



23 December 2016

LBL Review
Regulatory Reform and Advice Branch
Environment Protection Authority

By email: LBL.Review@epa.nsw.gov.au

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Dear Sir /Madam,

Review of The Load-Based Licensing Scheme

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide feedback to the Environmental Protection Authority's Review of the Load-based licensing scheme.

As you may be aware, the Chamber is one of Australia's largest business support groups, with a direct membership of more than 19,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the establishment of the Sydney Chamber of Commerce in 1825, the Chamber works with businesses ranging in size from owner-operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

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

The Chamber notes that the Environment Protection Authority ("the EPA") has prepared and is currently seeking feedback on an issues paper the purpose of which is to provide information about the performance of the LBL scheme and seek stakeholders' feedback to inform a comprehensive review of the scheme's efficiency and effectiveness.

The Chamber is interested in this review both from the regulatory design perspective given that the EPA was reported in our most recent Red Tape Survey report to be a complex agency to work with and from an industry operating and competitiveness perspective, to be reassured that the impact on industry of any new proposals is proportionate to its contribution to the problem to be solved.

The load-based licensing initiative in context

At a system level, the Chamber has recently provided a submission to the Independent Review of the NSW Regulatory Policy Framework (copy **attached**) being chaired by the Hon Nick Greiner AC. That submission endorsed the findings of the NSW Auditor General's Performance Audit into Red tape reduction (the Auditor General's Report)¹. In particular, the Chamber agrees with that report's principal findings that:

- a new red tape reduction framework is required;
- regulatory impact assessments do not consistently demonstrate that red tape reduction principles have been applied;
- there is no designated oversight function for red tape reform or red tape reduction; and
- regulatory decisions are not transparent.

While we welcome opportunities such as the current consultation to input on regulatory design, the Chamber strongly believes that improvements to the wider framework of regulatory review needs to be implemented to ensure that any regulation is efficient, proportionate and coordinated to meet justifiable policy objectives.

The Chamber notes that the objectives of this review are to assess whether changes are needed to ensure the scheme achieves its objectives as per clause 13 of the *Protection of the Environment Operations (General) Regulation 2009*; to improve the effectiveness of the LBL scheme in driving reductions in air and water pollutant emissions; to improve the efficiency and ease of use of the scheme for licensees and the EPA; and to ensure the scheme has a complete range of tools. We welcome the opportunity to provide feedback on these performance improvements to the regulation and set out further comments below.

Achieving the Objectives in Clause 13

The Chamber notes that the objectives as stated in Clause 13 include the provision of incentives to reduce the load of pollutants emitted based on the polluter pays principle and to do so within an equitable framework and to give industry incentives for ongoing improvements in environmental performance and the adoption of cleaner energies.

The Issues Paper states that the Proposal Paper to be released in 2017 for further public consultation will closely consider how all the elements of a revised scheme would fit together and complement the EPA's broader regulatory framework. It also explains how the "LBL scheme plays an important complementary role within the EPA's wider regulatory and policy framework, which works together to protect and improve air and water quality in NSW by seeking to reduce industrial pollutant emissions"².

In conjunction with the NSW Minerals Council, the Australian Sustainable Business Group (ASBG), and the Illawarra and Hunter Business Chambers, the Chamber has previously raised concerns about the proposed changes to the Environmental Protection Licence Administration Fees (a copy of their letter dated 11 December 2013 is **attached**). The views expressed in that letter remain current.

The Chamber has been provided with a copy of the submissions that will be submitted by the ASBG in response to the issues paper and shares the concerns expressed by the ASBG in that document.

In particular, the Chamber is concerned that, in developing a cost-benefit analysis, the EPA will exclude the costs of businesses being forced out of business as a result of a significant increase in fees and, in its proposal paper, will fail to adequately address a wide range of financial and non-financial incentives that are designed to drive ongoing improvements in environmental performance and the adoption of cleaner energies.

Greater assessment of the concept of "user pays"

In addition, the Chamber submits that this review consider its "user pays" principle in light of the fact that industry is not always the greatest contributor to the level of pollutants in New South Wales. For example, a significant contributor to the level of air pollutants is the private use of motor vehicles as is government agency activity such as burning off bushland in preparation for bushfire season.

At the heart of designing an efficient "user pays" scheme should be that a user contributes an amount equivalent to the marginal costs of their engagement in a particular activity – that is, the extent to which the activity results in negative externalities. For an activity that produces increasing costs at the margin, industry's contribution to that activity should not automatically be regarded as the "most marginal contributor" and therefore be liable for the highest possible fees while other contributors pay nothing.

There does seem to be a case for directing combined Commonwealth and State policy effort towards the largest emissions-contributing sources. It is not clear whether how this might be achieved has been considered in the current review. For example, a response to the Climate Change Authority's recommendation that new vehicle emission standards for cars on Australian roads be developed should inform and shape this review.

Thank you for the opportunity to contribute to this review. If you wish to discuss any aspect of this submission, please contact Elizabeth Greenwood, Policy Advisor on (02) 9458 7078 or elizabeth.greenwood@nswbc.com.au.

Yours sincerely

A handwritten signature in black ink that reads "Paul Orton".

Paul Orton
Director, Policy and Advocacy