits to the community as a whole of business licensing. Costs of business licensing include those arising from applying for approval (including costs associated with delays and uncertainty and the costs of supplying information to licensing agencies), and the costs of complying with standards and conditions attached to licences. Excessively prescriptive standards may impede adoption of innovative techniques by business and, thereby, create costs in terms of efficiency and competitiveness. Their effects on business costs and efficiency may be passed on to consumers. Licensing systems can also be used to create barriers to entry, particularly when administered by self-regulatory agencies, which enhance the profits or economic rents of incumbents, and impose losses on consumers. This issue is examined in the companion volume to this report.

Licences may also deliver important benefits to the wider community through the achievement of various social and economic objectives. These objectives include protecting the environment from excessive pollution, protecting the public from unsafe buildings, managing risks in the workplace, reducing risks from contaminated food and drugs, controlling the use of natural resources and improving the quality of the services offered by certain professions. The efficiency of enforcement activities also influences the benefits and costs of licensing.

The reader should be mindful of the limitations inherent in international comparisons of this kind. Social, cultural and economic priorities which affect the nature of regulation vary widely internationally. The legal systems and traditions within which licensing and other forms of regulation are used also differ. Consequently, regulatory forms which operate effectively in one society may be inappropriate in others.

1.2 The impetus for licensing reform

Interest in licensing reform is evident in many countries. For example, in the United Kingdom recommendations have recently been made to review all business licensing arrangements with a view to abolishing them within two years (UK DTF 1995). There are plans in many jurisdictions to improve the provision of information about licence requirements and to simplify licence application procedures. Examples of these from the United Kingdom, Canada, Ireland and a number of Australian jurisdictions are discussed in chapter 5. Particularly notable in this respect are the Australian Business Licence Information Service and the state of Washington's Master License Service in the United States.

In many jurisdictions, there have been concerns that small business bears a disproportionately large regulatory burden. This may reflect the fact that most regulatory requirements have a 'fixed' compliance component which is independent of the scale of the business. In the United Kingdom the views of small business on proposed regulation must be sought and taken into account. However, there has also been pressure to remove exemptions from regulation for small business because these may inhibit the expansion of businesses.

There are three broad sources of pressure for business licensing reform in Australia. First, the recommendations of the Hilmer Report (1993) have led to an increased focus on the anticompetitive potential of business licences. Second, there has been pressure to rationalise occupational licensing, including through the use of mutual recognition agreements within Australia. Third, a number of recent studies have examined licences in the context of development control and approval coordination improvement.

1.2.1 Licensing and competition policy in Australia

Following the Hilmer Report a consultative process involving Commonwealth, state and territory governments led to the approval of the *Competition Principles Agreement* (CPA) by the Council of Australian Government members in April 1995. Under the CPA, the governments accept that legislation should not restrict competition unless it can be demonstrated that it confers net benefits on the community and that the objectives of the legislation can only be achieved by restricting competition (CPA 1995, s.5(1)). The governments agreed to implement a review of restrictions on competition to be completed by 2000 (CPA 1995, s.5(3)). It is expected that anticompetitive occupational licensing arrangements will be reviewed as part of this process (Industry Commission 1995b).

1.2.2 Mutual recognition and occupational licensing in Australia

The Hilmer reforms build on earlier moves for mutual recognition, which is relevant to many of the issues discussed in this report. The Commonwealth *Mutual Recognition Act 1992* came into force in March 1993. Under this legislation, the states and territories were to refer power to the Commonwealth to ensure that a person registered in one jurisdiction would be accepted as qualified in all jurisdictions (Industry Commission 1995d).

However, occupations to which licensing applies in only some jurisdictions (termed *partially registered occupations*) cannot be subject to mutual recognition. A 1993 review by the Vocational Education, Employment and Training Committee

identified several hundred partially registered occupations and recommended that 121 of them be deregistered, including teachers, professional engineers, motor vehicle repair tradespersons and real estate sales persons. This would help reduce administrative barriers to interstate mobility (Industry Commission 1995b).

1.2.3 Licensing issues in Australia

Australian businesses have continued to express concerns about regulation in general as well as about specific types of licensing, permit and approval systems. In many cases, these concerns have prompted studies which have tried to measure the economic effects of these systems or which have identified shortcomings in them. These studies have, for example, dealt with problems in land use planning and development systems, and deficiencies in the coordination of application procedures for licences. The following discussion is based on an indicative selection of these studies. Australian business concerns about licensing are discussed in more detail in chapter 3 (sub-section 3.3.1).

Development control

In November 1992 the Victorian government appointed a Projects Steering Committee to examine aspects of that state's land use planning system. The system was later described by the government as 'cumbersome, expensive and slow' (Victorian MfP 1993, p.1). The committee's recommendations (Perrott Committee 1993) led to government proposals for greater use of effects-based planning, simplification of planning schemes, and the streamlining of approvals, objections and appeals processes.

Business concerns about the effects of planning controls on new developments in New South Wales were documented by Sturgess (1994) in a report commissioned by the New South Wales government. Evidence included anecdotes from businesses and individuals about excessive delays, bureaucratic ineptitude and unreasonable requirements in obtaining development approval.

Further analysis would be necessary to test whether or not anecdotal reports are representative of more wide-spread problems. For example, as demonstrated in chapter 7 (sub-section 7.3.1) of this report, development approval processing times can vary widely and it will probably always be possible to find applicants who claim to have been treated unfairly. The Sturgess report recommended a comprehensive review of the development approval process, including linkage to the Business Licence Information System operated jointly by the Commonwealth, states and territories.

Licence application coordination

In a report on Commonwealth and state business licensing requirements, commissioned by the Commonwealth and Tasmanian governments, Stenning and Associates identified considerable overlap in the administrative processes involved in obtaining and renewing licences (Stenning 1994). The overlap was predominantly between different state agencies, although overlap also occurred between the states and the Commonwealth. The Stenning review recommended clearer licensing and regulatory requirements; faster and simpler application and assessment procedures; and streamlined payment and renewal facilities.

A recently completed study into business paperwork burdens in the Australian Capital Territory recommended that opportunities for reducing the number of business licences be examined (ACT DBAST 1995). It also recommended a pilot scheme for a master licensing system for restaurants, service stations and hairdressers.

While reductions in the numbers of licences, or in the numbers of applications for licences, should reduce compliance costs for business, any such reductions need to be set against any lost benefits and increased costs arising elsewhere in the community. For example, simply abolishing food premises licences without replacing them with an alternative regulatory mechanism may seriously erode food safety and increase the costs to the community of dealing with food-borne illnesses. Even improved coordination of licence application procedures can only be achieved at a price because of the costs of establishing a central licensing coordination agency.

Moreover, costs imposed by regulation vary. The time required to complete specific forms and returns can vary widely, as shown in an Australian Bureau of Statistics study of the government paperwork burden on small business (ABS 1993). Importantly, the number of forms or returns was not the main determinant of the compliance cost. High paperwork burdens were often associated with requested data being unavailable from the firms' internal accounting systems. Nevertheless, had the unavailable data been used by the firm in its commercial operations (for example, for budgeting or planning) it may have delivered private benefits which might more than offset the cost of its collection.

This selection of studies suggests that the numbers of licences and applications any business activity is subject to, and the nature of the application procedures are important in assessing licensing arrangements. The conditions and standards attached to licences, and the strategies adopted to enforce licences are also relevant. All these issues are addressed in this volume.

1.3 Outline of this report

The methods used to collect data about licences and to compare licensing regimes and the definitions of licences and notifications are described in chapter 2. The international survey of businesses which was one of the sources of information about licences used in the study forms appendix B.

The extent of business licensing in practice, including international comparisons of numbers of business licences and applications as well as international business views about licensing, are examined in chapter 3. Appendix A contains detailed lists of licences required for selected activities in Australia and a number of overseas jurisdictions.

In chapter 4, a set of best practice criteria for designing licensing systems is developed. These criteria relate to licence application procedures, the standards attached to licences and licence enforcement strategies.

Licence application procedures in Australia and overseas are compared in chapters 5, 6 and 7 against the best practice criteria. The focus of chapter 5 is on information provision and integrated approval systems, while chapter 6 discusses issues involved in consultation and referral mechanisms during the application and approval process. The certainty and efficiency of approval processes, including the role of contestability, is canvassed in chapter 7.

In chapters 8 and 9, the design criteria for licensing standards developed in chapter 4 are used to benchmark selected Australian and overseas licensing and permit systems. The global trend away from prescriptiveness in standards is documented in chapter 8. Appendix C contains some international comparisons of the prescriptiveness of standards attached to licences and permits in the areas of building control and workplace safety. In chapter 9, external efficiency aspects of applying standards are discussed, including the efficient allocation of quotas across licensees and the coordination of standards across domestic jurisdictions. Enforcement strategies are discussed in chapter 10.

An overall assessment of Australian performance on the basis of the numbers of licences and applications and their design features is provided in chapter 11.

END OF CHAPTER

2 Method and definitions

This chapter sets out the method used to develop benchmarks for business licences and the definition of licences used throughout this report and the companion volume, *Business licences and regulation reform*. In section 2.1 details about how information about licensing was collected, the types of businesses examined and the countries used for the benchmarking comparisons are provided. The definitions of licences and notifications and descriptions of related and alternative policy instruments are set out in section 2.2. Section 2.3 contains a description of the approaches to benchmarking used in this report.

2.1 Method

The jurisdictions used for benchmarking and the case study businesses which provided the basis for data collection are described in this section.

2.1.1 Jurisdictions

Some licensing arrangements are administered at the national level (for example, export and import licences). Other licences are the responsibility of state, territorial or provincial governments in federal systems (such as occupational licensing in Australia, Canada and the United States). Municipalities administer still other licences (typically, land use and building control). To ensure that comparisons are sufficiently general, specific states or territories in Australia were used as the jurisdictional unit wherever possible.

Examining every licensing system in every state and territory in Australia is not a practical undertaking. Instead, this study focuses on developments in the more populous states (New South Wales and Victoria) because their licensing arrangements affect a relatively large part of the Australian community. Examples have, however, also been drawn from other Australian jurisdictions which have developed innovative licensing techniques in recent years.

Countries were selected for comparison on the basis of their current or potential economic importance for Australia, either as a trading partner or as an international competitor. These include Canada, Japan, Malaysia, New Zealand, the United Kingdom and the United States.

Of these countries, Canada, Malaysia and the United States have federal systems of government and the appropriate jurisdiction for comparison is the state, territory or province. The State of Washington was chosen in the United States because of its well-established master licensing system, which has attracted international interest. The adjacent Canadian province of British Columbia was also chosen for study. In Malaysia, data were collected from the state of Selangor.

Comparisons for the countries with unitary systems of government — Japan, New Zealand and the United Kingdom — are made broadly at the national level. However, regional variations can still be important. In Japan, much of the information was gathered from the Edogawa ward in the Tokyo region. In New Zealand, considerable information was obtained from Wellington and its surrounding region. For the United Kingdom, comparisons relate to the legal and administrative procedures for England and Wales: Scotland has largely similar procedures under its own legal system.

Developments of interest outside these countries, states and provinces were included where relevant.

2.1.2 Case study businesses

Case study businesses were used as a basis for collecting and comparing licence and permit information. Three types of businesses are examined in detail:

- foundries, which are usually subject to air emission, solid waste, and hazardous equipment and substances controls;
- seafood processors, which have air emission, water discharge, food hygiene and hazardous equipment and substances controls and which are often also subject to part of the resource management regulation of fisheries; and
- retail bakeries, where food hygiene licensing is of particular concern.

Other businesses which have been used to gather information include meat processors, petrol service stations and pharmacies. The last provides insights into the licensing of professions. The specifications of the case study businesses for the purposes of comparing licences are included in appendix A (section A.2).

2.1.3 Sources of information

Information was obtained from government departments, licensing agencies, industry associations and individual businesses in Australia and overseas. The BIE conducted a small survey of some of the case study businesses to gather information about licensing in Australia and overseas. Details about the survey are contained in appendix B. In Australia, the Business Licence Information Centres in each state and territory also provided considerable information about licences affecting the case study businesses.

2.2 Definitions

The definitions of two related regulatory instruments relevant to this report are set out in box 1.1.

In practice, many terms are used to describe the regulatory instruments which are the subject of this study, including approvals, permits, registrations, notifications and licences. While there may be differences in the use of these terms between and within different countries, it is important that their meaning be clarified for the purposes of this study. Precise definition of the legal instruments being benchmarked helps ensure that like is compared with like.

Box 2.1 Definitions of licences and notifications

Notification

An instrument created under government authority requiring all businesses with specified characteristics to provide information about their attributes to a specified agency.

Licence

A notification which also requires prior approval as a condition for conducting prescribed business activities, and compliance with specified minimum standards — breaches of which may result in the suspension or revocation of permission by a specified agency.

The essential properties of a ***licence*** are:

- *notification*
  - information is supplied to a specified agency;

- *prior approval*
  - approval from a specified agency is obtained before commencing the prescribed business activities;
- *standards*
  - minimum standards are to be complied with; and
- *enforcement* or *compulsion*
  - licensing is not voluntary so that conducting the activities without a licence is unlawful, the standards are legally enforceable, and contravention of them may lead to the suspension or revocation of permission to conduct the activity.

A ***notification*** involves only the first and fourth properties. While a specific standard may not be involved, compliance with more general requirements may be associated with a notification. For example, company 'registration' requires directors and officers of the company to comply with the relevant companies legislation.

A licence or notification need not be administered by a government agency, but it must be created under government authority, for example, by legislation, regulation, ministerial order, by-law or similar legal process. Therefore, licences and permits may be issued by industry associations (under 'co-regulation') or by private certifiers authorised by law (such as the private building approval certifiers now operating in some Australian jurisdictions). The standards need to be minimum requirements but not necessarily uniform across different businesses. They may reflect differences in the circumstances of individual businesses.

In contrast to licences, notification schemes may not involve any scrutiny of the business and may be implemented mainly to reduce the administrative costs of identifying and locating firms. Distinguishing between licences and notifications is often difficult in practice. 'Licences' may require only the most basic quality standards to be met or involve only the most cursory examination of an application. These are almost indistinguishable from notifications. For this reason, licences and notifications are close regulatory cousins and are considered jointly in this study.

Examples of items which fall within the definitions of licences and notifications are:

- Planning and building approval procedures. These are most likely to be relevant to the establishment of new businesses.

- Various types of retailers', traders' and manufacturers' licences and permits to manufacture, import, export or sell particular types of goods or services.
- Registrations of premises as shops or factories and permits to use equipment and use or store materials.
- Licences and registrations for operating various types of hazardous equipment.
- Licences for storing or transporting dangerous goods and hazardous substances such as flammable gases and liquids.
- Permits to discharge gaseous, liquid or solid wastes into the environment.
- Business name registration — if it is required by law to operate the business in a name other than the proprietor's name.
- Various taxation registrations including for employee income tax deductions, goods and services and value added tax, wholesale sales tax, payroll tax, excise, municipal taxes and state income taxes.
- Company registration — if the commercial circumstances of the firm (including its scale, the number of its promoters, and the nature and extent of the risk of liability in the event of litigation) normally require it.

The following are possible alternatives to licences and notifications. Some of these alternatives are assessed in the companion volume, *Business licences and regulation reform.*

- ***Accreditation*** or ***certification*** schemes which amount to non-mandatory licences. They involve prior approval and compliance with minimum standards and accreditation can be withdrawn for failing to satisfy the standards. However, lack of accreditation does not prevent a firm from lawfully engaging in the relevant business activity. Some critics of licensing systems (for example, Moore 1961) favour accreditation as an alternative to licensing.
- ***Negative licensing*** systems in which no licence or permit is required before commencing operations but a business committing serious breaches of the required standards may be barred from continuing the activity.

The properties of licences, notifications, accreditations and negative licences are summarised in table 2.1.

Table 2.1 Properties of licences, notifications, accreditations and negative licences

Property	*Licence*	*Notification*	*Accreditation*	*Negative licence*
Notification	✓	✓	✓	
Prior approval	✓		✓	
Standards	✓	┼	✓	✓
Enforcement or compulsion	✓	✓		✓

┼ = optional

- ***Compulsory contracts***. These arise when firms are required to engage one of a number of possible (private or public) contractors as a condition of conducting business and there is no requirement to supply a government agency with evidence of the contract. If the contract must be registered or notified, the arrangement is a notification. Two examples illustrate the difference.

  – If firms may exercise choice over their compulsory workers' compensation insurer, the insurance is a compulsory contract. If, however, there is only one insurer, operating under a public monopoly, it seems too contrived to regard the arrangement as a 'contract' — for all practical purposes it is a notification.

  – Laws requiring businesses to dispose of solid effluent with a private or public waste management business of their own choosing involve compulsory contracts. But 'contracts' to discharge trade waste into a public sewerage system are more realistically regarded as licences if there are no practical alternatives to this form of waste disposal.

- ***Standards***. A code of practice is an example of a standard without an associated licence. Its provisions may be voluntary or compulsory. It does not require businesses to obtain prior approval.

- ***Property, product liability and labelling laws***. These are laws which establish and protect property rights or require information to be supplied to consumers. They relate to, for example, transfers of land, copyright, trade marks and patents, as well as statutory warranties and requirements to label food and drug products. They do not involve prior approval.

- ***Government franchises***. These include the prerequisites for obtaining government tenders or undertaking government franchises or monopolies. Private firms may choose whether or not to tender to supply services to or on behalf of the government. In many countries, these arrangements may also be termed 'licences'. A recent example is the granting of *licences* (that is,

government franchises) to individual water supply authorities in Melbourne, Australia under the Victorian *Water Industry Act 1994*. Government franchises may be difficult to distinguish from licences (as defined in box 1.1). If the ostensible aim of the arrangement is to limit the quantity of suppliers, it may be more realistically described as a licence.

- Approvals for ***access to utilities*** such as electricity, water, gas and telephone. In most cases these resemble the purchase of any other commodity. In many jurisdictions, the building approval process includes application procedures for connecting a new or renovated structure to utility services. These are outside the scope of this study.

- ***Equipment operator licences*** and similar qualifications. These affect the characteristics of employees selected by the firm rather than represent a requirement to be satisfied by the business. However, licences which must be obtained by a proprietor, partner or major shareholder in the business are regarded as satisfying the definition in box 1.1. This is often the case with occupational licensing (for example, in most jurisdictions, only licensed pharmacists may operate a pharmacy).

- ***Company accounting returns, taxation returns*** and ***statistical returns***. These returns are not a condition for operating the business. However, the requirements for incorporating a company and initial notifications to taxation authorities are included in the study.

2.3 Benchmarking methods

In this report the efficiency and effectiveness of licensing systems with similar objectives in different countries are compared using criteria which reflect the key properties of licences (notification, prior approval, standards and enforcement or compulsion).

Comparisons of numbers of licences and applications

Are overseas jurisdictions as reliant on licensing as Australian jurisdictions? This issue is addressed using comparisons of the numbers of licences and applications needed to start up and operate specific types of businesses in Australia and overseas. Such comparisons provide insights into the extent to which different jurisdictions require businesses to notify the authorities about their activities. Notification is a key aspect of licensing.

Development of, and evaluation against, design criteria

If governments choose licensing and permit systems to meet a particular objective, how should these systems be designed if their efficiency and effectiveness is to be maximised?

The development and use of a checklist of licensing design features is a major aspect of this report. The content of the checklist reflects the relationship between the design features of licences and the net benefits they may confer on business and the community. These design features reflect the key properties of prior approval, standards and enforcement or compulsion. For example, better licensing systems allow businesses greater flexibility in deciding how to meet the regulator's goals while providing a means for businesses to be sure that they have complied. They include equitable and inexpensive procedures for resolving disputes between businesses, the rest of the community and the licensing authority. They should also use enforcement measures which are appropriate to the consequences of any non-compliance.

As mentioned in chapter 1, the companion volume, *Business licences and regulation reform*, deals with a third aspect of benchmarking licensing system efficiency: is licensing the most appropriate means of achieving particular regulatory objectives?

2.4 Summary

Comparisons in the report are made with licences and licensing systems in Australia's most populous states as well as from Canada, Japan, Malaysia, the United Kingdom and the United States. Relevant developments in other jurisdictions have also been included. Case study businesses are used to help make comparisons. Foundries, seafood processors and retail bakeries are examined in detail. Other businesses also used to gather information include meat processors, petrol service stations and pharmacies.

Licences are characterised by four key properties: notification, prior approval, standards and enforcement (or compulsion). These characteristics form the basis of the benchmarking comparisons made in the report. Specifically, chapter 3 contains a discussion of the numbers of notifications and applications for licences which a business needs to make. Best practice design criteria for licences in terms of prior approval, standards and enforcement are developed in chapter 4.

END OF CHAPTER

3 The impact of business licensing

Licences and permits are among the most pervasive instruments of business regulation and control. A surprisingly wide range of business activities require prior approval before they can even begin.

For example, an extensive structure of licensing of professions and occupations has developed in most countries. For the United States it has been estimated that 490 occupations are subject to licensing in one state or another (Young 1987, p.5) including funeral directors, hairdressers, ice cream buyers, tattoo artists and astrologers (Ogus 1994, p.226).

In the United Kingdom the list of licensed activities includes selling liquor, supplying consumer credit, driving vehicles, offering taxis for hire, felling trees, catching sea fish, conducting research on human embryos, and operating nuclear installations, pet shops, riding establishments, zoos, slaughterhouses, betting shops, sex shops, theatres and residential care homes (Ogus 1994, p.226).[1]

In Australia, there were 265 Commonwealth and 346 state licences, permits and registrations referenced in the Tasmanian Business Licence Information Centre in mid-1994 (Stenning 1994). This did not include municipal permits and licences. Businesses and professions regulated through licensing in Tasmania included auctioneers, bookmakers, casino gaming employees, gas fitters, milk vendors, optometrists, pawnbrokers, podiatrists, process servers and condom vending machine installers. Licences and notifications were also required to operate camping grounds, fish farms, guest houses, holiday cabins, motels, hatcheries, hairdressing premises, factories, shops, sawmills and serviced apartments.

[1] Among the more exotic United Kingdom licences are those for the premises of saddlers selling horsewormers, and for the movement of boar to an artificial insemination centre for the purposes of donating semen (information supplied by United Kingdom Deregulation Unit, 19 May 1995). In Australia until recently, New South Wales boasted a licence for exhibiting emus, quail and other game birds (information from New South Wales Cabinet Office Regulatory Review Unit, 27 March 1996).

The number of licences, and applications for licences, required to start and run a business indicates the extent to which jurisdictions rely on the notification property of licences. The number of applications may be fewer than the number of licences where coordination arrangements (such as master licensing systems) are in place. International comparisons of the minimum numbers of licences and applications needed for *any* business and the numbers required for certain *case study* businesses are provided in this chapter.

3.1 The extent of licensing in Australia

The pervasiveness of licensing in Australia can be gauged from the number of licences needed to begin and run an enterprise. Such licences involve all levels of government and impose controls over a wide range of business activities.

3.1.1 Minimum Australian licence requirements

Table 3.1 contains the minimum set of licences needed by a typical Australian business. This covers a wide range of businesses producing services as well as goods and trading only within the domestic economy. More specifically, the list assumes that:

- the business pays state payroll tax;
- it pays some remuneration in the form of fringe benefits;
- it is conducted from commercial or industrial premises and not from the employer's residence;
- the proprietor does not trade under his or her own name; and
- the business collects, stores or uses information about its personal customers.

Planning and building approvals are included in this minimum set of licences because these are relevant to new businesses in a growing economy. Building and planning approval may need to be obtained even to begin occupying existing premises if there have been interruptions in use or if refurbishment of the premises is required.

Export and import licences have not been included in this minimum set because not all firms engage in these activities. Similarly, transport licences are not required by all businesses and have not been included.

Table 3.1 Minimum licence requirements for a typical Australian business

Type of licence	*Name of licence and issuing authority*
Planning approval	• Planning and development approval (municipal)
Building approval	• Building approval (municipal) • Approval to occupy (municipal)
Business name or incorporation	• Registration of a business name (State consumer affairs office) **or** registration as a company (Australian Securities Commission)
Employment conditions	• Workers' compensation — in states where operated by a public monopoly (State occupational health and safety authority)
Taxation registration	• Registration as a group employer (Australian Taxation Office) • Tax file number (Australian Taxation Office) • Fringe benefits tax registration (Australian Taxation Office) • Payroll tax registration (State revenue office)

Sources: Business licence information centres in each state and territory.

3.1.2 Australian specialised licences

Additional licences are often required depending on the nature of the business. For example, occupational health and safety (OH&S), environmental controls and hazardous substances regulation feature prominently in certain manufacturing concerns such as foundries. An indication of the number of additional licences which might be required can be gained from the case study businesses of foundries, seafood processors and retail bakeries.

In general, equipment operator licences have not been included in these additional licences. These are a reflection of the characteristics of employees selected by the firm rather than a requirement to be satisfied by the business. However, licences which must be obtained by a proprietor, partner or major shareholder in the business are included. Also excluded are various vehicle and transport licences. It is assumed that the businesses can engage other firms to provide these services.

An Australian foundry is typically subject to the additional specialised licences shown in table 3.2. For convenience, these have been grouped into those involving pollution control, regulation of hazardous substances, equipment regulation, workplace registration and others. These requirements are often not uniform across states and territories in Australia or even across municipalities. For example, dangerous goods licences vary markedly in their nature between states and

territories. Some states require business to comply with more than one licence for storing dangerous goods, or to obtain additional licences to store them in tanks inside buildings.

Table 3.2 Specialised licences required by Australian foundries

Type of licence	*Name of licence and issuing authority*
Pollution control	• Pollution control licence or works approval (state environment protection authority) • Registration of premises in which trade waste is created or licence to discharge waste (state environment protection authority) • Permit to discharge trade waste into sewers (local water authority)
Hazardous substances	• Licence to store dangerous goods (State occupational health and safety authority)
Equipment	• Registration of a boiler or pressure vessel (State occupational health and safety authority) • Registration of a crane (State occupational health and safety authority)
Workplace registration	• Registration of factory or industrial workplace (State occupational health and safety authority — does not apply in all states and territories)
Other	• Diesel fuel permit for tax rebate (State revenue office)

Sources: Business licence information centres in each state and territory.

The licences typically needed by a seafood processor are shown in table 3.3. The number of fish receiver permits required depends on the number of species processed. These licences are part of quota systems designed to manage fisheries in a sustainable way. Fish processors in all states and territories must also register with the relevant authority for a processors' licence. Registration is also needed under the reportable payments requirements to notify the Australian Taxation Office (ATO) about payments for fish bought or sold (unless sold to a retailer or the general public).[2]

Fish processors must also satisfy weights and measures requirements administered by state consumer affairs authorities. Processors wishing to export their product

[2] Payments which relate to the taking or catching of fish in the course of a business and payments for the sale or supply of fish acquired for sale or supply to another person (other than by or to retailers of fish) are subject to the *reportable payments system* under the Australian *Income Tax Regulations*, r.147A-147F. Any recipient of these reportable payments may supply a tax file number declaration form to a payer who must lodge it with the Taxation Office. Otherwise, income tax on the reportable payment must be withheld by the payer.

must be registered as export establishments with the Australian Quarantine and Inspection Service and obtain an export permit.

Processors who also operate fishing vessels and occupy wharf space would be faced with even more licences. In particular, they would be more heavily involved in the fisheries management system, as well as needing licences to operate vessels and radio equipment. To simplify comparisons with overseas processors, it is assumed that the business is entirely land-based and does not use a wharf.

Table 3.3 Specialised licences required by Australian seafood processors

Type of licence	*Name of licence and issuing authority*
Resource management	• Fish receiver permit (Australian Fisheries Management Authority) • Fish processor's licence (State fisheries management authority)
Pollution control	• Pollution control licence or works approval (state environment protection authority) • Registration of premises in which trade waste is created or licence to discharge waste (state environment protection authority) • Permit to discharge trade waste into sewers (local water authority) • Offensive trades licence (municipal)
Hazardous substances	• Licence to store dangerous goods (State occupational health and safety authority)
Equipment	• Registration of a boiler or pressure vessel (State occupational health and safety authority)
Workplace registration	• Registration of factory or industrial workplace (State occupational health and safety authority - does not apply in all states and territories)
Food hygiene and export	• Export establishment registration (Australian Quarantine and Inspection Service) • Export permit (Australian Quarantine and Inspection Service)
Other	• Reportable payments system (Australian Taxation Office) • Diesel fuel permit for tax rebate (State revenue office) • Weights and measures registration (State consumer affairs authority)

Sources: Business licence information centres in each state and territory.

Finally, the licences typically needed by a small retail bakery are listed in table 3.4. These are principally associated with food hygiene requirements.

Table 3.4 Specialised licences required by Australian retail bakeries

Type of licence	*Name of licence and issuing authority*
Workplace registration	• Shop or workplace registration (State occupational health and safety — does not apply in all states and territories)
Food hygiene	• Food premises registration (municipal — does not apply in all states and territories) • Licence to conduct food business — personal or corporate (municipal — does not apply in all states and territories)
Pollution control	• Permit to discharge trade waste into sewers (local water authority)

Sources: Business licence information centres in each state and territory.

This discussion of the typical range of licences and notifications required by a range of different businesses in Australia is a useful basis for examining the corresponding licences and notifications needed in other jurisdictions. These comparisons are the subject of section 3.2.

3.2 The extent of licensing internationally

In this section the numbers of licences and applications needed to start and operate a business in Australia are compared with selected overseas jurisdictions. Such comparisons provide insights into the extent to which the notification property of licences is used in different jurisdictions. Four sets of comparisons are made, corresponding to the licensing requirements examined in section 3.1. These are: the minimum number of licences and applications needed to start and operate a business as well as the numbers needed for a foundry, seafood processor and retail bakery.

3.2.1 Minimum international licence requirements

Comparisons of minimum licensing requirements across a selection of countries are made in table 3.5. These minimum requirements are based on the same assumptions used for Australian businesses (see sub-section 3.1.1).

In the table there is a distinction between the numbers of licences and the numbers of licence applications. An important aspect of licence simplification from the viewpoint of business is reducing the number of applications through integrated approval and master licensing systems.

These comparisons need to be treated with caution. Information has been obtained from licensing agencies (including the Business Licence Information Service in Australia), individual business responses to a BIE survey, industry bodies, and examinations of relevant legislation. The quality of the comparisons reflects the consistency with which the definition of a licence has been applied and the quality of the information collected. For example, the nature of the environmental licences needed by a business is affected by variations in the siting of facilities, their internal configuration, peak operating cycles, and similar considerations.

Because there is room for debate about including or excluding a particular instrument, appendix A contains a full listing of the licences included in table 3.5. Some licences are specific to states or territories within Australia, or to cities or counties within other countries, so a range of numbers is sometimes shown. For all these reasons, the numbers in the table should be viewed as indicative rather than definitive.

In the United States and Canada, there are numerous state and provincial minimum licences. In the United States, there is some duplication between state and municipal licensing (for example, licences to conduct business) and between state and federal licensing (for example, income tax registration). However, in Washington State, the existence of a master licensing system has significantly reduced the number of applications which need to be made rather than the number of licences. Master licensing systems are discussed in detail in chapter 5.

In Canada, Revenue Canada uses a *business numbering (BN) system* to streamline business notifications for various taxation purposes. By applying for a business number, a new business may simultaneously notify Revenue Canada for the purposes of corporate income tax, import and export taxes, pay-as-you-earn (PAYE) income tax deductions and goods and services tax. All these notifications may be made on the same application form. Other government accounts and services are progressively being added to the BN system. This explains the relatively small number of applications relative to licences and registrations in Canada.

In Canada, corporate registration for a business operating nationally can be relatively complex. If the business is operated wholly within a single province, the general practice seems to be to incorporate the business in the province in which the corporation expects to conduct its business. If the business is expected to be carried on in more than one province, federal incorporation may be chosen because federal corporations have the right to carry on business across Canada. However, a federal corporation carrying on business in more than one province is required to comply with any applicable extra-provincial registration legislation in place in the

jurisdictions in which it wishes to operate. A business incorporated under the laws of one province is similarly required to comply with any extra-provincial registration legislation in effect in a jurisdiction (other than its home jurisdiction) within which it wishes to operate. Eight provinces, including British Columbia, appear to require federal corporations to register.[3] Consequently, the number of registrations required for incorporation in Canada depends on the extent of interprovincial business conducted by the firm (see table 3.5).

Table 3.5 Minimum numbers of licences and applications, selected countries

Country	***Australia***	*Canada*	*Japan*	*Malaysia*	*New Zealand*	*United Kingdom*	*United States*
System of government	***Federal***	*Federal*	*Unitary*	*Federal*	*Unitary*	*Unitary*	*Federal*
Location	***Typical state***	*British Columbia*		*Selangor*		*England*	*Wash. State*
Planning approval	**1** [a]	1	1	1	1	1	1
Building approval	**2** [a]	1	2	2	1	1	2
Business name or incorporation	**1**	1–8 [c]	1	1	1	1	1 [h]
Licence to conduct business	**–**	1	2	1	–	–	1–2
Employment conditions	**0–1** [b]	3 [d]	4	3	1 [f]	1 [g]	3 [i]
Taxation registrations	**4**	4 [e]	4	1	4 [f]	3 [g]	2 [h]
Data protection	**–**	–	–	–	–	1	–
Total licences	**8–9**	11–18	14	9	8	8	10–11
Total applications	**7–9**	6–14	14	9	7	7	5–6

a Queensland is integrating planning and building approval. **b** Queensland effectively uses a notification for industrial insurance, as does South Australia for all but the largest firms. New South Wales has a permit to employ 'minors' defined as children under 16 years, but this is only one year above the school leaving age and has been omitted from this table. **c** Provincial incorporation in British Columbia or federal incorporation, plus extraprovincial registration in seven other provinces. **d** Only one application is needed for the Canada Pension Plan and unemployment insurance. **e** All applications are covered by a Business Number registration. **f** Only one application is needed for PAYE tax deductions and workers' compensation. **g** Only one application is needed for PAYE tax deductions and the National Insurance Scheme. **h** Included as endorsement under *Master License*. **I** One of these (state income tax registration) included as endorsement under *Master License.*

Sources: see appendix A.

[3] Information supplied by Industry Canada, 30 January 1996. Extra-provincial registration is not the same as incorporation. Companies incorporate only once (either federally or provincially) but may subsequently register to conduct business in other jurisdictions. There are no federal incorporation provisions in Australia or the United States. Australia uses a national companies code which has been uniformly adopted by all states and territories, and incorporation in one jurisdiction is sufficient in all. New Jersey and Delaware are popular locations for incorporation in the United States because their legislation provides substantial flexibility to corporate management.

In the United Kingdom and New Zealand, the absence of state or provincial governments contributes to their relatively low numbers of licences. The regulatory reform processes in both countries may also have been important and, in the United Kingdom especially, may lead to further reductions in licensing requirements.

Overall, Australia, Malaysia, New Zealand and the United Kingdom seem to have, on average, the fewest required licences among the jurisdictions considered. Canada, Japan and the United States generally have more, with the number needed in Canada affected by the number of provinces in which the corporation carries on business. The differences mainly reflect the requirements connected with employment conditions and the need for licences to conduct business. In particular, employers are involved in unemployment and social security insurance arrangements in Canada, Japan, Malaysia and the United States but not in Australia, New Zealand or the United Kingdom. In addition, there are requirements to notify authorities about working conditions in Japan and permits to employ minors (under 18 years) in Washington State.

There are also local employment licences. For example, in Malaysia the approval of the Director General of Labour may be needed to employ women in industrial or agricultural undertakings between the hours of 10:00 pm and 5:00 am.[4] Local employment licences have not been included in the tables because it is not clear whether or not the case study businesses would require them.

A Canadian firm not operating interprovincially and a Washington State firm appear to have the fewest minimum number of applications. The number of applications is reduced through the operation of the Canadian business numbering system and the Washington State master licensing system. Australia, Malaysia, New Zealand and the United Kingdom have a slightly higher minimum number of applications, followed by Japan. There is a surprisingly large gap between the lowest possible minimum number of applications (five in the United States) and the highest (14 in Japan).

3.2.2 Numbers of licences and applications for a foundry

Table 3.6 contains the numbers of licences and applications needed by a foundry in Australia and in selected international jurisdictions.

Foundries are particularly subject to environmental licences. The United States and Japan appear to have the most foundry-specific licences, reflecting the high number

[4] Malaysian *Employment Act 1955*, s.34 *and Employment (Employment of Women) (Shift Workers) Regulations 1970.*

of pollution and hazardous substance licences in the United States and equipment licences in Japan. The Washington State master licensing system does not cover these foundry licences.

Overall, the number of Australian licences compares favourably with most other countries. This is especially so in states in which factory registrations are unnecessary or in which workers' compensation arrangements are handled by compulsory contract, or where planning and building approval systems have been integrated.

Appendix A contains a full listing of these licences (table A.4).

Table 3.6 Numbers of licences and applications required by a foundry, selected countries

Country	***Australia***	*Canada*	*Japan*	*Malaysia*	*New Zealand*	*United States*
System of government	***Federal***	*Federal*	*Unitary*	*Federal*	*Unitary*	*Federal*
Location	***Typical state***	*British Columbia*		*Selangor*		*Wash'ton State*
		Minimum requirements (see table 3.5)				
Minimum licences	**8–9**	11–18	14	9	8	10–11
Minimum applications	**7–9**	6–14	14	9	7	5–6
		Special requirements				
Pollution control	**3**	3	3	5	3	6
Hazardous substances	**1**	2	1	1	1	2
Equipment	**2**	2	4	2	2	1
Workplace registration	**0–1** [a]	–	2	–	–	–
Other	**1**	–	1	–	–	1
Total additional licences	**7–8**	7	11	8	6	10
		Total requirements				
Total licences	**15–17**	18–25	25	17	14	20–21
Total applications	**14–17**	13–21	25	17	13	15–16

a Victoria, Western Australia and the Australian Capital Territory have no factory registration.

Sources: See appendix A.

3.2.3 Numbers of licences and applications for a seafood processor

Seafood processors have even more licensing requirements than foundries (table 3.7). There are extra pollution control requirements compared with foundries, including controls on discharges to water and offensive trades (odour) licences in

most countries. Fish receiver licences, which are part of the resource management system for fisheries, appear to be generally required. For each jurisdiction, only one species of fish is assumed to be processed. There may need to be additional licences in some jurisdictions if more than one species is received.

Australia rates less well internationally in terms of the number of licences needed by seafood processors. This reflects some state and municipal overlap concerning effluent discharges (for example, in New Zealand a single resource consent for discharges of contaminants to water is required). There is also some Commonwealth-state overlap with fish receiving and processing licensing and an unusual (by international standards) tax registration is needed for cash payments in the industry.

Appendix A contains a full listing of these licences (table A.5).

Table 3.7 Numbers of licences and applications required by a seafood processor, selected countries

Country	***Australia***	*Canada*	*Japan*	*Malaysia*	*New Zealand*	*United States*
System of government	***Federal***	*Federal*	*Unitary*	*Federal*	*Unitary*	*Federal*
Location	***Typical state***	*British Columbia*		*Selangor*		*Wash'ton State*
			Minimum requirements (see table 3.5)			
Minimum licences	**8–9**	11–18	14	9	8	10–11
Minimum applications	**7–9**	6–14	14	9	7	5–6
			Special requirements			
Resource management	**2**	1	2	2	1	2
Pollution control	**4**	3	4	4	3	5
Hazardous substances	**1**	1	1	1	1	2
Equipment	**1**	1	3	1	1	1
Workplace registration	**0–1** [a]	–	1	–	–	–
Food hygiene & export	**2**	3	3	1	3	3
Other	**3**	1	2	–	–	1
Total additional licences	**13–14**	10	16	9	9	14
			Total requirements			
Total licences	**21–23**	21–28	30	18	17	24–25
Total applications	**20–23**	16–24	30	18	16	19–20

a Victoria, Western Australia and the Australian Capital Territory have no workplace registration.

Sources: See appendix A.

3.2.4 Numbers of licences and applications for a retail bakery

Retail bakeries have comparatively few additional licences in most jurisdictions (table 3.8). Food premises licensing has been replaced by a notification system in New South Wales (see chapter 5 of the companion volume, *Business licences and regulation reform*). For Canada, it is assumed that the bakery does not operate outside its home province. In Malaysia, regulations made under the *Control of Supplies Act 1961* require bakeries to apply to the Controller of Supplies for a written permit to use goods required for a bakery.[5]

The international ranking of licences and applications for retail bakeries is similar to that for the minimum numbers of licences and applications.

Appendix A contains a full listing of these licences (table A.6).

Table 3.8 Numbers of licences and applications required by a retail bakery, selected countries

Country	***Australia***	*Canada*	*Japan*	*Malaysia*	*New Zealand*	*United States*
System of government	***Federal***	*Federal*	*Unitary*	*Federal*	*Unitary*	*Federal*
Location	***Typical state***	*British Columbia*		*Selangor*		*Wash'ton State*
			Minimum requirements (see table 3.5)			
Minimum licences	**8–9**	11	14	9	8	10–11
Minimum applications	**7–9**	6	14	9	7	5–6
			Special requirements			
Food hygiene	**2**	1	3	2	1	3
Shop registration	**0–1** [a]	–	–	–	–	–
Other	**–**	2	1	–	–	–
Total additional licences	**2**	3	4	2	1	3
			Total requirements			
Total licences	**10–12**	14	18	11	9	13–14
Total applications	**9–12**	9	18	11	8	8–9

a Victoria, Western Australia and the Australian Capital Territory have no shop registration.

Sources: See appendix A.

[5] Malaysian *Control of Supplies Regulations 1974*, r.18 and Part IV of the Schedule. Only bakeries producing bread loaves, other then French loaves, weighing between 200g and 1000g have to comply.

3.3 Business attitudes and compliance costs

The BIE surveyed businesses in Australia and overseas for comments about the licences affecting them, as well as for details about any additional expenditure recently incurred in order to comply with licensing standards. Questionnaires were sent to representative businesses and when clarification was needed selected respondents were interviewed.

The responses should be interpreted carefully. It is difficult to know how representative the survey responses are. In particular, the number of firms surveyed was limited (see appendix B) and, because many had been established for some time, land use, building permit and initial licence issuing delays may be inadequately represented. Also, the estimates of compliance expenditure may be overstated because some expense would have been incurred even in the absence of the licence. Moreover, the burden of licensing tends to be readily identifiable because it is borne, in the first instance, by licensed businesses. The benefits are often more difficult to measure and, even if sizeable in aggregate, may be spread thinly over the whole community. Nevertheless, from the limited objective data available it is clear that there are very wide variations in the regulatory experiences of businesses.

3.3.1 Australia

Responses from the BIE survey of Australian case study businesses are discussed below.

Foundries

Environmental issues were a major concern for most foundries surveyed. In one case, expenditure on minor equipment to meet environmental requirements amounted to over $30 000 and environmental consultant fees amounted to over $4000 over two successive years. Some foundries noted the time and expense involved in preparing environmental management plans and other record-keeping requirements. Frequent changes to regulations were also of concern.

These limited survey findings are consistent with those obtained in a recent survey of Queensland foundries by the Metal Trades Industry Association. Respondents who believed they would be required to enter an environmental management program as a licence condition estimated the cost of the program at $13 000 on

average. Estimates of the cost of new or upgraded equipment needed to comply with the *Environmental Protection Act (1994)* ranged from $5000 to $2 million.[6]

Meat and seafood processors

Australian seafood processors are subject to large numbers of licences and permits (see table 3.3). Respondents commented that there were too many licences, with an increasing paperwork and inspection burden. One processor identified eight government departments to which the business made payments.

Extra expenditure had been incurred by respondents in order to meet licence standards, including workplace safety, environmental regulations and food export inspection requirements. The preparation of a boiler and four batch cooker pressure vessels for inspection was estimated by one firm to involve five staff each performing 22 hours overtime per year. Extra time was required to meet Australian Quarantine and Inspection Service procedural requirements for maintaining export licences. Additional environmental impact statements had cost one firm $15 000.

Some seafood processors reported large compliance costs in the form of new treatment plants ($1.5 million in one case) or relocation of plant ($400 000 in another).

Retail bakeries

Retail bakery respondents provided some indications about the licensing concerns of small business. Bakeries complained about the rising administrative burden on employers and the duplication of licences between different government agencies. Bakery franchisors observed inconsistencies in the enforcement of hygiene regulations between different states and municipalities within each state.

Concerns about compliance costs tended to centre on premises hygiene standards, including painting (as much as $4000 for one respondent), light fittings ($1000), and fumigation and ventilation fans ($200).

Pharmacies

A survey of and interviews with pharmacies provided further insight into the impact of licensing on smaller businesses, this time in the services and professional sector. Respondents were concerned about the time involved in completing government

[6] Metal Trades Industry Association, *Summary of results of MTIA/National Cast Metals Council (Queensland) Survey of Environmental Compliance Costs*, 13 December 1995.

paperwork requirements, regulatory complexity and the level of fees of some agencies. Weights and measures inspections of medicinal weighing scales were noted as being excessively frequent.

Petrol service stations

Petrol service stations equipped with restaurant and car-wash facilities face an extensive and broad-based set of licences in the areas of dangerous goods, waste discharges and food hygiene. Some respondents urged the simplification and consolidation of licences. Another indicated that compliance costs for retailing takeaway food had resulted in increased retail prices.

3.3.2 New Zealand

Views on licensing were also sought from businesses in New Zealand. Responses resembled the concerns of similar businesses in Australia, except that taxation reporting requirements seemed to be more prominent and environmental controls were mentioned less frequently. However, comparisons of business perceptions need to be treated cautiously. For example, the introduction of the goods and services tax and the reform of the Accident Compensation Commission in New Zealand are still relatively recent developments and have been the subject of controversy. Respondents are likely to hold stronger views about these issues than about licensing and registration arrangements of longer standing.

Foundries

Instances of compliance expenditure by New Zealand foundries included the installation of environment control and waste disposal equipment. Record keeping costs associated with the goods and services tax, workers' compensation insurance and PAYE taxation were also mentioned.

Meat and seafood processors

The former practice of abattoirs dumping meat effluent directly into watercourses was initially replaced by treatment systems using settling ponds. The waste was then discharged into watercourses. The current method is to recycle the effluent as farm fertiliser. An Auckland meat processor commented that the resource consent issued by its regional authority required it to invest in additional treatment facilities to reduce the nitrate content of its discharges to water. It estimated that this cost NZ$90 000 in 1995.

The same meat processor noted a new emphasis in New Zealand on self-regulation and voluntary compliance. Plant operators need extra training to learn how to comply with new regulations. The proprietor believed that, while there is greater employee protection under the new system, it is more burdensome to administer. For example, the business had to pay NZ$9000 for its first inspection and it will require more inspections in the future. Older plants need considerable capital expenditure to bring them up to the new requirements.

Retail bakeries

As in Australia, New Zealand retail bakeries indicated that licensing frequently involved additional expenditure in continually upgrading premises. However respondents noted that goods and services tax, workers' compensation and PAYE taxation also imposed compliance costs.

Some respondents felt licences often failed to account for individual business needs. For example, measures appropriate to large supermarkets were applied to small shops. Others believed that there were too many licences and that, although the process of obtaining a health licence was simple, staff shortages or poor systems meant that there were delays in issuing licences. Some operators expressed a view that bakery licensing was simpler and more realistic in France because inspectors were ex-bakery or patisseries professionals.

Pharmacies

In the only positive response from any business received in any country, a New Zealand pharmacist indicated that licences may encourage higher quality performance. The paperwork involved with taxation was cited as a problem. As in Australia, weights and measures inspections appeared to be a source of concern.

3.3.3 Other international business attitudes to licences

Small surveys of businesses were also conducted in Canada (British Columbia), Japan, the United Kingdom and the United States (Washington State). These locations were chosen because of their concern with reforming licensing arrangements, or their importance to Australia as trade partners or competitors. Once again, care needs to be exercised in comparing international concerns about licensing.

Canada (British Columbia)

Compliance expenditure by Canadian retail bakeries seemed to be undertaken in broadly similar areas to those identified by Australian respondents. One bakery reported the installation of new flooring, painting and renovations to walls at a total cost of C$16 000. Seafood processors were concerned about the extent of licence overlap and felt that Canadian licensing arrangements were stringent. One respondent costed the introduction of a quality management program needed to comply with requirements for seafood processing at over C$20 000.

Japan (Tokyo)

Japanese foundries reported that licensing requirements appeared to be too complex, but there did not seem to be the same concern about environmental controls evident in Australia. However, seafood processors complained about the need to obtain pollution control licences, particularly non-odour filtration, drainage and exhaust gas requirements. Delays in obtaining permits were also of concern. Retail bakeries complained about the complexity of licensing application procedures, high renewal fees and an excessive number of licences. However, specific premises requirements were not highlighted (except for licences to erect signs over roadways).

United Kingdom (England)

One foundry quoted compliance costs of £300 000 to install new furnaces, dust extractors and similar equipment to meet environmental emission standards. Compliance costs for seafood processors were estimated to be high, as in other countries. For one firm health regulations were estimated to have caused the outlay of over £70 000 since 1991 and expenditure of a similar amount had been needed to satisfy the requirements for an export licence complying with European Community regulations. Spain and Portugal were mentioned as jurisdictions with less complicated fish processing requirements. Paperwork, including requirements under the *Data Protection Act 1984*, concerned United Kingdom bakeries.

United States (Washington State)

Respondents in Washington State had few comments to offer, suggesting that licensing was not a major issue. This may reflect the impact of that state's master licensing system. Some United States foundry respondents indicated that expenditure had been incurred or operating procedures changed in order to satisfy

waste discharge permits and noise standards. Seafood processors felt that licensing tended to be too complicated.

3.4 Summary

By international standards, the minimum number of licences and notifications needed by an Australian business is relatively small. Businesses in Malaysia, New Zealand and the United Kingdom require a similar number of licences and notifications to their Australian equivalents. The additional licences in Canada, Japan and the United States are of two broad types: business operating licences and licences involving employment conditions.

The existence of master notification and licensing systems in Canada and the United States (Washington State) means that these jurisdictions have the fewest minimum number of applications. Australia, Malaysia, New Zealand and the United Kingdom rank next, with Japan having the largest minimum number of applications.

Comparisons for the case study industries also suggest that Australia has relatively few licences and applications by international standards. This reflects comparatively larger numbers of licences for pollution control and hazardous substances in the United States and Canada, and for operating equipment in Japan.

The next chapter provides the groundwork for a closer comparison of licence approvals, standards and enforcement.

END OF CHAPTER

4 Developing benchmarks for licensing

Comparisons of the numbers of licences and applications provide some insight into the extent to which the notification aspect of licensing is used in different jurisdictions. Notification is one of the key features of a licence. Desirable design criteria for the other three key characteristics of a licence (identified in chapter 2), licence approval, standards and enforcement, are developed below. These criteria summarise best practice across a wide range of licensing activities. These features are used to compare selected licensing systems in different countries in the remainder of this report.

The criteria dealing with licence approval have been developed largely from international research concerning development planning and building control. Sources include numerous government reviews and industry proposals. Criteria having general applicability to most licensing approval processes have been highlighted. These general criteria may be used to develop more specialised benchmarks for particular licensing regimes, although this has not been attempted here.[1]

A wide body of literature has been used to develop the criteria for licence standards. Much of this focuses on the need for flexibility and reduced prescriptiveness. However, where it is costly for businesses to develop their own compliance procedures, it may be efficient to offer some firms the option of guidance in the form of potentially more prescriptive codes of practice. This may be particularly relevant for smaller businesses.

The desirable licence enforcement principles developed in this chapter reflect recent developments in enforcement theory. The criteria developed are those which, if adopted, would maximise compliance with licence standards at the minimum cost to the community overall. They relate to the range of enforcement options available, how they are applied (including the efficiency with which enforcement resources

[1] For example, BOMA (1996) and BOMA and BDW (1995) present a comprehensive set of detailed design criteria for planning and development control.

are used) and the scope for using market mechanisms as incentives to secure compliance.

4.1 Licence approval

Desirable or best practice design features for licence approval were developed on the basis of recent theoretical and practical studies of approval processes. These design criteria are set out in box 4.1. These features reflect the steps typically involved in obtaining licences and permits in more complex cases. Australian and overseas licensing arrangements are examined relative to these desirable features in chapters 5, 6 and 7.

Obtaining information about necessary licences is the first stage a business must go through in obtaining approvals. Systems that supply information are useful if they reduce the burden on business — in time and money — of finding out about licensing requirements. Ideally information about the costs of obtaining the licences, the standards to be complied with and the penalties for non-compliance, for example, should also be available.

Coordination of approval systems is an important aspect of efficiency. Master licensing systems replace multiple applications with a single application form to an agency which coordinates approval by the relevant licensing agencies. This approach may yield efficiencies when little discretion is involved in granting approval (for example, taxation and business name registrations).

In more complex cases, such as land use, building and environmental permit systems, integrated approval systems may be desirable. Under these, an existing licensing agency with appropriate expertise manages the application through the approval processes of other licensing agencies. However, the Perrott Committee (1993) noted that it is unreasonable and costly to require applicants to specify every aspect of a large project in advance. In general, integration should proceed to the point at which the costs of further integration outweigh the benefits. Flexibility can be retained by allowing approval to be granted for individual stages of a major project.

There should be opportunities for prospective licence applicants to consult with the relevant authorities before formally seeking approval so that necessary information and guidance can be obtained. This should help to reduce unnecessary costs for both applicants and licensing authorities.

Box 4.1 Desirable design features for licence approval

1 Information

The system should supply complete information about licensing. Facilities are needed to enable businesses to quickly and efficiently determine which licences are needed.

2 Master licensing systems

Where little discretion is involved in issuing licences or notifications (such as taxation and business name registrations), separate applications may be combined under a master licensing system.

3 Integrated approval systems

Where numerous approval authorities are involved, approval syste ms should be integrated to the point at which the marginal cost of further integration exceeds the marginal benefit to the community.

4 Pre-application consultation

Licence applicants should have an opportunity to consult with licensing agencies before formal application, to help clarify required standards and procedures. This should reduce compliance costs for business and administrative costs for agencies.

5 Third-party consultation

The need to inform affected third parties about an application to avoid unanticipated effects on third parties should be balanced against the need to reduce delays for business.

6 Dispute resolution

Disputes with the licensing agency over any conditions imposed on licences, or over its refusal to grant a licence, or with third parties need to be resolved efficiently, equitably and quickly.

7 Approval duration

The duration of the licence should provide an appropriate balance between certainty for the licensee and any flexibility the licensing agency may require to change the licence conditions if necessary.

8 Cost recovery

Licensing agencies should not be subsidised by general taxation revenues. However, there needs to be restraint on their operating costs if these are to be recovered from user charges. The existence or threat of competition in the supply of licensing services may help control costs and foster administrative efficiency, as may use of performance indicators. Audit mechanisms are needed to reduce the risk of abuses of power by commercialised licensing agencies.

Ideally, a licence approval system should require a level of advertising and consultation that balances the need to inform third parties who may be affected by a successful licence application with the need to reduce delays for obtaining approval.

Advertising requirements should be designed to prevent significant costs being imposed on individuals without their knowledge. Advertising procedures are usually closely linked with consultation, objection and appeal mechanisms.

The ability to resolve disputes efficiently and equitably is also a desirable feature of approval processes. Although appeals can cause delays for business, they may also result in improved outcomes. For example, the Perrott Committee (1993) concluded that most planning decisions are improved by the efficient and reasonable involvement of third parties. The Building Owners' and Managers' Association (BOMA 1994) stressed the need for balance and clear rules in public consultation and in appeals procedures in the context of land use planning approval.

Licensees may prefer licences to be of indefinite or very long duration, especially when the licence relates to capital-intensive businesses with lengthy pay-back periods. However, licensing agencies may prefer licences of much more limited duration which enable the number of licences to be changed or licence standards to be renegotiated in response to unanticipated developments. The optimal duration will vary between different activities and products because of differences in the level of capital investment, the nature and level of understanding of the problem requiring regulation, and the likelihood of technological developments relevant to the licence.

It is more efficient if the administrative fees charged by licensing agencies reflect the costs of issuing and administering licences. Licensing agencies should not be subsidised by general taxation revenues. However, where this applies, there is a danger that the costs to business become inflated by inefficiency on the part of the licence issuing agency. Incentives which address this potential problem include competition in the supply of licensing services. Publicly available performance indicators and benchmarks of administrative efficiency may also foster efficiency, although probably not as effectively as actual or potential competition.

For example, in some Australian jurisdictions private building surveyors are authorised to issue building permits in competition with each other and with municipal building surveyors. Stringent audit and complaint systems are needed to minimise any abuses of power by private commercialised licensing agents. For example, private agents may try to attract business through excessive leniency in applying standards, or may engage in corrupt practices.

4.2 Licence standards

Desirable design features for standards typically attaching to licences are described in box 4.2. These are also relevant to standards generally. These desirable features are used in chapters 8 and 9 to assess the relative quality of Australian and overseas licensing standards.

A major theme of international regulatory reform in recent years has been to reduce the prescriptiveness of regulation. This has meant focusing on outcomes (rather than technologies or processes). It provides firms with the flexibility to comply with standards in a 'least cost' way. This approach recognises that firms, rather than regulators, are in the best position to determine how desired outcomes should be achieved.

Box 4.2 Desirable design features for licence standards

1 Outcomes instead of processes

It is less costly for everyone if the choice of how to achieve the desired outcomes is made by the business rather than the regulator. However, it may be desirable to have optional codes of practice available to help businesses comply when it is costly for them to develop their own compliance procedures. This may be especially relevant to smaller businesses.

2 Management systems

Management systems, including quality and environmental management systems, may be a useful means of applying standards. Licensing agencies audit these management systems (which are focused on outcomes), instead of auditing or inspecting every product, waste or process of the business. Management systems may be tailored to the individual firm's requirements so that their influence on its activities reflects the extent of the problem being addressed.

3 Efficient allocation of standards

Standards involving limits or quotas should be allocated efficiently across businesses.

4 Coordinated application of standards

Coordination of the use of standards across jurisdictions increases the certainty and consistency of application of standards, especially for businesses operating in many different locations.

Regulations that specify technologies, even if it is 'best available technology', may tend to discourage innovation (Porter and van der Linde 1995). The Industry Commission (1995a), in the context of industrial safety, notes that overly restrictive and inflexible regulation can impede innovation, increase compliance costs and prevent firms from adopting a quality management approach. The Australian Manufacturing Council (AMC 1993), in discussing environmental regulation, also concludes that 'best practice' regulation is outcome-oriented and recognises that both technology and community standards change over time. However, when it is costly for firms to develop compliance procedures to ensure that outcomes are satisfying desired objectives, it may be more efficient for these businesses to be guided by optional codes of practice instead of developing their own means of compliance. This may be particularly relevant to smaller businesses facing high fixed costs in developing compliance systems.

For some businesses, introduction of management systems represents an important means of focusing on outcomes, ensuring that the level of control or stringency of any standard is related to the importance of the problem being addressed. In some countries, businesses may be required by licensing agencies to identify hazards, manage risks and regulate pollution discharges by developing their own management systems rather than simply being required to adopt a set of prescriptive controls.

The Australian National Food Authority (NFA 1994) suggests that prescriptive detail in food hygiene standards should be minimised, but should be sufficient to ensure safety. This more flexible approach is consistent with a system of regulatory control where regulators audit the existence of user-designed *quality management systems* (QMSs) rather than directly auditing business activities. The NFA also suggests codes of practice should be used to complement standards and to provide detail on how the requirements of legislation are to be met by firms. This is particularly useful to small business which may not have in-house expertise to determine how best to comply with performance-based standards. As QMSs are designed to address the quality of a business's goods and services, so *environmental management systems* (EMSs) are now emerging to regulate the ecological spillovers generated by industry.

The standards attached to a licence system may specify aggregate limits on the maximum quantity of a natural resource to be harvested or the maximum quantity of pollution to be discharged in a locality during a specified period. In these cases, the total quota needs to be allocated efficiently among the licensed businesses. For example, quotas to discharge waste or harvest a natural resource under licence are probably most efficiently allocated by being tradeable among licence holders.

Otherwise, individual limits may occasionally need to be renegotiated between licensees and the licensing agency because of changing circumstances, and this may be a more expensive procedure than allowing trading in quotas.

Finally, coordination of and consistency in the use of standards across state, provincial, regional and municipal borders can help reduce compliance costs for businesses operating in more than one jurisdiction. The criteria for approval should be clear and be applied consistently from applicant to applicant.

4.3 Licence enforcement

Desirable properties of licence enforcement activities are set out in box 4.3 and are used to assess Australian and overseas licensing enforcement strategies in chapter 10. They have been discussed extensively by Ayres and Braithwaite (1992) and Grabosky and Braithwaite (1993).

Box 4.3 Desirable design features for licence enforcement

1 Private reporting

An effective way to ensure compliance is to reward private reporting of breaches, if practical.

2 Hierarchy of public enforcement methods

A range of possible deterrents needs to be available to licensing agencies. Enforcement is more likely to be effective when the expected severity of the sanction matches the seriousness of non-compliance. This also means that the sanction should be more severe when the probability of observing contraventions is smaller .

3 Publish enforcement policies

Compliance is likely to be enhanced if businesses are provided with greater certainty about the application of sanctions. Publicly available enforcement policies or codes may help in this respect.

4 Targeted enforcement

Targeted enforcement allows the more efficient use of enforcement resources and can be expected to improve compliance.

5 Performance incentives

Market incentives, rather than command and control regulation, are likely to be more effective in achieving licensing objectives. For example, licensing or inspection fees may be lower for firms with superior records of compliance.

Private reporting of non-compliance is a relatively inexpensive enforcement option and should be encouraged if practical. This may be difficult if businesses do not regard contraventions of standards as damaging to the industry generally or if there are cultural objections to private reporting. The role of private enforcement through the legal system is more controversial.

Licensing agencies require a hierarchy of enforcement measures and sanctions which can be applied sequentially in the face of persistent non-compliance. At each stage, the deterrent should be proportional to the seriousness of the consequences of non-compliance. If the only sanction for non-compliance is licence revocation, threats to use it may lack credibility. The deterrent reflects the expected severity of the sanction, which depends on the size of the penalty and the probability of a contravention being detected. As the probability of observing contraventions declines, the penalty should become more severe (Becker 1968).

Publishing enforcement policies and codes is becoming increasingly popular among licensing agencies. This provides business with greater certainty about the consequences of non-compliance, the circumstances in which particular penalties will be applied, and the scope for businesses to contest enforcement decisions.

Enforcement resources should be employed efficiently. This may mean that enforcement activities should be targeted towards areas of high risk or persistent and wilful offenders. In some cases, firms exhibiting superior levels of compliance may be rewarded with less frequent inspection or auditing activity.

Given the administrative cost of operating a licensing system, the use of market mechanisms where practicable is also desirable as these are more likely to be effective than command and control regulation. These market incentives include performance-related fees.

4.4 Summary

A set of desirable design criteria for licensing systems which can be used to benchmark specific Australian and international licensing regimes was developed in this chapter. These criteria apply to licence approval processes, the standards attached to licences and licence enforcement strategies.

Licensing approval criteria are: providing information to applicants; integrating and coordinating approval processes; consultation before and during the approval process; an appropriate level of third party consultation resolving disputes efficiently and equitably; ensuring that approval duration is appropriate; and ensuring that licensing agencies are subject to competitive pressures. Important

criteria for licence standards are focusing on outcomes rather than processes; using management systems where appropriate; efficiently allocating limits or quotas among firms; and coordinating the use of standards. Best practice licence enforcement involves encouraging private reporting of licence breaches (if practical); using a hierarchy of enforcement methods; publishing enforcement policies; targeting enforcement; and using performance incentives.

The remaining chapters of this report will use these criteria to determine how Australian licensing arrangements compare with their overseas counterparts.

END OF CHAPTER

5 Licence approval: information and integration

The next three chapters include international comparisons of aspects of the licence approval process. Examples are drawn from the following major areas of licensing:

- land use planning or development permits, which represent permission to use land and buildings for business purposes;
- building permits, which provide consent to construct premises; and
- environmental licences, which allow businesses to discharge contaminants.

Issues involved in pre-application consultation with licensing agencies, consultation with affected third parties and the resolution of disputes involving applicants, third parties and the licensing authority are discussed in chapter 6. The certainty of the duration of approval as well as the efficiency of approval agencies are discussed in chapter 7.

This chapter deals with the first three licence approval design criteria (see box 4.1): information, master licensing and integrated approval. The availability of information about licences, permits and approvals in Australia and overseas is compared in section 5.1. In section 5.2, the discussion shifts to the process of applying for a licence, and examines the extent to which master licensing systems are used in Australia and elsewhere. Section 5.3 contains a discussion of the integrated approval systems used where more complex approval processes are involved.

5.1 Information about licensing

New businesses need to know whether any licences or notifications are required for their proposed activities. Finding out which licences are required can be time consuming. A licence information service can be of considerable help to a new business by providing coordinated information about licensing requirements in one location.

5.1.1 Licence information services

Although the nature of information about licensing requirements and how it is made available to businesses varies greatly internationally, many countries are improving their licensing information arrangements.

At the simplest level are services such as the New Zealand Department of Internal Affairs' *Government within reach program*, which is designed to improve the interface between government and the community. This program is based on the *Information Queensland* service which provides a single telephone number for all Queensland state government services. The operator assists with general enquiries and transfers the caller to the correct state government department. A *Regulatory yellow pages* containing licensing and regulatory information is also planned in New Zealand to reduce search costs for new businesses.

New Zealand does not currently produce comprehensive guides to setting up a business. In contrast, the Ministry for Small Business in British Columbia in Canada supplies a *Business start up kit* containing information about basic requirements and the most commonly used application forms. The Delaware state government in the United States supplies a *Small business start-up guide* with information about taxes, sources of finance and occupational licences and directories to Delaware and local government agencies. The Malaysian Industrial Development Authority produces a listing of licences and approvals required by manufacturing firms.

Examples of more sophisticated software-based information systems include the Australian *Business Licence Information Service* (BLIS, see box 5.1) and the Washington State *Master License Service* (MLS) in the United States (see box 5.2 below). Both services can provide customised licensing information for prospective businesses. Moves towards a master licensing system are proceeding in Ontario and British Columbia in Canada (see section 5.2).

An independent assessment of the Australian BLIS estimated that in 1994 the service cost just under $1.9 million annually, including the private costs of enquirers, but that it resulted in annual benefits of around $22.5 million, a net benefit of around $20.6 million (Price Waterhouse, 1994). According to Price Waterhouse, the benefits comprised:

- cost savings to enquirers in the form of savings in time and additional telephone calls; and
- cost savings to licensing agencies and departments (including reducing telephone calls to the wrong agency).

In the study, the estimate of the annual benefits was calculated on the basis that clients would save 4.9 hours in search time by using BLIS.[1] This time was estimated from a telephone survey of 'a sub-group [17 professional business advisers and 20 other BLIS clients] of respondents to the mail-out BLIC [Business Licence Information Centre] users survey' (Price Waterhouse, correspondence dated 10 May 1996). Based on this sample and assuming an average cost of around $42 per hour and around 106 000 callers, the total saving was valued at around $21 million.

However, other information from the Price Waterhouse study suggests that these estimates of the net benefits of the service may be optimistic. A mail-out questionnaire survey was also conducted as part of the Price Waterhouse study. The sample comprised 208 BLIS clients and 272 newly-established businesses serving as a 'control' group. One of the survey questions concerned the time spent obtaining information about licences and permits.[2] The responses are shown in table 5.1.[3]

Table 5.1 Time spent obtaining information about licences and permits, BLIS clients and control group

Amount of time spent obtaining information about licences and permits	*BLIS clients (per cent)*	*Non-BLIS clients (per cent)*
Less than 1 hour	21	28
1 hour to less than 2.5 hours	21	18
2.5 hours to less than 3.5 hours	9	3
3.5 hours to less than 4.5 hours	12	7
4.5 hours to less than 5.5 hours	7	5
5.5 hours to less than 10.5 hours	13	16
10.5 hours or more	18	23
Total	**100**	**100**

Columns may not add because of rounding.

Source: Price Waterhouse (1994) and correspondence from Price Waterhouse on 10 May 1996.

[1] This was based on three and a half hours for professional business advisers (around 10 per cent of all enquirers) and five hours for other users (the remaining 90 per cent).

[2] Statistical tests of the data in this survey shows that these two groups experienced a significantly different pattern of search time for licence information. Contingency table tests indicated that the distributions of responses by time spent (in each column of table 5.1) were not independent at the 5 per cent level using a chi-squared test statistic. See W. Mendenhall, J.E. Reinmuth and R. Beaver (1989), *Statistics for management and economics*, 6th edition, PSW-Kent, Boston, pp. 878–881.

[3] The data published in Price Waterhouse (1994) contained a minor error. Price Waterhouse rectified the problem for the BIE (correspondence dated 10 May 1996).

Assuming that the mean time spent by respondents who indicated '10.5 hours or more' was 20 hours, the average time saved overall is just under 50 minutes.[4] This is considerably less than the 4.9 hours used in the calculations of annual benefits based on the smaller sample. Using this alternative estimate of time saved implies cost savings of around $3.8 million. Given that the service was estimated to cost $1.9 million, this estimate suggests that the BLIS supplies a net benefit of only around $1.9 million annually.

The services provided by the BLIS are free. However, even if the service delivers a net benefit to the community, this does not rule out the possibility that a fee should be charged for the service.[5]

Box 5.1 Australian Business Licence Information Service

The Business Licence Information Service (BLIS), is a joint Commonwealth and state and territory initiative. It provides a free first-stop electronic register of licensing information to enable businesses to quickly identify the Commonwealth and state or territory licences necessary for their particular business. Queries are made by telephone and a customised package of information is forwarded to callers.

In 1995, BLIS centres were estimated to deal with around 110 000 inquiries annually,[6] providing written responses to over 80 per cent of callers. The findings of a Price Waterhouse evaluation of the BLIS found that 81 per cent of those surveyed rated BLIS as exceeding their expectations (Price Waterhouse 1994). The then Government announced a $2.9 million package in *Working Nation* that extends BLIS until 1997-98 and provides funds to develop it further.

Joint initiatives with the states and territories are under way and focus on the collection and integration of local government licences and other regulatory information. Pilot projects include:

- an expanded system in Tasmania that contains all local, state and Commonwealth licence requirements;
- the development of an integrated approvals package for South Australia's aquaculture industry; and
- the integration of land use planning and local government information in BLIS in the Northern Territory.

[4] Price Waterhouse informed the BIE that they did not use the data gathered from this survey question as it was 'not only strongly counter intuitive but also contradictory to the outcomes of a previous relevant study'. Price Waterhouse concluded that the mail-out survey format had resulted in respondents not considering their response to this question in sufficient detail (Price Waterhouse, correspondence dated 10 May 1996).

The Washington MLS charges a small fee (US$5.40 per enquiry in 1993) for a *personalized licensing packet* based on a prospective applicant's description of the proposed business operation.[7] It contains a guide sheet indicating the state licensing requirements needed by such a business, a master licence application form and any other forms needed to fulfil basic state requirements.

In addition to providing licensing information, the Washington MLS coordinates the issuing of licences (see section 5.2). The overall information and licence issuing service is self-financing. The fees for master licences, their renewal and delinquencies are deposited in a master licensing fund which can only be applied to the MLS. Fees for *personalized licensing packets* are deposited in the state government's general fund.[8]

In the United Kingdom, the Deregulation Task Force (DTF) recommended that the government investigate the feasibility of a 'single information point' to provide prospective business people with details of 'all relevant licensing and regulatory requirements' (UK DTF 1995, p.8). The latest DTF report noted that there are over 250 different business licences in the United Kingdom.

The separate arrangements for pay-as-you-earn (PAYE) tax contributions, administered by the United Kingdom Inland Revenue, and national insurance contributions operated by the Contributions Agency (CA) were strongly criticised. They were described as a 'massive and unnecessary burden for employers' and a 'wasteful duplication of government resources' (UK DTF 1995, p.7). The report recommended a merger of the field forces of the Inland Revenue and the CA to reduce the time needed to cope with workplace taxation, and to allow a closer alignment of the rules of the two systems.

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[5] This is an issue beyond the scope of this report. The issue of how the service would be priced depends on the extent to which the information it supplies can be passed on by enquirers to other prospective businesses as well as the costs and benefits of the service.

[6] Information supplied by AusIndustry, 22 March 1996.

[7] This corresponds to roughly $7.00 at prevailing exchange rates. The average cost per enquiry of the Australian BLIS was estimated at $17.83 in 1994 (Price Waterhouse 1994). Reasons for this difference are not clear. The Australian service may be more comprehensive, or the Washington information service may be more efficient or may not be recovering all its costs (although the overall information and approval service is self-financing).

[8] Individual licence fees levied under the MLS are also deposited in the general fund and are then allocated to individual agencies (Washington State *Business License Center Act 1977*, s.19.02.075, 080, 085 and 210).

The report also recommended that eventually (UK DTF 1995, p.9),

> …there should be a single notification for tax purposes for new businesses. Instead of making businesses notify separately with the Inland Revenue, CA and HM Customs and Excise, just one telephone call would put the business in touch with all three agencies and lead to the issue of a combined starter pack.

The Irish Task Force on Small Business recommended establishing a national business information system geared to the needs of small business. The system is envisaged as providing basic information and advice on state programs and availability of finance as well as official regulations. The task force recommended including a telephone helpline and a walk-in facility in the system (Ireland MfCT 1994, pp. 148–9).

5.2 Master licensing systems

Master licensing systems may be useful in reducing the number of applications (and renewals) required. They are becoming increasingly popular, and developments in a number of jurisdictions are discussed below. They are more likely to be successful when approval is relatively simple, or merely involves registration of the details of the business. The most comprehensive system examined in this report is operated in Washington State in the United States. Other jurisdictions discussed are Ontario and British Columbia in Canada, the United Kingdom and Queensland and New South Wales in Australia.

Washington State, United States

In 1976 the State of Washington piloted a program designed to test the feasibility of developing a consolidated application and renewal system for grocery and grocery-related business licences. The system was intended to reduce the number of application and renewal forms and introduce a common renewal date for a number of separate licences. By the early 1980s the Master License Service had developed. Its main features are:

- a common registration number, the *Unified Business Identifier* (UBI), used by several state agencies to identify each business, and issued on application for a master licence;
- a one-stop shop for businesses to acquire the many state licences needed to conduct business, including a consolidated application form;

- storage, retrieval and exchange of licence information by state agencies, with due regard to privacy legislation;
- an inventory of licences, registrations and permits combined with a licence information service; and
- a trade name registration service (a prerequisite for a business to initiate litigation in the state).

Nevertheless, the authority for determining whether a requested licence is issued remains with the agency legally authorised to issue the licence. The requested licences, when granted, become *endorsements* on a single *Registration and licences document*. While over 70 licences are included in the system, a large number of these relate to liquor control.

More detail about the operation of the system is contained in box 5.2. The number of licences which can be obtained from selected agencies through the Master Licence Service are shown in table 5.2.

Box 5.2 Washington State Master License Service

New businesses register with one of four state agencies using a three-page *master business application* and making a single payment. Businesses can obtain a number of licences using a single application form. More than 70 licences from 11 state agencies can be obtained through the Master License Service.

Supporting information is required for many of these licences. The service can provide a personalised licensing packet including the necessary forms and information. Recent estimates indicate that there are over 250 000 master licence accounts and the service receives over 240 000 telephone enquiries annually.

Source: Information provided by Washington State Department of Licensing.

New businesses complete a three-page *Master Business Application* and make a single payment at a branch office of any of four state agencies or through the mail. They receive a UBI when the application is received and, after processing, a Registration and Licences document which lists the endorsed licences.

Additional information may be sought for more complex licences. Completion of separate forms for each agency participating in the system is unnecessary. The Master License Service acts as the agent for licence and notifications renewals.

Table 5.2 Washington State Master License Service, selected agencies

Agency	*No. of licences*
Employment Security Department (unemployment insurance)	1
Department of Labor and Industries (industrial insurance and employing minors)	2
Department of Licensing (trade name registration)	3
Liquor Control Board (various retail, non-retail, club and interstate common carrier liquor licences)	37
Lottery Commission	1
Board of Pharmacy (shopkeeper licence)	1
Department of Revenue (tax registration and various cigarette retailing and wholesaling licences)	5
Secretary of State (renewal of corporate licence)	1
Department of Ecology (used battery collector and waste tyre storage and carrier licences)	3
Department of Agriculture (various agricultural licences)	6

Source: Washington State DoLic (1993).

United States federal multi-media environmental planning

The US Environmental Protection Agency (EPA) plans to pilot a single environmental permit system for facilities which currently require multiple permits for discharges to air, water and soil (US NPR 1995). This initiative will involve the collaboration of licensees, the affected state governments and local communities.

Massachusetts, United States

A Permit Streamlining Legal Advisory Committee established by the Massachusetts Secretaries of Environmental Affairs and Economic Affairs reported in April 1995 (US EPA 1995). It recommended a number of application streamlining measures for environmental permits including:

- 'outreach' measures such as permit manuals, pre-application conferences, regional permit assistance offices and improved access for applicants to agency policies;
- approval coordination, including the use of a single point of contact, better coordination among different agencies issuing media-specific permits, and permit ombudsmen;
- uniform timeframes for each step in the approval process; and

- a master uniform reporting form to be submitted on a single annual date for all permits with an annual reporting requirement.

Maryland, United States

An *Environmental Permits Service Center* was opened in Maryland in December 1994. The Center is designed to provide businesses, local governments, community organisations and interested citizens with a consolidated environmental permits process (US EPA 1995).

California, United States

Environmental regulation in California is complicated by the large number of state and local government agencies. In 1995, the Californian government proposed the formation of *permit relief communities*, each of which would develop a single *compliance assurance plan* representing all state and local environmental requirements for its community. Businesses would need to comply with each community's compliance assurance plan (US EPA 1995).

Other United States jurisdictions

Environmental streamlining has been recommended or has occurred during the past three years in Alaska, Connecticut, Delaware, New York, Oregon, Pennsylvania and Texas (US EPA 1995). In many cases, one-stop shops and unified permit systems are involved.

Ontario, Canada

In May 1994, the Ontario provincial government began development of a *single window* registration service to enable new businesses to complete several registration processes at a single location.[9] This initiative has been implemented through the *Clearing the Path Project* which involved wide consultation with the private sector.

Beginning in late 1994, a new *Ontario Business Registration Access* (OBRA) software program was installed at various municipal Business Self-Help and land registry offices. This enabled unincorporated businesses to carry out staff-assisted

[9] The following information was supplied by the Ontario Ministry of Consumer and Commercial Relations, (8 January 1996).

business name searches and electronically complete applications for some of the most common notifications, namely:

- business names;
- employer health tax;
- retail sales tax; and
- workers' compensation.

Users were able to print and review their completed forms with a business consultant. A central telephone helpline was also introduced to support the system and integrated kits were provided for the use of applicants unable to travel to an office where OBRA was available.

In April 1995 the *Business Regulation Reform Act* was proclaimed. Its aim is to provide legislative scope to expand the service. Registration for health tax for the self-employed was added and payment by credit card offered. By October 1995, regulations passed under the act allowed applications to be electronically transmitted, eliminating the need for paper and signatures. The system was also expanded to accommodate incorporated businesses.

By late 1995, the system was processing 30 per cent of all unincorporated business registrations. The claimed benefits include reducing the search time for business names from four weeks to five minutes, and for any combination of the above five registrations from two hours to 20 minutes or less.

Negotiations were under way with Revenue Canada to enable new businesses to register a federal business number (see chapter 2) through the workstation.

British Columbia, Canada

The British Columbia government's *One-Stop Business Project* is intended to simplify business registration, filing of government documents and payments to government. The first stage is a proposed *One-Stop Business Registration* (OSBR), under which small businesses could register with multiple federal and provincial agencies at any OSBR office. Names, addresses and other common registration information will need to be entered only once. Initially, the scheme is targeting the inclusion of the following notifications handled by four different agencies:

- social service tax (provincial);
- hotel room tax (provincial);

- declaration of partnership or proprietorship (provincial);
- workers' compensation registration; and
- business number accounts used by Revenue Canada (federal) (discussed in chapter 2.)

The program will also involve simplifying and amalgamating government forms, computerised filing of applications, single business identifiers and scope for consolidating certain government payments.

United Kingdom

The United Kingdom Deregulation Task Force recommended that if its proposal for a 'single information point' for new businesses is feasible (see section 5.1), the service could eventually be extended to 'make it possible for start-up businesses to register or notify in one place for those requirements common to all businesses' (UK DTF 1995, p.8). It also recommended a single notification requirement for tax purposes.

The current United Kingdom government also intends to establish an integrated, one-stop *Environmental Agency* combining the functions of Her Majesty's Inspectorate of Pollution, the National Rivers Authority and the waste regulation functions of local authorities (Victorian DBE 1995).

The Netherlands

In March 1993 separate environment protection licences in the Netherlands were replaced by an integrated licence. The new licence includes requirements for noise, odour, traffic and routine discharges to air and water, and measures to prevent major accidents (Victorian DBE 1995).

Queensland, Australia

The Queensland government has commissioned a review of current business licensing practices. The report is expected to highlight recommendations for streamlining and simplifying the administration of the high volume of state government licences and permits.[10]

The principal elements of the recommendations are expected to be:

[10] Information from Queensland Department of Tourism, Small Business and Industry, 21 March 1996.

- Development of a *basic business licence* that combines the three existing licences and permits most commonly required by small business (business name registration, workplace registration and workers' compensation);

- Establishment of a *one-stop shop* for business licence processing, to provide a single point for licence application lodgement and payment for business licences. Initially, this shop will process the basic business licence but it is planned to systematically extend the system. This may eventually lead to the inclusion of certain Commonwealth licences and permits.

- Redesign of government forms to ensure simplicity and ease of completion.

The applications for registration of a business name and registration of a workplace have already been consolidated so that only one application form is now necessary. At this stage it is not proposed to extend the service beyond state government licences.

New South Wales, Australia

In recent years efforts have been made in New South Wales to implement a master licensing system — the *Business Licence Administration Service* (BLAS) — as part of a government-wide process of business regulatory reform. The BLAS was intended to provide a single point of contact for businesses using standardised application forms. However, since its development commenced, the project has suffered from systems design problems and significant delays. Sturgess recommended that the master licence project be brought under the control of the Cabinet Regulatory Reform Committee.[11] As part of the master licensing project, a pilot master licence scheme was introduced in 1991. It covered the five most common licences required by service station operators in New South Wales. Although development of more broadly-based master business licences has now been suspended, the service station master licence will continue to operate.[12]

Australian Capital Territory

As mentioned in chapter 1, the Australian Capital Territory Red Tape Task Force recommended that opportunities be taken to reduce the number of business licences

[11] Department of Consumer Affairs, *Annual Report* 1993-94, pp.40-41.

[12] The service station master licence consolidates into one document a number of individual licences which were previously issued separately. These include licences to retail petroleum products, to retail tobacco, to keep dangerous goods, and licences for motor vehicle repairers and authorised inspection station proprietors.

and a pilot scheme for a master licence system for restaurants, service stations and hairdressers be explored.

5.3 Integrated approval systems

Integrated approval may be appropriate when approval involves considering complex issues and requires relatively wide consultation and referral to other licensing agencies and third parties. Integrated approval systems have been advocated for land use and building control arrangements.

5.3.1 Integrated land use approval systems

Legislation associated with land use control is usually enacted by national (or, in federal systems, state or provincial) levels of government. However, the interpretation and administration of that legislation often falls to local or regional government authorities. Each sphere of government may control different types of development and the different spheres may operate independently, applying different criteria to approval of the same development. Where the division of responsibility between licensing agencies is not clear cut, the risk of duplication and application of inconsistent standards is increased. This may contribute to uncertainty for business and the community.

Land use approvals systems tend to have five common features or stages: application, consultation, assessment, decision and implementation. Each application or stage of application usually involves different professional and technical groups such as surveyors, town planners, electricians, engineers, builders and health technologists. There may be scope to improve coordination between these groups at the various stages of the approvals process. In New South Wales councils, for instance, the merging of planning, building, health and engineering staff units is reducing the division between disciplines and encouraging an integrated client-focused approach to assessment and monitoring of approvals.[13]

Time and cost savings could be achieved through adopting joint application procedures (for example for building and development applications) where approval is required under more than one piece of legislation. Application requirements could be standardised and covered by a single application form and decisions communicated in a single notice. Local councils could also work through approval options with intending applicants and encourage the form of application best suited to an applicant's proposal. Rationalising application procedures to achieve a greater

[13] New South Wales DoP (1993), p.14.

degree of integration may also have the benefit of encouraging licence issuing agencies to review their own processes.

Australia

In Australia, the Commonwealth Office of Local Government's *Local Approvals Review Program* (LARP), is attempting to encourage integration and coordination of approval processes at local government level (box 5.3). Since the LARP initiative, Australian states have reviewed and revised their legislation to achieve more outcome-oriented and integrated approvals processes. There is evidence in several states that information guides and simplified application forms, registration and administrative procedures can speed the processing of applications.[14]

Box 5.3 The Local Approvals Review Program

LARP commenced in 1989 and aims to encourage an integrated or one stop shop approvals system at local government level. The program proposes that separate approvals, criteria and assessment procedures be replaced by a unified system of application assessment and approvals. A unified system makes it possible for a single decision to be given for any form of development. Objectives include:

- improved quality of decision-making and outcomes;
- more accountable decision-making;
- increased certainty in the decision-making process;
- a simplified approvals process by eliminating duplicated administrative processes;
- better consultation procedures;
- better assessment of environment, social and infrastructure amenity; and
- cost savings through eliminating duplication and reducing delays.

Source: Local Approvals Review Program 1992, *A Manual for reforming Local Government approval systems*, Commonwealth Office of Local Government.

New South Wales has streamlined its legislation. The procedures for granting development and building approval are now similar to each other and allow local councils to operate them in an integrated way.

The previous Queensland government released an exposure draft of the *Planning, Environment and Development Assessment (PEDA) Bill* for public comment. The bill aims to integrate development and building approvals into one development assessment process (box 5.4). The new state government has indicated that it will

[14] See, for instance, NSW DoP 1993.

convene a task force to review the proposed legislation and that it expects to have a final version before the Queensland Parliament before the end of 1996.

The Perrott Committee in Victoria rejected the implementation of an integrated planning system. It argued that such a system would probably require a detailed review of, and changes to, all relevant legislation, which would take many years, would be without firm benefits and would create unforeseen problems. It particularly rejected the integration of the planning and building systems. The committee argued that obtaining building approval was not a problem and complications may arise if Ministerial approval were needed for land use but a council had to decide the building approval. Moreover, local government was not considered to be an appropriate body to handle all development approvals and, in any case, it was not a priority for applicants 'who often cannot or are not prepared to, and should not be forced to, fully document a project front up' (Perrott Committee, 1993, p.40).

Box 5.4 Queensland's integrated development assessment system

The Queensland draft *Planning, Environment and Development Assessment Bill* integrates hundreds of different state-level approvals, permits and licences into a single comprehensive development assessment process. It consolidates the *Local Government (Planning and Environment) Act*, the *Building Act* and *Standard Building Law* and parts of the *Sewerage and Water Supply Act* and *Regulations*. It also replaces the development assessment provisions of *the Integrated Resort Development Act* and the *Mixed Use Development Act*.

The integrated development assessment system (IDAS) established by the bill will enable relevant agencies to ensure development is consistent with resource management objectives. All development applications could be integrated and assessed through a single streamlined process managed by one agency (for example, a local council) designated as 'resource manager'. This aims to eliminate duplication of approvals where the resource manager is not the agency charged with approving development. Licences now issued by separate development authorities under the *Environmental Protection Act* would be issued as part of a development approval or simultaneously with it.

The proposed changes will require decision-makers and regulators to focus on assessing and managing the effects and objectives of development and what they are trying to achieve. Developers will have flexibility in how they achieve the requirements.

The new Queensland government has announced that, following a review of the draft legislation, a final version will be put before Parliament by the end of 1996.

Source: Queensland Department of Housing, Local Government and Planning, *Queensland Planning, Environment and Development Assessment Bill, Exposure Draft for Public Comment*, May 1995.

In particular, the Perrott Committee noted that relatively uncoordinated approval systems can be managed by authorities in such a way as to provide applicants with better information about any approvals and to allow applicants to decide the sequence in which to seek approvals.

It is likely that integrating a fragmented approval system will be time-consuming. For example, the Queensland *PEDA Bill* has taken over four years to develop. While there are concerns about the implementation of IDAS among developers and others, they do not appear to result from its integrated nature.[15]

Staged approval processes (discussed below) may effectively address many of the Perrott Committee concerns. BOMA (1996, p.51) has urged that each state and territory develop an integrated approval system which allows applicants to obtain staged approvals in any sequence. This system avoids the need for every detail of a large project to be specified at the outset. There is no reason why integrated approval systems cannot accommodate staged approvals, and Queensland's proposed system does so by allowing *preliminary approvals* to be granted.

Stenning has suggested that the concept of integrated approval could be applied in Australia to extend the Business Licence Information Service (BLIS) into a *Business Activity Approvals Package*. The package would provide each new business with a comprehensive approvals package for its nominated industrial activity. The BLIS already contains information about licences clustered around separate business activities. Its use by all states and territories means that it could provide a nationally uniform platform for progressing licensing and approval reform. The package would involve the use of delegations within and between different levels of government, centralised licence payment facilities, the use of a single business account and the rationalisation of application forms and procedures.[16]

Overall, the integration of approval systems should proceed until the costs of further integration outweigh the benefits. This is likely to mean that the best balance and greatest flexibility is provided by a more integrated approval process which also provides developers with an option for separate, staged approval in appropriate circumstances. Ultimately, integration of approvals through legislation need not guarantee better service. Management of the approval process may be more

[15] Concern has been expressed publicly about state government veto rights and security of development rights ('Developers oppose one-stop planning bill', *The Australian*, 2-3 September 1995), compensation for rezoning ('Mixed views on new planning laws', *Business Queensland*, 15 May 1995) and lack of coordination of information requests (John Brannock, 'Planning law needs more public input', *Business Queensland*, 19 June 1995).

[16] Personal communication from David Stenning, 24 May 1996.

relevant. Management and administration issues in this context are examined in chapter 7 (especially section 7.2.1).

Washington State, United States

The Washington State Governor's Task Force on Regulatory Reform has developed recommendations to integrate the procedures for comprehensive land use planning and development regulations with procedures for environmental impact review and shoreline planning under three different statutes. The Task Force also recommended the streamlining of permit review procedures and eliminating duplication in reconsidering decisions (US EPA 1995).

There has been ongoing piloting of a joint aquatic resource permit application which provides a single application form for six different types of federal, state and local permits related to projects in shoreline areas.

Washington State has also been examining the feasibility of combining air, water quality and hazardous waste permits for a single facility into one permit. The proposal is being piloted with volunteer businesses (US EPA 1995). Legislation has also been proposed to enable all required state and local government environmental permits to be coordinated through a *lead permit manager* at the applicant's option. This is an example of a highly flexible integrated approval process.

5.3.2 Staged land use or building approval

Approval systems can deliver more efficient outcomes for larger projects without the need for integration. Most planning and building approval systems offer scope for approval to be granted for separate stages of a major development project.

In New South Wales, planning and building approval can be issued subject to a requirement for further approval (*staged approval*).[17] For example, a permit may be issued for the external 'envelope' of a multi-storey building as the first part of a staged approval, with its internal configuration considered in later applications (NSW DoP 1993). Moreover, the planning and building approvals staging procedures in New South Wales are similar, so that an application can be dealt with in an integrated way at each stage of the process.

The Victorian planning legislation does not specifically provide for staged approvals. However, there is sufficient flexibility in planning permits to allow

[17] New South Wales *Environmental Planning and Assessment Act 1979*, s.91AB and New South Wales *Local Government Act 1993*, s.96.

approval to be granted for a large-scale subdivision, for example, with requirements for staging of development and for further detailed plans to be submitted as development proceeds.[18] The Victorian *Building Act 1993* also allows permits to be issued for 'a stage of the proposed building work' (s.20).

The proposed Queensland *Planning, Environment and Development Assessment Bill* allows *preliminary approvals* to be issued. A developer might request preliminary approval for a major project before making further expenditures on the detailed plans needed for a development permit. The preliminary approval might involve approval of the change of use of a site on the basis of a site plan covering the form and bulk of the proposed structures, traffic circulation and landscaping (Queensland DHLGP 1995).

Although the New Zealand *Resource Management Act 1991* does not appear to explicitly provide for staged development, a resource consent for land use could be made conditional on the grant of a further consent.[19]

Staged approvals for building work are allowed under the New Zealand *Building Act 1991*.[20] The legislation establishes the local council as a one-stop shop for all aspects of building approval (except some minor aspects of electricity and gas connection). Developers of commercial and industrial buildings need no longer submit plans and specifications to separate authorities such as the fire brigade and occupational safety agencies.

5.4 Summary

This chapter examined two important features of licence approval processes in Australia and overseas: information provision and integration of approval processes.

Information. In international terms Australia is relatively advanced in the provision of interactive licensing information services for business. Of the locations surveyed, only Washington State operates a similar comprehensive service and, even then, it does not extend to federal requirements. The Australian system relies on an implicit

[18] Information from Municipal Association of Victoria, 12 February 1996.

[19] S.108(2) states that 'Except as expressly provided in subsection (1), the matters set out in paragraphs (a) to (g) of that subsection do not limit the conditions on which a resource consent may be granted, and subject to any regulations, a resource consent may be granted on any other condition that the consent authority considers appropriate'.

[20] S.33(3) states that 'A series of applications for building consent may be made in respect of stages of the proposed building work'. Large residential developments are often carried out in stages to match customer demand. Staged approvals for building work are not common, according to Dave Walker of the Wellington City Council (private communication 5 December 1995).

subsidy from taxpayers at large. While an independent study indicated that it delivers net benefits to the community, calculations by the BIE suggest that, under plausible assumptions about the time saved by users, than benefits may not be as large as claimed. The Washington State service is funded, at least in part, through a charge on users.

Master licensing. Washington State has the most comprehensive master licensing system of any of the jurisdictions surveyed. Separate applications and renewals are not required for a large number of licensing agencies. There has been substantial progress in streamlining and unifying environmental permit processes by various US state governments. Master licensing systems are developing in some Canadian provinces, with Ontario adopting a system which uses modern information technology to achieve efficiencies.

In Australia, there has been only limited adoption of the master licensing approach. Queensland and the Australian Capital Territory have been examining the concept most recently.

Integrated approval. In the area of land use planning and building control, an advanced integrated approval system is under consideration in Queensland. Victoria has favoured better coordination and management of separate approval systems on benefit-cost grounds. New South Wales has streamlined its development approval processes. It is difficult to know which approach is likely to deliver the greatest net benefits to the community without a more detailed analysis than is possible in this report. However, while it is clear that these Australian jurisdictions have been and are addressing perceived deficiencies in their planning and development approval systems, overseas jurisdictions are also making progress in these areas.

Improved integration and coordination of licence application procedures can save businesses time and money. Where many licences are issued by numerous agencies and little discretion is involved, a central coordinating agency may usefully administer a master licensing system. In more complex cases, one approval agency may be designated as a lead manager of the application as part of an integrated approval process or business activity approvals package.

END OF CHAPTER

6 Licence approval: consultation

Expediting licence approval and ensuring that all relevant factors are taken into consideration in the decision-making process need to be balanced. This balance should be reflected in the consultative mechanisms incorporated into approval processes.

This chapter includes a comparison of consultative mechanisms in Australia and selected overseas countries. As land use planning and environment permits involve the most well-developed consultative procedures of all the licences discussed in chapter 3, these are used as the basis for comparison. International comparisons are made in terms of the fourth, fifth and sixth licence approval design criteria:

- pre-application consultation between the applicant and the authority before formal application is made (section 6.1);
- consultation with potentially affected third parties (section 6.2); and
- dispute resolution (section 6.3).

These design criteria are described in more detail in chapter 4 (see box 4.1).

6.1 Pre-application consultation

Unnecessary delays in processing applications for licences and permits — for example, because of the number of authorities involved, unclear procedures, or inefficiencies in the issuing agencies — can impose considerable costs on business and the wider community.

Pre-application consultation may help reduce both delays and the costs incurred by both agencies and applicants if the agency is prepared to provide guidance. However, agencies are understandably reluctant to make commitments before examining all relevant information about a development proposal. Pre-application guidance may, therefore, be limited to matters of principle. Many jurisdictions allow approval to be granted in stages. Staged approvals are discussed in chapter 5 (section 5.3.2).

In jurisdictions which use zoning systems, certificates or similar documents which describe the provisions of the planning scheme as they apply to any parcel of land, may be obtained. The pre-application consultative arrangements discussed here extend well beyond a simple statement of the potential uses of the land. They involve consideration by the relevant authority of a reasonably specific proposal. Arrangements in different jurisdictions are compared in table 6.1.

In both New South Wales and Victoria in Australia, arrangements are relatively *ad hoc*. The onus is on the applicant and the authority to engage in pre-application consultation if both parties believe it would be helpful. In New South Wales local councils are required to take reasonable steps to bring to the notice of an intending applicant any relevant regulations or local policy criteria affecting approval. Certificates which provide information about planning controls that apply to land are available from the relevant planning authority under the New South Wales *Environmental Planning and Assessment Act 1979* (s.149). These are usually obtained by purchasers and developers before lodging a development application.

In Victoria, the LARP program (see chapter 5, section 5.3.1) has developed guidelines for local councils. These recognise that the quality of assistance given to developers and the clear illustration of the rights and responsibilities of other participants are important in minimising delays caused by poorly presented applications. Checklists relating to planning permits, subdivision approval and building permits and setting out general or basic information requirements as well as the additional information needed by particular types of developments and any special local requirements can be supplied by local councils to applicants. As in New South Wales, developers and purchasers may obtain a planning certificate under the *Planning and Environment Act 1987* (s.199). This describes the provisions of the planning scheme which apply to a parcel of land.

In New Zealand, applicants for a land use planning permit (territorial authority resource consent) may request from the local council a *land information memorandum* (LIM). This provides information about the characteristics of the land (such as potential erosion and the likely presence of contaminants), about the existence of private and public stormwater drains, outstanding taxes, and about any consent, certificate, notice, order or requisition previously issued by the local council affecting the land or any buildings.

Builders and developers in New Zealand now obtain a *project information memorandum* (PIM) from the local council before applying for a building consent. This memorandum sets out all relevant information about the site — such as the location of underground cables, crossings, the presence of fill on the land and whether it is subject to subsidence or flooding — which is available to the council.

The Wellington City Council has also introduced *property reports* to complement the PIM. These contain photocopies of all building consents issued for the property and information about whether or not the resulting work was approved.[1] All these measures provide important information to developers. They should reduce the costs involved in searching for site-specific information and facilitate the application when it is lodged. Although there is a cost to the local council in supplying this information, there is also a public benefit from an improvement in the quality of applications and a decrease in the processing time involved. Also, by better coordinating the supply of information, the demand on the time of other agencies for information may be reduced.

For a fee, local councils in the United Kingdom will issue a formal decision about whether or not an existing or planned development needs planning permission. If planning permission is not needed, a *Certificate of Lawful Use or Development* is issued. This provides the same security from enforcement action as planning permission.

Table 6.1 Pre-application consultation, land use planning, selected jurisdictions

Jurisdiction	*Provision for pre-application consultation*
New South Wales, Australia	No formal procedures. For major developments, the state planning authority recommends that councils or state lead agencies consider bringing together all relevant parties and state agencies in focus groups to identify issues and develop a cooperative approach. Most councils now encourage pre-application consultations for almost all applications.
Victoria, Australia	The state planning authority recommends that applicants discuss proposals in detail with the responsible authority before lodging a formal application.
New Zealand	*Certificates of compliance* may be issued for permitted activities to provide certainty for developers. Any owner considering applying for a land use permit can apply for a *land information memorandum* providing information about the characteristics of the land. Any owner considering building work or applying for a building consent can request *a project information memorandum* containing information about the land and about the requirements of other acts.
United Kingdom	A developer can apply for a *lawful development certificate*. If refused, the developer can apply for planning permission or appeal to the Secretary of State. Informal consultation is also available.

Sources: Queensland DHLGP (1995); Victorian DoPD (1994); NZ MftE (1995); UK DoE (1994a).

[1] Property reports are particularly important for owners wishing to reinstate structures after earthquake damage. In Wellington, building permit data are available back to 1892. These are also useful for detecting unauthorised building work. However, it may be expensive to maintain archived records over this length of time.

6.2 Consulting affected parties

Land use planning systems are used here to examine advertising requirements. These requirements recognise the need to inform affected third parties of a licence or permit application. However, unnecessary advertising requirements add to development costs without providing any significant improvement in the quality of the approval process. Requirements to advertise applications for licences and permits, are discussed in this section as well as procedures for referring applications to other interested agencies for comment or approval.

6.2.1 Advertising of applications

Applications for land use are required to be advertised to provide people affected by a proposed development with an avenue of objection to possible unanticipated costs. This requirement, and the scope for objections or submissions, can delay the granting of a permit, particularly if agencies have a long statutory time limit to decide an advertised application.

Failure to inform potentially affected parties about a development may mean that significant unexpected costs are imposed on them, some of which may be irreversible. (On the other hand, an application may attract more objections simply because it is advertised more widely.)

Advertising procedures in different jurisdictions tend to be reasonably similar, especially for planning permits. They usually involve notifying adjoining owners and occupiers, other people who may be detrimentally affected, and other interested public authorities. Advertising in local newspapers may be mandatory or optional, along with a notice or sign on the site and letters to potentially affected neighbours.

Arguably, advertising should be confined to situations in which the application may cause material detriment to other parties. It would seem less necessary if no third parties are affected unless the authority considers the application to be of such a sensitive nature that consultation with wider interest groups is desirable. More controversial applications are likely to be advertised where the agency has discretion to do so.

There may be a tension between making detailed plans available for public scrutiny and preserving commercial confidentiality. For example, some businesses are concerned that detailed plans displayed by council could be used by competitors to commercial advantage.

In Victoria, the Perrott Committee (1993) concluded that advertising requirements were excessive. This led to changes in the planning laws to curb excessive requirements. These changes are gradually being implemented. In particular, the government stated:

> Minor applications will not require notice. For many routine applications, the requirement will be specified in the planning scheme. Councils will have discretion to set the requirement for other types of application. If councils unreasonably delay the setting of the requirement, an applicant will be able to give notice in accordance with a standard specification. (Victorian MfP 1993, p.17)

The impact of these new planning arrangements on advertising is not yet clear. However, advertising for minor applications was being removed in early 1996 and the proposed recourse to applicants for unreasonable delay by councils has already been implemented.[2]

Advertising in New South Wales is required for *designated developments* and for any classes of application specified in the planning scheme as requiring advertising (*advertised developments*). However, in practice, advertising in New South Wales is likely to occur whenever a third party might be detrimentally affected. Notifying adjoining owners is mandatory when the council considers a proposed building may have a detrimental effect (NSW DoP 1993, pp.10–11).

The introduction of the *Resource Management Act 1991* has allowed New Zealand's local councils to make more decisions without the need for fully advertising applications than they could before. For certain classes of proposed activity advertising is not necessary if the local planning scheme expressly permits it to be considered without the written approval of affected persons or if the council is satisfied that the adverse environmental impact will be minor and written approval has been obtained from all potentially adversely affected parties (s.94).

However, the level of applications that are publicly advertised in New Zealand has always been quite low. According to a 1985 study for the Christchurch City Council (Williams 1985), under the former *Town and Country Planning Act* about 21 per cent of land use consents were advertised under that legislation. St Clair and Zuur (1994) show that in 1993, under the *Resource Management Act*, this figure was about 10 per cent.

[2] Advice from Victorian Department of Planning and Development 14 February 1996. The *Planning and Environment (Amendment) Act 1993* allows an applicant to advertise an application in a specified way if there has been a 10-day delay in being told of advertising requirements.

District plans provide a lot of guidance about what the community has decided is suitable in an area. Consequently, full public advertising, submissions, and appeal rights are generally only necessary for activities which are not provided for or which are contrary to the local planning scheme. The New Zealand Ministry of the Environment rejects the view that this may have resulted in a greater incidence of unanticipated detriment to third parties. The need for consent, rather than advertising the activity, is regarded as the main protection for third parties. Consents are still required for all activities that needed consent under the old legislation and new plans may require consent for possibly more activities. The benefit for the developer has been a reduction in costs.[3]

The incidence of advertising in these jurisdictions is compared in table 6.2. As can be seen in this table, advertising requirements in the United Kingdom may be more extensive than in New South Wales and Victoria which, in turn, are probably wider than those in New Zealand. Whether this means that UK businesses are burdened with an unnecessary level of advertising, or that third parties in New Zealand are more likely to suffer from unanticipated costs, depends on local community preferences and expectations.

However, it is evident that Australian businesses are probably not being subjected to particularly onerous advertising procedures when compared with the United Kingdom and New Zealand. Moreover, in Australia there are moves to further reduce these advertising requirements.

Table 6.2 Advertising procedures, land use planning, selected jurisdictions

Jurisdiction	*Advertising in practice*
New South Wales, Australia	Applications for designated development are advertised. Schemes may also require certain classes of application to be advertised. Many councils notify any person they consider might be detrimentally affected by any application.
Victoria, Australia	Schemes may exempt any class of application. Only a small number of schemes have so far been released under the new legislation, so the general level of exemption is still not clear.
New Zealand	In 1992, almost half of all regional resource consent (environmental discharge) applications were advertised. Less than 10 per cent of territorial land use consent applications were advertised.
United Kingdom	All small-scale business applications are advertised.

Sources: NSW DoP (1993), Victorian DoPD (1994), NZ MftE (1995), UK DoE (1994a).

[3] Discussion with New Zealand Ministry for the Environment, 29 May 1995 and correspondence 4 January 1996.

6.2.2 Referral and concurrence

Development applications are often referred from one level of government to another in Australia. The power to approve developments in Australia is normally delegated by state or territory governments to local government.[4] However, the state often retains the right to have applications referred to it so that it can consider whether or not the proposed development is in the broader community interest.

A 1991 LARP study found the system of referrals in Australia unduly complex. It also saw a large number of referrals as unnecessary because over 70 per cent of them are agreed by state agencies without modification. The system was found to be inefficient and to have inadequate monitoring, quality control and evaluation (Graham and Byers 1992). Detailed comparisons of referral requirements are difficult and potentially misleading. Applications may need to be made to a number of authorities in sequence, but where this is not essential delays may be reduced by referring applications concurrently to different authorities.

The Perrott Committee in Victoria favoured a system in which simultaneous applications concerning a single project are made to each relevant authority but in which the applicant has:

> … the choice to require authorities to meet with the applicant and each other to seek decisions which do not conflict. Also, if more than one application is made simultaneously to one authority, one application should be satisfactory, joint notice should be given (if required), joint hearing of submissions should take place (if required) and all appeals (if made) against the decisions should be able to be heard and determined by one body. (Perrott Committee 1993, p.41)

6.3 Resolving disputes

Disputes may arise between licence applicants and the issuing agency, or between third parties and the issuing agency. Third party objections frequently reflect perceptions of problems arising from spillovers from the licensed activities.

Land use planning approval systems can involve the most extensive and protracted dispute resolution procedures found in any area of business licensing. In this section *objections* are discussed. These include the submission of information by third parties which may help a local authority in determining an application, and which occur before the authority has made a decision.[5] Also discussed are *appeals*, which

[4] In the Australian Capital Territory there is no local government.

[5] Internationally, planners are increasingly replacing the term *objection* with *submission.*

happen after the decision has been taken. The extent to which alternative dispute resolution procedures are used in different jurisdictions is also discussed.

6.3.1 Objections

Of the jurisdictions shown in table 6.3, Victoria and Queensland in Australia and the United Kingdom appear to have the widest scope for third party objection. Objections may be lodged even if the application has not been advertised. In New South Wales and New Zealand, objections can only be made if the application has been advertised. Given the reduction in the extent of advertising following the introduction of the *Resource Management Act 1991*, this may especially restrict the incidence of objections in New Zealand.

In Victoria, the Perrott Committee recommended that the scope for objection be tightened by requiring objectors to specify how the grant of a permit would cause them material detriment (Perrott Committee 1993, p.62). This requirement is now incorporated into the Victorian *Planning and Environment Act 1987*. An objector must state the reasons for the objection and how the objector would be affected by the grant of the permit. This makes it difficult, for example, for an environment group with concerns about the indirect or general effects of a development to be an objector in its own right.

Table 6.3 Objection procedures, land use planning, selected jurisdictions

Jurisdiction	*Scope for third parties to object*
New South Wales, Australia	Any person may make a submission by way of objection to a designated or advertised development application. Submissions by way of objection to designated developments must provide the grounds for objection.
Victoria, Australia	Anyone who may be affected by the grant of a permit may submit an objection. The objection must state how the grant of the permit will cause material detriment.
Queensland, Australia (proposed)	Any person may make a submission on an application.
New Zealand	Any person may make a submission on a resource consent application that is advertised. The submission must state the basis on which it is made and the decision the submitter wants the authority to make.
United Kingdom	Any person may comment on an application

Sources: NSW *Environmental Planning and Assessment Act 1979* ; Victorian DoPD (1994), Queensland DHLGP (1995); NZ MftE (1995) and *Resource Management Act 1991* , s.96; UK DoE (1994a).

6.3.2 Appeals

It may be desirable to have mechanisms in place so that those affected by the decisions of licensing agencies can appeal to an independent authority against a perceived unfair or uninformed decision. However, scope for appeals adds to uncertainty for business and the wider community. The appeals discussed below all relate to the merits of the particular case and not to points of law. In most jurisdictions, appeals on points of law to a court of superior competence are usually possible.

Third party planning appeal provisions in New South Wales, Victoria, New Zealand and the United Kingdom are compared in table 6.4. Delays are likely to be reduced, but the risk of decisions based on less than full information may be increased, when the permitted class of objectors and appellants is smaller.

The scope for third party appeals in the three Australian jurisdictions and New Zealand appear to be broadly similar. Third party appeal rights in New South Wales are restricted to designated developments (ordinary advertised developments do not give rise to third party appeals). In Victoria, until 1993, persons other than objectors could appeal. This right is now confined to objectors who have an 'automatic' right of appeal unless the planning scheme specifies the type of application as one which is exempt from third party appeal rights. However, any person affected may *seek leave* to appeal against a decision to grant a permit in Victoria provided the application is not exempt, but leave is not automatically granted.

The United Kingdom system is much more restrictive, and only allows appeals by applicants against the refusal of an authority to grant permission, or against the conditions attached to planning permission. Appeals by third parties against a decision to grant planning permission are not allowed in the United Kingdom because:

- third parties have the right to have their views taken into account when planning applications are decided;
- it is believed that locally-elected councils can be expected to represent the overall interests of their communities when making decisions; and
- it is felt that people who object purely out of self-interest could use the right of appeal to delay otherwise acceptable new developments (UK DoE 1994b, p.38).

The scope for appeal is also comparatively limited in Malaysia. While planning appeal boards can be established in every state in peninsular Malaysia, only Penang has an appeal board currently in operation. Sabah and Sarawak are governed by separate legislation which does not provide for an appeal board.[6]

Table 6.4 Third party appeal procedures, land use planning, selected jurisdictions

Jurisdiction	*Who can appeal against a decision to grant a permit?*	*Provisions for planning schemes to exempt permits from third party appeals*
New South Wales, Australia	Objectors to designated developments	None
Victoria, Australia	Objectors	Planning scheme may set out classes of applications which are exempted from third party appeals
Queensland, Australia (proposed)	Submitters	None
New Zealand	Submitters	None
United Kingdom	No-one	None

Sources: NSW *Environmental Planning and Assessment Act 1979* ; Victorian DoPD (1994), Queensland DHLGP (1995); New Zealand *Resource Management Act 1991* , UK DoE (1994a).

6.3.3 Alternative dispute resolution

The existence of alternative dispute resolution (ADR) processes can expedite applications. The scope for using ADRs in the selected jurisdictions is summarised in table 6.5.

New South Wales appears to have a more extensive range of ADRs available for planning and development disputes than does Victoria and most other jurisdictions shown except New Zealand. This may reflect the relatively judicial nature of its appeal body, the New South Wales Land and Environment Court. The court now has a *mediator* as a further alternative to formal appeal proceedings.[7] Also, the combined jurisdiction of the Land and Environment Court allows quick settlement of points of law as well as appeals on merit when both arise in the same case.

[6] Advice from Malaysian Federal Department of Town and Country Planning, 28 October 1995.

[7] The BIE is grateful to Roslyn Crichton of the University of Technology, Sydney for this point.

In Victoria, appeals are handled by the Planning Division of the Administrative Appeals Tribunal (AAT). Hearings are intended to be:

> … a combination of formal procedure and informal atmosphere. Strict 'court room' procedure is not followed. The usual aims of semi-judicial bodies apply — openness, fairness and impartiality (Victorian DoPD 1994, p.106).

The Perrott Committee (1993) recommended against changing the AAT into a court, provided the tribunal received power to more effectively implement enforcement orders, grant injunctions and award costs and damages. It noted that the Victorian Department of Planning and Development had been co-sponsoring a pilot project on mediating planning disputes.

Table 6.5 Alternative dispute resolution procedures, land use planning, selected jurisdictions

Jurisdiction	*ADR procedures available*
New South Wales, Australia	**Facilitation meetings** of the applicant, objectors and the council can be called to clarify the issues in dispute (usually for large projects). **Mediation** can be used and **mediation conferences** can be convened by the Land and Environment Court to achieve agreement. A council may initiate an **independent inquiry** and a **Planning Commission of Inquiry** may be established by the Minister.
Victoria, Australia	**Applications for review** by the Administrative Appeals Tribunal may be requested. **Compulsory conferences** can be directed but are rarely used.
Queensland, Australia (proposed)	**Mediation** is available if the applicant considers a referral agency information request to be unreasonable, or if different agency requirements are inconsistent, or if agreement cannot be reached on extending the decision-making period.
New Zealand	**Compulsory conferences** can be directed. **Mediation**, **conciliation** or 'other procedures' can be used with the consent of the parties to encourage the achievement of a settlement.
United Kingdom	None.

Sources: NSW DoP (1993); Victorian DoPD (1994), Queensland DHLGP (1995); New Zealand *Resource Management Act 1991* ss.267, 268; UK DoE (1994a).

The New Zealand Planning Tribunal is a specialist environmental court consisting of one District Court judge and two lay members which can conduct its proceedings without formality where it is fair and efficient to do so (NZ MftE 1995).

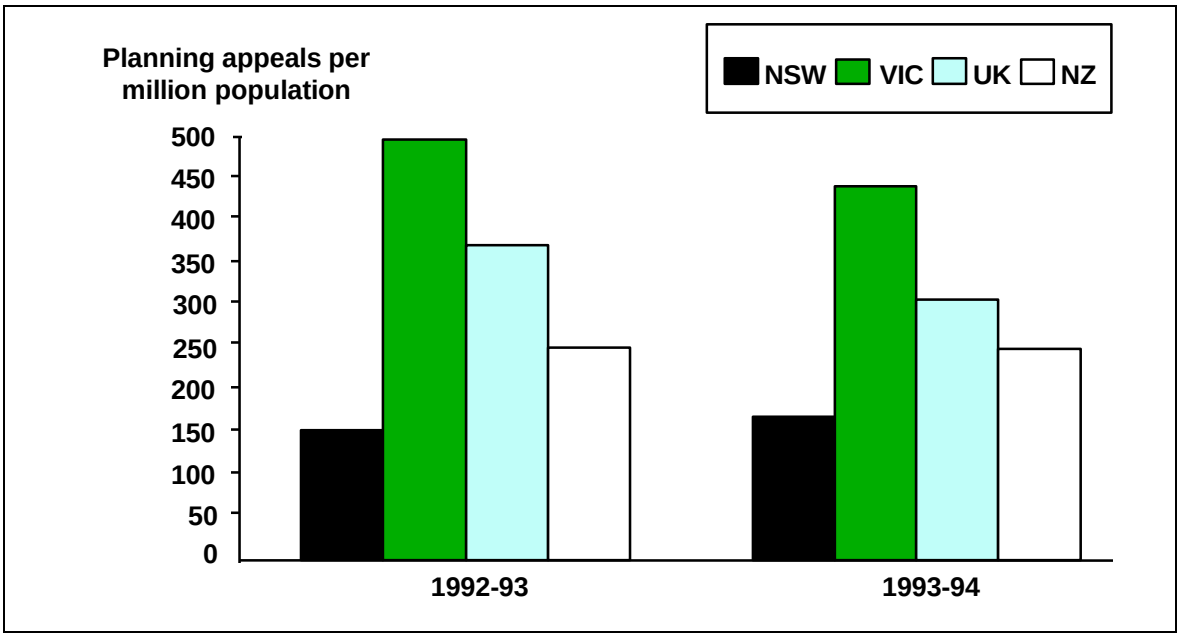
6.3.4 The incidence of appeals

The foregoing suggests that the United Kingdom and, until recently, Victoria could be expected to record higher incidences of objections than New South Wales or New Zealand because of their more extensive advertising requirements. With a higher rate of objections, Victoria was likely to have more third party appeals.

However, third party appeals are not permitted in the United Kingdom, so this would tend to reduce the overall incidence of appeals there. The likely ranking would be expected to be most appeals in Victoria, followed by the United Kingdom, with New South Wales and New Zealand having fewest.

The numbers of appeals relative to the population in Victoria, New South Wales, the United Kingdom and New Zealand are compared in figure 6.1. While largely confirming the expected pattern, the data may be distorted by the inclusion of large numbers of appeals concerning residential and land subdivision developments which are less relevant to businesses generally (apart from firms engaged in those activities).[8] The incidence of appeals seems to be declining in Victoria following the tightening of the scope for objections and might reasonably be expected to decline further as councils become more experienced with the new provisions. The incidence of Victorian appeals in recent months may also have been affected by the introduction of a filing fee for lodging appeals.[9]

Figure 6.1 Incidence of planning appeals, selected jurisdictions



Financial year data for New South Wales has been estimated from published calendar year data.

Sources: Unpublished data from Victoria Department of Justice; annual reports of Land and Environment Court of New South Wales, New Zealand Registrar of Planning Tribunal and United Kingdom Department of the Environment, Planning Inspectorate.

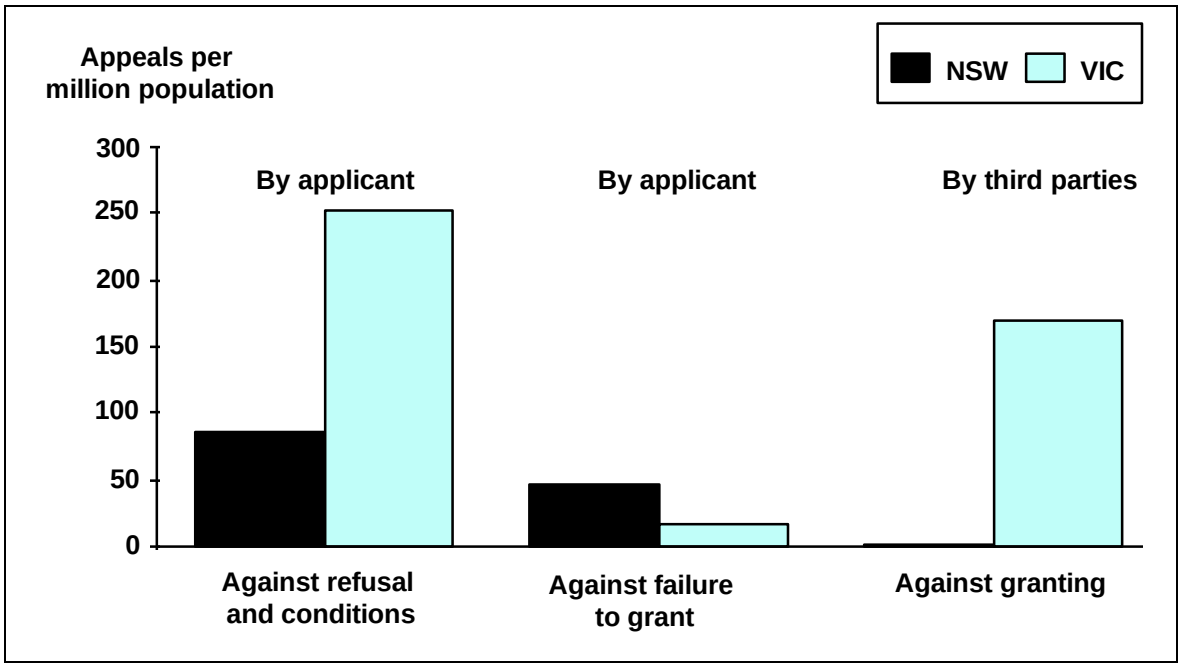
[8] Victorian data include all planning permit and Environment Protection Authority appeals while New Zealand data include all appeals under the *Resource Management Act 1991*, enabling comparison of all planning and environment appeals in both jurisdictions. Almost all of the Victorian appeals are under the *Planning and Environment Act 1987* rather than the *Environment Protection Act 1970*.

[9] Information from Municipal Association of Victoria, 12 February 1996.

In Victoria, the appeal rate[10] for planning applications was 5.5 per cent in 1991-92 (Victorian MfP 1993), compared with less than 2 per cent in New South Wales in the late 1980s (Cripps 1990). The Victorian *objector* (that is, third party) appeal rate alone amounted to 1.8 per cent, almost as high as the overall New South Wales rate.

The *successful objector* appeal rate[11] in Victoria was 0.5 per cent (Perrott Committee 1993, p.58): that is, almost three-quarters of objector appeals were unsuccessful.

Figure 6.2 Planning appeals by type, New South Wales and Victoria, 1993-94



Note: NSW data are calendar year (1994) and cover appeals under the Environmental Planning and Assessment Act 1979. They refer to appeals received by the Court in that year which have been completed to date (the majority of appeals received are disposed of in that year). The Victorian data are for appeals received in 1993-94 and cover appeals under both the *Planning and Environment Act 1987* and the *Environment Protection Act 1970* (the number of appeals under the Environment Protection Authority is very small).

Sources: Unpublished data from Land and Environment Court, New South Wales and Administrative Appeals Tribunal (Department of Justice), Victoria.

However, the Perrott Committee felt that:

> … the data shows (sic) that only a very low proportion of applications results in appeals and that 'success' rates by objectors are high. This suggests the majority of appeals are not frivolous. (Perrott Committee 1993, p.60)

[10] $Appeal\ rate = \frac{Number\ of\ appeals}{Number\ of\ applications}$

[11] The percentage of total applications subject to objector appeals which were allowed or allowed in part.

The Perrott Committee concluded that most third party appeal problems in Victoria resulted from excessive requirements for a permit and excessive advertising requirements.

There are wide variations in the incidence of third party appeals in the four jurisdictions shown in figure 6.1, with Victoria having experienced very high appeal rates. It is possible that the appeal rate in Victoria will decline in future.

The relative importance of third party appeals in Victoria compared with New South Wales is highlighted in figure 6.2. Also, appeals by applicants against refusal to grant approval of an application and against conditions attached to approval are much higher in Victoria than in New South Wales. However, appeals by the applicant against failure to grant (that is, when a consent authority has not determined a development application within a specified time) are higher in New South Wales than in Victoria. This suggests that consent authorities in New South Wales may place greater reliance on appeals court decisions to determine approvals (rather than making determinations themselves) than do authorities in Victoria.

6.4 Summary

The relative performance of Australian and overseas jurisdictions against three important features of licence approval processes are examined in this chapter: pre-application consultation, third party appeals and dispute resolution.

Pre-application consultation. The importance of pre-application consultation in connection with land use planning applications is being increasingly recognised in Australian jurisdictions, partly through the work of the LARP program. It is not clear that Australian procedures are any better or worse than comparable arrangements in some overseas jurisdictions. However, there may be room for improvement, for example by adopting the proposal by BOMA and BDW (1995, p.15) to establish pre-development application committees comprising experienced and qualified agency officers to guide applicants.

Third party consultation. Overall, land use advertising requirements appear to be more extensive in the United Kingdom than Australia, although New Zealand appears to have even less burdensome advertising requirements. Whether Australian arrangements are socially optimal is an open question. However, land use advertising requirements in some Australian jurisdictions are not as stringent as in some countries and are being rationalised.

Dispute resolution. The scope for third party post-decision appeals against land use permits in New South Wales, Victoria, Queensland and New Zealand appears to be

broadly similar, particularly since recent reforms to the Victorian system. It seems likely that the relatively high incidence of third party appeals in Victoria will decline in the future following legislative changes to appeal rights in that state. The United Kingdom and Malaysia appear to operate systems with more restrictive rights for third party appeals. New South Wales and New Zealand appear to use alternative dispute resolution procedures more extensively than most other jurisdictions studied. Overall, consultative mechanisms in the Australian land use planning systems discussed in this report do not appear to be particularly onerous when compared with those in New Zealand and the United Kingdom.

END OF CHAPTER

7 Licence approval: certainty and efficiency

In this chapter, licence approval in Australia and selected countries is reviewed in terms of the design criteria of approval duration and cost recovery (see box 4.1).

When the commencement of a business requires a substantial investment in buildings and equipment, the duration or term of any relevant licences is important to the economic viability of the undertaking. However, in some circumstances licensing agencies may wish to review licence conditions over time when factors relevant to the standards attached to the licence change. Section 7.1 contains an examination of the optimal duration of licences in the case of land use and environmental permits.

The financing of licensing agencies is also relevant to their overall economic impact. In some cases, such as building permit approval procedures in Australia, competition in the supply of licensing services has been introduced, partly to enhance efficiency and restrain costs to developers. More generally, there are various administrative procedures which agencies may employ to control costs and improve service delivery. These issues are addressed in section 7.2.

Some indicators of efficiency and costs in licensing activities in different jurisdictions are examined in section 7.3. These include land use planning approval times and building permit fees. Trends in overall business licensing fees in Australia are also discussed.

7.1 Certainty about approval duration

The duration of a licence or permit influences the amount of resources an investor is prepared to dedicate to the licensed activity. *Duration* means the minimum period over which the licence remains in force before its conditions may be reviewed and the licence renewed or revoked. This contrasts with situations in which licence renewal requires only the payment of a renewal fee.

The discussion here focuses on the duration of approval to *conduct* an activity rather than the duration of approval to *commence* it. For example, land use permits in Victoria have a default duration of two years within which work must commence. Once the activity begins, permission to use the land in accordance with the permit is indefinite and does not require renewal, and this is the licence duration examined here.

The optimal duration will vary between different activities and products because of differences in the degree of capital investment, the nature of the market failure requiring regulation, and the likelihood of technological developments relevant to the licence. The term of a licence may influence the stringency of the standards attached to it. For example, if the standards are expected to be tightened in future, licences with long duration may involve stricter standards than those with shorter duration.

Land use planning permits usually continue indefinitely, but in many jurisdictions environmental licences have finite duration. This may possibly reflect differences in the nature of the problems each type of licence addresses. There may be perceived to be greater risks to the community from incorrectly assessing the effects of contaminant emissions from a business, which are controlled by environment licences, than from incorrectly assessing the effects of the siting of a business, which are regulated by land use permits. By imposing a limited term on a licence, part of this risk is transferred to the licensee.

In New Zealand land use consents under the *Resource Management Act 1991* are issued for an indefinite duration but resource consents to discharge contaminants or take water are issued for a maximum of 35 years.[1] The right of consent authorities to review the conditions attached to any resource consent is limited to times specified in the original consent, in certain cases where a new regional plan is prepared, or where inaccurate information was supplied by the applicant.[2]

Concerns were expressed in New Zealand by some parties that resource consents of limited duration may constrain projects involving relatively heavy capital expenditure with long pay-back periods.

An independent study commissioned by the Ministry for the Environment observed:

> The complaint that the limited term of 35 years would hinder major investment and construction work is hard to accept, when consents granted since 1967 have regularly been for specified periods of less than that length, and have been considered acceptable. (NZ MftE 1994a, p.17)

[1] New Zealand *Resource Management Act 1991,* s.123.

[2] Op.cit., s.128.

However, the act contains no provision for the renewal of a resource consent so that when the term of one consent expires, a fresh application must be made. No allowance is made for the existing capital investment and infrastructure in considering the fresh application.[3] The study recommended that the *Resource Management Act* be amended to allow for existing capital investment and infrastructure to be considered by authorities when assessing any 'renewed' resource consent.

A subsequent review concluded that the existing legislation is capable of recognising the level of investment in buildings, plant and infrastructure of an applicant, and of recognising that a consent application is in effect a renewal.[4]

Shorter licence terms than those used in New Zealand apply in some jurisdictions. New South Wales environmental pollution licences are currently issued for one year. The New South Wales Environment Protection Authority (EPA) recognises that:

> This makes it difficult for companies to institute long-term improvements to their operations to lessen environmental impacts. The EPA is looking at issuing longer term licences which will allow companies to make strategic plans for longer term environmental decisions. Organisations will be able to better appraise future trends in environmental requirements and plan for the introduction of more environmentally benign processes at the most appropriate points in the capital investment cycle. (Izmir 1995)

In contrast, under the Victorian *Environment Protection Act 1970* (s.26), a discharge licence remains in force unless it is revoked, or suspended by the Victorian EPA or surrendered by the licence holder.

Waste discharge licences in Malaysia may be issued for a term as short as one year.[5] This may reflect the need for discharge standards to be made progressively more stringent over time. In addition to the standards, effluent-related licence fees are levied on the load discharged (Rahim, 1994). The potential uncertainty for business generated by short duration of licence approval is likely to be offset to a large extent if planned changes to standards are known to business at the outset. In the case of the *Environmental Quality (Prescribed Premises) (Crude Palm Oil) Regulations* in Malaysia, the changes to discharge limits were staged and implemented over several years.

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[3] There is limited provision to extend the term of a consent while fresh application is made (op.cit. s.124).

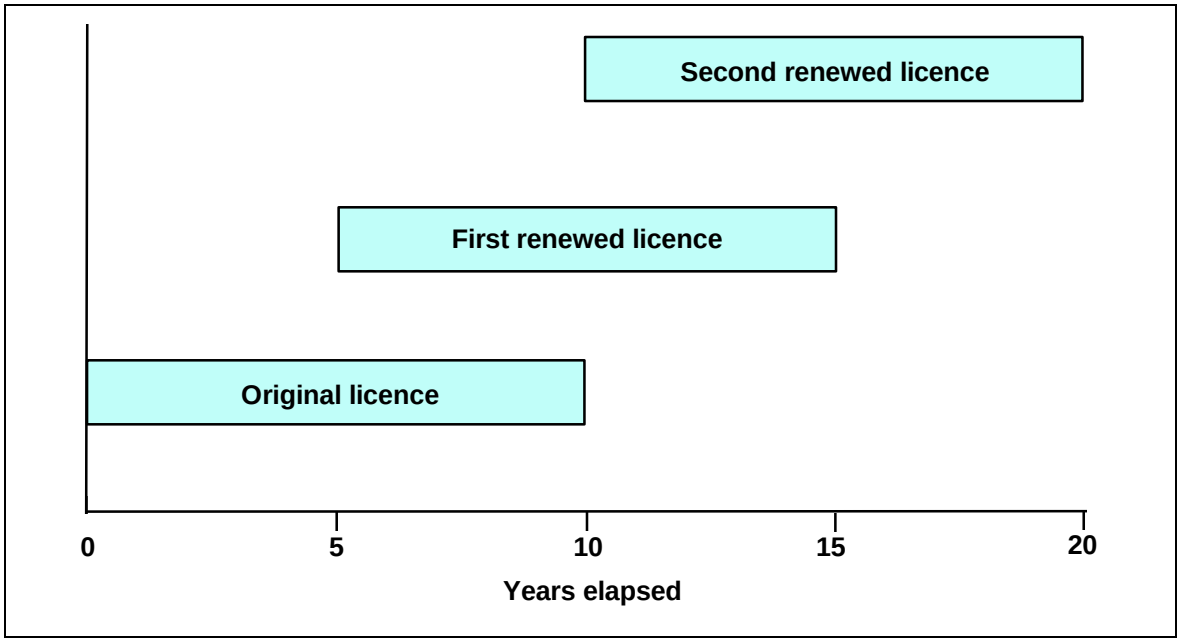
[4] Cowper (1995), 'Taking into account existing investment (renew of consents)', study prepared for New Zealand Ministry for the Environment, June.

[5] Malaysian *Environmental Quality Act 1974*, s.13.

As can be seen from the above, there is a tradeoff between giving licences a duration long enough to give some certainty to investors, and a duration short enough to provide flexibility in the regulatory regime to allow for changes in the terms of the licence (for example, when more information about the regulated problem comes to hand). While this report does not examine at length the methods for determining optimal licence duration, it is worth noting that good regulatory design can reduce this tension between investors' desire for greater certainty and regulator flexibility.

The New South Wales fishery licence system set out in the state's new *Fishery Management Act 1994* contains a renewal mechanism which gives both considerable investor certainty and flexibility to the regulator. Under this system a licence is initially granted for a period with a guaranteed right of renewal before the full term of the licence, under renegotiated conditions. For example, suppose the licence were initially granted for a ten-year period, with a right of renewal after five years. At the end of five years the licence terms are renegotiated and the regulator offers the licensee a new ten-year licence under renegotiated terms. If the licensee refuses this offer the licence continues with the current conditions for the remaining five years. If the licensee accepts the offer a new ten-year licence is granted with another right of renewal after five years. This is illustrated in figure 7.1. For more information see Young (1996). This system might provide a useful model for other licensing arrangements.

Figure 7.1 Renewal structure for New South Wales fishery licences



7.2 Contestability, cost recovery and efficiency

When fees fail to cover the costs of providing a licensing approval service, it must be paid for in other ways, for example, through general taxation. Removing any such subsidies may cause fees to increase. However, if the approval process can be made subject to competition, either between different government agencies or by allowing private sector involvement, the resulting competition may improve efficiency. Opportunities for economies of scale to be realised and for the provision of the licensing service to be rationalised would arise. In the absence of actual competition, the threat to introduce competition (if credible) may serve the same purpose.

Failing this, performance indicators may supply an incentive to reduce costs and raise efficiency. However, they are unlikely to prove as effective as the financial inducements available in a competitive or contestable market for licensing services. Examples of the uses of both contestable licensing services and performance indicators are discussed in this section. Building approval systems have recently been privatised in a number of Australian jurisdictions, significantly improving building approval times. In local government more generally, increased use has been made of performance indicators.

7.2.1 Private certification of building permits

Private licensing bodies effectively act as agents of the government. Extensive and stringent audit and complaint systems need to be established to minimise any abuses of power by these private commercialised agents.

In Australia, the Northern Territory, Victoria and South Australia have introduced privatised building approval systems.

The Northern Territory *Building Act 1993* introduced a totally privatised building permit system. Private building certifiers must register with the *Building Practitioners Board* and carry professional indemnity cover. Some other building practitioners, such as engineers, architects and plumbers, must also be registered. Private certifiers issue building permits, carry out inspections and issue certificates of occupancy. Government involvement in these activities is restricted to providing the legislative framework, facilitating the necessary insurance arrangements, registering practitioners and auditing their activities.

Similar provisions exist under the Victorian *Building Act 1993* but there are some important differences. First, local councils may continue to employ certifiers on their staff (*municipal building surveyors*), who must also be registered with the

Victorian *Building Practitioners Board*. In effect, private certifiers and local councils compete to supply building approval services. Councils may use the services of other councils or private certifiers to relieve themselves of the building approval function.

Second, in Victoria, a private certifier must not be involved in the design of work which is being certified. This requirement is absent from the Northern Territory's system.

Third, the Victorian arrangements include more comprehensive *run-off* insurance cover for certifiers (and other building practitioners) than in the Northern Territory. In Victoria, the approved insurance cover continues to apply after a practitioner leaves the industry. Run-off insurance has been described as providing the consumer with 'what is tantamount to a guarantee of a financially viable defendant' (Lovegrove et al. 1995, p.13). Victoria is one of the few jurisdictions in the world having this form of insurance cover. In the Northern Territory, practitioners are indemnified only so long as the annual premium continues to be paid.

Evidence assembled by Lovegrove et al. (1995) suggests that private certification in Victoria has reduced building approval times from 4–6 weeks to 7–10 days. In the Northern Territory, the reduction is from 3–4 weeks to 5–7 days.[6]

In Queensland, the proposed *Planning, Environment and Development Assessment Bill* will allow the building, plumbing, drainage and subdivisional engineering components of a development application to be approved by accredited private certifiers, but municipal approval will continue to be available. As in Victoria, private certifiers will need to be independent of the designers of a project. Local authorities will audit the activities of private certifiers. Arrangements are being made to allow Queensland certifiers to effectively join the Victorian run-off insurance scheme.

In South Australia, the *Development Act 1993* allows an applicant to appoint a private certifier to issue a provisional building approval. However, there is no South Australian equivalent of the Northern Territory or Victorian Building Practitioners Board and certifiers are not registered.

In New South Wales, councils may accept certification of any design, material, process or product from an appropriately qualified person.[7] This may be offered as an alternative to some post-approval inspections of building work. Councils remain

[6] The South Australian scheme has not been operating long enough to provide firm evidence about the effect on approval times.

[7] New South Wales *Local Government Act 1993*, ss.92 and 93.

responsible for the consequences of accepting private certification, although a statutory indemnity is available.[8]

In New Zealand, private certifiers (but not other practitioners) are to be registered with the Building Industry Authority which will exercise disciplinary powers similar to those of the Victorian Building Practitioners Board. However, New Zealand certifiers are not empowered to issue building permits. Instead, they may issue a *building certificate* if satisfied that proposed building work complies with the building code. Responsibility for issuing a building permit rests with the local council.[9]

Unlike Australia, New Zealand does not have a system of building surveyors trained in compliance verification.[10] Implementation of the New Zealand private certifier system was delayed by difficulties in establishing run-off insurance cover. However, these have been resolved and a number of building certifiers have been registered.[11] There appear to be no plans to create competition among local councils.

Controls on private certifiers

There are direct financial incentives for private surveyors to be lenient to attract business, and indirect incentives for local councils which are competing for business. A potential constraint on excessive leniency is the risk that claims for professional negligence will lead to increased insurance costs, or even a refusal by private insurers to provide cover. However, it is not clear that these will be sufficient to ensure a socially ideal outcome. Strict safeguards that promote professionalism and penalise poor practices and corruption may need to be in place when private certifiers are competing with local councils for work.[12]

In the Northern Territory, all building practitioners (including certifiers) must be audited a specified number of times annually. Private building certifiers are audited through checking of their design certifications (paperwork) and by on-site inspection of their work.

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[8] Op. cit., s.732.

[9] For example, s.19 of the Victorian *Building Act 1993* states that 'The relevant building surveyor must decide an application for a building permit …', whereas s.35 of the New Zealand *Building Act 1991* states that 'The territorial authority shall issue each building consent …'

[10] Two alternative (but not equivalent) New Zealand qualifications are the *Certificate in Building* (suitable for a clerk of works — the architect's on-site representative during a building project) and the *Certificate in Quantity Surveying*.

[11] The first two private certifiers were registered at the end of November 1995.

[12] These safeguards may be necessary even in the absence of private competition.

The Victorian Building Practitioners Board (BCB) may inquire into the conduct or ability to practise of a registered practitioner (including a private building surveyor) on its own initiative or at the request of any person. The practitioner's registration may be suspended during the course of the inquiry in the interest of public safety. Proven misconduct or incapacity to practise may result in suspension or cancellation of registration, and misconduct may also lead to a reprimand or fine.[13] Disputes about the decisions of private (or municipal) building surveyors may be appealed to the Victorian Building Appeals Board.

In New Zealand, the Building Industry Authority (BIA) also has extensive powers to monitor, audit and control the activities of private certifiers. A disputed building certifier's decision can be submitted to the BIA for determination. The local council requires building certifiers to submit monthly reports on every building consent even if no work has been carried out in that month. The BIA is also empowered to undertake reviews of the operation of building certifiers. It may also appoint an independent investigator to examine questions by the BIA, or complaints by the public, about building certifiers. An independent inquiry may result, at which the certifier may be heard. The BIA has the power to reprimand, suspend or deregister the certifier. In exercising its monitoring function, the BIA has the power to access documents held by, and demand information from local councils or private certifiers and to enter premises to inspect work and conduct tests.[14]

Effects on building approval fees

According to Lovegrove et al. (1995), building approval fees for major commercial and industrial projects have not risen significantly in the Northern Territory or Victoria following private certification. However, residential fees have increased, probably reflecting past subsidisation by council ratepayers and less than full cost recovery in the past in the Northern Territory.

7.2.2 Administrative efficiency

Many licence issuing agencies develop performance indicators and publish the results of their performance. There are examples in box 7.1 of performance monitoring by municipal governments in various parts of the world as part of *continuous improvement* and similar initiatives.

[13] These powers are set out in the Victorian *Building Act 1993* ss.177–180, 182.

[14] These powers are set out in the New Zealand *Building Act 1991*, ss. 55, 79.

Some councils have taken a more radical approach than others. The City of Burnside in South Australia, for instance, offers a guarantee to applicants that application fees will be refunded if specified development and building applications (which do not require advertising) are not dealt with in three working days. Some approvals for building work are issued on the spot (NSW DoP 1993).

In New Zealand, the Wellington City Council has introduced a *small works consent*. Consents for repairs up to $NZ1200 in value (which constitute almost 40 per cent of the council's building consents) can be issued within 10 minutes over the counter.[15]

Overall, Australian performance monitoring procedures for local councils tend to be less formal than in New Zealand. Nevertheless, there appears to be increasing acceptance of the need to monitor performance in such areas as licence and permit approval times and service quality.

Box 7.1 Performance monitoring by municipal agencies

Queensland. The corporate targets of Brisbane City Council include continuing to streamline development approvals, aiming to process 80 per cent of applications within statutory time limits by June 1996; and rewriting the Town Plan to make it performance-based.[16]

Victoria. Victorian councils are implementing performance indicators developed by the Municipal Association. The LARP program has developed quantitative performance measures for development approvals (see section 7.3).

In **New South Wales**, the Department of Local Government has compiled comparative information on councils, including on the number of building and development applications received and determined per staff member.

New Zealand. Municipal councils are required to report on their performance against specific targets set out in an annual plan. The targets set standards for quality, quantity and timeliness for the delivery of council services.

United Kingdom. The UK Citizen's Charter (which is being extended into local government services) requires organisations to provide an annual written commitment in terms of level of provision, quality of service, information provision, complaints procedures, accessibility and choice, and non-discrimination.

[15] Interview with George Skimming and Dave Walker of Wellington City Council 31 May 1995.

[16] Brisbane City Council, *Building a livable Brisbane: a corporate plan 1994–1998*

7.3 Evidence on approval times and fees

This chapter concludes with some selected evidence on approval times for land use applications from Australia and New Zealand. Some preliminary data about movements in business licensing fees in Australia since the early 1980s are also presented. Finally, trends in Australian building fees are discussed and some international comparisons of fees are made.

7.3.1 Approval times

Performance indicators of development approvals have been developed by the LARP program (see chapter 5) for use in Victoria.[17] The recommended measures include approval times expressed in terms of time bands rather than averages because the latter conceal the incidence of lengthy delays which are relevant to service quality.

Comparisons of processing time data obviously have significant limitations as indicators of the quality of the decision. Pre-hearing consultations can delay processing times but may well lead to better decisions and possibly fewer appeals. Processing time data also gives no indication of whether a consent was actually required in the first place or whether the activity should simply have been permitted. In many instances, delays arise from the failure of applicants to provide information (although this could also reflect the complexity of the approval process).

Even within the same region the variation in observed approval times can be striking. For example, in 1992 a multinational franchise lodged 99 applications to rationalise the signs on each site and improve the aesthetics at each of its outlets in 49 Victorian municipalities. The time taken to approve or refuse these virtually identical applications ranged from 8 to 69 working days.[18]

New South Wales and New Zealand data on median and 95 percentile processing times for comparable development applications or resource consents are compared in figure 7.2. These figures provide no clear insights into the approval time experience of commercial and industrial applicants because they include residential permits (including residential subdivisions).

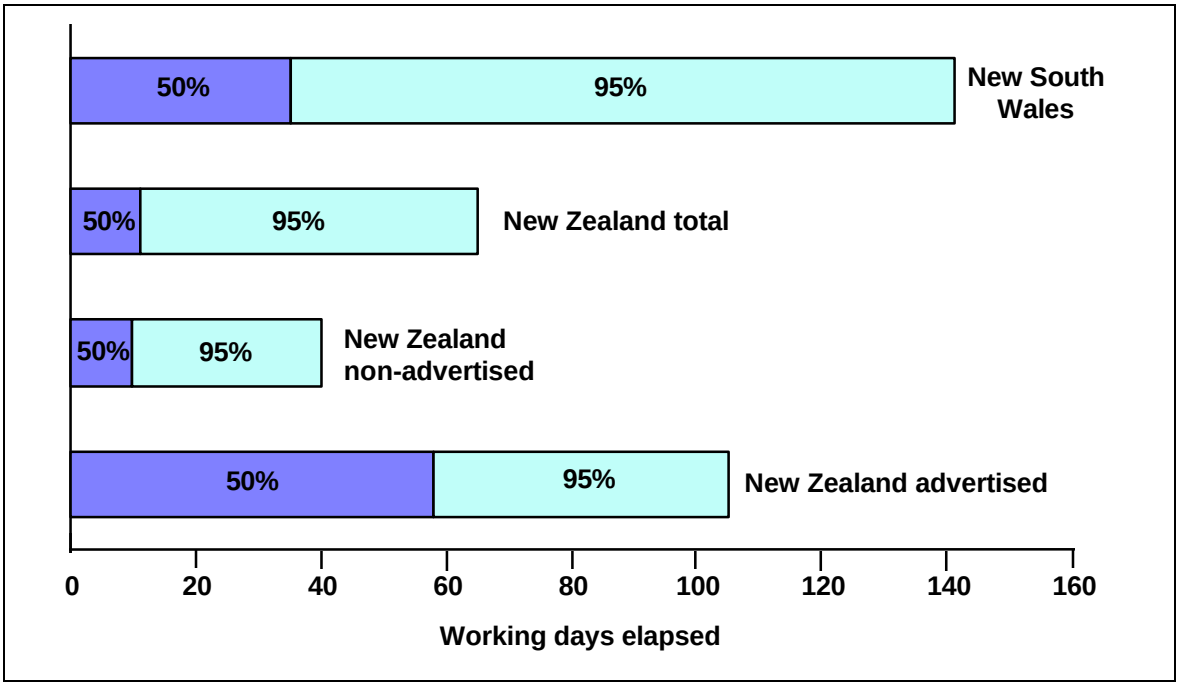
[17] LARP Victoria 1995, 'Performance measurement in development approvals: an initial approach to quantitative measures'.

[18] Letter from Tim Biles, Contour Consultants Pty Ltd in Royal Australian Planning Institute, Victorian Division, *Planning News*, March 1993.

A small number of applications can involve very extensive periods before a decision on the application is made. For example, five per cent of NSW applications took over six months to be decided and five per cent of New Zealand applications required longer than five months. These may include quite complex proposals, cases where applicants provided inadequate information and cases in which there was significant disagreement between the developer and the licence agency. Cases involving long approval times are a rich source of anecdotes but are unlikely to be representative. As Williams (1985, p.74, emphasis in original) notes in the New Zealand context:

> It appears that a small proportion of planning applications which are not approved at all or approved after delays, receive a disproportionate share of publicity compared to the great bulk of applications which are not subject to any planning application *at all*, because they comply.

Figure 7.2 Percentage of land use permits processed by elapsed time, New South Wales and New Zealand



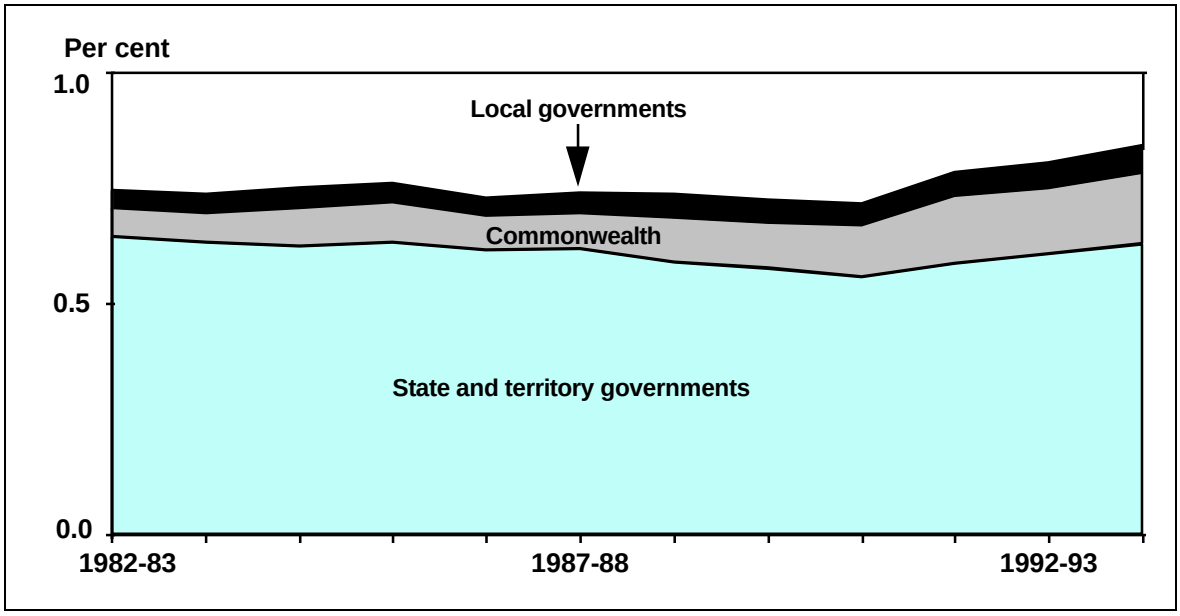
Working days taken to decide application. New South Wales development applications, median and 95th percentile processing times, 15 local councils in 1992. New Zealand territorial land use consents, median and 95th percentile processing times, six regional councils and 12 local councils, October 1991 through September 1992.

Sources: Sturgess (1994), St. Clair and Zuur (1994) and information supplied by New Zealand Ministry for the Environment.

7.3.2 Business licence fees in Australia

It would be interesting to know whether or not there have been any trends in business licence fees in Australia over recent years. Unfortunately, data are not available at a sufficiently disaggregated level to develop a time series of business licence fees which matches the definition used in chapter 2. The data available from the Australian Bureau of Statistics includes fees paid by households as well as businesses, and various inspection fees which are not strictly licence application or renewal fees. A preliminary, estimated series of total licence fees since 1982-83,[19] including those incurred directly by households as well as business, expressed as a percentage of gross domestic product (GDP), is presented in figure 7.3. This series is based on fees for vehicle registrations, drivers' licences, broadcasting and television station licences, building fees and sundry fees paid by producers and households.

Figure 7.3 Estimated licence fees as a percentage of gross domestic product by level of government, Australia [a]



a Commonwealth, state and local government vehicle registration fees and taxes, drivers licence fees, broadcasting and television station licence fees, building fees, fees generally paid by producers not elsewhere counted and fees paid by producers and households as a percentage of gross domestic product at current prices.

Source: Unpublished Australian Bureau of Statistics Government Finance Statistics data.

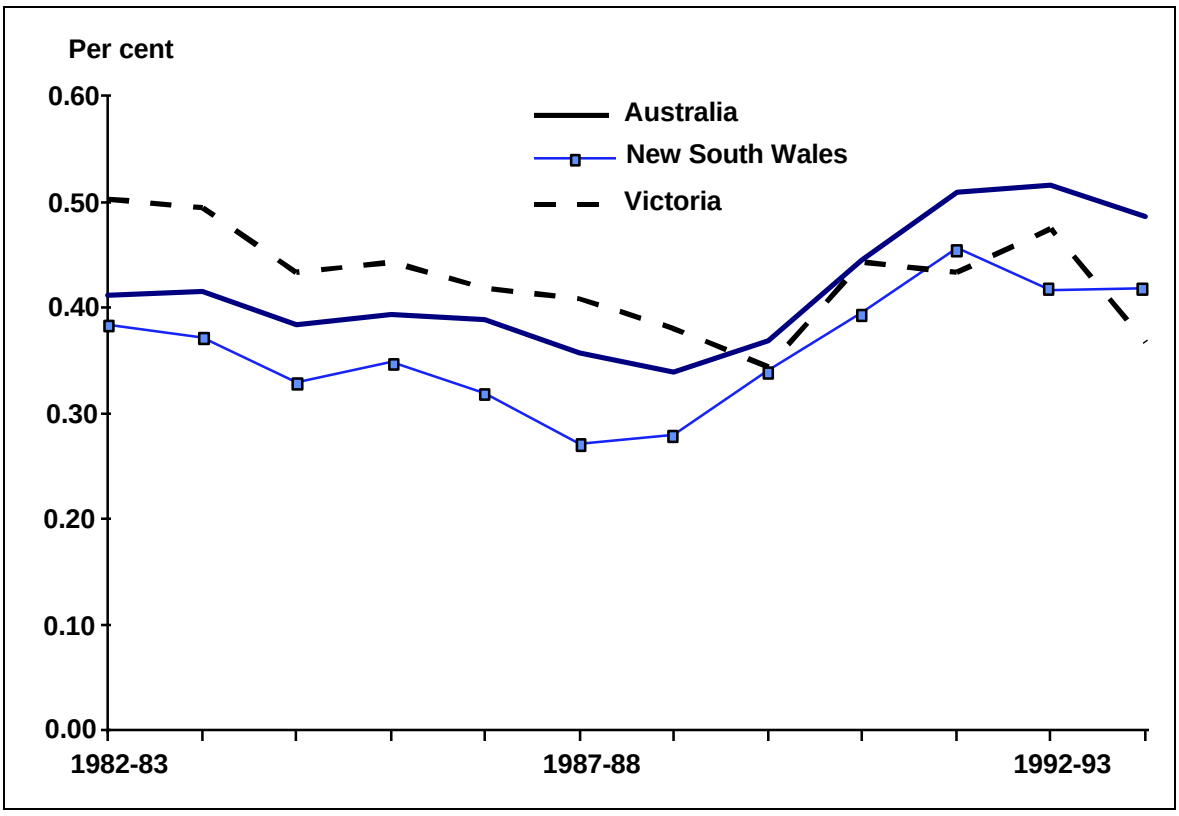
[19] Discontinuities in the component series prevent the series beginning any earlier.

Licence fees have reached relatively high levels in terms of recent history. The largest share of total licence fees is accounted for by state governments but the strongest growth has been in Commonwealth fees. Aggregate licence fees declined to 0.73 per cent of GDP ($1.9 billion at current prices) in 1986-87. By 1993-94 licence fees had risen to 0.84 per cent of GDP ($3.6 billion at current prices). Commonwealth licence fees contributed over two-thirds of this increase. This reflected in part the implementation of cost recovery policies by many Commonwealth agencies.

7.3.3 Building fees

Trends in building fees in Australia, as a percentage of the value of the private buildings which were approved, since 1982-83 are shown in figure 7.4. These fees include those paid directly by households as well as businesses. Building fees as a proportion of building approvals are affected by the average cost of building approvals (see figure 7.5 below). Lower value projects, including housing, tend to attract proportionately higher fees. Nevertheless, the series is useful as an indicator of general trends in fees.

Figure 7.4 Building permit fees as a percentage of the value of private buildings approved, Australia, New South Wales and Victoria

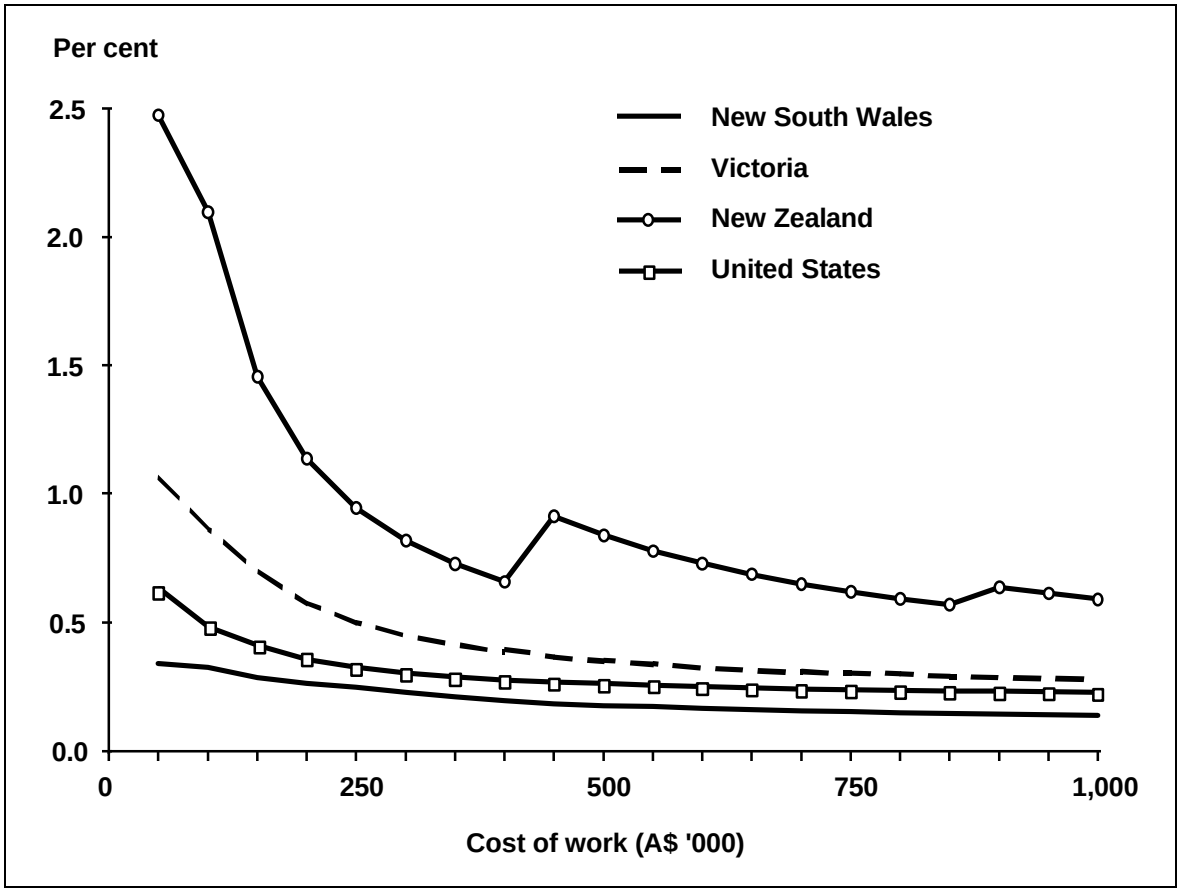


Source: Unpublished Australian Bureau of Statistics Government Finance Statistics data.

There is some evidence of a general increase in building fees as a proportion of building approvals nationally and especially in New South Wales since the mid-1980s. The growth in building fees in Victoria has been more restrained, and fees declined relative to approvals in 1993-94, although this has brought Victorian fees more closely into line with those in New South Wales. It is too early to determine whether the most recent decline in Victorian fees is connected with introducing private certification of building surveyors.

The relationship between building fees and the value of building work in various jurisdictions is shown in figure 7.5. Although there is a consistent tendency for building fees to absorb larger proportions of the cost of the project as the cost declines, there are marked differences in the fees' proportions across the jurisdictions shown. For example, for a project costing A$100 000, building fees range from 0.3 per cent in New South Wales to 2.1 per cent in New Zealand in 1995. At A$1 million, the range is under 0.2 per cent in New South Wales to almost 0.6 per cent in New Zealand.

Figure 7.5 Building permit fees as a percentage of the cost of building work, selected jurisdictions



Sources: City of Sydney (New South Wales); City of Brimbank (Victoria); Wellington City Council (New Zealand); Clark County, Washington State (United States).

In figure 7.5 only the basic permit fees are shown. There may be additional fees in some jurisdictions. For example, for the selected United States jurisdiction (Clark County, Washington), there are additional fees for mechanical equipment such as furnaces, boilers and mechanical ventilation systems installed in the building, as well as additional plumbing fees. Some of the differences in fee levels may also reflect differences in the number of inspections and other services provided at each location.

The tendency for building fees to be relatively higher for lower-value projects suggests that they may have a disproportionate effect on small business.

7.3 Summary

This chapter applied the final two best practice design features of licence approval outlined in chapter 4 to specific licensing regimes in Australia and other selected countries.

Approval duration. The duration of a licence influences the amount of resources investors are willing to dedicate to the licensed activity. There is a tradeoff between a licence duration long enough to give some certainty to investors and short enough to provide flexibility to regulators to change the terms of the licence (for example, when more information about the regulated problem comes to hand). Good regulatory design can reduce the tension between investors' desire for certainty and the regulator's need for flexibility.

The New South Wales fishery licence system offers licence holders a guaranteed right of renewal before the completion of the full term of the licence in exchange for potentially re-negotiated conditions. This might prove a useful model in other situations.

Cost recovery. In terms of its use of competitive licence issuing services, building control in the Northern Territory, Victoria and South Australia is more advanced than most jurisdictions anywhere in the world. As a result, building approval times have declined from many weeks to a matter of days. Private certifiers are being introduced in New Zealand but building approvals will continue to be issued by local councils. Stringent audit mechanisms are needed to monitor the activities of private commercialised licence agencies. The legislation in these jurisdictions provides for auditing of certifiers. Commercial and industrial building approval fees have not increased significantly following the introduction of private certification.

There is some evidence that business licence fees in Australia, including building fees, may have increased more rapidly than would be explained by growth in the economy in recent years as agencies implement cost recovery principles. While this may increase the direct costs paid by business, it removes the distortionary effects which arise from financing these activities through other taxes.

Building fees in Australia, including in jurisdictions in which competitive permit issuing occurs, appear to be broadly comparable with those in a number of overseas jurisdictions. These fees appear to be structured so as to adversely affect small business in all jurisdictions examined.

END OF CHAPTER

8 Licence standards: flexibility

All licences involve standards which businesses must satisfy. These standards need to be designed so that the social and economic objectives of the licence are achieved at least cost to business and the wider community. A preferred set of design features for licensing standards was developed in chapter 4 (see box 4.2). In this chapter the first two of these principles, outcomes instead of processes and quality management systems, are applied to specific examples relevant to the case study businesses.

The need for standards to be directed towards outcomes and performance rather than technologies and processes is discussed in section 8.1 in the context of land use planning controls and building standards.

Four examples are described in section 8.2 with respect to the use of quality and environmental management systems (QMSs and EMSs). First, the use of QMSs in occupational health and safety is discussed using the licensing and related standards applied to pressure vessels as examples. Second, international developments in the use of the preferred food hygiene QMS, *Hazard Analysis of Critical Control Points* (HACCP), which is particularly relevant to retail bakeries and seafood processors, is described. Third, the incorporation of EMSs into pollution licensing arrangements which are particularly relevant to foundries and seafood processors is canvassed. Finally, differences in the treatment of automatic equipment in buildings, such as lifts and fire alarms, in different countries are discussed. This is an area which is also becoming subject to QMS procedures in some countries.

8.1 Outcomes instead of processes

It is generally less costly if the choice of how to achieve desired outcomes is made by the business rather than the licensing agency. However, it may increase efficiency further if optional codes of practice are available to help businesses which find it costly to develop their own compliance methods, including small and medium-sized enterprises. Consultative processes also become more important in less prescriptive approaches to regulation.

A good example of this approach can be seen in the field of workplace safety regulation and licensing which addresses risks and hazards arising from employment activities. Modern occupational health and safety regulation has been heavily influenced by the recommendations of a comprehensive appraisal of workplace health and safety control in the United Kingdom undertaken by the Robens Committee in 1972. The committee's recommendations were largely implemented in the UK *Health and Safety at Work Act 1974*.

The Robens Committee recognised the limits to which externally imposed regulation could deliver improved standards of workplace health and safety. It pointed to the uncoordinated proliferation of safety standards, excessive complexity of many of the standards, failure of standards to keep pace with technological, social and economic change, and failure of regulation to involve employers and workers in the standard-setting process. These problems contributed to apathy about workplace health and safety (Industry Commission 1995a). In general, the committee considered that unduly detailed regulation by centralised authorities led to an unwieldy, over-prescriptive mass of rules which required constant and costly amendment to keep pace with technological developments. It favoured a policy of encouraging consensual solutions using safety committees of employees with whom employers are obliged to consult.

The Robens report also changed the nature of safety licensing and standards in the United Kingdom. The main parliamentary legislation contains only broad targets and objectives, including ensuring workplace safety 'so far as reasonably practicable'. These targets are interpreted by the courts as implying a level of care consistent with optimal loss abatement. In other words, they need not require risk elimination (Ogus 1994, p.186).[1]

It has been suggested that the use of consultative mechanisms involving employees was the major way by which information failures in workplace safety were addressed by the Robens reforms in the United Kingdom (Ogus 1994, pp.185–6). In practice, trade unions received exclusive rights to appoint workplace safety representatives on behalf of employees. These representatives had the power to investigate dangerous hazards and worker complaints and to conduct inspections. This trade union monopoly '… has resulted in a large (non-unionised) component of the workforce being effectively excluded from the benefits of this aspect of the legislation' (Industry Commission 1995a, vol. 2, p.215).

WorkSafe Australia is currently writing a code of practice for dangerous goods storage as part of the national uniformity process. The standards are expected to be

[1] The requirements for compliance are spelt out in statutory instruments, approved codes of practice and guidance notes.

performance-based rather than prescriptive. Adoption of the code of practice on either a voluntary or compulsory basis will be at the discretion of individual states and territories.

Two other examples of performance-based or outcome-oriented standards are discussed here: land use permits and building control.

8.1.1 Land use planning systems

Increased flexibility in land use planning and development systems in Australia and elsewhere has been approached in part through the adoption of outcome-oriented planning regulation. This has taken the place of the more traditional zoning systems.[2] These approaches are compared below using examples from Australia and New Zealand.

Zoning systems

Early planning codes simply prescribed which activities could be conducted (with or without conditions) within geographically defined 'zones'. For example, a foundry may have been a prohibited use within a residential zone but would be a permitted use within a heavy industrial zone.

Zoning systems tend to become excessively complex, inconsistent and prescriptive. For example, by early 1993 Victoria, Australia had over 2800 separate land use zones spread across 206 planning schemes. Nine schemes had at least 30 separate zones each.

The number of commercial and industrial zones in the Melbourne metropolitan area had risen from less than 50 in the early 1980s to over 200 (Victorian MfP 1993). When new activities which were not identified in existing zones sought land use permission, there were inevitable delays while the zoning scheme was amended or special permission granted.

The Perrott Committee commented at the time:

> The zones are too complex, there is too much control and prohibition of use and development, and inconsistency of provisions where there should be commonality. In most cases, even uses comprising the primary purpose of the zone cannot proceed without the need for a planning permit. (Perrott Committee 1993, p.34)

[2] In the planning literature, this is usually described as *effects-based* planning, but throughout this chapter the term *outcome-oriented* is used to describe broadly similar approaches.

A sample of four Western Australian municipalities in 1995 revealed that the number of specified activities varied between 70 and 126 (Stenning 1995, p.33).

The mechanics of zoning-based systems are illustrated in box 8.1 using a typical planning scheme in metropolitan Melbourne as it applies to a petrol station. There are special site conditions and prescriptive requirements are applied when petrol stations are combined with convenience shops. In some zones a petrol station is prohibited. In others, a permit is required and may be subject to further conditions. In some industrial zones a permit is not required.

Victoria has decided to continue using zoning controls for commercial and industrial land uses. However, the zones will be reformed, simplified and standardised. Three new industrial zones and five new business zones have been introduced to replace the large number of existing zones evident in plans such as that discussed in box 8.1. Definitions in planning schemes are being redrafted to achieve greater consistency throughout Victoria.[3]

Box 8.1 Zoning-based planning consent for a petrol station

Melbourne. Under the City of Sunshine Planning Scheme (now part of the City of Brimbank), petrol stations require a minimum site area of 1080m ^{2}, a minimum frontage of 36 metres (30 metres for corner sites) and a minimum depth of 30 metres. There are also building, canopy and fuel pump setback requirements. The site must be separated from any adjoining residential zone by a landscape buffer strip at least three metres wide. Waste from a vehicle wash area must drain into a public sewer or into a settlement and oil separation system complying with the Victorian *Environment Protection Act 1970*.

The total floor area of enclosed buildings used for shop purposes in a combined petrol station and convenience shop must not exceed the maximum floor area allowed for a convenience shop in the zone by more than 30m ^{2}. In residential areas there are constraints on the development of convenience shops with a floor area exceeding 80m ^{2}.

In addition to these general requirements for petrol stations, there are geographical restrictions imposed under zoning controls. The permit requirements for petrol stations and car wash facilities in selected zones of the Sunshine Planning Scheme are shown in table 8.1.

Source: City of Sunshine Planning Scheme (as at June 1995)

[3] Victorian Department of Planning and Development,*Annual Report 1993-94*.

Table 8.1 Planning permit requirements for petrol stations and car washes in selected zones, City of Sunshine, Melbourne

Zone	*Petrol stations*	*Car wash*
Sunshine District Centre Zone No 1	Permit required	Permit required
Local Business Zone	Permit required	Permit required
Neighbourhood Business Zone	Permit required	n.s.
Service Business Zone	Permit required	Permit required
General Industrial Zone	Permit not required	Permit not required
Light Industrial Zone	Permit not required	Permit not required
Manufacturing 2 Zone	Permit required	Prohibited
Residential C Zone	Permit required[a]	Permit required[b]
Riverside Residential Zone No 1	Prohibited	Prohibited

a Must adjoin a business or industrial zone or abut on two boundaries a main or secondary road. Maximum site area and hours of operation conditions apply. **b** Must be on land also used for a petrol station. **n.s**. not stated.

Source: City of Sunshine Planning Scheme (as at June 1995).

Outcome-oriented planning

An alternative to zoning rationalisation is to adopt outcome-oriented planning. In box 8.2 outcome-oriented planning which operates in New Zealand is described, again using the example of a petrol station.

Allin (1995) notes that, in New Zealand, planning allows a wider range of activities which meet easily quantifiable performance standards (such as building height, parking and noise) than would usually be allowed under a conventional zoning system. However, outcome-oriented plans may lead to less certainty in the case of effects which are more difficult to quantify (such as visual and urban design standards).

In Australia, the new Victorian zones are moving towards a more outcome-oriented approach. New Zealand appears to be relatively advanced in the implementation of outcome-oriented standards in this area of licensing.

Box 8.2 Outcome-oriented planning consent for a petrol station

Wellington, New Zealand. In Wellington, land use consent in commercial areas is determined on the basis of the effects of the proposed activity on the local area through noise, traffic, parking and other factors. Provided a proposed service station satisfied these requirements and planned to locate in the central city, suburban shopping or industrial areas, an application for a land use resource consent would not need to be advertised to adjoining occupiers. Pure effects-based planning does not extend to the residential zone because it is more difficult to establish criteria for quality aspects of urban amenity and design. Such planning would also provide less certainty for residents. A petrol station is more difficult to establish in residential areas and would certainly require advertising.

The standards to be satisfied in Wellington include:

- noise emissions not to exceed 60 dBA(L10) and 85 dBA(Lmax) at all times;
- all activities causing discharges to air, land or water to obtain and comply with any necessary discharge consents (these are issued by the regional council);
- no dust nuisance (a nuisance occurs if there is visible evidence of suspended solids in the air, ground and/or water); and
- outdoor illumination must not exceed 8 lux at the windows of residential buildings.

Source: Wellington City Council, Extract from Proposed District Plan: Suburban Centres (Sections 6,7) and Central Area (Sections 12,13).

8.1.2 Building standards

Building codes set out the technical standards to be satisfied by new and altered structures. They are usually embodied in subordinate legislation. This can be altered administratively rather than requiring amending legislation. The main building code also incorporates other, more technical, standards by reference.

There have been important developments in the design of building codes in recent years. In New Zealand a new national performance-based building code became fully operational at the start of 1993. The reformed New Zealand building code does not prescribe methods or processes to be used by builders. Instead, the code identifies *social objectives* that a building must achieve, for example:[4]

> … to safeguard people from injury caused by falling.

[4] New Zealand *Building Regulations 1992*, First Schedule, cl. F4.1.

The New Zealand building code translates these into *functional requirements*, for example:[5]

> Buildings shall be constructed to reduce the likelihood of accidental fall.

The code specifies qualitative or quantitative *performance criteria* which the building must meet in order to comply with its functional requirements. For example:[6]

> Where people could fall 1 metre or more from ... the floor of a building ... a barrier shall be provided.
>
> Barriers shall ... restrict the entry of children under 6 years of age, when located in areas likely to be frequented by them

The Building Industry Authority (BIA) has published *acceptable solutions.* These are examples of prescriptive solutions which comply with the performance criteria. Acceptable solutions are not mandatory. *Alternative solutions* may be used provided they satisfy the performance criteria. The BIA has also developed *verification methods* by which alternative solutions may be evaluated for compliance.

An example of an alternative solution and the relationship between acceptable solutions and standards is given in box 8.3.

The Australian Building Codes Board (ABCB) is developing a performance-based code to replace the current Building Code of Australia. The current code contains many state and territory variations to accommodate local industry practices and idiosyncrasies. The first draft of the new code is conceptually based upon the New Zealand code.[7] Obviously, the effectiveness of the new code will depend on the willingness of state and territory governments to amend their existing regulations to incorporate its provisions.

Malaysian controls appear considerably more prescriptive and inflexible than those in New Zealand or even the current, pre-reform, Australian code. These differences are illustrated in appendix C by comparing Australian, New Zealand and Malaysian standards for structural safety and natural lighting.

In Australia and Malaysia standards are effectively incorporated into the code to become minimum mandatory requirements. In New Zealand, the acceptable solution is not referenced in the code and so is non-mandatory. Instead, a set of

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[5] Ibid., cl. F4.2.

[6] Ibid., cl. F4.3.1 and F4.3.4(f) respectively.

[7] In Australia, the 'acceptable solution' will be termed 'deemed to satisfy' (*Building Australia News*, March 1995).

more general requirements is used and these may be satisfied by alternative solutions.

Box 8.3 Alternative methods in New Zealand building control

An example of an alternative solution is provided by child-proof barriers to prevent falling from a building. The acceptable solution specifies these as being of a minimum height with no openings through which a 100 mm diameter sphere can pass. This is to prevent children climbing or passing through the barrier. [8] Builders are free to adopt this solution (which resembles the previous prescriptive regulation for barriers). However, architects in Wellington designed a barrier with horizontal members which prevented children climbing by being tilted away from the vertical and over the areas occupied by the children. As children try to climb the barrier their own weight forces their feet away from it and back to the ground. This was accepted as an alternative solution.

The acceptable solution was influenced by a technical standard for playground equipment developed by Standards New Zealand. This standard is based on the fact that head widths for one-year-olds in that country typically range from 110 to 130 mm.[9] A child's body can pass through an opening that is about 90 per cent of the size of the opening through which the head can pass. If the barrier is to prevent both the child's body passing through it and the head from being trapped, a 100 mm sphere test is appropriate. [10]

Overall, the New Zealand approach is currently the most outcome-oriented of the jurisdictions examined. It encourages flexibility and innovation and involves lower costs for business and the community. If and when the new performance-based Australian code is adopted by each state and territory, Australia is likely to obtain similar benefits to those currently being experienced in New Zealand.

8.2 Management systems and proportionality

Flexibility for businesses to comply with standards can also be achieved by shifting the focus of regulation from direct auditing and inspection of business activities towards auditing the existence of user-designed quality and environmental management systems.

[8] New Zealand Building Industry Authority Acceptable Solution F4/AS1.

[9] Standards New Zealand (1986), *'Specification for playgrounds and playground equipment, Part 3: Design and construction — safety aspects.'*

[10] This discussion draws on material in the New Zealand *Building Industry Authority News*, April 1994.

The International Organisation for Standards (ISO) has developed a set of uniform generic quality system standards for *quality management systems* (QMSs). These are known as the ISO 9000 family of standards. Many countries now require businesses to implement QMS to ISO 9000 standard as a condition of, or as an alternative to, licensing. These international standards tend to represent only minimum levels of protection (Ogus 1994, p.138). For some countries, it may be necessary to raise the standards to meet local preferences.

While QMSs focus on the quality of products and services for the benefit of customers, *environmental management systems* (EMSs) have been developed to enable business to address the quality of the environment. The ISO is now finalising a set of generic quality system standards for EMSs which will be known as the ISO 14000 family of standards.

In economic terms, QMSs attempt to address the failure of market forces to deliver satisfactory outcomes when decision-makers are unable to obtain the information (including information about the management of hazards and risks) needed to do so. The use of QMSs reflects the view that the quality of products cannot be ensured by inspection only. Under ISO 9000, quality management systems, rather than the products, are measured and certified by customers or an independent third party certification body (Majumdar 1994). The more recent EMSs, which emerged in the United Kingdom in the early 1990s, are designed to tackle problems such as excessive or unsustainable levels of pollution.

8.2.1 Occupational health and safety

The operation of hazardous plant may involve QMSs, or inspection schemes.

General hazard management principles

Recent thinking in the area of equipment regulation focuses on the management of specific hazards. Hazard management involves:

- identifying hazards;
- assessing whether or not there is any risk associated with them; and
- controlling the risk.

The application of these general principles to pressure vessel regulation in the United Kingdom, New Zealand and Victoria is examined below.

Specific hazard management responsibilities

The regulatory standards applied to boilers and similar pressure vessels provide an example of the application of hazard management principles to a specific class of hazardous equipment. In late nineteenth century Britain, prior to regulation, explosions in steam boilers happened almost daily (UK HSE 1994).

Despite differences in emphasis, the overall hazard management requirements in the United Kingdom, New Zealand and Victoria appear broadly similar. Neither Victoria nor the United Kingdom formally recognise QMS schemes. However, Victoria requires a record of inspection and maintenance for specific plant, and there is a United Kingdom requirement for a written scheme of examination. The arrangements appear to provide scope for the scale of hazard management activities to be tailored to the individual circumstances of each business.

Proposed New Zealand regulations for the operation of pressure vessels give the controller of the equipment the choice of:

- having certificates of inspection issued by independent inspection bodies; or
- operating and inspecting the equipment under a quality management system.

Any New Zealand business which has achieved quality assurance certification under Standards New Zealand or Standards Australia may apply to the Department of Labour to be recognised as operating under a QMS. Under a QMS, equipment controllers are required to carry out the surveillance audits needed to maintain quality assurance certification and to ensure that personnel involved in QMS are appropriately qualified and competent.

More detailed comparisons of the hazard management requirements for pressure vessels imposed under subordinate legislation in Victoria, New Zealand and the United Kingdom are made in appendix C.

8.2.2 Food hygiene regulation

Food hygiene control in many countries has been moving from traditional end-product inspection approaches towards quality management systems. Although there are a number of quality management systems available for food hygiene, *Hazard Analysis of Critical Control Points* (HACCP) is the most common and most widely regarded as the best system for food safety enhancement.

Quality management systems such as HACCP identify the points in a food business' operation (whether processing, packaging or selling) which may be

hazardous to food safety, and monitor and control those points. This contrasts with the traditional food safety approach of inspecting the production process and the finished product. The HACCP system is described in box 8.4.

Food-borne disease is a significant public health issue in many countries, with reported incidences of food poisoning growing considerably in recent years (Maurice 1994; Quevedo 1992). This increase may reflect an improvement in the recorded statistics, as well as an actual increase in incidence. Factors such as the trend towards 'eating out' and the corresponding growth of mass catering have been identified as factors contributing to this increase.[11] This is exacerbated by population ageing, with growing numbers of people with weakened immune systems (Maurice 1994). Other factors include the increased use of additives and irradiated foods (Scott 1990). HACCP is in many ways being relied on to control this continuing rise in reported food poisonings.

Regulatory agencies in many countries are now making HACCP (or similar preventive hygiene schemes) a mandatory element of their food safety systems. All food businesses in member countries of the European Union (EU) are required to have in place an effective HACCP system by December 1995 (Grijspaardt-Vink 1994).

HACCP is also being adopted by the United States and Canada as the system to ensure food product safety. In Canada, the comprehensive HACCP-based *Quality Management Programme* (QMP) has been in place since 1992 (Majumdar 1994). Its success is regarded as having been an important impetus for the proposed *Regulatory Efficiency Act.* This is intended to spread performance-oriented regulation throughout Canada (see companion volume, *Business licences and regulation reform*).

The United States Food and Drug Administration (FDA) has introduced HACCP on a trial basis for domestic seafood, meat and poultry processing. It has indicated that HACCP systems will be mandatory for every company which exports meat and seafoods to the United States (Sumner 1994).

Japan currently has a system of uniform production or processing standards for each food product under the *Food Product Hygiene Act.* Under this system, a particular food business may need a number of different licences if it sells a number of different food products at the same premises. However, in recognition of the burden

[11] The percentage of Australian household expenditure on food and non-alcoholic drinks which was spent on meals out and takeaway food rose from 22 per cent in 1984 to 27 per cent in 1993-94 (Australian Bureau of Statistics, Household Expenditure Survey: Detailed Expenditure Items, 1993-94, cat. no. 6535.0).

on business of this system, Japanese health authorities are continuing to rationalise application forms and are simplifying the licence application process for food businesses. Also, in line with international trends, Japan is planning to adopt hygiene regulation mechanisms based on HACCP. Health authorities expect this move towards HACCP-style production management systems to lead to a safer and more diverse range of food products becoming available to Japanese consumers (Japan MHW 1995).

Box 8.4 What is HACCP?

Hazard Analysis of Critical Control Points (HACCP) is a quality control system which relies on monitoring the whole production process to reduce the risk of contamination rather than on detecting and correcting problems after they have occurred. It involves assessment of safety and quality hazards introduced into food by all process inputs, including raw materials and ingredients, equipment, premises and handling.

HACCP is conducted according to seven basic principles:

- identify and analyse hazards, that is, likelihood of occurrence and preventive measures to control them;
- identify the critical control points (CCPs) in the process;
- establish critical limits for preventive measures for each CCP;
- establish a monitoring process to ensure control;
- establish procedures for corrective action when there is deviation from critical limits;
- develop an independent audit and verification program to ensure that the HACCP system is functioning;
- keep documentation that shows how the HACCP system is operating.

There are four basic categories of hazard in the food manufacturing process: biological, chemical, physical and operational (Sumner 1994). For each potential hazard identified within those categories, records are kept with information on critical points, tolerances and target levels, corrective action to be taken and the person responsible for verification.

Documentation and auditing are fundamental to a HACCP system. Plans and documentation have to be specific to each operation, as the hazards to food safety will depend on process-specific factors such as inputs and equipment used. Independent auditing of the documentation, rather than of the physical processes, ensures compliance.

Sources: Sumner (1994); Marine Fisheries Research Department (1994).

Both New Zealand and Australia are currently moving in the direction of mandating systems such as HACCP and codes of practice for all food businesses. The

Australian Quarantine and Inspection Service (AQIS) has incorporated in its regulations QMSs that are based on HACCP.

In moving from a traditional regulatory system for food hygiene to a HACCP-based system, it is important that older, more prescriptive regulations are removed as QMSs are introduced. If new requirements to implement QMSs are merely overlaid on older regulatory requirements, the overall compliance burden on business may increase as a result of the change, without necessarily raising the level of food safety.

The QMS approach, while generally advantageous, may prove burdensome for smaller firms which have less easy access to information about the best way of complying. One flexible way of dealing with this is to combine traditional technical standards with target standards. Smaller firms may then use the technical standards while larger businesses can be allowed to show that they have developed an equally effective method of meeting the target standard (see also section 8.1).

The development of codes of practice will help maintain standards in areas where detailed provisions in the legislation are removed or replaced with broader provisions. These international trends in food hygiene regulation reflect growing recognition of the benefits of a system in which regulators specify targets and principles, while individual firms choose the best way to conform (NFA 1994). For example, under the United Kingdom *Food Safety Act 1990*, under certain conditions, it is a defence for a person charged with a quality or safety offence to prove that he or she took all reasonable precautions and exercised all due diligence to avoid committing the offence (Ogus 1994, p.197).

Convergence between Australia and New Zealand

There is a significant level of trans-Tasman consultation in developing new food hygiene arrangements, with recent New Zealand developments in food hygiene regulation similar to those proposed in Australia. At present, food hygiene in Australia is primarily regulated under state legislation, with administrative responsibility devolved to local councils. However, the *Food Standards Code* provides for a considerable degree of uniformity between states. This code incorporates standards relating to food products as well as standards on matters such as labelling and the use of additives. The National Food Authority (NFA) in Australia is currently working to achieve greater uniformity across Australian states in food hygiene regulation. The development of QMSs is an integral part of this move.

The NFA's reform package has the following key elements (NFA 1994):

- development of national food hygiene legislation incorporating the principles to which individual food businesses must adhere;
- food businesses to develop and implement *food safety plans* (FSPs);
- food handlers to receive appropriate training; and
- development of appropriate documentation, including codes of practice and guidelines, to supplement the proposed national food hygiene standard.

These standards will be based on HACCP principles. Regulation of food hygiene with HACCP-based programs and auditing may not necessarily be linked into a licensing system. It may be used in conjunction with accreditation as an alternative to licensing.[12]

The proposed New Zealand requirement to register food premises is broadly similar to the proposed Australian requirements. Minimum standards will have to be met in order for premises to be approved. The New Zealand government is currently considering amendments which would recognise FSPs in law and shift the emphasis towards QMSs (NZ MoH 1995).

The legal recognition of FSPs would shift the emphasis of regulation from inspection of premises and products to risk and quality management. It would also recognise the owner of the food enterprise as the most appropriate person to consider all contributing factors in the provision of safe food.

In December 1995 a treaty was signed between Australia and New Zealand which established a single harmonised food standards setting system. As a result, standards set by the joint Food Standards Authority will be accepted in both countries. Included in the treaty are standards covering food composition, labelling, packaging and additives. At present, standards relating to food hygiene are excluded.

Although progress is being made, Australia is less well-advanced than a number of other countries in the adoption of HACCP for food premises which supply the domestic market only. However, important advances have been made in Australia in the regulation of food destined for export markets.

[12] See companion volume, *Business licences and regulation reform*, for a discussion of the advantages of accreditation.

8.2.3 Environmental management systems

Comprehensive environmental management systems (EMSs) represent the application of quality management systems to environmental quality. Welford (1995, p.54) observes that:

> If we regard environmental damage as a quality defect then its treatment is like any other quality characteristic.

The *Responsible Care* program used by the international chemical manufacturing industry is an early example of an EMS (see companion volume, *Business Licences and regulation reform*).

Voluntary EMSs have been used by larger North American companies and form the basis for the European *Eco-Management and Audit Scheme* (EMAS).

Mandatory applications of EMSs include the pioneering United Kingdom *integrated pollution control* (IPC) system. A draft European Commission directive has now been developed along the lines of IPC.[13] In Australia, environmental management systems have been encouraged by some state and territory authorities but comprehensive tracking systems have not yet been implemented.

Many Australian companies have implemented EMSs. Draft ISO 14000 series standards were implemented as Interim Australian Standards in November 1995, pending international verification expected in mid-1996. The Commonwealth Environmental Protection Agency has been actively involved in developing the standards and in establishing mechanisms for accreditation of auditors to service industry requirements in this area.

AusIndustry has developed an environmental management module as part of its *Enterprise Improvement* program. It is designed to help firms address environmental management as a means of improving their overall business performance. The focus of the program is waste management and cleaner production, rather then compliance, however, it is broadly designed to be compatible with ISO 14001 standards.[14] The program will assist firms to progress to accreditation under ISO 14001 if they wish. This module will be trialed in early 1996.

The uses of EMSs in the United Kingdom and Australia are discussed below.

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[13] *Proposed Council Directive on integrated pollution prevention and control*, COM(93) 423 final (14 September 1993).

[14] ISO 14001 is the only one of the series of ISO 14000 standards so far to contain specified measurable and verifiable requirements.

BS 7750, EMAS and ISO 14000

The world's first environmental management standard for management systems, the United Kingdom's *BS 7750*, was released in draft form in 1991 and published in final form in 1994. The standard does not specify environmental objectives or targets. Instead, it sets out the requirements for an EMS to be capable of achieving environmental improvements. The performance targets (such as emission rates) are self-determined by each firm in implementing the EMS in its business or at its site. Certification of a firm's EMS under BS 7750 is voluntary and is maintained through regular audits by accredited independent third party certifiers.[15]

In the late 1980s, the European Commission proposed a mandatory scheme, known as the *Eco-Management and Audit Scheme* (EMAS), under which companies would be required to undertake environmental audits and publish a detailed environmental statement. The scheme became voluntary after industry pressure and debate about its costs (Welford 1995) and began in 1993.[16]

The objective of EMAS is to promote compliance with environmental legislation and continuous improvement in environmental performance by industry. Environmental audits are a crucial element in the scheme, which is described in more detail in box 8.5.

Unlike EMAS there is no requirement to publish audit results under BS 7750. Welford (1995) notes that the main criticism of voluntary approaches such as EMAS and BS 7750 is the absence of basic or common environmental performance requirements.

Compliance is based on each firm specifying its own performance objectives so that:

> … even the most environmentally damaging firms will be able to achieve BS7750 and the prestige that may come with it, so long as they can demonstrate the existence of a management system which can deliver incremental environmental improvement (Welford 1995, p.75).

[15] This standard should be distinguished from the United Kingdom *integrated pollution control* (IPC) system, which is a mandatory requirement involving externally-imposed environmental improvement targets for larger polluters (see companion volume, *Business licences and regulation reform*).

[16] However, the European Council and member countries have retained the right to introduce compulsory registration in selected industrial categories (Welford 1995, p.72).

Box 8.5 What is EMAS?

The European Eco-Management and Audit Scheme (EMAS) is a voluntary scheme designed to promote compliance with environmental regulations and to continuously improve environmental performance by industry. To register under EMAS, firms must:

- adopt an environmental policy;
- undertake an environmental review;
- establish environmental programs;
- install an environmental management system;
- undertake an environmental audit;
- prepare an environmental statement; and
- seek verification.

The environmental audit should compare environmental performance against basic standards set by regulation, the firm's own stated objectives and best practice. The results of the audit have to be considered by senior management, and policy, objectives, targets, action plans and systems revised accordingly. An external environmental statement is prepared on the basis of the audit and the statement is validated by external accredited environmental verifiers.

Source: Welford (1995).

In September 1991 the International Organisation for Standardisation and the International Electrotechnical Committee established a Strategic Advisory Group on Environment to make recommendations on the need for international standards for the environment. In June 1995, ISO agreed that five standards in this new ISO 14000 family could proceed to draft stage. The key principles of ISO 14001 are set out in box 8.6. They are expected to become final standards in mid-1996. However, Australia and New Zealand published these as interim standards in November 1995.[17]

A pilot program for the accreditation of certification bodies that wish to audit and certify environmental management systems was launched in December 1995 by the Joint Accreditation System of Australia and New Zealand. Around a dozen audit assurance organisations are expected to participate. Each of these is expected to invite at least two companies to become involved.[18]

[17] 'ISO 14000 — turning the challenge into opportunity,' *The Australian Standard*, November 1995.

[18] 'Pilot EMS Scheme to commence in early 1996,' *Environment Business*, October 1995.

BS 7750 and ISO 14000 are conceptually similar, (although the United Kingdom standard is more prescriptive). However, the focus of continuous improvement differs. In BS 7750, it is the environmental performance of the system which is to be improved; ISO 14000 is more concerned about the improvement of the system itself.

Together with the British Standard BS 7750 and the European Union's EMAS, ISO 14001 is expected to make a major contribution around the world to changing business management and trading practices. It has also been mentioned as a potential component of regulatory regimes in some economies. However, there are varying opinions on whether or not a mandatory application of this standard is appropriate. ISO 14001 will not replace environmental regulation although, by its requirement for demonstrated compliance, it may have a useful role in assisting a more efficient allocation of regulatory resources.

Box 8.6 ISO 14001 standards

The essential elements of the ISO 14001 standards are:

- a clearly defined and documented environmental policy with the continuing commitment of top management;
- policy objectives taking into account significant environmental impacts associated with the business's activities or products;
- plans which are integrated into the firm's strategic plan, including environmental management programs identifying specific actions for processes, products, services or facilities within a site;
- support mechanisms, including the clear designation of responsibilities, employee awareness and training programs, documentation, communication and reporting processes; and
- the monitoring of compliance with legislative requirements, the establishment of an audit program, procedures for corrective action and a commitment to continual improvement of the environmental management system .

Source: Izmir (1995).

Victorian Environment Protection Authority accredited licensees

The Victorian Environment Protection Authority has an *accredited licensee* program for firms which have developed an environmental management system and environmental audit and improvement programs, and which undertake to publicly report their environmental performance. The system is described in box 8.7.

The scheme has been described as a 'good example of industry being allowed to take greater responsibility for its own performance' (Victorian DBE 1995, p. 21). It provides for a 25 per cent reduction in the licence fee for accredited firms which apparently corresponds to the saving in regulatory resources for administering individual licences. However, this fee reduction may not cover the cost to businesses of conducting the environmental audit required to qualify. Nevertheless, four companies were actively seeking an accredited licence in mid-1995, which suggests that there are other strong incentives, such as increased operating flexibility (Victorian DBE 1995).

Box 8.7 Victorian EPA accredited licensee system

The Victorian Environment Protection Authority (EPA) accredited licensee system was introduced in 1994 to reduce the prescriptiveness of environmental regulation for businesses with high levels of management, technical and legal skills. To be eligible for an accredited licence the business must have:

- an *environmental management system* which has been independently certified against a recognised management system standard applied using environmental guidelines by an EPA-approved environmental auditor and a management systems expert;
- an *environment audit program* involving an EPA-approved independent environmental auditor and covering:
  - the performance of the management system;
  - compliance with performance requirements;
  - the extent and source of waste generation (where necessary);
  - the adequacy of safeguards; and
  - the actual environmental effects (where these are potentially large);
- an *environment improvement plan* developed in consultation with the local community and the EPA; and
- annual *environment performance reports* which are available to the public and contain any performance indicators required by the EPA.

The benefits to the accredited licensee include:

- greater operating freedom for the business;
- a reduction in licence fees; and
- a single environment regulation system for the site.

Source: Victorian Environment Protection Authority (1994), *Information Bulletin — Accredited Licensee Guidelines for Applicants*, Publication 424, Melbourne.

8.2.4 Warrants of fitness: automatic equipment in buildings

Recent New Zealand reforms make a case for incorporating the regulation of automatic equipment in buildings into the building approval process. In Australia, these items are often regulated by industrial safety agencies and fire departments.

Automatic equipment such as lifts, sprinkler systems, fire alarms and air conditioning are detailed in a *compliance schedule* supplied by the local council to the owner at the completion of a new building. The owner is required to have these systems maintained, inspected and reported on annually by an *independent qualified person* (IQP). An IQP is a person accepted by the local council as qualified to independently monitor and maintain the equipment. Each year the owner issues a *warrant of fitness* to the local council and fixes a copy in a prominent place in the building. This document warrants that the automatic equipment in the building has been maintained to the manufacturer's or the local council's requirements. The process has dispensed with the need for separate inspections by the fire service (alarms, smoke detectors), Department of Labour (lifts and escalators), and similar agencies.

The IQP is approved by and registered with the local council. Approval lasts for one year and the IQP must reapply for registration each year. An IQP can be removed from the register if an independent audit detects that inspections have not been performed adequately.

The new system has settled responsibility for building safety on the owner. Previously, dangerous situations (for example, fire alarms not working properly) may have been difficult to resolve because of disputes about responsibility between owners and tenants. Resolution would not be helped by the need for the local council to coordinate the efforts of other agencies, such as the fire service. An owner who fails to issue a warrant of fitness is immediately liable to prosecution under the new code.

In Australia, automatic equipment in buildings typically requires additional notification. For example, in New South Wales, lifts are registered annually with the WorkCover Authority under the *Construction Safety Regulations 1950*. In Victoria, lift registrations are renewed every three years under the *Occupational Health and Safety (Plant) Regulations 1995*.

There may be benefits to business and the wider community from integrating the licensing of some items of automatic building equipment with the building approval process and operating them within an independent quality control system. If so, these are yet to be exploited in Australia.

8.3 Summary

This chapter applied two best practice design features for licence standards to particular licensing systems in Australia and overseas.

Outcomes instead of processes. Outcome-oriented standards have begun to appear in land use planning systems in New Zealand and will soon be adopted in some Australian jurisdictions. New Zealand has also adopted a performance-based building code and a similar code is being developed for Australia. These systems allow smaller businesses to adopt approved methods to ensure compliance with the standards while offering larger firms flexibility to use innovative, cost-reducing approaches.

Management systems. Australia is generally less well advanced than some other countries in applying quality and environmental management systems. For example, in food processing the adoption of HACCP is more advanced in Canada and the United Kingdom than in Australia. In environmental regulation, the United Kingdom has pioneered standards for EMSs, although Australia and New Zealand are already adopting the latest international draft standards for EMSs. In Victoria, an accredited environmental licence involving less prescriptive control is available to firms which have satisfactorily implemented an EMS. New Zealand has applied some innovative regulatory approaches to building equipment control which may be worth consideration by Australian regulators.

Nevertheless, Australian regulators in many fields are aware of the potential benefits of greater flexibility in licence standards. Progress is being made on a number of fronts to introduce that flexibility.

END OF CHAPTER

9 Licence standards: efficiency

This chapter addresses the final two best practice design criteria for licence standards set out in chapter 4 (see box 4.2). These are the need for any licensing standards involving limits or quotas to be allocated efficiently and the need for coordination in the use of licensing standards across jurisdictional boundaries. The chapter also contains a discussion of the use of technology standards as an element of licensing.

The first criterion is examined in section 9.1 using tradeable permit systems as an example. Provided that there are sufficient market participants, a tradeable permit system is a highly efficient method of allocating an aggregate limit or quota across licensed businesses. For example, an overall limit on the rate of use of a natural resource such as a fishery may be allocated across and traded between individual licensed fishing boats. The example used in section 9.1 is an overall limit on the rate of emission of contaminants into the air, with allocation among individual firms which have pollution discharge licences by way of a tradeable permit system.[1]

Section 9.2 contains a discussion of the coordination of standards across different jurisdictions. The inconsistent application of standards across jurisdictional boundaries contributes to uncertainty and additional expense for businesses operating in numerous locations. This source of external inefficiency need not be confined to larger undertakings. For example, the owner of two licensed retail bakeries operating under different local council jurisdictions may encounter different inspection procedures by food hygiene authorities.

In section 9.3, the use of technology standards in conjunction with licences is discussed in the context of pollution control. The effects of these standards on the efficiency of business is a matter of controversy.

[1] It is the *rate* of emissions which is allocated and traded. For example, in Washington State (United States) the relevant air pollution agency measures emission reduction credits in ton per year increments (Puget Sound Air Pollution Control Agency, *Regulation I*, r.6.08).

9.1 Allocating licensing quotas

Legislators often specify a maximum aggregate level for emissions and discharges to provide adequate margins of health and environmental safety, and attempt to allocate the limit across firms in a cost-effective way (Tietenberg 1992, p.369).

Mechanisms are needed allowing these limits to be adjusted as each firm's circumstances change. Limits could be individually renegotiated between the pollution control agency and licensed firms but this is likely to be administratively expensive and vulnerable to manipulation and abuse (Ogus 1994, pp.170–1). A less costly approach is to allow the individual emission limits granted under each licence to be traded among polluters.[2] Trade could be allowed in all or part of the allocated limit. Under competitive conditions, trade continues until the price of a unit of emission equals the cost of abating that unit. At this point each firm is indifferent between incurring extra expenditure to prevent a given additional amount of pollution and purchasing an emission credit to allow the same incremental discharge.

The point at which trade ceases will be socially optimal if the marginal cost of abatement equals the marginal social damage from pollution. If the total emission limit exceeds the optimum, the price of emission rights (and the marginal cost of abatement) will be below the marginal social damage and there will be excessive pollution. Conversely, if the total limit is below the optimum, firms will incur excessive costs in controlling pollution and this will be reflected in emission permit prices being bid up. In terms of efficiency, there will be 'too little' pollution.

The marginal social damage of emissions (or the marginal social benefit of reducing them) may vary between different firms or at different locations. For example, some industrial air pollution sources may congregate at a single location so that a given reduction in pollution by each will have a much larger effect on local air quality than the same volume of abatement at another location.

These variations in the marginal benefit of reducing emissions may mean that regionally or nationally uniform discharge limits may not be ideal. The use of *offset credits* in the United States, in which the price of air emission rights is higher in areas of severe pollution reflects this concern (examples of systems using offset credits are discussed below).

[2] Of course, the initial allocation of the emission rights affects the value and viability of existing firms. The rights may be auctioned to the highest bidders or allocated to existing emitters.

This section describes how tradeable permit systems are applied in practice in the context of air pollution abatement in North America and water discharges in New South Wales, Australia. They may be particularly relevant for foundries and seafood processors.

9.1.1 Washington State, United States

The tradeable permit system in Washington State operates within the relevant national air pollution control arrangements. The United States *Clean Air Amendment Act of 1977* defines *attainment* areas as those in which national ambient air quality standards have been met. Otherwise, the area was defined as a *nonattainment* area. This classification is also pollutant-specific: for example, an airshed might be an attainment area for carbon monoxide but not for lead.

The tradeable permit system's operation also varies between existing and proposed sources of pollution.

Existing contaminant sources

The Puget Sound Air Pollution Control Agency in Washington State employs a system of tradeable *emission reduction credits* (ERCs) which firms may bank for future use or sale. Stationary emission sources are subject to standards (*allowable limits*) with respect to discharge rates. These are concentration limits (for example, contaminant measured in parts per million of discharge). Emission reduction credits are measured in tons per year and may be banked for up to five years. Firms wishing to earn ERCs must formally apply to the agency within 180 days of any action taken to effect an emission reduction, paying an administrative fee of US$50 per ton.

The amount of ERCs a firm may claim is based on the difference between the source's allowable emissions and its reduced, actual emissions. The permission to bank ERCs represents a legally enforceable title to property. It includes any conditions imposed by the agency to ensure that the emission reduction is permanent (such as technology requirements) and is enforceable under federal legislation. The firm may sell or transfer the ERC with prior approval by the agency. However, sale or transfer of the credits does not relieve the vendor from the conditions applying to the ERC. If, after sale or use, the conditions are violated and this results in an emission increase, the agency may require the vendor to replace that amount of credit through additional emission reductions or the purchase or use of ERCs already banked.

New contaminant sources

Any new air contaminant source is subject to approval by the agency through a *new source review*. New sources must demonstrate that they will meet all emission standards and not contribute to a violation of the ambient air quality standards. Any *major* new source must also satisfy a benefit–cost test, which must include an analysis of alternative sites, sizes, production processes and environmental control techniques. According to the agency, few new sources are 'major'.[3]

Finally, *offset credits* are used for major new sources or major modifications within geographic areas designated by the US Environment Protection Agency as violating a primary or secondary national ambient air quality standard (nonattainment areas). Before commencing operations, these firms are required to purchase ERCs from existing permit holders at a premium of at least 1.1 times the quantity of banked ERCs in the same nonattainment area.

In effect, the price of ERCs is at least 10 per cent higher for major new sources (relative to existing sources) within a nonattainment area. This provides some incentive for new sources to locate in areas which are not violating ambient standards while financing emission controls being undertaken by existing sources. Airshed emissions are lower rather than higher after the new source begins operating within a nonattainment area so that 'economic growth became the means for achieving better air quality rather than the source of further deterioration' (Tietenberg 1992, p.407).

9.1.2 Californian trading between stationary and mobile sources

In southern California, the most severe nonattainment area in the United States, ERCs may be transferred between mobile and stationary pollution sources. An *old-vehicle scrapping program* allows stationary sources to generate mobile source emission reduction credits by scrapping older high-polluting vehicles. These credits can be used to offset emission impacts resulting from a delay in compliance with stationary emission reduction requirements. Also, facilities with 100 or more employees which generate air emissions must encourage car pooling. Emission reduction credits from scrapping old cars can be used to satisfy ridesharing requirements (Broadbent 1995).

[3] A 'major source' is one which emits 100 tons per year or more of any air contaminant (Puget Sound Air Pollution Control Agency, *Regulation I*, r.1).

9.1.3 New South Wales water discharge trading

Trading in ERCs is not confined to air pollution. Salinity discharge problems from irrigation and mines in the Hunter River region in New South Wales have led to the development of saline water discharge credits. A total allowable salt load in the river was calculated given acceptable salinity levels and the extent of diffuse sources of saline water. Credits are allocated to existing sources. Those which are efficient in managing their water can sell, loan or lease their credits to sources wishing to exceed their initial allocation (Izmir and Shepherd 1995).

The New South Wales Environment Protection Authority has also been examining the scope for encouraging trading between point and non-point sources of phosphorous in water catchments (Izmir and Shepherd 1995).

9.1.4 The potential for tradeable emission permits in Victoria

The Victorian Environment Protection Authority examined the potential for a tradeable emission rights market (Victorian EPA 1995). It noted that total licensed emissions of many of the major pollutants are dominated by a single firm. This would reduce the scope for emission trades to occur under competitive conditions, making it more difficult for the aggregate limit to be allocated optimally.

For example, there are over 250 licensed emitters of nitrous oxides in Victoria, but the largest emitter accounts for 40 per cent of licensed discharges. There are also dominant individual emitters of carbon monoxide and sulphur dioxide. Only emissions of volatile organic compounds approach relatively competitive conditions, with the largest emitter responsible for 10 per cent of discharges (Victorian EPA 1995, p.16).

Possible means of addressing insufficient competition in the market for emission rates include the application of competition laws to outlaw monopolistic activities and the participation of non-emitters (such as conservation or community groups) as traders.

There is also a need to ensure that a tradeable permit system for contaminants is consistent with other pollution prevention and control programs. In particular, modern approaches to regulation in this area include the encouragement of environmental management systems which are concerned with the overall environmental consequences of the firm's activities rather than with a single pollutant. Environmental management systems are discussed in sub-section 8.2.3.

9.2 Coordinating licensing standards

The setting and application of standards is likely to be more efficient from the viewpoint of businesses operating in more than one domestic jurisdiction if there is some coordination between similar licensing agencies across those jurisdictions. Food hygiene regulation provides some useful insights into this issue.

Weddig (1994) notes in the United States context that if the new Hazard Analysis of Critical Control Points (HACCP)-based system for food hygiene regulation generates a multitude of enforcement actions by federal, state and local authorities, all wishing to examine HACCP records, the costs will be overly burdensome for industry and for taxpayers.[4] He suggests that this system needs some kind of formal arrangement between federal agencies and state governments to ensure coordination and uniformity.

Enforcement of food law is devolved to local authorities in the United Kingdom, but is coordinated through the *Local Authorities Co-ordinating Body on Food and Trading Standards* (LACOTS). The United Kingdom is attempting to address the issue of coordination of advice and enforcement to ensure food businesses are treated consistently in its new *Code of Practice for Food Hygiene Inspections* .[5] This is particularly important for food businesses that have premises situated in more than one food authority area.

In cases where a business has premises located in more than one local authority area, all food authorities should be guided by the LACOTS *home authority principle*. An authority would normally be the *home authority* for a business if the decision-making base of that business is located in their area. The home authority takes the leading responsibility for advising food businesses on policy matters relating to compliance with food safety legislation. Non-home authorities with company outlets in their area may need to coordinate with the home authority where local advice or enforcement relates to centrally agreed policies or procedures. LACOTS has a role in developing liaison arrangements between local and home authorities.

The code of practice also encourages authorities to combine food hygiene inspections with other inspections (food standards inspection, inspections under other legislation or following-up a complaint) wherever practical and appropriate. This is intended to use food authority resources most effectively and minimise disruption to businesses. LACOTS also recommends that food authorities monitor

[4] See sub-section 8.2.2 for a description of HACCP.

[5] *Food Safety Act 1990*, Code of Practice No. 9: Food Hygiene Inspections (Revised September 1995).

the quality of their inspections to ensure they are carried out to a uniform standard, and that interpretation and action by officers is as consistent as possible within that authority.

A recent study by the Office of Regulation Review (ORR) on food law enforcement in Australia found that coordination and communications problems were perceived to be widespread by the enforcement agencies surveyed. The study found that poor coordination and communication can lead to duplication of enforcement, poor input by some local councils in the law-making process, reduced effectiveness of enforcement and non-uniform enforcement. The ORR notes that some measures have been put into place to reduce coordination problems. These include formal or informal networking systems in some areas, such as in south-east Queensland and Adelaide, and the development by the National Food Authority, with the agreement of the states, of a national database — the Australian Food Safety Information Network (ORR 1995).

9.3 Forcing technology

Pollution control authorities often specify technological standards for the plant and equipment used in facilities generating emissions. Some researchers have claimed that these requirements unnecessarily distort the production decisions of the regulated businesses and reduce competition in affected industries.

For example, Dean (1994) found that US environmental regulations deterred small establishments from starting. The regulations often required installation of capital intensive equipment with high fixed costs which tended to increase the minimum efficient scale of manufacturers. They also added to business complexity in terms of understanding and complying with regulations and created difficulties in siting new facilities. Pashigian (1984) also noted the inhibiting effect of United States environmental regulations on the formation of small firms through the increased capital intensity of affected industries. However, Evans (1986) disputed Pashigian's findings and presented results showing that average pollution abatement costs per employee tended to increase, rather than decrease, with plant size.

Mandatory technology standards tend to be more prevalent in the United States and western Europe than elsewhere. It has been argued that United States standards have been set beyond the reach of conventional control methods in order to force the development of new technologies (*technology forcing*), incidentally improving the profitability of United States technology suppliers.

Technology forcing would probably not be considered best practice in Australia. In a review of best practice regulation for the chemical and petroleum industries commissioned by the Victorian Department of Business and Employment it was observed that:

> Australian industry frequently comments … on the inappropriateness of uncritically applying American-style legislation to Australia. Prescriptive standards are not considered to be best practice in Australia where there is a strong preference for adopting flexible performance-style legislation. (Victorian DBE 1995, p.25)

A brief discussion of United States, United Kingdom and Australian technology standards in the field of environmental licensing appears below.

9.3.1 Mandatory technology standards in Washington State

The US federal air pollution controls specify technology standards for new and some existing stationary emission sources. These have been incorporated into local air control authority requirements. In Washington State, there is a general requirement that new sources must install *best available control technology* (BACT) and replacement investment must use *reasonably available control technology* (RACT).

In effect, BACT is a purely technological requirement whereas RACT is less stringent and takes account of both technological and economic feasibility (Pearce and Brisson 1993). The operational definition of BACT used in Washington State involves potentially highly prescriptive regulation:

> … technology that will result in an emission standard … based on the maximum degree of reduction which the Agency, on a case-by-case basis, taking into account energy, environmental and economic impacts, and other costs, determines is achievable for such source through application of production processes, available methods, systems and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques for control of each contaminant. … The Agency may prescribe a design, equipment, work practice, or operational standard, or combination thereof, to meet the requirements of best available control technology.[6]

While the definition of RACT is less stringent, it involves considerable subjectivity:

> Reasonably available control technology means the lowest emission standard that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic

[6] Puget Sound Air Pollution Control Agency, *Regulation I*, r.1.07 (k).

feasibility. [It is] determined on a case-by-case basis for an individual source or source category…[7]

For those air contaminants for which the area is designated as nonattainment, new sources must employ the *lowest achievable emission rate* (LAER). This is whichever is the more stringent of:

- that rate of emissions that reflects either the most stringent emission standard that is contained in the implementation plan of any state for this type of source unless the owner or operator demonstrates that such emission standards are not achievable; or
- the most stringent emission standard achieved in practice by this type of source.[8]

9.3.2 United Kingdom integrated pollution control

Operators of certain prescribed industrial processes under the United Kingdom *integrated pollution control* (IPC) system of regulations must apply for authorisation (that is, a licence) to operate those processes from Her Majesty's Inspectorate of Pollution (HMIP). The IPC system involves a unified permit system for minimising pollution into all media (air, water and land). The authorisation includes operating conditions such as emission release limits and reporting requirements and applies to the most complex and polluting industrial processes in the United Kingdom. The system emphasises continuous improvement in environmental management through the setting and achieving of targets. It appears that much of the improvement work has involved developing adequate monitoring systems (Smith 1994).

Under IPC, industrial process operators must demonstrate to the HMIP pollution inspectors that they are pursuing *the best available techniques not entailing excessive costs* (BATNEEC). Techniques 'includes matters such as numbers and qualifications of staff, working methods, training and supervision' (UK DoE 1993, p.12). The United Kingdom focus on *technique* and its implied concern with managerial arrangements as well as hardware is likely to provide greater flexibility, and involve less economic inefficiency, than the United States *technology*-based requirements (Pearce and Brisson 1993).

[7] Op.cit, r.1.07 (pp).

[8] Op.cit., r.1.07 (cc).

In implementing IPC, BATNEEC requirements are applied to discharges to air, water and land. If substances are being discharged into more than one environmental medium, the *best practicable environmental option* (BPEO) must be used.

The Deregulation Task Force recommended that the definitions of BATNEEC and BPEO should be clarified, apparently at the request of industry. It urged that BATNEEC and BPEO be defined for each industrial sector, describing how account is taken of cost-benefit factors, economies of scale and differences in the treatment of new and existing plant (UK DTFs 1994, p.30). This may have been partly addressed by HMIP's publication of guidance notes summarising the performance parameters (for example, air emission rates) that represent BATNEEC for various types of new industrial processes (Smith 1994). More recently, the Environment Agency created by the United Kingdom *Environment Act 1995* may be required by a Minister to carry out a benefit–cost study of alternative options for dealing with pollution problems.

9.3.3 Australian standards

In Australia, some specific technical requirements may be applied to particular pieces of equipment such as those used in foundries. For example, the Victorian Environment Protection Authority requires all foundry melting furnaces to meet certain basic technical requirements.[9] Similarly, the proposed Queensland policy on air discharges empowers the licensing agency to require chimney heights to be calculated using air pollution dispersion modelling to demonstrate compliance with air quality guidelines.[10] However, general mandatory technology standards corresponding to BACT or BATNEEC are largely absent from most Australian jurisdictions.

9.4 Summary

In this chapter two best practice design features for licence standards — efficiency in allocating standards and coordination in applying standards — were discussed. Tradeable permit systems for air pollution emissions and the problem of coordinating municipal food hygiene standards were used as examples.

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[9] These include smokeless light-up by gas or oil burner, clean metallic charge, shielding of charge materials from wind effects and unimpeded vertical discharge (Victorian Government Gazette,*State Environment Protection Policy*, various issues).

[10] Queensland Department of Environment and Heritage, *Draft Environmental Protection (Air) Policy 1995 and explanatory notes: Draft for public consultation*.

Efficiency in allocating standards. Tradeable permits are used widely in the United States for allocating aggregate air emission quotas. These systems are beginning to be applied to pollution problems in Australia but are still at a relatively formative stage. It is necessary to ensure that tradeable emission systems are operated consistently with more comprehensive methods of pollution control, such as environmental management systems.

Coordination of the use of standards. The United Kingdom has an innovative system for coordinating the food hygiene regulation activities of local councils. In the face of that experience, it is probable inter-municipal coordination in Australia could be improved significantly in this area.

These two examples indicate that there may be considerable potential for Australian licensing systems to be applied more efficiently and in a more coordinated manner. This would enable costs to be reduced and provide greater certainty for businesses operating across municipal boundaries.

Australian environmental licensing is yet to incorporate the types of technology standards applied in the United States and the United Kingdom. It appears that attempts to force the pace of innovation through these standards would not be regarded as best practice by Australian firms.

END OF CHAPTER

10 Licence enforcement

In this chapter enforcement procedures used in a number of Australian and overseas jurisdictions are assessed against the desirable licence design features for enforcement set out in chapter 4 (box 4.3).

Businesses which comply with licensing conditions and regulation are often concerned about the extent to which other businesses fail to comply but avoid detection and penalty. Licences and conditions need to be enforced fairly and efficiently in order to yield high rates of compliance among businesses.

Potential conflicts between equity and efficiency in enforcing licences may also need to be resolved. For example, it may be efficient for an agency to use its limited resources to concentrate on a small number of serious offenders. However, while heavy penalties for serious offenders may deter others they may not be regarded as fair by the small number convicted.

Private reporting of non-compliance may be a potentially efficient means of enforcing licences. The conditions under which private compliance activity is likely to prove effective, and its limitations, are examined in section 10.1. The usefulness of a hierarchy of enforcement methods for licensing agencies is discussed in section 10.2. Comparisons of enforcement techniques for environmental and occupational health and safety (OH&S) regulations in Australia and overseas are also made in this section.

In section 10.3, the importance of publishing enforcement policies is discussed and illustrated, using examples from Australian and overseas jurisdictions. The effective use of deterrents through targeted enforcement procedures is described in section 10.4, drawing on examples from the fields of OH&S and food hygiene. The use of incentives to secure compliance is discussed in section 10.5.

10.1 Private compliance activity

Private compliance activity consists of:

- private reporting of contraventions to public enforcement agencies; and/or
- private enforcement through legal proceedings where public agencies fail to intervene.

These are discussed in turn in this section.

10.1.1 Private reporting

If businesses are aware that licence conditions are being flouted by others why might they not report offenders to the licensing authority? There are several possibilities.

First, they may not perceive that such licence contravention results in any material damage to other businesses or to the general reputation of the industry. This is consistent with businesses regarding regulatory standards as unnecessarily stringent. Private reporting is more likely when the damage caused by an offender is evident to or personally affects the reporter. For example, reporting of breaches of licence conditions which allow a competitor to cut prices may be more forthcoming when complying firms lose business to the offender.

The lack of an adequate financial reward may also discourage reporting (Shavell 1993). Suppose the reward to the reporter is significantly below the penalty imposed on the offender. If, in exchange for failing to report, the potential reporter receives payment from the offender, both parties may be better off than when a report is made.[1] In fact, the lack of an adequate incentive to report offences may encourage extortion and blackmail. An example of a reward arrangement is that under which the US Internal Revenue Service pays citizens for information leading to the successful prosecution of tax evaders (Grabosky 1993).

The fear of reprisal may also inhibit private reporting. Anonymity cannot always be guaranteed, 'especially when the liable party is able to deduce who must have supplied the information' (Shavell 1993, p.268).

[1] Both parties gain if the payment is larger than the reward and less than the penalty. The potential reporter receives more than the reward and the offender pays less than the penalty.

Finally, there may be cultural objections to reporting. For example, it is often claimed that Australians have a long-standing dislike of informing or 'dobbing in'.

Private reporting may be the most effective method of enforcement when licensing standards are seen as reasonable, when there are incentives to reporting breaches, when reporters can be assured of anonymity and when reporting is at least tolerated by society. If these conditions are not met public enforcement measures are likely to be needed.

10.1.2 Private enforcement

The existence of private enforcement, in the form of private individuals and groups initiating legal proceedings where public agencies do not intervene, can heighten the accountability of public enforcement agencies for their own behaviour. However, it may also interfere with the activities of public officials who can target enforcement in a way which is socially efficient. This is a more controversial area than private reporting.

10.2 Hierarchy of public enforcement methods

One of the key features of a licensing system is the power to withdraw the right to conduct the licensed activity. Many regulatory agencies regard licence revocation or suspension as a more effective enforcement tool than prosecution (Rowan-Robinson et al. 1990, p.251).

However, if the only option available to the regulator is the power to withdraw or suspend a licence, threats to act may have little credibility. This is because the sanction may be so drastic politically that it is unlikely the regulator would use it except in extraordinary cases. If businesses realise that the only enforcement option available to a licensing agency can be used only to address contraventions having the gravest consequences, the incentive to prevent less serious contraventions may be weakened (Ayres and Braithwaite 1992, p.36).

The withdrawal of a licence also limits the redress open to the business. The onus is then placed on the business to prove the licensing agency acted unreasonably. There is evidence in the United Kingdom that the threat of licence withdrawal is often used as a bargaining tactic to encourage compliance. Businesses may argue that threatening licence revocation is an abuse of power. According to this view, licensing agencies should use only their specific legislated powers and there is no redress for a business forced into compliance in this way. Licensing agencies may

counter that they may use any lawful means to achieve compliance. Rowen-Robinson et al. (1990, p.252) conclude:

> Neither side occupies the moral highground in this debate but the lack of accountability and redress in relation to the imposition of such administrative sanctions is obviously a matter of concern.

A better enforcement strategy than sole reliance on licence withdrawal is to use a hierarchy of enforcement methods. The first step in this hierarchy involves coaxing compliance by persuasion. If this is unsuccessful, further steps involve increasingly severe sanctions such as official warnings or notices and civil penalties. If compliance is still not secured, there may be criminal prosecution and temporary or permanent withdrawal of licence. The existence of a hierarchy of enforcement measures is likely to provide a more credible deterrent than the sole option of licence suspension or revocation.

These options can be thought of as an *enforcement pyramid*. Most enforcement activity is expected to involve the less severe sanctions (such as persuasion and official warnings), with very few involving licence suspensions and revocations. Ayres and Braithwaite (1992, p.36) observe that:

> Defection from cooperation is likely to be a less attractive proposition for business when it faces a regulator with an enforcement pyramid than when confronted with a regulator having only one deterrence option .... [I]t is especially true where the single deterrence option is cataclysmic.

Ayres and Braithwaite suggest that a graduated system of enforcement is likely to give greater credibility to actions of the regulator, and consequently, encourage voluntary compliance. They also note that preserving perceptions of fairness is important to encouraging voluntary compliance. More serious enforcement action against firms that repeatedly fail to comply, such as prosecution or revocation of a licence, may be an important element in maintaining the credibility of the regulatory authority's enforcement actions.

Regulators may choose to place greater emphasis on either prevention or enforcement as strategies to achieve compliance. In some cases, more emphasis is placed on education and training as part of a preventive strategy than on investigation and prosecution.

Available enforcement actions for environmental regulation in Victoria (Australia), New Zealand, Malaysia, United Kingdom and Canada are listed in table 10.1. The enforcement instruments with less obvious names are defined in the glossary.

Table 10.1 Enforcement instruments available for environmental regulation, selected jurisdictions

Victoria, Australia	*New Zealand*	*Malaysia*	*United Kingdom*	*British Columbia, Canada*	*Washington State, United States*
Inspections	Inspections	Inspections	Visits	Inspections	Inspections
Written warning, direction by authorised officer	Infringement notices				
Notice, infringement notice, contravention notice	Enforcement order, abatement notice	Improvement notice, abatement notice	Enforcement notice, prohibition notice	Pollution prevention order, pollution abatement order	Abatement notice (including other notices of violation)
Injunction				Restraining order	Restraining order or injunction
Prosecution	Prosecution	Prosecution	Prosecution	Prosecution	Prosecution
Licence suspension or revocation				Suspension or cancellation of permit and approval	

Sources: Victorian EPA (1993); NZ MftE (1995); Malaysian *Environmental Quality Act 1974* ; United Kingdom Department of the Environment *Annual Report 1995* ; British Columbian *Waste Management Act 1982*; Puget Sound Air Pollution Control Agency.

Environmental enforcement strategies in selected jurisdictions are compared in table 10.2 using data on complaints, inspections, warnings, orders and prosecutions. The enforcement pyramid concept is evident in all the regions considered, with the most stringent measures (prosecutions) at the top and relatively benign measures (inspections) lower down. Measures are expressed per complaint rather than per capita because the data have been collected from agencies which have varying responsibilities and monitoring techniques. In particular, the information for Washington State applies only to stationary source air pollution, while that for the other jurisdictions also covers mobile sources as well as water and soil pollution. Of course, agencies may initiate enforcement without receiving a complaint: as a result there is no necessary relationship between the incidence of complaints and the number of inspections.[2] The number of complaints per million population in each jurisdiction is shown in the final row in table 10.2.

[2] For example, there is more than one inspection per complaint in New South Wales and Victoria in table 10.2 because the data for these jurisdictions includes random inspections of vehicles which are initiated without a complaint.

In general, the ratio of enforcement measures to complaints is likely to progressively decline moving up the enforcement pyramid. Although the optimal shape of the pyramid is not known, differences between jurisdictions indicate variations in the nature of the local enforcement strategy.

Table 10.2 Environmental enforcement pyramids, selected jurisdictions

	New South Wales, Australia[a]	*Victoria*[a]	*Malaysia*[a],	*Washington State, United States*[b]
Period	*1994-95*	*1993-94*	*1993*	*1994-95*
		Number per complaint		
Prosecutions	0.04	0.01	0.10	0.04
Notices & orders	1.58	1.00	1.08	0.21
Warnings	0.56	n.a.	n.a.	n.a.
Inspections	1.18 **c**	3.57 **d**	n.a.	0.99 **e**
		Number per million population		
Complaints	290	541	97	639

a Mobile and stationary air pollution sources; water, land and noise pollution; waste transport. **b** Stationary air pollution sources only. **c** Licensed and non-licensed premises only. **d** Vehicles only. **e** Point source inspections only. **n.a**. Not available.

Sources: New South Wales Environment Protection Authority *Annual Report 1994-95* ; Victorian Environment Protection Authority *Annual Report 1993-94*; Malaysian Department of Environment *Environmental Quality Report 1993* ; Puget Sound Air Pollution Control Agency.

Notices and orders seem to be heavily relied on in New South Wales. While the level of prosecutions relative to complaints is highest in Malaysia, the incidence of complaints is lowest.

Similar enforcement pyramids for OH&S activities are shown in table 10.3. New South Wales and New Zealand make relatively greater use of more severe sanctions than does Victoria.[3] In Malaysia in recent years, the OH&S authority opted to take no court actions as this method of enforcement was believed to be lengthy and relatively less effective.[4] This highlights the fact that different approaches may be taken to ensuring compliance with regulations, with varying degrees of emphasis being placed on prevention or enforcement. However, compared with the other jurisdictions listed in the table, Malaysia also has a relatively low number of workplace visits.

[3] The Victorian Health and Safety Organisation (HSO) is currently reviewing its enforcement and guidelines on prosecution. Enforcement activity is a key part of HSO's overall strategy in administering OH&S legislation.

[4] Malaysian Department of Occupational Safety and Health,*Annual Report 1992-93*, p.8.

In the United States, the relevant OH&S authorities tend to take legal action for most breaches of standards identified during workplace inspections. Penalties are imposed under a system of on-the-spot (OTS) fines rather than through formal prosecutions (Industry Commission 1995a, vol.2, p.403). In Washington State, the number of violations exceeds the number of visits because of the incidence of multiple penalties.

The Industry Commission found that the current Australian approach to OH&S enforcement was most similar to that used in the United Kingdom and 'arguably' most dissimilar to the United States (Industry Commission 1995a, vol.2 p.403). It found that British Columbia relied on a system of administrative penalties similar to that used in the United States.

Table 10.3 OH&S enforcement pyramids, selected jurisdictions

	New South Wales, Australia	*Victoria, Australia*	*New Zealand*	*Malaysia*	*Washington State, United States*
Period	*1993-94*	*1993-94*	*1993-94*	*1993*	*1994-95*[d]
			Number per thousand employees		
Prosecutions[a]	0.19	0.03	0.21	0.00	n.a.
Violations	n.a.	n.a.	n.a.	n.a.	6.78
Improvement notices issued[b]	3.41	1.37	12.65	0.04	n.a.
Workplace visits	29.49 [c]	36.07	50.09	10.27	3.30

a Prosecutions conducted (New South Wales), prosecutions completed (Victoria), prosecutions initiated (New Zealand). **b** Prohibition and improvement notices issued (Victoria and New South Wales), improvements raised (New Zealand), prohibition notices issued (Malaysia). **c** 1992-93. **d** October 1994 – September 1995. **n.a.** Not applicable.

Sources: Victorian Department of Business and Employment *Annual Report 1993-94* ; New South Wales WorkCover Authority *Annual Report 1994*; New Zealand Department of Labour *Business Plan 1994-95* and *Annual Report 1993-94* ; State of Washington Department of Labor and Industries, Division of Consultation and Compliance.

The Industry Commission recommended the use of on-the-spot (OTS) fines for OH&S breaches in all Australian jurisdictions (Industry Commission 1995a, vol.1, p.120). At present, only New South Wales uses these, although the Australian Capital Territory, Victoria and the Northern Territory are considering their introduction. The Office of Regulation Review (ORR) notes that the absence of OTS fines for food hygiene violations in some Australian states means regulatory agencies must rely on prosecutions through the courts, leaving them with 'no effective deterrent to deal with intermediate level breaches of food safety regulations' (Coghlan and Nankivell 1995). The ORR notes that the main advantages of OTS fines are that they are easy to dispense and cheap to administer, they provide a 'moral shock' effect in addition to a moderate financial penalty and

they create a continuing and credible deterrent by their very existence and moderateness (ORR 1995).

10.3 Publication of enforcement policies

Informing regulated firms of the range of enforcement options may encourage compliance. Therefore, well-publicised enforcement policies may be a desirable design feature of systems of licence enforcement.

The Victorian Environment Protection Authority (EPA) publishes a statement of its enforcement policy. This provides a description of each enforcement option available and the circumstances in which it is likely to be used (Victorian EPA 1993).

In the United Kingdom, the publicly-available *Code for Enforcement Agencies* sets out enforcement principles for central government agencies. It is available for adoption by local authorities (box 10.1). Each enforcement agency has been instructed to publish codes of practice stating how they implement the principles set out in the code. The United Kingdom Deregulation Task Forces recommended that the code incorporate additional features. These included setting up easy channels of complaint (including the availability of an ombudsman for all enforcement agencies), and compensation to business if performance standards are not met (including for business losses resulting from incorrect enforcement practice) (UK DTFs 1994, rec. 39). They also recommended trial use of *binding rulings* whereby the decision of one enforcement officer binds others, especially in the areas of trading standards and inspections of premises by environmental health officers.

The importance of having an appropriate hierarchy of public enforcement methods is even greater if an agency's enforcement policy is known. Otherwise, publication of the policy may be counterproductive. For example, firms may discern from the published enforcement policy that the costs of non-compliance are low relative to the benefits. In a study of the enforcement strategies of water pollution control authorities in the United Kingdom, the operational importance of bluff in the absence of published enforcement policies was noted by Hawkins (1983, pp.62–3):

> In pollution control work, where uncooperative or potentially uncooperative polluters are concerned, field officers may threaten the use of procedures or sanctions they do not intend to employ, or, more interestingly, that are not theirs — legally — to use. … Bluffs tend to be concerned with legal sanctions or procedures, that is, with the penalties available or the risk of prosecution. … It is enough that the criminal sanction is insufficiently used for there to be considerable unfamiliarity among company staff

about the nature of the formal process and the implications of prosecution. This allows the possibility of a socially manufactured form of deterrence.

Box 10.1 United Kingdom Code for Enforcement Agencies

The code contains six main principles:

Publication of standards, including the time taken to respond to queries and the effectiveness of complaints procedures, with performance relative to the standards published annually.

Providing **information** and advice in plain language about rules and **openness** by enforcement bodies about how they set about their work.

Consultation and communication with business to discuss compliance failures.

Providing a **courteous and helpful** service, with enforcement staff identifying themselves by name.

Use of well publicised, swift and effective **complaints** systems that are easily accessible to business, with an element of independence so that business can complain without fear of retribution or discrimination.

Value for money, involving the minimisation of compliance costs imposed on business by enforcement. Compliance costs should be proportional to the risk and circumstances of small firms.

The code applies to over 70 United Kingdom central government agencies including Companies House, Customs and Excise, Engineering Inspectorate, Export Licensing Unit, Health and Safety Executive, HM Inspectorate of Pollution, Inland Revenue, Office of Fair Trading, Poisons Inspectorate, Trading Standards Inspectorate, Transport Licensing and Enforcement, and the Vehicle Inspectorate.

Source: UK Department of Trade and Industry (1993), 'Working with Business — a code for enforcement agencies'.

A general requirement for Australian authorities to publish their enforcement policies may provide a strong incentive for review and improvement of those enforcement policies.

10.4 Targeted enforcement

Ayres and Braithwaite (1992) note that compliance rates are likely to be higher when the available menu of deterrents is used effectively. This requires selecting a deterrent proportional to the extent and seriousness of the non-compliance. Targeting of inspections and enforcement action to high-risk industries or firms, or where the consequences of failure are more serious, also helps to ensure that resources are used effectively.

Examples of targeted enforcement approaches in OH&S and food hygiene are provided below. There are two broad types of targeting in both areas: targeting of high-risk industries because of the nature of their workplace activities and targeting of high-risk firms because they have a poor record of compliance.

10.4.1 Occupational health and safety

The Victorian Health and Safety Organisation (HSO) has developed two interesting initiatives in the context of targeting and audits:

- The SafetyMAP approach was developed to promote and encourage systematic OH&S management in workplaces. It assists employers to implement a management system that reduces their regulatory burden and introduces an integrated management system for health and safety. There are different levels of certification, and some inspectors carry out audits for certification to SafetyMAP levels at the request of participants in the scheme.

- Since 1989 HSO has used a computer-based prevention model for the targeting of industries with high workers' compensation claims. A new Site Assessment and Targeting System (SATS) is being introduced. This is a site-specific risk assessment and management model. It can be used to evaluate individual workplaces by assessing layout, hazards present, OH&S management systems, OH&S performance and performance relative to similar workplaces.[5]

In 1992-93 the WorkCover Authority in New South Wales also implemented a strategy of targeting high-risk industries for intensive education, inspection and performance improvement programs. WorkCover identified nursing homes, abattoirs and local government as 'high risk' industries on the basis of workers' compensation premium rates which indicated an above-average incidence of workplace injury and illness. WorkCover inspectors then visited employers in these industries to analyse their workplace practices and assess their awareness of legislative requirements. The inspectors worked with these employers to provide relevant information, assist in developing safer work practices, implement systems to identify risks, and introduce appropriate management systems.[6]

The New Zealand Occupational Safety and Health Service also adopts a strategy of targeting high-risk clients. It aims to ensure that operations identified as presenting high risks of injury to employees or to the public comply with legislative

[5] Information supplied by Mr Bryan Bottomley, Director, Strategy Division, Victorian Health and Safety Organisation, 22 February 1996.

[6] Information supplied by New South Wales WorkCover Authority.

requirements. This is achieved by targeted visits by inspectors. The service adopts targets for enforcement activity that reflect identified priority areas.

10.4.2 Food hygiene

Food hygiene regulation is another area where targeted auditing and inspection is increasingly being adopted in many countries. For instance, a licensing system that takes into account the degree of risk associated with a particular product or process is more flexible and likely to be less costly to both regulators and business than one which does not. Under *Hazard Analysis of Critical Control Points* (HACCP) and other quality management systems (discussed in chapter 8), food hygiene is maintained through the focus of control on critical points of high risk and hazard. Businesses with more critical control points must exercise greater control.

Food businesses with an effective hazard analysis system in place are likely to pose a lower level of risk to food safety. Accordingly, inspection resources can be directed away from those businesses and targeted towards more risky operations. This approach recognises that different food and different operations can have different risk factors.

United Kingdom

A targeted enforcement strategy, based on the assessed risk of food businesses, is the approach being adopted in the United Kingdom. Under the relevant code in the *Food Safety Act 1990*, all food premises should be assessed by inspectors and allocated a risk category using the inspection rating scheme, or another scheme based on similar principles.[7] The minimum frequency of inspection of premises is determined by the risk category of the premises. The criteria by which United Kingdom food authority inspectors are to assess premises under the new rules, and the factors they need to consider are set out in table 10.4.

Under the United Kingdom Code of Practice, food hygiene inspections have two main purposes. The first is to identify risks and assess the effectiveness of food businesses' own assessment of hazards and control of risks. The second is to identify contraventions of the *Food Safety Act 1990* and of food hygiene and processing regulations, and seek to have them corrected.

The implementation of new food hygiene regulations in the United Kingdom has introduced two major new requirements for food businesses:

[7] United Kingdom *Food Safety Act 1990*, Code of Practice No. 9, Food Hygiene Inspections (revised September 1995).

- businesses need to identify any step in their activities which is critical to food safety and ensure adequate safety procedures are implemented, maintained and reviewed; and

- the training of food handlers.

The code recommends that food authorities adopt a graduated approach to enforcing requirements related to these new rules, emphasising an educative approach as the first step towards securing compliance. However, more formal enforcement action, such as using improvement notices and prohibition procedures, is also available to food authorities where warranted by the risk. The code also recommends that, when considering enforcement action, food authorities should have regard to risks arising from contraventions, the nature of the food business and the nature and type of food handled.[8]

Table 10.4 United Kingdom food premises inspection rating scheme

Scoring criteria	*Factors to consider*
The potential hazard	• Type of food and method of handling • Method of processing • Number of consumers likely to be put at risk
The level of current compliance	• Food hygiene and safety procedures (eg. food handling practices, temperature control) • Structure of premises (eg. cleanliness, layout, condition etc)
Confidence in management/control systems	Factors affecting inspectors' judgement include: • track record of the company; • attitude of management towards hygiene and training; • technical knowledge available to company on food hygiene matters; and • existence of external quality assurance accreditation, or satisfactory food safety management systems

Source: United Kingdom *Food Safety Act 1990* , Code of Practice No. 9, Food Hygiene Inspections (revised September 1995), *Inspection Rating — The Priority Classification of Food Premises* .

Australia

A recent survey of food enforcement agencies in Australia by the ORR found that the main factor that determined priorities for food enforcement activities was the level of risk to public health and safety. The study noted that a number of agencies in Australia, including Hindmarsh/Woodville Council (South Australia), Eastern Metropolitan Regional Health Authority (South Australia), Adelaide City Council

[8] *Food Safety Act 1990,* Code of Practice No. 9, Food Hygiene Inspections (revised September 1995).

(South Australia) and Penrith Council (New South Wales), had developed formal grading systems to prioritise inspections (ORR 1995). A risk assessment procedure is also used by Wellington City Council in New Zealand (see sub-section 10.5.2).

10.5 Compliance incentives

This section discusses the provision of incentives as a means of encouraging compliance. Workplace registration fees merit discussion because of the wide variety of fee structures used in different Australian states (the appropriateness of this type of notification is discussed in the companion volume, *Business Licences and regulation reform*). It also discusses the need for the licensing of food premises, and contrasts traditional licensing approaches with the notification system adopted in New South Wales.

10.5.1 Workplace registration fees

In jurisdictions in which workplace registrations are used, registration fees are calculated in a variety of ways (see table 10.5).

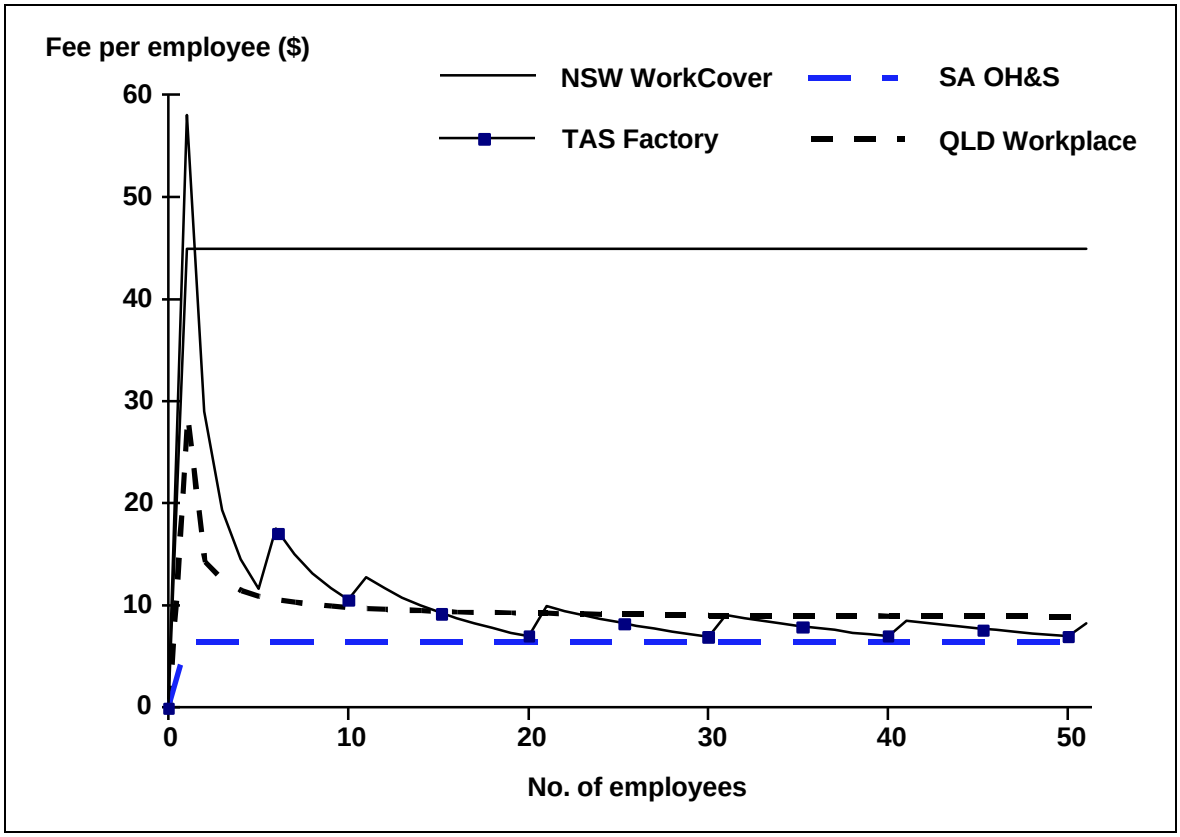
Table 10.5 Comparative factory and shop registration fee arrangements

Jurisdiction	*Basis of registration fee*
New South Wales, Australia	No fee (but a levy of 7.6 per cent of workers' compensation premiums is imposed)
Queensland, Australia	Number of employees
South Australia, Australia	0.85 per cent of workers' compensation premiums
Tasmania, Australia	Number of employees
Malaysia	Floor area of building

Sources: Business licence information centres and relevant authorities in Australia, Malaysian *Factories and Machinery (Notification, Certificate of Fitness and Inspection) Regulations 1970.*

Linking the registration fee to the workers' compensation premium (as in New South Wales and South Australia) seems to offer a better incentive for improved industrial safety performance than does basing the fee on the number of employees (Queensland and Tasmania) or the size of the building (Malaysia). It may also provide a better incentive than financing OH&S activities through consolidated revenue (Victoria and Western Australia). The incentive is even stronger if workers' compensation premiums reflect, at least partly, the claims experience of individual firms. This is an issue taken up in the companion volume, *Business licences and regulation reform.*

Figure 10.1 Factory registration fees, Australia



For South Australia, the fee is based on the workers' compensation levy. Figure 10.1 uses the workers' compensation cost per employee for SA for 1993-94 estimated in ABS, Labour Costs Australia, Cat. No. 6348.0. This probably overstates the fee for smaller businesses and understates it for larger businesses. Note that there are no fees in Victoria, Western Australia or the Australian Capital Territory.

Sources: Business licence information centres and relevant authorities in Australia.

In New South Wales, registration applies only to factories and strictly speaking there is no registration fee. However, there is a levy on all workers' compensation policies to finance WorkCover's main operating activities, payments under uninsured liability and indemnity schemes (to initially meet the cost of claims against uninsured employers), and payments to the New South Wales Compensation Court.[9] These amount to registration fees. In South Australia, a single registration is used for the OH&S authority and for workers' compensation and there is also a levy on workers' compensation premiums.

The relative levels of these fees (including workers' compensation premium levies) per employee in four Australian jurisdictions are compared in figure 10.1. For New South Wales and South Australia, the fees are estimates based on average workers' compensation expense per employee in those states. There is little uniformity in

[9] New South Wales WorkCover Authority, *Annual Report 1994*.

these fees between jurisdictions. The New South Wales levy is substantially greater than those used in all other jurisdictions shown in figure 10.1.

In some states, especially Tasmania and Queensland, there are very high fees per employee for small numbers of employees which must be particularly burdensome for small- and medium-sized enterprises.

10.5.2 Food premises rating systems

There are a number of examples of the use of performance incentives being applied to food premises, including retail bakeries, in New Zealand and Australia.

New Zealand

In New Zealand, the Wellington City Council risk assessment scheme also uses performance-related fees within a licensing system. Premises with higher risk factors are charged higher registration fees and tend to receive more frequent inspection visits. Delicatessens, restaurants and other premises engaged in higher risk activities are also targeted independently of the risk assessment. If hygiene conditions are found to be unsatisfactory the operator is warned and re-inspection occurs within a matter of days. Repeated non-compliance leads to the suspension of registration and shut-down of the premises until they are brought up to the minimum standard. Prosecutions are rare.

Premises with the highest inspection ratings are denoted *A grade* premises, with other high standard premises denoted *B grade*. The council supplies a certificate of the grade awarded which can be displayed on the premises. This provides an incentive for licensed premises to improve and maintain their food hygiene procedures. Many premises with a B grade are interested in knowing how to achieve the higher grade.[10]

Australia

A similar system has been proposed by the City of Moreland in Melbourne, Victoria. Food premises' registrations fees would be related to their potential impact on public health and their recent performance. Premises would be classified under a three-tiered rating system with the rating displayed on the premises' registration certificate (ORR 1995, p.110).

[10] Interview with Catherine Dawson, Environmental Health Officer, Wellington City Council 2 June 1995.

10.6 Summary

The recent literature on regulatory enforcement provides a number of principles which serve as useful criteria in determining how Australian enforcement practices compare with those overseas.

Private reporting. There are few instances of incentives for private reporting in any of the jurisdictions examined by this report.

Hierarchy of public enforcement methods. The variety of enforcement options available to Australian authorities appears to be at least as wide as those available overseas. The extent to which relatively severe sanctions are relied on in the enforcement of environmental and OH&S standards varies as much within Australia as between Australian and overseas jurisdictions.

Publishing enforcement policies. Some Australian authorities have made their enforcement policies highly visible. This accords with good practice provided the policies are appropriate. However, a general code for enforcement agencies, such as that used in the United Kingdom, or a general requirement to publish enforcement policies might provide a strong incentive for review and improvement by Australian authorities in this area.

Targeted enforcement. Targeted inspections are a feature of many of the licensing systems examined. For example, occupational health and safety authorities in Victoria have adopted a targeted inspection approach to the management of hazardous substances in the workplace. Similarly, New Zealand targets high-hazard workplaces. Targeted enforcement is also being applied to food hygiene regulation in the United Kingdom.

Market mechanisms. Linking licence fees to the performance of firms may provide an efficient compliance incentive. While there is evidence that this is occurring in some Australian jurisdictions, in such areas as workplace notifications and food premises regulation, there is scope for much greater use of these mechanisms in Australia.

END OF CHAPTER

11 Australia's scorecard

Where does Australia rank in terms of the effectiveness of its business licensing systems compared with the other countries surveyed in this report? Comparisons have been made using a checklist of best practice design criteria which reflect the key characteristics of licences: notification, prior approval, standards and enforcement or compulsion.

Section 11.1 contains a summary of the relative numbers of licences and applications needed to begin different types of businesses in Australia and overseas. This discussion involves comparisons using the notification feature of licences. In section 11.2, Australian licensing systems are compared against some overseas counterparts using the prior approval, standards and enforcement or compulsion features of licences. An overall assessment is provided in section 11.3.

11.1 Numbers of licences and applications

The number of licences, and applications for licences, required to start and run a business indicate the extent to which different jurisdictions rely on the notification feature of licences. Numbers of licences were compared across jurisdictions using the minimum numbers of licences and applications needed to commence any business, and the numbers needed for three case study businesses — a foundry, a seafood processor and a retail bakery.

The minimum number of licences and notifications needed by an Australian business is similar to that required in Malaysia, New Zealand and the United Kingdom and less than in British Columbia (Canada); Washington State (United States); and Japan where there are more business operating licences and licences involving employment conditions. In terms of the minimum numbers of applications, the jurisdictions divide into three broad groups. In the first group, Canada and the United States have the fewest applications, reflecting their use of master licence systems. There follows a group comprising Australia, Malaysia, New Zealand and the United Kingdom. Finally, Japan has the most number of applications.

Additional licences are often needed which are specific to the nature of a particular business. For example, foundries often require additional occupational health and safety, environmental and hazardous substance licences. In the three case study businesses examined, Australia also had relatively few licences and applications compared with the other jurisdictions considered. There are comparatively larger numbers of licences for pollution control and hazardous substances in the United States and Canada, and for operating equipment in Japan.

The potential to reduce the numbers of licences and notifications is addressed in the companion volume, *Business licences and regulation reform*.

11.2 Design of licensing

Adoption of best practice design criteria for licences is likely to confer greater net benefits on business and the wider community. In this report a checklist of design criteria was developed related to approval processes, the nature of the standards attached to licences and the enforcement of those standards. The results of interstate and international comparisons of licensing systems against this checklist are discussed below.

11.2.1 Licence approval

Best practice licensing approval criteria include: providing information to applicants; integrating and coordinating approval processes; consulting before and during the approval process; resolving disputes efficiently and equitably; ensuring that approval duration is appropriate; and ensuring that licensing agencies are subject to competitive pressures.

Information

Licensing information services for business are relatively advanced in Australia. The Business Licence Information Service (BLIS) provides a first-stop service for new businesses seeking information about federal and state licence requirements, and is being extended to cover municipal requirements. Of the locations surveyed, only Washington State in the United States operates a similarly comprehensive service and, even then, it does not extend to federal requirements.

While an independent study indicated that BLIS delivers net benefits to the community, calculations by the BIE suggest that, under plausible assumptions about the time saved by users, those benefits may be much smaller than claimed. The

BLIS is not a self-funding service. If it provides net benefits to the community, there may be grounds for charging users for the service. The Washington State service is funded, at least in part, through a charge on users.

Master licensing systems

There may be scope for the introduction of master licensing systems to deliver net benefits to the community in the form of savings to businesses and government which outweigh their operating costs. Integration and simplification of licensing approval systems is proceeding in many overseas jurisdictions. Washington State has had a comprehensive master licensing system for many years which has dispensed with the need for separate applications and renewals for a large number of licences. Environmental permit processes are being streamlined and unified by many state governments in the United States. Master licensing systems are also developing in some Canadian provinces.

Efforts to establish master licensing systems in Australia have so far fallen short of what has been achieved overseas. Efforts have been made in New South Wales to implement a master licensing system — the Business Licence Administration Service — but the project has suffered from systems design problems and significant delays. Queensland and the Australian Capital Territory have been examining the concept most recently.

Integrated approval

In more complex cases, such as planning and development approval procedures, separate application processes may be integrated under the auspices of one of the licensing agencies which acts as an ‘approval manager’. An advanced integrated approval system for land use and building control has been under development in Queensland since the early 1990s and New South Wales has streamlined its development approval processes.

The Queensland experience shows that integration of approval processes can involve heavy costs. These costs will limit the extent to which separate processes can be integrated in practice. Moreover, flexibility should be retained for those developers who wish to determine their own sequence for obtaining necessary approvals, including the option of receiving a sequence of approvals for each stage of a development.

In Australia, the integrated approval system concept might take the form of a business activity approval package using the existing BLIS as a nationally uniform platform. Such a system would need to be justified on benefit-cost grounds.

Pre-application consultation

Consultation between a potential applicant and the licensing agency prior to the making of formal application can assist both parties in clarifying issues and ensuring that sufficient information is provided to expedite a decision.

In general, Australian procedures seem on par with comparable arrangements in some overseas jurisdictions. There is some scope for improvement, for example, through the use of pre-development application committees by permit authorities to guide applicants in more complex cases such as land use development.

Third-party consultation

Third-party consultation, including requirements to advertise applications, add to business costs but may prevent unanticipated costs being imposed on those who may be detrimentally affected by the grant of a licence. Land use development application procedures were used as a basis for comparing Australian arrangements for third-party consultations with those overseas. Advertising requirements in some Australian jurisdictions are not as stringent as in the United Kingdom but may be more burdensome than in New Zealand.

Dispute resolution

Disputes may arise between licence applicants and the issuing agency, or between third parties and the issuing agency. Land use planning approval systems, which can involve extensive and protracted dispute resolution procedures, were used as a case study in this area.

Third party post-decision appeal opportunities against land use permits appear to be broadly similar in New South Wales, Victoria, Queensland and New Zealand, while the United Kingdom and Malaysia operate systems with apparently more limited third party appeal rights. In particular, New South Wales and New Zealand appeared to use alternative dispute resolution procedures more extensively than most other jurisdictions studied.

Approval duration

Licences of lengthy duration provide greater certainty for business but may restrict the capacity of licensing agencies to modify the terms and conditions of the licence in the face of changing circumstances. Good regulatory design can improve the tradeoff between investor uncertainty and regulator flexibility.

The recently adopted system of overlapping licence renewal in the New South Wales fishery may provide a useful model for other licensing agencies. Under this system a licence is granted for a limited period of years under certain conditions. At some point prior to the end of that period, the licensee can elect to renew the licence under possibly new conditions, or may continue under the old conditions until the licence has expired.

Competition in licence provision

The actual or threatened introduction of competition in the provision of licences is relevant to the ongoing reform of competition policy in Australia. Competition has the potential to improve the administrative efficiency of licensing agencies. However, there must be stringent safeguards to discourage corrupt practices and to prevent licensing agencies competing by being excessively lenient.

The use of competitive licence issuing services in building control in the Northern Territory, Victoria and South Australia is more advanced than almost anywhere else in the world. Approval times have declined sharply following the introduction of private certification — an important cost saving to business.

Cost recovery

When government licensing agencies fail to recover their administrative costs, the rest of the community must eventually contribute to the shortfall through general taxation revenue. This implicit taxation and subsidy arrangement is likely to distort decisions by other, non-licensed business in other industries as well as those of consumers.

There is some evidence that business licence fees, including building fees, may have increased more rapidly than would be explained by growth in the Australian economy in recent years as agencies implement cost recovery principles. While cost recovery may increase the direct costs paid by business, it removes the distortionary effects which arise from financing these activities through other taxes. It is too early to determine whether competitive permit issuing has raised building permit fees in the jurisdictions in which it has been introduced.

Summary

Overall, Australian jurisdictions appear to be close to international best practice in a number of areas, including:

- developing high quality information systems; and
- introducing competition in the provision of licensing services.

The adoption of master licensing systems, integrated approval systems or business activity approval packages could contribute further to improving approval processes provided it is justified on benefit–cost grounds. There would also appear to be scope for further private sector involvement in dispensing licences.

11.2.2 Licence standards

For licence standards, important design criteria include: focusing on outcomes rather than processes; using management systems where appropriate; efficiently allocating limits or quotas among firms; and coordinating the use of standards.

Outcomes instead of processes

The move towards outcome-oriented standards, under which businesses are free to select the most appropriate means of achieving and maintaining a required standard, encourages efficiency. New Zealand leads Australia in the use of outcome-oriented standards in land use planning and building control systems. However, these approaches are being introduced in these areas in Australia.

While less prescriptive approaches are generally desirable, optional prescriptive standards or codes of conduct can be helpful to small businesses which typically do not have the resources to develop their own compliance procedures. New Zealand again leads Australia in this respect.

Management systems and proportionality

Management systems may be tailored to the individual firm's requirements so that their influence on its activities reflects the extent of the problem being addressed. Management systems can also be designed so that the extent of control being exercised over production, wastes and processes matches the extent of the associated hazard or risk.

Australia is behind some other countries in using management systems in such areas as food hygiene control and environmental licensing. However, Australia and New Zealand are already adopting the latest international draft standards for environmental management systems (EMSs). In addition, in Victoria an accredited environmental licence involving less prescriptive control is available to firms which have satisfactorily implemented an EMS. A form of quality management system for regulating automatic equipment in buildings developed in New Zealand may be worth consideration by Australian regulators.

Australian regulators in many fields are aware of the potential benefits of greater flexibility in licence standards and progress is being made on a number of fronts to introduce that flexibility.

Efficient allocation of standards

The use of potentially highly efficient tradeable permits to allocate aggregate pollution emission quotas is still at a formative stage in Australia compared with the United States. In the context of pollution control, it is necessary to ensure that systems of tradeable emission licences are operated consistently with more comprehensive methods of pollution control, such as environmental management systems.

Coordinated application of standards

Coordination of the use of standards across jurisdictions increases the certainty and consistency of application of standards, especially for businesses operating in many different locations.

Inter-municipal coordination of licensing standards for food premises in Australia could probably be improved significantly, possibly by using the United Kingdom approach as a model. Improved coordination would reduce compliance costs and increase certainty for businesses operating across municipal boundaries.

Summary

Overall, the Australian licensing standards reviewed in this report are generally becoming less prescriptive, but many other countries are more advanced in this area than Australia.

11.2.3 Licence enforcement

Best practice licence enforcement involves: encouraging private reporting of licence breaches (if practical); using a hierarchy of enforcement methods; publishing enforcement policies; targeting enforcement; and using performance incentives.

Private reporting

Private reporting of licence breaches is a potentially efficient, cost-effective means of securing compliance with licence standards. However, it is not widely used in any of the jurisdictions examined in this report. In Australia, there may be strong cultural objections to such an approach.

Hierarchy of public enforcement methods

Effective deterrence requires the availability of a hierarchy of enforcement methods from which a sanction appropriate to the potential seriousness of a breach may be selected. The Australian environmental licensing agencies studied in this report appear to have sets of enforcement instruments at least as extensive as those available to their counterparts in Canada, Malaysia, the United Kingdom and the United States. The extent to which these sanctions are actually used in the enforcement of environmental and industrial safety standards varies as much within Australia as between Australian and overseas jurisdictions.

Publish enforcement policies

The publication of enforcement policies by agencies compels them to review and improve their enforcement strategies. Better enforcement strategies will improve compliance. For example, the Victorian EPA publishes its enforcement policies so that businesses have a clearer understanding of the action likely to be taken in response to a breach of standards. In the United Kingdom, there is a general *Code for Enforcement Agencies* for central government agencies which may be adopted by local authorities.

A general code for enforcement agencies, such as that used in the United Kingdom, or a general requirement to publish enforcement policies might provide a strong incentive to review and improve enforcement strategies in Australia.

Targeted enforcement

Targeting enforcement on areas of high hazard, high risk or known non-compliance can improve the efficiency with which enforcement resources are employed. Targeted enforcement is a feature of occupational health and safety and food hygiene regulation in all the jurisdictions examined.

Compliance incentives

There appears to be scope for greater use of performance-related fees and other similar incentive mechanisms such as quality grading systems by the licensing agency which businesses may publish. These may contribute to improved compliance levels in Australian jurisdictions.

Summary

Many Australian licensing and regulatory agencies are aware of the need to employ enforcement resources efficiently through targeted enforcement policies and the use of performance-related incentives to encourage compliance. The range of enforcement instruments available to Australian authorities and the way in which they are used compares favourably with those in the overseas jurisdictions examined. Wider publication of this range of instruments and the circumstances in which they may be used may be worth consideration in Australia.

11.3 Overall assessment

There are areas in which some Australian licensing arrangements compare well with the overseas jurisdictions examined in this report: These include:

- availability of information about the licences and permits needed to start and run a business;
- implementing an integrated approval process for land use, environmental and building controls in Queensland and the streamlining of approval processes in New South Wales and Victoria;
- introducing an outcome-oriented national building code, following the lead set by New Zealand; and
- introducing private certifiers for building control in the Northern Territory, Victoria and South Australia.

The report highlights opportunities for Australian jurisdictions to improve the quality of business licensing and notification systems:

- the master licensing system used in Washington State may provide a model for a one-stop approval system, provided such a system can be justified on benefit-cost grounds;

- the BLIS might provide the basis for a comprehensive, nationally uniform *Business Activity Approval Package* which would provide each new business with a comprehensive approvals package for its nominated industrial activity;

- however, account needs to be taken of whether the benefits of integrating approval systems justify the cost and of the need for applicants to be able to determine their own optimal approval sequence; and

- there is likely to be further scope for the private sector to dispense licensing services in order to secure similar improvements in the quality of approval processes to those which occurred after private building surveyors were introduced in a number of Australian jurisdictions.

This comparison has focused on licensing systems in Australia and overseas. However, a broader question is whether licensing is the most effective means of achieving particular regulatory objectives and this is the subject of the companion volume, *Business licences and regulation reform*.

More efficient and effective approval and licensing systems can benefit Australia's competitiveness and welfare in much the same way as improvements in infrastructure services. Because the pace of reform in other countries is rapid, continuous improvement will be needed to maintain and improve Australia's international ranking.

END OF CHAPTER

Appendix A International comparisons of licences

A.1 Comparisons of minimum licence requirements

Detailed comparisons of *minimum* licensing requirements for any business in each country or jurisdiction are contained in table A.1. The business to which these requirements refer has the following characteristics:

- The business employs a sufficient number of staff to exceed any payroll tax threshold in any of the Australian states or territories. This would exclude many very small businesses.
- Some remuneration is paid in the form of fringe benefits.
- The proprietor wishes to use a trading name rather than conduct the business in his or her personal name. In most jurisdictions, unincorporated enterprises can avoid business name registration if they trade in the owner's personal name. If business name registration is unavailable, as in New Zealand, the only other option may be the selection of a company name as part of the process of incorporation.
- The business is conducted from commercial or industrial premises and not from the employer's residence. Planning and building approvals are included because these are relevant to new businesses in a growing economy. Also, interruptions in use and the need for refurbishment may mean that building and planning approval must be obtained even to begin occupying existing premises.
- The business collects, uses or stores information about its personal customers.

Where a licence or notification may be obtained jointly with another licence or notification, the arrangement which makes this possible is shown in bold type in the tables.

Details of Australian licences and notifications were obtained through the Business Licence Information Service in every state and territory. These were checked against responses to questionnaires sent to businesses requesting details of their licences and notifications (see appendix B). The lists were further verified with the agencies responsible for issuing the relevant licences.

In Canada, Japan, New Zealand, the United Kingdom and the United States, initial sets of licences and notifications were compiled from responses to questionnaires sent to businesses requesting details of their licences and notifications (see appendix B). These were verified with the agencies responsible for issuing the relevant licences. In Malaysia, licence and notification details were obtained directly from the issuing agencies because a business questionnaire was unlikely to achieve satisfactory results.

These sources were supplemented using Environment Canada (1995), Freehill, Hollingdale and Page (1994), Japan JETRO (1992a,b), and Malaysian DoE (1994a,b).

Table A.1 Minimum licence requirements, Australia, Canada and Japan

Australia (typical state)	*Canada (British Columbia)*	*Japan (Tokyo)*
	Planning approval	
Planning and development approval (municipal)	Zoning approval (regional district)	Land development permit (prefectural)
	Building approval	
Building approval (municipal) Approval to occupy (municipal)	Building permit (municipal)	Building permit (prefectural) Registration of completion of construction (prefectural)
	Business name or incorporation	
Registration of a business name (state consumer affairs office) **or** registration as a limited liability company (Australian Securities Commission)	Registration of business name **or** incorporation as a limited liability company (provincial Registrar of Companies)[a]	Registration of incorporation (Legal Affairs Bureau, Ministry of Justice)
	Licence to conduct business	
	Business licence (municipal)	Registration for place of business (Labor Standards Inspection Office) Notification of the establishment of a business (prefectural)
	Employment conditions	
	Canada Pension Plan registration: **inc. in Business number system**	Notification of social insurance (Social Insurance Office)
	Unemployment insurance: **inc. in Business number system**	Notification of employment insurance (Public Employment Security Office)
Workers' compensation (Queensland and South Australia)	Registration with Workers' Compensation Board	Declaration of worker' compensation insurance (Labor Standards Bureau) Submission on house regulations (Labor Standards Inspection Office)
	Taxation registrations	
Group employer registration (Australian Taxation Office)	Business number (Revenue Canada, federal).	Registration of the establishment of a salary payment office (Tax Office)
Tax file number application (Australian Taxation Office)	Corporate income tax registration: **inc. in Business number system**	Application for special deductions and carry over of losses (Tax Office)
Payroll tax (state revenue office)	PAYE taxation deductions: **inc. in Business number system**	Notification to Tax Office (Tax Office)
Fringe benefits tax (Australian Taxation Office)	Goods and service tax: **inc. in Business number system**	Declaration of consumption tax payment (Tax Office)

a Federal incorporation (Corporations Directorate, Industry Canada) or extraprovincial incorporation and subsequent registration to carry on business as an extraprovincial corporation in Manitoba, New Brunswick, Newfoundland, Prince Edward Island, Saskatchewan, Northwest Territories and Yukon Territory are required for a company wishing to carry on business across Canada. See chapter 2.

Table A.1 Minimum licence requirements (continued), Malaysia and New Zealand

Malaysia (Selangor)	*New Zealand*
Planning approval	
Planning approval from State Economic Planning Division	Land use consent (municipal)
Building approval	
Building approval (municipal) Certificate of fitness (municipal)	Building approval (municipal)
Business name or incorporation	
Registration of business name (personal name on identification card) **or** trade name with Registrar of Business **or** registration as a Malaysian company with Registrar of Companies	Registration as a New Zealand company
Licence to conduct business	
Business licence (municipal)	
Employment conditions	
Registration as employer with Social Security Organisation for Employment Injury Insurance Scheme and Invalidity Pension Scheme Registration with Employee Provident Fund Board Permit allowing employers to keep employees' register in the company's headquarters (Labour Department)	Workers' compensation (Accident Compensation Corporation): **covered by tax registration (IRD) number**
Taxation registrations	
Employer's reference (E) number (Inland Revenue)	Registration as employer (IR 66K, Inland Revenue) Tax registration (IRD) number (IR 595A, Inland Revenue) Registration for goods and services tax (GST1, Inland Revenue) Fringe benefits tax election (IR 414, Inland Revenue)

Table A.1 Minimum licence requirements (continued), United Kingdom[b] and United States

United Kingdom (England)	*United States (Washington State)*
Planning approval	
Planning application (municipal)	Development permit (municipal)
Building approval	
Building permit (municipal)	Building permit (municipal) Certificate of occupancy (municipal)
Business name or incorporation	
Registration of business name **or** company registration (Department of Trade and Industry)	Trade name registration **or** Filing Certificate of Limited Partnership **or** Articles of Incorporation (for a corporation) with Corporations Division, Office of Secretary of State (state): **endorsement under master licence**— annual renewal
Licence to conduct business	
	Application for Unified Business Identifier under Master License (state). Business or trading licence (municipal) — may not apply in all cities or counties
Employment conditions	
National Insurance Scheme (Contributions Agency): **covered by PAYE registration**	Registration for industrial insurance (Department of Labor & Industries): **endorsement under master licence** Registration for unemployment insurance (Washington State Employment Security Department and Department of Labor & Industries): **endorsement under master licence** Permit to employ minors (under 18 years) (Department of Labor & Industries): **endorsement under master licence**
Taxation registrations	
Registration for PAYE tax (P223, Inland Revenue) Tax registration (41G, Inland Revenue) Registration for value added tax (HM Customs and Excise)	Employer identification number (Internal Revenue Service, federal) Tax registration (Washington State Department of Revenue): **endorsement under master licence**

b Notification to the Data Protection Registrar is also required.

A.2 Specialised licence comparisons

Detailed international licence comparisons are found in tables A.4 through A.6. These are based on the specifications of foundries, seafood processors and retail bakeries shown in table A.2.

Table A.2 Specification of case study industries

Seafood processor	*Retail bakery*	*Foundry*
	Businesses mainly engaged in:	
Processing fish.	Retailing bread, cakes, pastries or biscuits manufactured on the premises.	Iron or steel casting.
	Primary products may include:	
Canned fish. Cleaned or filleted fish. Dried or smoked fish. Fish fillet, loaf, cake, paste or pate.	Bread, cake, pastries or biscuits.	Steel castings, for example machine parts, valve bodies, turbine shells, pump casings, gears, crankshafts. Iron castings, for example cast-iron pipe, automotive cylinder blocks, forming dies.
	Site characteristics may include:	
Factory building and staff amenities. Processing equipment, for example processing tables, mechanical filleters, cooking retorts, freezers, canning lines, ice-making equipment. Boilers and pressure vessels. Potable water supply. Cold and cool stores. Disposal of fish waste and related effluent. Fork lift trucks.	Shop & shop fittings, for example display counters. Baking ovens. Mechanical slicing and packaging equipment. Food storage equipment.	Factory building and staff amenities. Furnaces (electric-arc or electric induction). Boilers and pressure vessels. Hazardous substances storage and transport. Emission of smoke and gases. Disposal of used sand and other solid wastes. Runway or bridge cranes. Fork lift trucks.
	Scale of operations:	
Less than 50 persons.	Less than 20 persons.	Less than 50 persons.
	Markets supplied:	
Domestic and export. Only one species of fish requiring a fish receivers' licence or its equivalent is processed.	Domestic. Not outside home state or province in federal systems.	Domestic and export.

In the case of foundries, the quantities of particular types of dangerous goods stored on site are relevant to the licences and notifications which apply. These were based

on discussions with foundry operators and are shown in table A.3. The class and packaging group (PG) are specified in Federal Office of Road Safety 1992, *Australian Code for the Transport of Dangerous Goods by Road and Rail*, Fifth Edition, Canberra.

Table A.3 Typical substances stored in a foundry

Dangerous good	*Class*	*PG*	*Quantity*
Flammable gases	2.1		10 000 L
Non-flammable, non-toxic gases	2.2		10 000 L
Non-flammable, non-toxic gases and oxidising agent	2.2 (Sub-risk 5.1)		500 L
Flammable liquids	3.1	II	2 000 kg
Flammable liquids	3.2	III	500 L
Solids that react when in contact with water	4.3	II or III	1 000 kg
Solids that react when in contact with water and poisonous (toxic)	4.3 (Sub-risk 6.1a)	III	2 000 kg
Corrosive liquid	8	II	100 L

Table A.4 Foundry licence requirements, Australia, Canada and Japan

Australia (typical state)	*Canada (British Columbia)*	*Japan (Edogawa, Tokyo)*
	Pollution control	
Pollution control licence or works approval (state Environment Protection Authority)	Air emission permit (provincial Ministry of Environment)	Registration of facilities where smoke is released into the atmosphere (prefectural)
Registration of premises on which trade waste is created or licence to discharge waste (state Environment Protection Authority)	Refuse permit (provincial Ministry of Environment)	Notification for pollution control or permit for the prevention of pollution (prefectural)
Permit to discharge trade waste into sewers (local water authority)	Water effluent discharge permit (provincial Ministry of Environment)	Certificate of power (Tokyo Pollution Board)
	Hazardous substances	
Licence to store dangerous goods (state occupational health and safety authority)	Initial generator registration report for special waste and consignor identification (provincial Ministry of Environment)	Master licence for keeping small amounts of dangerous goods (fire station)
	Special waste permit (provincial Ministry of Environment)	
	Equipment	
Registration of a boiler or pressure vessel (state occupational health and safety authority)	Boiler permit (provincial Ministry of Municipal Affairs)	Certificate of registration of boiler (prefectural)
Registration of a crane (state occupational health and safety authority)	Crane hoist registration (Provincial Workers' Compensation Board)	Permit for storing crane (Labor Standards Inspection Bureau)
		Pressure tank registration (Ministry of Industry and Trade)
		Permit for self-made electric products to melt iron in an electric furnace (Ministry of Industry and Trade)
	Factory registration	
Registration of factory or industrial workplace (state occupational health and safety authority)		Notification for establishing a specified plant or factory licence (prefectural)
		Registration of chief electrical engineer to receive high voltage electricity (Ministry of Industry and Trade)
	Other	
Diesel fuel permit for tax rebate (state revenue office)		Permit to use public roads from and into factory (prefectural)

Table A.4 Foundry licence requirements (continued), Malaysia, New Zealand and United States

Malaysia (Selangor)	*New Zealand*	*United States (Washington State)*
	Pollution control	
Permission to construct premises that may discharge effluent (Department of the Environment)	Resource consent to discharge to air (regional council)	Notice of construction (Puget Sound Air Pollution Control Agency)
Licence to occupy and operate prescribed premises (Department of the Environment)	Resource consent to discharge to land (regional council)	Certificate of registration for pollution control (Puget Sound Air Pollution Control Agency)
Licence to emit waste into the atmosphere (Department of the Environment)	Resource consent to discharge to water (regional council)	National Pollution Discharge Elimination System (NPDES) permit (state Department of Ecology on behalf of federal Environmental Protection Agency)
Licence to emit noise (Department of the Environment)		Noise permit (municipal health department)
Licence to emit waste into inland waters (Department of the Environment)		Industrial waste approval (municipal)
		NPDES and state Waste Discharge Baseline General Permit for Storm Water Discharges Associated with Industrial Activities (state Department of Ecology)
	Hazardous substances	
Notification of generation of scheduled waste (Department of the Environment)	Licence to store dangerous goods (municipal)	Underground storage tank registration (state Department of Ecology)
		Fire permit (municipal)
	Equipment	
Certificate of fitness for boiler or pressure vessel (Factories and Machinery Department)	Notification of operation of boiler or pressure vessel (Occupational Safety and Health Service, Department of Labour)	Boiler and pressure vessel license (Boiler Section, state Department of Labor and Industries)
Certificate of fitness for crane (Factories and Machinery Department)	Notification of operation of crane (Occupational Safety and Health Service, Department of Labour)	
	Other	
		Special fuel bulk user license (state Department of Licensing)

Table A.5 Seafood processor licence requirements, Australia and Canada

Australia (typical state)	*Canada (British Columbia)*
Resource management	
Fish receiver permit (Australian Fisheries Management Authority)	Fish processing licence (provincial Ministry of Agriculture, Fisheries and Food) — incorporates fish buying station licence
Fish processor's licence (state fisheries management authority)	
Pollution control	
Pollution control licence or works approval (state environment protection authority)	Air emission permit (provincial Ministry of Environment)
Registration of premises on which trade waste is created or licence to discharge waste (state environment protection authority)	Effluent discharge permit (provincial Ministry of Environment)
Permit to discharge trade waste into sewers (local water authority)	Wastewater discharge to sewer (provincial Ministry of Environment)
Offensive trades licence (municipal)	
Hazardous substances	
Licence to store dangerous goods (state industrial safety authority)	Initial generator registration report for special waste and consignor identification (provincial Ministry of Environment)
Equipment	
Registration of a boiler or pressure vessel (state industrial safety authority)	Boiler permit (provincial Ministry of Municipal Affairs)
Factory registration	
Factory or workplace registration (state industrial safety authority) — does not apply in all states and territories	
Food hygiene and export	
Export establishment registration (Australian Quarantine and Inspection Service)	Operating permit (municipal and provincial Ministry of Health)
Export permit (Australian Quarantine and Inspection Service)	Plan approval for fish processing plants (provincial Ministry of Health)
	Export licence (provincial Department of Fisheries and Oceans)
Other	
Diesel fuel permit for tax rebate (state revenue office)	Provincial sales tax registration
Reportable payments system (Australian Taxation Office)	
Weights and measures registration (state consumer affairs authority)	

Table A.5 Seafood processor licence requirements (continued), Japan and Malaysia

Japan	*Malaysia (Selangor)*
	Resource management
Fish receiver permit (Ministry of Health and Welfare)	Fish receiver permit (Fisheries Development Authority of Malaysia)
Processor's licence (Ministry of Health and Welfare)	Fish processing licence (Fisheries Development Authority of Malaysia)
	Pollution control
Trade waste permit (prefectural)	Permission to construct premises that may discharge effluent (Department of the Environment)
Notification for pollution control or permit for the prevention of pollution (prefectural)	Licence to occupy and operate prescribed premises (Department of the Environment)
Inspection of water quality of sewer (prefectural)	Licence to emit waste into the atmosphere (Department of the Environment)
Certificate of power (Tokyo Pollution Board)	Licence to emit waste into inland waters (Department of the Environment)
	Hazardous substances
Master licence for keeping small amounts of dangerous goods (fire station)	Notification of generation of scheduled waste (Department of the Environment)
	Equipment
Certificate of registration of boiler (prefectural)	Certificate of fitness for certified machinery (Factories and Machinery Department)
Pressure tank registration (Ministry of Industry and Trade)	
Licence for producing high pressure gas — to use freezers (prefectural)	
	Factory registration
Notification for establishing a specified plant or factory licence (prefectural)	
	Food hygiene and export
Licence for freezing and chilling food (Ministry of Health and Welfare)	Permit to export fish (Fisheries Development Authority of Malaysia)
Certificate of factory (Japan Frozen Food Association)	
Permit for bonded warehouse (Nagoya Customs, Ministry of Transport)	
	Other
Licence for warehouse business (Kanto Shipping Bureau, Ministry of Transport)	
Permit to use public roads from and into factory (prefectural)	

Table A.5 Seafood processor licence requirements, New Zealand and United States

New Zealand	*United States (Washington State)*
	Resource management
Fish receivers licence (Ministry of Agriculture and Fisheries)	Wholesale fish dealer's licence (state Fisheries Department)
	Fish buyer card licence (state Fisheries Department)
	Pollution control
Resource consent to discharge to air (regional council)	Notice of construction (Puget Sound Air Pollution Control Agency)
Resource consent to discharge to land (regional council)	Certificate of registration for pollution control (Puget Sound Air Pollution Control Agency)
Resource consent to discharge to water (regional council)	National Pollution Discharge Elimination System (NPDES) permit (state Department of Ecology on behalf of federal Environmental Protection Agency)
	Industrial waste approval (municipal)
	NPDES and state Waste Discharge Baseline General Permit for Storm Water Discharges Associated with Industrial Activities (state Department of Ecology)
	Hazardous substances
Licence to store dangerous goods (municipal)	Underground storage tank registration (state Department of Ecology)
	Fire permit (municipal)
	Equipment
Notification of operation of boiler or pressure vessel (Occupational Safety and Health Service, Department of Labour)	Boiler and pressure vessel licence (Boiler Section, state Department of Labor and Industries)
	Food hygiene and export
Undertaking to issue a fish packing house licence (Ministry of Agriculture and Fisheries Regulatory Authority)	Food processing license (state Department of Agriculture)
Fish packing house licence (Ministry of Agriculture and Fishers Quality Management)	Wholesale distribution license (state Department of Agriculture)
Fish export licence (New Zealand Fishing Industry Board)	Health approval (municipal)
	Other
	Special fuel bulk user license (state Department of Licensing)

Table A.6 Retail bakery licence requirements, Australia, Canada and Japan

Australia (Typical state)	*Canada (British Columbia)*	*Japan*
	Food hygiene	
Food premises registration (municipal)	Operating permit (municipal and provincial Ministry of Health)	Licence to operate on-premises (Public Health Center)
		Licence to deal in confectionery (Public Health Center)
Licence to conduct food business — personal or corporate (municipal)		Licence of the person who is responsible for food hygiene (Public Health Center)
	Shop registration	
Shop or workplace registration (state industrial safety authority) — does not apply in all states and territories		
	Other	
	Weight and measures, equipment registration (Industry Canada)	Registration of weights and measures (Measurement Examination Center)
	Provincial sales tax registration	

Table A.6 Retail bakery licence requirements (continued): Malaysia, New Zealand and United States

Malaysia (Selangor)	*New Zealand*	*United States (Washington State)*
	Food hygiene	
Licence for goods required for bakery (Ministry of Domestic Trade and Consumer Affairs)	Food premises registration (municipal)	Food establishment permit (county health department)
Controlled substances permit (Ministry of Domestic Trade and Consumer Affairs)		Food service handler's permit (county health department)
		Bakery and bakery distributor's licence (state Department of Agriculture)

END OF APPENDIX

Appendix B Survey of businesses

Questionnaires were sent to representative Australian and overseas firms in the case study businesses, seeking information about their licences and notifications. In Australia, this provided a check on data supplied by the Business Licensing Information Service (BLIS) and yielded information about municipal permits not available from BLIS. Overseas, it provided the initial method for obtaining information about overseas licences.

In Australia and New Zealand, representative firms were identified using lists provided by industry associations or government licensing agencies. In the other overseas jurisdictions the BIE engaged a contractor (The Roy Morgan Research Centre Pty Ltd) with an overseas network of affiliates (the Gallup Organisation) to distribute the questionnaire and collate the responses.

Overall, 122 responses were received from businesses to the BIE questionnaire. These comprised 61 in Australia, 23 in New Zealand and 38 in Canada, Japan, the United Kingdom and the United States. The BIE received advice that a business questionnaire was unlikely to achieve satisfactory results in Malaysia. Information in that country was obtained solely from government sources.

Questionnaires were sent to most of the case study businesses in Australia and New Zealand, and to foundries, seafood processors and retail bakeries in the other overseas jurisdictions. Responses were received from 24 foundries, 29 seafood processors, 21 retail bakeries, 24 pharmacies, 14 meat processors and 10 petrol stations. Follow-up telephone interviews were conducted with a number of respondents to obtain further details of their licensing arrangements. A limited number of personal interviews were conducted with the proprietors of retail bakeries and pharmacies in the Australian Capital Territory, metal manufacturers and meat processors in Queensland and foundries in Victoria.

IMPORTANT

PLEASE READ THIS FIRST

Definition of a 'location'

A 'location' is a site from which a business operates permanently, eg. a shop, a factory or a plant site.

What to include as a 'licence':

The following types of licences would be included and excluded when answering the survey questions:

Include

- Licences, registrations, permits or approvals from **all** levels of government
- Retailers, traders and manufacturers licences
- Permits to use equipment, buildings and land (including local authority building and zoning approvals)
- Permits to discharge waste
- Permits to use or supply particular types of goods and services
- Licences to import or export
- Equipment certification (for example, weights and measures, boilers and pressure vessels, cranes and furnaces)
- Licence for employees to use equipment (for example, boiler attendant licence, crane driver certificate)
- Tax forms to start a business
- Company registration
- Business name registration
- Workers accident compensation insurance

Exclude

- Voluntary codes of conduct
- Industry-imposed standards
- Labelling requirements for food and other products
- Copyright, trade mark and patents
- Forms necessary for tendering for government business
- Preparation of business accounts, etc.

Part 1 Background Details of Business

Q.1 Please indicate if you would like a copy of the report that will arise from this project

	Tick one only
No	☐
Yes	☐

Q.2 What is the legal status of the business conducted at this location?

	Tick one only
Sole proprietor	☐
Partnership	☐
Incorporated company	☐
Other (please specify)	☐

Q.3 How long had the business been operating at this location on 30 June 1994?

	Tick one only
under 2 years	☐
2 years or more	☐

Q.4 What are the core activities of the business conducted at this location?
eg. dispensing medicinal prescriptions, frozen meat manufacturing

Q.5 How many people did the business employ at this location on 30 June 1994?

	Number
Full-time	
Part-time	

Q.6 What was the value of sales for the business at this location in the year ended 30 June 1994?

Include only revenue from core activities

	$000s
$	

Please turn this page over and complete questions in table.

Q.7 Please list the licences, registrations, permits or approvals needed to start and operate this business.

'Licence' includes: trading licences, building and zoning permits, waste discharge permits, import & export licences, weights and measures, tax forms, company registration, workers compensation etc.	**7.1** Name of 'licence' (include category, class, etc. if relevant). For example, fish receiver's licence — tuna.	**7.2** Name of government agency that issued or required 'licence'.	**7.3** If possible, please state why you need this licence? (For example, receiving fish, operating boiler, storing LPG, discharging liquid waste etc).	**7.4** Time taken between application and final approval of **first-time application**. (If obtained in the **last 2 years**).	**7.5** Time taken between application and final approval of **renewal of licence**.
1					
2					
3					
4					
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9					
10					
11					
12					
13					
14					
15					

Part 2 General Comments

Q.8 Have you had to undertake any additional expenditure or change the way you operate your business because of any of the licences, registrations, permits or approvals listed in the table (Question 7)?

Tick one only

No ☐
Yes ☐

If **Yes**, please provide examples from the past 2 years

Description	**Year**	**$'000**

Q.9 Are you aware of any other countries which have less complicated business licensing arrangements than those faced by your business?

Tick one only

No ☐
Yes ☐

If **Yes**, please indicate details below

Q.10 Any other general comments about licence processes or requirements?

Thank you for completing this questionnaire.

Appendix C International comparisons of standards

This appendix contains international comparisons of standards in the areas of building control and workplace safety.

C.1 Building code standards

Comparisons of the explicit objectives and compliance verification methods used in building codes in Australia, New Zealand and Malaysia are contained in table C.1.

In the case of structural safety, the New Zealand objectives are specified in terms of the ultimate objectives of protecting people and property from the consequences of structural failure. The Australian objective appears more concerned with means than ends, specifying the factors affecting structural sufficiency to be taken into account during construction. There is no explicit statement of a structural safety objective in Malaysia.

The methods used to test for structural compliance are stated simply in New Zealand. Structures must have low risk of collapsing or of causing loss of amenity through structural failure. In assessing compliance with the standard, the intended use of the structure, forces likely to operate on it and the consequences of structural failure are all relevant. In contrast, the Australian and Malaysian compliance tests incorporate the relatively prescriptive sets of load tests set out in the relevant official standards.

For natural lighting, the New Zealand objective is also more outcome-oriented than is the Australian equivalent: it focuses on the need to preserve the health of users of the building. This differs from the Australian objective which is concerned merely with the ‘adequacy’ of natural lighting. Once again, there is no explicit objective in Malaysia.

The New Zealand verification method is also more closely related to outcomes than are the Australian and Malaysian methods. In New Zealand, the test is the measured illumination within the building. In contrast, tests in the other jurisdictions are less direct, prescribing minimum window areas based on the building’s floor area.

Table C.1 Building standards, selected countries

Australia	*New Zealand*	*Malaysia*
	Structural safety	
	Objectives	
A building must be so designed and constructed that…All loads, internal actions, material properties and foundation conditions that significantly affect structural sufficiency or serviceability must be taken into account in the construction of a building or other structure.	… (a) Safeguard people from injury caused by structural failure, (b) Safeguard people from loss of amenity caused by structural behaviour, and (c) Protect other property from physical damage caused by structural failure.	Not explicit.
	Methods for verifying compliance	
The loading requirements are satisfied if the structure can resist loads determined in accordance with Australian standards.	Buildings shall have low probability of rupturing, becoming unstable, losing equilibrium or collapsing. Buildings shall have low probability of causing loss of amenity through undue deformation, vibratory response, degradation, etc. Account shall be taken of all physical conditions likely to affect the stability of buildings, the consequences of failure, the intended use of the building, etc.	Conformance of material with a Standard Specification or Code of Practice if the use of the material is appropriate for the purpose and conditions in which it is used. Loads shall be calculated in accordance with British Standard Code of Practice and British Standards.
	Natural lighting	
	Objectives	
A building must be so designed and constructed that …Light… within a building must be adequate for the occupants, having regard to the use or purpose of the building.	… safeguard people from illness or loss of amenity due to isolation from natural light and the outside environment.	Not explicit.
	Methods for verifying compliance	
… required natural lighting must be provided by windows that — (i) have an aggregate light transmitting area measured exclusive of framing members, glazing bars or other obstructions of not less than 10% of the floor area of the room; and (ii) are open to the sky or face a court or other space open to the sky or an open verandah, carport or the like.	Natural light shall provide an illuminance of no less than 30 lux at floor level for 75% of the standard year. Openings to give awareness of the outside shall be transparent and provided in suitable locations.	Every room designed, adapted or used for residential, business or other purposes except hospitals and schools shall be provided with natural lighting and natural ventilation by means of one or more windows having a total area of not less than 10% of the clear floor area of such room and shall have openings capable of allowing a free uninterrupted passage of air of not less than 5% of such floor area.

Sources: Building Code of Australia, Sections B and F; New Zealand Building Regulations 1992, First Schedule, Clauses B1 and G7; Malaysian Uniform Building By-laws, by-laws 53, 54 and 39.

Overall, the New Zealand code appears to be the most flexible, offering the greatest scope for using innovative, efficient design and construction methods.

C.2 Workplace safety: pressure vessel regulation

Table C.2 contains a detailed comparison of the hazard management requirements for pressure vessels imposed under subordinate legislation in Victoria (Australia), New Zealand and the United Kingdom.

In all three cases businesses are encouraged to adopt technical standards relevant to their needs. In Victoria and the United Kingdom, a code of practice is also available to assist businesses with compliance. While the draft New Zealand regulations impose obligations on employees, similar broad obligations exist in Victoria and the United Kingdom. None of these regulatory frameworks specifies inspection procedures for hazardous plant to be followed by users, owners or employers.

In Victoria, the emphasis is on consultation with employees when undertaking hazard management measures.[1] The frequency and nature of inspections are the responsibility of the employer and there are no prescriptions. For example, 'Plant should be maintained, inspected and cleaned according to the recommendation of the designer and manufacturer'.[2]

In New Zealand, the approach is also non-prescriptive, although the draft regulations are more specific about the timing of inspections than those operating in Victoria or the United Kingdom.

In the United Kingdom, the nature of the inspection process depends on the extent of the hazard presented by the pressure system.

> The responsibility for defining the scope of the scheme of examination lies with the user … After identifying the protective devices to be included in the scheme the user or owner should consult a competent person on what other parts of the system should be included … In order to be able to justify a decision to exclude parts of the system the user or owner will need to have the advice of a competent person with an appropriate level of expertise (UK Health and Safety Commission (1990), *Safety of pressure systems: approved code of practice*, p.19).

[1] Under the primary Victorian legislation, employers must 'if practicable, consult the health and safety representative of a designated work group on all proposed changes to the workplace, the plant or substances used at the workplace or the conduct of work at the workplace that may affect health or safety of any member of the designated work group' (*Occupational Health and Safety Act 1985*, s.31(2)(c)).

[2] Victorian Health and Safety Organisation (1995), *Code of Practice for Plant*, p. 62.

Table C.2 Hazard management obligations for operating pressure vessels in subordinate legislation, selected jurisdictions

Victoria	*New Zealand*	*United Kingdom*
Employer's duties with respect to use of plant	*Controller's safety assurance duties*	*User's duties of compliance with pressure vessels and systems.*
	Risk management requirements	
Ensure that plant is used and maintained to eliminate risk associated with its use or, if elimination not practicable, reduce risk as far as practicable. Ensure that, so far as practicable, measures provided to prevent interference with plant.	Ensure equipment has a current certificate of inspection **or** equipment is operated and inspected within quality management system (QMS) in accordance with regulations.	System not operated unless: • its safe operating limits are established; and • written scheme for periodic examination of plant has been prepared.
	Inspection requirements	
Ensure that plant inspected to extent needed to ensure risk from use of plant monitored. If plant is registered, records of inspections and maintenance kept.	Ensure that equipment is inspected: • when commissioned; • after recommissioning; • during modification; • after adjustments which might prejudice safety, serious harm from malfunction, repairs affecting pressure integrity; • at periodic intervals. Ensure surveillance audits under QMS conducted sufficiently frequently to continue to satisfy ISO 9000.	Ensure inspections occur under the written scheme and that the system is not operated until any repairs or modifications are completed. Keep records of examinations. Ensure system properly maintained in good repair, so as to prevent danger. Take precautions to prevent unintentional pressurisation.
	Information and training requirements	
Ensure employees who are exposed to risk and supervisors receive information and instruction in: • nature of hazard; • proper use and maintenance of risk control measures; • safety procedures; • personal protective equipment.	**Obligations on employees** to understand and comply with written instructions relating to safe operation of equipment and to exercise required level of care when operating equipment.	Provide any person operating system adequate and suitable instructions for: • safe operation; and • emergency action.

Sources: Victorian Occupational Health and Safety (Plant) Regulations 1995; New Zealand Department of Labour (1994), Draft Health and Safety in Employment (Pressure Equipment, Cranes and Passenger Ropeways) Regulations, UK HSE (1994).

END OF APPENDIX

Glossary

Abatement notice	A notice requiring environmental nuisances to be remedied within a stated period.
Accreditation	A voluntary *notification* or *licence*.
Airshed	A basin of air, usually marked by geographic features, in which ambient pollution is contained.
Ambient standards	Quality standards for air or water defined using the concentration rates, exposure times and frequencies of occurrence of a pollutant. See also *emission standard*.
Attainment area	In the US, an *airshed* which has attained national ambient air quality standards.
Authorised code of practice	In the UK, a commentary on a *statutory instrument* in non-legal language providing practical guidance about how regulations apply to different circumstances and which alternative methods may be adopted to comply with them.
Certification	See *accreditation*.
Code of practice	Set of rules specifying appropriate conduct for particular aspects of a business. They are defined in this report to be voluntary. In the United Kingdom, the term refers to a set of formally binding rules issued by an agency: for the purposes of this report, these are termed *mandatory codes of conduct*. See also *authorised code of practice* (voluntary).
Contravention notice	Issued after ongoing contravention of standards where it is envisaged that further enforcement will be by prosecution. See also *infringement notice*.
Co-regulation	*Direct regulation* by an industry association combined with government oversight or ratification.

Direct regulation	Regulatory methods which do not rely on *voluntary mechanisms* or *fiscal instruments*. They include *standards*, *compulsory contracts*, *co-regulation*, prohibitions on the manufacture or use of products, price controls and *licences*.
Emission reduction credit	The difference between the allowable emission limit and the actual emissions of a source.
Emission standard	Limits on the quantities of pollutants discharged over a period of time. See also *ambient standard*, *concentration standard*, *load standard*.
Emission tax	Charges paid on discharges into the environment or, in the case of *user charges*, into collective treatment facilities and based in principle on (an indicator of) the quantity and/or quality of discharged pollutants.
Environmental management system	Processes and systems implemented by businesses designed to maintain the quality of the environment.
Enforcement order	An order to restrain unlawful activity, repair damage (for example, to the environment), claim reimbursement for damage, or generally notify a licensee that the provisions of a licence will be enforced.
HACCP	HAZARD ANALYSIS OF CRITICAL CONTROL POINTS. A *quality assurance system* for food hygiene used by food production and preparation businesses.
Improvement notice	A notice requiring specific action, for example, to install, repair or replace safety equipment in a workplace.
Infringement notice	Notice of infringements posing a low level of danger to environment and human life. See also *contravention notice*.
ISO 9000	A set of *quality assurance system* standards developed by the INTERNATIONAL ORGANISATION FOR STANDARDS.
ISO 14000	A set of *environmental management system* standards developed by the INTERNATIONAL ORGANISATION FOR STANDARDS.

Licence	A *notification* which also requires prior approval as a condition for conducting prescribed business activities, and compliance with specified minimum *standards* — breaches of which may result in the suspension or revocation of permission by a specified agency.
Master licence	An integrated licence approval system allowing many licence approvals to be obtained through a single application.
Mobile sources	Motor vehicles and other forms of transport which contribute to air pollution. See also *stationary sources*.
Nonattainment area	In the United States, an *airshed* which has not attained national ambient air quality standards.
Notification	An instrument created under government authority requiring all businesses with specified characteristics to provide information about their attributes to a specified agency.
OECD	ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT.
Partially registered occupation	In Australia, an occupation which must be registered in some state jurisdictions but not in others.
Point source	Readily identifiable and monitored sources of pollution, for example, chimney stacks, exhaust and drainage pipes.
Quality management system	Processes and systems designed to maintain the quality of products and services.
Risk assessment	Identifying and analysing the risks and evaluating remedies, including those already in place.
Stationary sources	Non-mobile sources of pollution, for example, chimney stacks and drain pipes. See also *mobile sources*.
Standard	A mandatory or voluntary requirement that • imposes sanctions for certain harmful consequences from a product or service; • requires certain conditions of quality to be met at the point of supply; or • compels the supplier to use certain production methods or materials, or prohibits the use of certain production methods or materials. See also *ambient standards, emission standards, licences*.
Statutory instrument	In the United Kingdom, subordinate legislation containing regulations.

Tradeable permits

Dischargers of pollutants operate under some multi-source emission limit and trade is allowed in permits adding up to that limit. If a discharger releases less pollution than its limit allows, it can sell or trade the differences between its *emission reduction credits* to another discharger which then has the right to release more than its initial limit allows. Trades can take place within a plant, within a firm or among different firms.

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