



New South Wales Government

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BETTER REGULATION OFFICE REPORT

LICENSING OF SELECTED OCCUPATIONS

April 2009

SUMMARY AND RECOMMENDATIONS

The Better Regulation Office has reviewed the need to continue licensing the following eleven occupations that are licensed only in NSW or in NSW and one or two other jurisdictions:

1. entertainment industry agent and manager
2. venue consultant
3. floor finisher and coverer
4. kit home supplier
5. lift mechanic
6. motor vehicle repairer
7. optical dispenser
8. property inspector (pre-purchase)
9. strata manager
10. structural landscaper, and
11. wool, hide and skin dealer.

The Better Regulation Office recommends the removal of seven licences and the retention of licensing for four occupations. These recommendations are based on an assessment of the costs and benefits of licensing to consumers, licensees and Government. The findings reflect NSW-specific circumstances which mean that in some cases, licensing is appropriate even though it does not exist in other jurisdictions.

Licensing is a valuable regulatory tool when an occupation is associated with particular financial, safety or probity risks. By providing an assurance that work is performed by a suitably skilled and reputable provider, licensing can reduce these risks. Licensing is also a beneficial tool for the enforcement of laws, both through identifying and monitoring operators and providing a means to exclude people from the industry.

The review proposes to retain licensing for motor vehicle repairers, strata managing agents, structural landscapers and wool, hide and skin dealers, as licensing is considered an appropriate way to minimise safety, financial and criminal risks.

In contrast, the Better Regulation Office has found that consumers can be adequately protected without licensing in seven occupations. With the exception of the lift mechanic licence, it is proposed that the removal of these licences should be done in conjunction with other reforms to ensure consumer protections are sufficiently maintained.

For example, the review proposes to strengthen existing non-licence sanctions applying to entertainment industry representatives and introduce mandatory insurance requirements for kit home suppliers along with an expanded dispute resolution mechanism. These provisions are currently linked to, but are not contingent on, licensing.

The provision of information to consumers about engaging a suitably skilled person to do a property inspection is proposed as a sufficient alternative to licensing of pre-purchase property inspectors.

In relation to the flooring and optical dispenser licences, the review recommends that specific higher-risk activities such as structural flooring and the selling of novelty contact lenses should continue to be regulated, but that this can be done without licensing. This would remove regulatory burden on lower-risk activities that can now only be undertaken by licensed operators.

Removing these licences will significantly reduce administrative costs. Licence application, renewal and other compliance costs for businesses in these industries will fall by around \$1.007m per year. This includes major savings for individual businesses that no longer need to comply with mandatory education and insurance requirements. As

a result of these reforms, more skilled people from interstate or overseas will be able to take on projects or set up businesses in NSW without the barrier of licensing, which will improve the free flow of skills around the country.

Recommendations

Recommendation 1

The licensing scheme for entertainment industry agents and managers under the *Entertainment Industry Act 1989* is not operating effectively and should be removed, subject to:

- amendment of the Act to clarify its coverage, remove outdated provisions, provide a clear mechanism for dealing with complaints and provide effective sanctions for breach of consumer protection provisions
- the development of industry-endorsed performance standards for assessing claims of misconduct by entertainment industry participants, and
- further consultation with industry about its role in the regulatory model.

Recommendation 2

The Better Regulation Office and the Office of Industrial Relations should immediately commence a targeted review of the *Entertainment Industry Act* to inform the implementation of Recommendations 1 and 3.

Recommendation 3

The licensing scheme for entertainment industry venue consultants under the *Entertainment Industry Act* is not operating effectively and should be removed, subject to:

- amendment of the Act to clarify its coverage, remove outdated provisions, provide a clear mechanism for dealing with complaints and provide effective sanctions for breach of consumer protection provisions
- the development of industry-endorsed performance standards for assessing claims of misconduct by entertainment industry participants, and
- further consultation with industry about its role in the regulatory model.

Recommendation 4

The flooring licence class under the *Home Building Act 2004* should be removed.

Recommendation 5

The *Home Building Act* should be amended to clarify that structural flooring work may be undertaken by a licensed building contractor or a carpentry contractor.

Recommendation 6

The kit home supplier licence under the *Home Building Act* should be removed.

Recommendation 7

The *Home Building Act* should be amended to confirm that kit home suppliers must continue to meet contract and information disclosure requirements (Sections 16D-16E of the Act), and that disputes about kit home suppliers may continue to be heard by the Home Building Division of the Consumer, Trader and Tenancy Tribunal.

Recommendation 8

The mechanical services licence class under the *Home Building Act* should be removed.

Recommendation 9

The motor vehicle repairer licence under the *Motor Vehicle Repairs Act 1980* should be retained.

Recommendation 10

The *Motor Vehicle Repairers Act* should be amended to clarify that the licensing requirement does not apply to the fitting of accessories which do not affect the performance, safety or security of a vehicle.

Recommendation 11

The optical dispenser licence should be removed by repealing the *Optical Dispensers Act 1963*.

Recommendation 12

The *Health Care Complaints Act 1993* should be amended to remove references to the *Optical Dispensers Act* and to ensure that optical dispensers remain covered by the Act.

Recommendation 13

The Unregistered Health Professionals Code of Conduct should be amended to require that an unregistered health practitioner may not supply novelty contact lenses unless they hold tertiary qualifications in optical dispensing and supply specified health and safety information with all novelty contact lenses sold.

Recommendation 14

The building consultant licence class under the *Home Building Act* should be removed.

Recommendation 15

The Office of Fair Trading should provide, on its website, guidance to consumers about selecting a person with relevant experience to undertake a pre-purchase property inspection.

Recommendation 16

The strata managing agent licence under the *Property, Stock and Business Agents Act 2002* should be retained.

Recommendation 17

The structural landscaping licence class under the *Home Building Act* should be retained.

Recommendation 18

The wool, hide and skin dealer licence under the *Wool, Hide and Skin Dealers Act 2004* should be retained.

INTRODUCTION

Background

In May 2008, the Productivity Commission released its *Report on the Review of Australia's Consumer Policy Framework*¹. The Productivity Commission recommended that the Council of Australian Governments (COAG) Business Regulation and Competition Working Group should oversee a reform program for industry-specific consumer regulation, including identifying and repealing unnecessary regulation, initially focusing on requirements that apply only in one or two jurisdictions².

On 3 July 2008, COAG agreed to develop a national trade licensing system that will remove inconsistencies across State borders and allow for a much more mobile workforce. Under current arrangements, an array of occupational trades is licensed to varying requirements in each State. COAG's agreement will result in a new national system which will see a national approach to the licensing of a range of economically important trades³.

Work on defining the trades to be included in the national system will be undertaken in 2009. As part of the process, COAG asked the Business Regulation and Competition Working Group to report on the need to continue licensing trades that are licensed in only one or two jurisdictions.

Purpose

The purpose of the review is to determine whether licensing of selected occupations in NSW is justified and to remove any unnecessary regulation.

The review attempts to identify whether alternative approaches would achieve the same objectives (for example, consumer protection or crime prevention) or whether deregulation is appropriate.

Scope

In its *Report on the Review of Australia's Consumer Policy Framework*, the Productivity Commission identified a range of occupations that are licensed only in NSW or in NSW and one or two other jurisdictions. The occupations of quantity surveyor and steel fixer were incorrectly identified as being licensed in NSW and are not included in this review.

The COAG Skills Recognition Taskforce has identified a further two occupations that are licensed only in NSW – lift mechanics and inbound tour operators who hire out boats for recreational use. The licensing of inbound tour operators is being reviewed by the Australian Transport Council and is not included in the review.

The review separately considers each of the following occupations:

¹ Volume 2, page 94 and Appendix G, page 489.

² Recommendation 5.1.

³ COAG has agreed that the national system will initially apply to air conditioning and refrigeration mechanic, building, electrical, transport (passenger vehicle drivers, dangerous goods), maritime, plumbing and property agent occupations.

1. entertainment industry agent and manager
2. venue consultant
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9. strata manager
10. structural landscaper, and
11. wool, hide and skin dealer.

The review has assessed the merits of licensing these occupations based on a quantitative and qualitative analysis of the costs and benefits of each licence. It recognises the wide range of factors which determine whether licensing is the best way to achieve the Government's policy objectives.

Licensing benefits consumers by identifying people who are trustworthy and/or competent to carry out an occupation. It provides consumers with a verified source of information about licence holders which improves their ability to seek redress if there are any problems. The requirement to hold a licence can exclude undesirable or unqualified people from taking up an occupation, and sanctions against licence holders can be used to drive out people who repeatedly do the wrong thing. Additional benefits can be achieved, depending on the particular risks associated with an occupation, by imposing conditions upon licence holders. These may include requirements to hold insurance, keep records, own or have access to certain equipment or undertake ongoing training and development.

While licensing imposes costs on licensees (and these costs may be passed on to consumers in the form of higher prices and reduced choice), being licensed is a straightforward way for an individual or a business to signal they have the necessary skills and are just as qualified as a competitor. For this reason, licensing is commonly supported by industry.

For Government, licensing can take up significant administrative resources, but also provides useful information and enforcement provisions which in addition to protecting consumers, can assist with law enforcement and crime prevention.

A broader discussion of the rationale for licensing can be found in the Issues Paper released as part of this review⁴.

Review process

On 29 October 2008, the Minister for Regulatory Reform, the Hon Joe Tripodi MP, released the Better Regulation Office Issues Paper *Licensing of Selected Occupations* seeking submissions on the need to continue licensing of eleven occupations in NSW. The Issues Paper was posted on the Better Regulation Office website and mailed to 49 organisations and individuals.

The Better Regulation Office sought the views of stakeholders on a range of matters including the costs and benefits of the existing licensing regimes, any reasons why licensing may be needed in NSW when it is not considered necessary in other jurisdictions, and alternative ways to achieve the objectives of the licensing regimes.

⁴ *Licensing of Selected Occupations*, Better Regulation Office Issues Paper, October 2008.

The Issues Paper was the subject of a four week stakeholder consultation period. Submissions closed on 28 November 2008 and 89 submissions were received. Appendix A contains a list of the organisations and individuals who made submissions. Submissions are available at www.betterregulation.nsw.gov.au.

The review involved extensive engagement with NSW Government agencies that have administrative responsibility or are particularly interested in the licences being reviewed. Agencies provided significant input and advice at all stages of the review process.

In addition, the Better Regulation Office held meetings with twelve stakeholder organisations from December 2008 to February 2009. Attendees are listed at Appendix B.

A detailed assessment of each licence is contained in the following sections of this report.

1. ENTERTAINMENT INDUSTRY AGENT AND MANAGER

NSW, Western Australia and the ACT are the only jurisdictions in Australia requiring entertainment industry agents and managers to be licensed⁵.

The *Entertainment Industry Act 1989* (the Act) contains a suite of protections for performers, including a requirement that anyone acting, or advertising that they act, as an entertainment industry agent or manager must hold a licence. The maximum penalty for acting without a licence is \$5,500.

The Act defines an *agent* as someone carrying out any of the following for a performer for financial benefit:

- seeking or finding work opportunities
- negotiating terms and conditions for a performance
- finalising arrangements for the performer's payment
- negotiating arrangements for the performer's attendance at a performance, and
- administering the performer's contract with someone who employs the performer for a performance.

The Act defines a *manager* as a person who represents a performer and agrees, by way of a written agreement, to carry out for financial benefit the activities of an agent and other activities specified in the agreement.

Currently, there are 256 licensed agents and 198 licensed managers. More than one type of licence may be required by an individual depending on the range of activities conducted. There are 53 people who hold both a manager and an agent licence.

Licensing was introduced to protect performers who are in a weak bargaining position. The scheme aims to remove unscrupulous or unqualified persons from the industry as they may cause a performer to suffer financial detriment, loss of industry advancement and diminished public standing.

A person is qualified to hold an entertainment agent or manager licence if the Office of Industrial Relations (OIR) is satisfied that the person is a fit and proper person to hold a licence, is over 18 years of age, is able to conduct a business in the entertainment industry in a proper and business-like manner, and has knowledge of and experience in the entertainment industry or a related area.

The Act requires that OIR keep a register of licences and that anyone, including a performer, may inspect the register and take copies of all or any part of any entry in the register. A licence holder must exhibit the licence at their principal place of business.

Independent of the licensing provisions, the Act includes a range of other requirements to protect performers and these apply equally across all sectors of the entertainment industry. The Act provides that:

- anyone may complain to OIR about an agent or a manager's misconduct, unfair contract or failure to pay. The Act also provides for the taking of remedial action by a 'Complaints Committee'. If:

⁵ Western Australia and the ACT require private employment agents to be licensed and this covers those operating in the entertainment industry. A private employment agent is a person who provides employment placement services to someone seeking employment.

- an agent or manager is found guilty of misconduct, the Committee may caution or reprimand the agent or manager, or suspend or cancel or put a condition on their licence, or penalise the agent or manager up to \$550
 - a contract or a provision in a contract is found to be unfair, the Committee may make an order that the contract or provision is to be varied, and
 - an agent or manager is found to have failed to pay an amount owing to a performer, the Committee may make an order requiring the agent or manager to pay the amount owing (up to an amount of \$20,000). The order is enforceable in the Local Court
- OIR can issue a direction to an entertainment industry employer concerning any matter relating to their employment of performers, or to the operator of any premises concerning any matter relating to the employment of performers at their premises
 - fees paid by performers to agents and managers are generally limited to 10 per cent of the amount payable to the performer⁶, except where an entertainment industry manager negotiates a higher fee with the written consent of a performer, and
 - agents and managers must provide performers with financial statements regarding payments accepted by the agent or manager on behalf of the performer, establish trust accounts for performers' money and lodge a \$2,000 bond with OIR to cover the payment of money owed to performers (the bond is refundable after a licence holder passes a 12 month probationary period).

Most States regulate entertainment industry agents and managers in some way, as outlined below:

- Western Australia and the ACT require private employment agents, including those working in the entertainment industry, to be licensed
- South Australia requires private employment agents, including those working in the entertainment industry, to be registered
- Queensland requires private employment agents, including those working in the entertainment industry, to comply with the Private Employment Agents (Code of Conduct) which is contained in a Schedule to the *Private Employment Agents (Code of Conduct) Regulation 2005 (Qld)*, and
- entertainment industry agents and managers in Victoria, Tasmania and the Northern Territory are not specifically regulated, though generic fair trading protections would still apply.

In NSW, people who provide employment placement services are covered by the *Fair Trading Act 1987*. This legislation excludes entertainment industry representative regulated under the *Entertainment Industry Act*.

Stakeholder views

Nine submissions addressed licensing of agents and managers. Two stakeholders favour industry self-regulation. Of the seven stakeholders that favour government administered regulation, two support the licensing system in its current form and five support licensing in principle. Stakeholder submissions focussed on the activities of agents rather than managers which may be because the relationship between a manager and performer is covered by a written agreement.

⁶ In the case of an engagement involving live theatre or a live musical or variety performance (not involving film, television or electronic media), the maximum fee is 10 per cent for any period up to 5 weeks and then 5 per cent for any period after 5 weeks.

The major points raised in the submissions were:

- The performer-protection objectives of the Act are appropriate because performers are often low paid and in a weak bargaining position. However, many submissions stated that the legislation is not meeting its objectives.
- Entry requirements are low and do not adequately test the knowledge of applicants (Music NSW and the Media, Entertainment and Arts Alliance).
- The Act provides major benefits for performers by obliging managers to keep trust accounts for the appropriate handling of performers' money.
- Licensing provides a mechanism for lodging complaints about agents and investigating their behaviour. However, several submissions (including the Musicians' Union of Australia, the Media, Entertainment and Arts Alliance and the Music Managers' Forum) noted that there is no practical machinery in place to investigate complaints and enforce requirements.
- Compliance and enforcement activities should be strengthened.
- Licensing should be extended to all States. In implementing licensing, NSW became a national leader in performer protection. The licensing scheme sets a standard in performance protection for other jurisdictions.
- Changes to entertainment industry practices mean that some industry participants are not covered by the requirement to hold a licence (Music Managers' Forum). As a result, entertainment industry participants are not operating under the same regulatory framework and performers are not subject to the same protections.
- Some provisions, such as licence fees and bond requirements, need to be reviewed (Music NSW, and the Media, Entertainment and Arts Alliance).

Music NSW stated that licence fees and costs would be better spent on self-regulation, specifically the development of industry codes of practice and endorsement schemes. Music NSW and the Association of Artist Managers Incorporated support industry self-regulation over licensing on the basis that the industry is diverse, and noted that the approach would need to be tailored to each industry sub-sector. Both said that the licensing scheme does not offer value for money, (a view shared by the three other submissions including the Music Managers Forum), that it is a barrier to entry level operators and creates uncertainty for people who operate across states.

Assessment

The entertainment industry in NSW is significant both in terms of its aggregate and relative contribution to economic activity generated by the sector. The Media, Entertainment and Arts Alliance has indicated that NSW legislation protects half of those working in the arts and entertainment industries in Australia because NSW is the location for the majority of employment and also the place that much work undertaken in other states is negotiated.

The Better Regulation Office supports continued regulation of the entertainment industry as it is clear that performers are in a weak bargaining position and the nature of the industry means that there is significant scope for unscrupulous behaviour by industry representatives.

The purpose of this review is to consider whether licensing is the best way to protect performers and promote the development and growth of the entertainment industry, or whether an alternative form of regulation would lead to better outcomes.

The recommendations are informed by an assessment of the effectiveness of the current licensing scheme. The assessment is complicated by the fact that the licensing scheme is operating differently to what was envisaged when the Act was established. In particular, the Act's objectives are:

- (a) to promote the development and growth of the entertainment industry
- (b) to provide for the development of codes of ethics for the entertainment industry
- (c) to provide a forum for the hearing and resolution of complaints in the entertainment industry
- (d) to develop a framework that will provide for the self-regulation of the entertainment industry.

To meet these goals, the Act established an interim Industry Council and a Complaints Committee to hear and resolve disputes. The Council dissolved after a period of five years, before a code of ethics was developed or any other mechanism for continued industry representation was established. Administration of the Act is now the responsibility of OIR.

The same fees apply to licences for agents and managers. Licences are issued for one year. For a new licence, an application fee of \$100 and a licence fee of \$200 apply. Renewal fees are \$200 per year. The annual cost to Government of administering an agent or manager licence is approximately \$188 per licence.

The relatively low level of the licence fees and the large number of licence holders suggests that licensing does not impose a large burden on the industry, or significantly constrain entry or restrict labour mobility. Few submissions raised concerns at the level of licence fees.

The key benefits of licensing are the protections offered through licence entry requirements, the ability of a performer to verify that a representative is licensed through the public register of licence holders and the ability to exclude people from the industry and take action for non-compliance with regulatory requirements.

Entry requirements are intended to protect performers by excluding unscrupulous operators from the industry and ensuring agents and managers have sufficient business and industry knowledge. The Act provides that OIR may refuse a licence if the applicant does not meet the entry criteria. In practice, however, OIR does not often refuse licence applications on probity grounds. The assessment of skills is also not based on any clear criteria. This means that the entry requirements may exclude certain people from the industry but do not necessarily enhance professional standards.

While being licensed should signify that a licence holder has sufficient skills and experience to provide a quality service, the assessment process does not appear to support this goal. As such, licensing may actually mislead performers about the skills and experience of a licensee.

The requirement to display licences and the public register of licensees are intended to protect performers by providing relevant information about agents and managers. In practice, however, this information is rarely accessed. OIR only receives around 20 inquiries per year about whether a person is licensed, and has not received any requests to see a copy of the register in recent times.

The Act provides that OIR may cancel or suspend a licence for breach of a number of provisions. However, over the past few years licences have only been cancelled because a licence holder has ceased trading or has failed to renew their licence. In 2008, 28 agent and 25 manager licences were cancelled because of non-renewal, and 5 agent and 8 manager licences were cancelled at the request of the licence holder. There is no evidence that the licence has been used to deter unscrupulous operators.

Many of the legislative protections for performers contained in the Act are not contingent on licensing, although exclusion from the industry through licence suspension or loss is one of the key sanctions for non-compliance. As outlined earlier, other protections include:

- provisions for making and determination of complaints about agents and managers in relation to misconduct, unfair contracts and failure to pay
- the provision for OIR to issue a direction to an employment industry employer
- the requirement that a manager enter into a written agreement with a performer
- the regulation of fees paid by performers to agents and managers
- the requirement that agents and managers must provide performers with financial statements
- the requirement that agents and managers must establish trust accounts for performers' money, and
- the requirement that agents and managers must lodge a \$2,000 bond to cover the payment of money owed to performers.

While these provisions are significant protections in theory, the current operation of the scheme means that in practice, they are not. While complaints may be lodged with OIR in its role as the descendant Council, the Act makes no provision for OIR to take remedial action in place of the Complaints Committee. There is no code of ethics or standard by which the actions of a representative can be assessed. The provision for OIR to issue a direction regarding the employment of performers has never been used.

OIR does not receive a large number of complaints about entertainment industry agents and managers. In the four years from 2005 to 2008, a total of 21 complaints were received by OIR. Of these, 15 were about agents and managers not paying performers or charging incorrect fees and 6 concerned unlicensed operators. A number of factors may contribute to the low number of complaints to OIR, including the absence of an effective mechanism to make complaints, reluctance on the part of performers to pursue complaints because of the influence of agents and managers in the industry, and the relatively short timeframe for pursuing redress in relation to a complaint. Under the *Criminal Procedure Act 1989*, proceedings must be commenced no later than six months from when the offence was alleged to have been committed.

In the past year, one agent has been prosecuted under the Act for operating without the correct licence. It is noted that the Media, Entertainment and Arts Alliance has the authority to prosecute under the Act and also handles complaints.

The Better Regulation Office considers that the licensing scheme is not operating effectively. Regulatory outcomes could be improved by:

- clarifying which industry representatives the licensing requirement applies to
- updating compliance and enforcement provisions to enable OIR to effectively implement its regulatory responsibilities
- providing transparent criteria for assessing licence applications and the performance of industry representatives, and

- clarify the mechanism for industry involvement in the licensing scheme.

However, a Government administered licensing scheme may not be the most effective way to monitor and assess the behaviour of entertainment industry representatives and performers, or to promote compliance amongst the industry.

Alternative approach

The purpose of regulating industry representatives is to reduce the risks that agents and managers charge performers excessive fees, pay late or not at all, or otherwise act inappropriately. Regulation should ensure that industry representatives can be effectively penalised for poor behaviour. This can be done through financial penalties, loss of licence and poor publicity. The latter would have significant consequences for an entertainment industry representative. In this context, industry associations play a key role in communicating with performers and representatives, and are well placed to judge the conduct of industry participants.

The Act includes several consumer protection measures that are not contingent on licensing. If supported by clear performance standards and mechanisms for effective enforcement, these should be sufficient to achieve the Government's objectives without a licensing requirement. Indeed, stakeholders acknowledge that the key protections offered by the Act are the protocols for paying performers and managing funds on their behalf, both of which are not part of the current licensing scheme.

Several matters would need further consideration before licensing could be removed, including the form and degree of sanctions for breach of the Act and the criteria for assessing whether an agent or manager is guilty of misconduct. Performance standards would need to be developed in partnership with industry. Initiatives such as the Code of Practice for music managers being considered by the Association of Artist Managers Incorporated and existing industry codes should inform this work.

In relation to the role of industry, self-regulation may be viable for some or all sectors of the industry. The Better Regulation Office proposes further investigation of the needs of different groups and the potential to transition to industry self-regulation.

Review of the Entertainment Industry Act

The Act has not been reviewed since 2003 and that review was focussed on competition policy considerations⁷. Several stakeholders noted that the industry has undergone major changes since the Act was introduced in 1989. There is concern that the regulatory framework is out of date and does not apply equally across all industry sectors and participants, reducing the quality of protection for performers.

A broad review of the Act is needed to address the issues identified above. It is proposed that the review be undertaken jointly by the Better Regulation Office and the Office of Industrial Relations. Entertainment industry stakeholders would need to be actively engaged in the development of professional standards and consideration of industry's role in the regulatory model.

Summary

The Better Regulation Office supports continued regulation of entertainment industry agents and managers, but does not consider that licensing is necessary to achieve the Government's objectives. The assessment clearly shows that the existing licensing scheme is not operating effectively. It is not providing performers with an assurance that

⁷ *Review of the Entertainment Industry Act 1989*, Final Report, National Competition Policy Legislation Review, Office of Industrial Relations, Department of Commerce, August 2003.

licence holders will provide a quality service, nor does it improve professional standards for the benefit of the industry as a whole.

Licensing should not be removed without first implementing broader reforms to the *Entertainment Industry Act*. A review which considers the objectives of the Act and its effectiveness should be a priority. Specific matters to consider include the effectiveness of non-licence consumer protection provisions (including sanctions for non-compliance), the establishment of performance criteria, mechanisms for handling complaints and the role of industry in administering the regulation. Regulation that imposes relevant and enforceable requirements for the performance of agents and managers should meet the needs of industry participants without imposing the additional costs of a licensing scheme.

Recommendation 1

The licensing scheme for entertainment industry agents and managers under the *Entertainment Industry Act 1989* is not operating effectively and should be removed, subject to:

- **amendment of the Act to clarify its coverage, remove outdated provisions, provide a clear mechanism for dealing with complaints and provide effective sanctions for breach of consumer protection provisions**
- **the development of industry-endorsed performance standards for assessing claims of misconduct by entertainment industry participants, and**
- **further consultation with industry about its role in the regulatory model.**

Recommendation 2

The Better Regulation Office and the Office of Industrial Relations should conduct a targeted review of the *Entertainment Industry Act* to inform the implementation of Recommendations 1 and 3.

Removal of the licence combined with reforms to the Entertainment Industry Act will improve the level of protection offered to participants in the entertainment industry. It will promote greater compliance by agents and managers and enable the concerns of performers to be dealt with properly. It will also remove unnecessary costs associated with licensing – \$111,000 in renewal fees across NSW businesses each year, including savings in time taken to renew licences.

2. VENUE CONSULTANT

NSW is the only jurisdiction in Australia requiring venue consultants in the entertainment industry to be licensed.

The *Entertainment Industry Act 1989* (the Act) contains a suite of protections for performers, including a requirement that anyone acting, or advertising they act, as a venue consultant must hold a licence. The maximum penalty for acting without a licence is \$5,500.

The Act defines a venue consultant as someone who acts on behalf of an entertainment industry employer, for a fee or remuneration paid by any such employer, and who arranges for a performance by a performer at a particular venue (but does not include a person who arranges for a performance solely as an employee of a venue consultant or an employer).

Currently, there are 84 licensed venue consultants. More than one type of licence may be required by an individual depending on the range of activities conducted. There are 23 licensed venue consultants who are also licensed entertainment industry agents and 7 licensed venue consultants who are also licensed entertainment industry managers. The previous section of this report discusses licensing for agents and managers.

A person is qualified to hold a venue consultant's licence if the Office of Industrial Relations (OIR) is satisfied that the person is a fit and proper person to hold a licence, is over 18 years of age, is able to conduct a business in the entertainment industry in a proper and business-like manner, and has a knowledge of and experience in the entertainment industry or a related area.

The Act requires that OIR keep a register of licences and that anyone, including a performer, may inspect the register and take copies of all or any part of any entry in the register. A licence holder must exhibit the licence at their principal place of business.

Independent of licensing requirement, the Act includes a range of other requirements to protect performers and these apply equally across all sectors of the entertainment industry. The Act provides that:

- anyone may complain to OIR about a consultant's misconduct, unfair contract or failure to pay. The Act also provides for the taking of remedial action by a 'Complaints Committee'. If:
 - a venue consultant is found guilty of misconduct, the Committee may caution or reprimand the venue consultant, or suspend or cancel or put a condition on their licence, or penalise the venue consultant up to \$550
 - a contract or a provision in a contract is found to be unfair, the Committee may make an order that the contract or provision is to be varied, and
 - a venue consultant is found to have failed to pay an amount owing, the Committee may make an order requiring the venue consultant pay the amount owing (up to an amount of \$20,000). The order is enforceable in the Local Court.
- OIR can issue a direction to an entertainment industry employer concerning any matter relating to their employment of performers, or to the operator of any premises concerning any matter relating to the employment of performers at their premises
- fees charged by venue consultants must comply with the following:

- a venue consultant may not demand or receive any fee or other remuneration, for or in respect of the engagement of a performer, from any person other than an entertainment industry employer
- if an entertainment industry agent also acts as a venue consultant in respect of a particular performance, the agent is entitled to demand or receive a fee only as a venue consultant for the performance
- if a manager also acts as a venue consultant in respect of a particular performance, the manager is entitled, in addition to his or her fee or other remuneration as a manager, to demand or receive a fee as a venue consultant for the performance, but only if the manager and the performer concerned have agreed in writing to such an arrangement, and
- an entertainment industry employer may not include in a venue consultant's fee or other remuneration any payment by the employer of money owing to a performer.

Other protections in the Act concerning the payment of money to performers apply only to entertainment industry agents and managers (such as the requirement to provide financial statements to relevant parties 'as soon as practicable' after receiving and disbursing monies).

Stakeholder views

Five submissions addressed licensing of venue consultants. One stakeholder favoured industry self-regulation. Of the four stakeholders that favoured government administered regulation, two support the licensing system in its current form and two support licensing in principle.

The major points raised in the submissions were:

- The performer-protection objectives of the Act are appropriate because performers are often low paid and in a weak bargaining position.
- Licensing helps to prevent exploitation of venues and performers by the many unscrupulous individuals who operate in the entertainment industry and helps to ensure that performer earnings are not eroded by venue consultants charging both the performer and employer.
- Although licensing has proven beneficial to entertainers, venue owners and operators and the community at large, the legislation is not meeting its objectives.
- Entry requirements are low and do not adequately test the knowledge of applicants (Music NSW and the Media, Entertainment and Arts Alliance).
- Licensing provides a mechanism for lodging complaints about venue consultants and investigating their behaviour. However, one submission (the Media, Entertainment and Arts Alliance) noted that there is no practical machinery in place to investigate complaints and enforce requirements.
- Compliance and enforcement activities should be strengthened.
- If licensing were abolished, statutory provisions should be introduced to require venue operators to cease dealing with unscrupulous or unqualified persons.

Music NSW commented that licence fees and costs would be better spent on self-regulation, specifically the development of industry codes of practice and endorsement schemes.

Assessment

The entertainment industry in NSW is significant both in terms of its aggregate and relative contribution to economic activity generated by the sector. The Media, Entertainment and Arts Alliance has indicated that NSW legislation protects half of those working in the arts and entertainment industries in Australia because NSW is the location for the majority of employment and also the place that much work undertaken in other states is negotiated.

The Better Regulation Office supports continued regulation of the entertainment industry as it is clear that performers are in a weak bargaining position and the nature of the industry means that there is significant scope for unscrupulous behaviour by industry representatives.

The purpose of this review is to consider whether licensing is the best way to protect performers and promote the development and growth of the entertainment industry, or whether an alternative form of regulation would lead to better outcomes.

The recommendations are informed by an assessment of the effectiveness of the current licensing scheme. The assessment is complicated by the fact that the licensing scheme is operating differently to what was envisaged when the Act was established. In particular, the Act's objectives are:

- (e) to promote the development and growth of the entertainment industry
- (f) to provide for the development of codes of ethics for the entertainment industry
- (g) to provide a forum for the hearing and resolution of complaints in the entertainment industry
- (h) to develop a framework that will provide for the self-regulation of the entertainment industry.

To meet these goals, the Act established an interim Industry Council and a Complaints Committee to hear and resolve disputes. The Council dissolved after a period of five years, before a code of ethics was developed or any other mechanism for continued industry representation was established. Administration of the Act is now the responsibility of OIR.

Licences are issued for one year. For a new licence, an application fee of \$100 and a licence fee of \$200 apply. Renewal fees are \$200 per year. These fees and terms are the same as those applying to the licences for entertainment industry agents and managers. The annual cost to Government of administering a venue manager licence is \$188 per licence.

The relatively low level of the licence fee suggests that licensing does not impose a large burden on the industry, or significantly constrain entry or restrict labour mobility. Few submissions raised concerns at the level of licence fees.

The key benefits of licensing are the protections offered through licence entry requirements and the ability of a performer to verify that a representative is licensed through the public register of licence holders and the ability to exclude people from the industry and take action for non-compliance with regulatory requirements.

Entry requirements are intended to protect performers by excluding unscrupulous and inexperienced persons from the industry and ensuring venue consultants have sufficient business and industry knowledge. The Act provides that OIR may refuse a licence if the applicant does not meet the entry criteria. In practice, however, OIR does not often refuse licence applications on probity grounds. The assessment of skills is also not based on any clear criteria. This means that the entry requirements may exclude certain people from the industry but do not necessarily enhance professional standards.

While being licensed should signify that a licence holder has sufficient skills and experience to provide a quality service, the assessment process does not appear to support this goal. As such, licensing may actually mislead performers about the skills and experience of a licensee.

The requirement to display licences and the public register of licensees are intended to protect performers by providing relevant information about venue consultants. In practice, however, this information is rarely accessed. OIR only receives around 20 inquiries per year about whether a person is licensed, and has not received any requests to see a copy of the register in recent times.

The Act provides that OIR may cancel or suspend a licence for breach of a number of provisions. However, over the past few years licences have only been cancelled because a licence holder has ceased trading or has failed to renew their licence. In 2008, two venue consultant licences were cancelled because of non-renewal, and one licence was cancelled at the request of the licence holder. There is no evidence that the licence has been used to deter unscrupulous operators.

Many of the legislative protections for performers contained in the Act are not contingent on licensing, although exclusion from the industry through licence suspension or loss is one of the key sanctions for non-compliance. As outlined earlier, other protections include the sanctions that may be imposed by the Complaints Committee.

While complaints may be lodged with OIR in its role as the descendant Council, the Act makes no provision for OIR to take remedial action in place of the Complaints Committee. There is no code of ethics or standard by which the actions of a representative can be assessed. The provision for OIR to issue a direction regarding the employment of performers has never been used.

OIR does not receive a large number of complaints about licensed venue consultants. In the four years from 2005 to 2008, a total of 21 complaints were received by OIR. Of these, 15 were about agents and managers not paying performers or charging incorrect fees (in two cases, the licence holders also held venue consultant licences) and 6 concerned unlicensed operators. In recent years, there have been no complaints or prosecutions relating to venue consultant activities.

A number of factors may contribute to the low number of complaints to OIR, including the absence of an effective mechanism to make complaints, reluctance on the part of performers to pursue complaints because of the influence of industry representatives, and the relatively short timeframe for pursuing redress in relation to a complaint. Under the *Criminal Procedure Act 1989*, proceedings must be commenced no later than six months from when the offence was alleged to have been committed.

The Better Regulation Office considers that the licensing scheme is not operating effectively. Regulatory outcomes could be improved by:

- clarifying which industry representatives the licensing requirement applies to

- updating compliance and enforcement provisions to enable OIR to effectively implement its regulatory responsibilities
- providing transparent criteria for assessing licence applications and the performance of industry representatives, and
- clarify the mechanism for industry involvement in the licensing scheme.

However, a Government administered licensing scheme may not be the most effective way to monitor and assess the behaviour of entertainment industry representatives and performers, or to promote compliance amongst the industry.

Alternative approach

The purpose of regulating industry representatives is to reduce the risks that venue consultants act to the detriment of performers. Regulation should ensure that industry representatives can be effectively penalised for poor behaviour. This can be done through financial penalties, loss of licence and poor publicity. The latter would have significant consequences for an entertainment industry representative. In this context, industry associations play a key role in communicating with performers and representatives, and are well placed to judge the conduct of industry participants.

The Act includes several consumer protection measures that are not contingent on licensing. If supported by clear performance standards and mechanisms for effective enforcement, these should be sufficient to achieve the Government's objectives without a licensing requirement. Indeed, stakeholders acknowledge that the key protections offered by the Act are the protocols for paying performers and managing funds on their behalf, both of which are not part of the current licensing scheme.

Several matters would need further consideration before licensing could be removed, including the form and degree of sanctions for breach of the Act and the criteria for assessing whether a venue consultant is guilty of misconduct. Performance standards would need to be developed in partnership with industry. Initiatives such as the Code of Practice for music managers being considered by the Association of Artist Managers Incorporated and existing industry codes should inform this work.

In relation to the role of industry, self-regulation may be viable for some or all sectors of the industry. The Better Regulation Office proposes further investigation of the needs of different groups and the potential to transition to industry self-regulation.

Review of the Entertainment Industry Act

The Act has not been reviewed since 2003 and that review was focussed on competition policy considerations⁸. Several stakeholders noted that the industry has undergone major changes since the Act was introduced in 1989. There is concern that the regulatory framework is out of date and does not apply equally across all industry sectors and participants, reducing the quality of protection for performers.

A broad review of the Act is needed to address the issues identified above. It is proposed that the review be undertaken jointly by the Better Regulation Office and the Office of Industrial Relations. Entertainment industry stakeholders would need to be actively engaged in the development of professional standards and consideration of industry's role in the regulatory model.

Summary

⁸ *Review of the Entertainment Industry Act 1989*, Final Report, National Competition Policy Legislation Review, Office of Industrial Relations, Department of Commerce, August 2003.

The Better Regulation Office supports continued regulation of venue consultants, but does not consider that licensing is necessary to achieve the Government's objectives. The assessment clearly shows that the existing licensing scheme is not operating effectively. It is not providing performers with an assurance that licence holders will provide a quality service, nor does it improve professional standards for the benefit of the industry as a whole.

Licensing should not be removed without first implementing broader reforms to the *Entertainment Industry Act*. A review which considers the objectives of the Act and its effectiveness should be a priority. Specific matters to consider include the effectiveness of non-licence consumer protection provisions (including sanctions for non-compliance), the establishment of performance criteria, mechanisms for handling complaints and the role of industry in administering the regulation. Regulation that imposes relevant and enforceable requirements for the performance of venue consultants should meet the needs of industry participants without imposing the additional costs of a licensing scheme.

Recommendation 3

The licensing scheme for entertainment industry venue consultants under the *Entertainment Industry Act 1989* is not operating effectively and should be removed, subject to:

- **amendment of the Act to clarify its coverage, remove outdated provisions, provide a clear mechanism for dealing with complaints and provide effective sanctions for breach of consumer protection provisions**
- **the development of industry-endorsed performance standards for assessing claims of misconduct by entertainment industry participants, and**
- **further consultation with industry about its role in the regulatory model.**

Removal of the licence, combined with reforms to the Entertainment Industry Act, will improve the level of protection offered to participants in the entertainment industry. These reforms will promote greater compliance with fee charging and conduct requirements and enable the concerns of performers to be dealt with properly. They will also remove unnecessary costs associated with licensing – \$21,000 in renewal fees across NSW businesses each year, including savings in time taken to renew licences.

3. FLOOR FINISHER AND COVERER

NSW, Queensland and South Australia are the only jurisdictions to require all floor finishers and coverers to be licensed.

The NSW licence is called a 'flooring contractor licence' and is issued under the *Home Building Act 1989*. Anyone who contracts to do flooring work worth over \$1,000 is required to be licensed. There are 732 licensed flooring contractors. The flooring contractor licence covers activities beyond floor finishing and covering. It is considered appropriate that this review consider the full range of activities undertaken by a flooring contractor.

'Flooring' refers to "the permanent installation of any material to form a floor and to items that cannot be removed without causing damage and that would remain upon a change in occupancy". This includes, but is not limited to:

- tongue and groove flooring
- timber strip flooring
- particle board flooring
- parquet flooring
- cork flooring, and
- floor sanding and sealing.

For licensing purposes, concrete or solid tile flooring materials (such as ceramic, earthen or masonry tiles) and wearing surface installations such as carpet, vinyl or a true floating floor⁹ are not considered to be flooring.

The range of flooring covered by the flooring contractor licence essentially relates to decorative aspects and the appearance of flooring and is not considered structural. The Better Regulation Office understands, however, that the definition of flooring contained in the Act is unclear and could be interpreted to include some structural activities. It is likely that structural work, including on floors, will be addressed through the national licensing system being developed by COAG.

Licensing was introduced to protect consumers by ensuring that flooring work is undertaken only by qualified persons who pass prescribed probity requirements and hold appropriate insurance.

Applicants must be at least 18 years of age, a fit and proper person (of good repute, having regard to character, honesty and integrity) and they or their employees must hold a Certificate III in Floor Finishing and Covering, which includes units in installing pre-finished and manufactured timber flooring, preparing timber floors for finish coating, and applying finishes to timber, parquet and cork floors.

All contractors licensed under the *Home Building Act* are required to include certain provisions in contracts, meet a range of information disclosure requirements and hold Home Warranty Insurance for work greater than \$12,000 in value. Licensees must not be debtors to the Home Building Service, or be bankrupt, disqualified or the subject of an unsatisfied Consumer, Trader and Tenancy Tribunal order. Licensees must not have had an unreasonable number of complaints or penalties or have performed work subject to a large number of insurance claims.

⁹ A true floating floor is supported by a non-rigid underlay and is not fixed to the load bearing floor.

Stakeholder views

Three submissions explicitly commented on the flooring contractor licence and all supported retention of the licence.

The Master Builders Association noted that builders also need protection from the risk that sub-contractors they engage may perform poor quality work.

The Law Society of NSW noted that many activities performed by licensed flooring contractors are likely to be part of the national trade licensing system being developed.

The Australian Timber Flooring Association noted that structural flooring work requires a different level of regulation to non-structural flooring work.

Assessment

Licensing imposes costs on industry in the form of licence fees and the time taken to apply for and renew a licence. Licence fees range from \$243 for a one-year licence for individuals (\$179 for an annual renewal), to \$387 for a one-year licence for corporations (and \$316 for an annual renewal). The costs of undertaking the training course required for a flooring contractor licence is around \$1,800.

The cost to Government of administering the flooring contractor licensing scheme is unknown, but is estimated at around \$30,000 per year¹⁰.

Data provided by the Office of Fair Trading indicates that there are few serious complaints about floor finishers and coverers. In the period 2006-08, there were 49 complaints about floor contractors, of which seven were the subject of rectification orders by the Consumer, Trader and Tenancy Tribunal (CTTT).

The licence provides information to consumers about the educational qualifications of a contractor and ensures the contractor is insured and the consumer has a right of redress in the event of substandard work.

With the exception of work to the floor structure which will be discussed separately, the activities undertaken by a flooring contractor present a relatively low safety risk to consumers and third parties.

In addition, the benefits to consumers of the rights of redress and insurance provisions of the *Home Building Act* are limited by the low value of most flooring contracts and the fact that flooring work will often be undertaken in conjunction with other building work. In particular:

- The Home Building Division of the CTTT hears claims of up to \$500,000 under the *Home Building Act*. Under the *Consumer Claims Act 1998*, any consumer may apply to the General Division of the CTTT for claims of up to \$30,000 in value, including claims for flooring work. The value of most domestic flooring contracts will be well below

¹⁰ The administration of licences issued under the *Home Building Act* is undertaken across a range of functional areas and cannot be accurately costed for each class of licence. As such, costs were estimated by attributing costs equally across all licences.

\$30,000¹¹, and in these cases, the licence would not provide any additional benefits to consumers.

- Home Warranty Insurance protects consumers from loss or damage if they cannot recover compensation or have defects rectified due to the insolvency, death or disappearance of the contractor, but this applies only to work greater than \$12,000 in value. Many contracts will not exceed this threshold and will not be covered by Home Warranty Insurance. Where a flooring contractor is engaged as a builder's sub-contractor, the consumer is protected by their contract with the builder under the builder's Home Warranty Insurance. This further limits the benefits to consumers of the flooring contractor licence.

Stakeholders have suggested that licensing floor contractors protects builders from the risk of poor quality work performed by flooring sub-contractors. While it is recognised that licensing can provide benefits to consumers by ensuring the selection of a suitably qualified contractor and providing recourse if work is not undertaken to a suitable standard, it is difficult to argue that licensing provides the same benefits to builders. Licensed builders should be aware of the skills and experience required to undertake flooring work, and should also be able to verify the quality of the work performed by a flooring sub-contractor before finalising payment.

Based on this assessment, the Better Regulation Office does not believe there is a net benefit in requiring licensing for non-structural flooring work. The consumer protections that exist under the *Consumer Claims Act* should be sufficient to address the risks associated with non-structural flooring works. As with the supply of any other service, entering into a contract that allows for payment after successful completion of work can help to protect consumers. It is noted that consumers are provided with information on engaging a contractor (including the limit on claims through the CTTT) and contract-specific matters through the Office of Fair Trading website.

Structural works clearly present greater safety risks to consumers and third parties and should be subject to more stringent regulation than non-structural flooring activities. It is recommended that all structural work, including structural flooring work, should be undertaken by a licensed builder or carpenter. The Act should be amended to clarify that structural flooring work is covered by the building contractor licence.

Guidance to consumers about the need to engage a licensed contractor to undertake structural flooring work should be provided on the Office of Fair Trading website.

Recommendation 4

The flooring licence class under the *Home Building Act 2004* should be removed.

Recommendation 5

The *Home Building Act* should be amended to clarify that structural flooring work may be undertaken by a licensed building contractor or a carpentry contractor.

¹¹ A telephone survey of 13 flooring contractors indicated a cost of \$7,000 to \$10,250 to replace an existing 50 square metre open-plan cork floor area with a light coloured hardwood tongue and groove floor (including sanding and sealing) and up to \$20,000 for parquetry.

Removal of the licence will significantly reduce entry costs for flooring contractors. Costs will be reduced by at least \$348,000 per year across the industry in licence application and renewal fees, time spent applying for licences and filling out the paperwork to become eligible for insurance, and course fees. These reforms will allow floor finishers and coverers from interstate to work in NSW without incurring licence and education costs, while improving safety for consumers and removing uncertainty for industry about licensing requirements.

4. KIT HOME SUPPLIER

NSW is the only Australian jurisdiction to require kit home suppliers to be licensed.

A licence under the *Home Building Act 1989* is required by an individual, partnership or corporation that contracts, sub-contracts or advertises to supply building components for kit homes, kit garages, kit carports or kit sheds. The maximum penalty for operating in contravention of this requirement is \$2,200 for an individual and \$110,000 for a corporation.

The requirement to hold a licence applies only to contracts valued at more than \$1,000, and only to the supply of materials (not construction of the kit home). Supply of materials for certain minor constructions such as stairways, cupboards, driveways and cabanas are exempt from requiring a licence.

Licensing was introduced to protect consumers from financial loss following the collapse of a major kit home supplier in 1990 which resulted in consumers losing \$2.7 million in deposits. Maximum deposits for kit home supply contracts were also introduced to reduce the level of consumer risk in transactions.

Requirements for kit home suppliers are different to those for other building contractors. Whilst licence applicants must be at least 18 years of age and fit and proper persons (of good repute, having regard to character, honesty and integrity), licensees are not required to hold a particular training qualification or have minimum experience. There are 349 licensed kit home suppliers.

All contractors licensed under the *Home Building Act* are required to include certain provisions in contracts, meet a range of information disclosure requirements and hold Home Warranty Insurance for work greater than \$12,000 in value¹². Licensees must not be debtors to the Home Building Service, or be bankrupt, disqualified or the subject of an unsatisfied Consumer, Trader and Tenancy Tribunal order. Licensees must not have had an unreasonable number of complaints or penalties or have performed work subject to a large number of insurance claims.

Stakeholder views

Two submissions specifically commented on licensing for kit home suppliers and both supported retention of licensing. The main arguments for retaining licensing are that it prevents unscrupulous persons from supplying kit homes, protects consumers from the loss of deposits and provides consumers who buy a kit home with the same protection as those who contract with a builder to build a home.

Assessment

Licensing imposes costs on industry in the form of licence fees and the time taken to apply for and renew a licence. Licence fees range from \$534 for a one-year licence for individuals (\$357 for an annual renewal), to \$1,072 for a one-year licence for corporations (and \$534 for an annual renewal).

¹² Home Warranty Insurance Data indicates that the premium for Home Warranty Insurance is likely to be around 0.8 per cent of the value of the contract.

The cost to Government of administering the licensing system for the supply of kit homes is unknown, however, it is estimated to be \$14,000 per year¹³.

The licensing of kit home suppliers is not intended to address consumer and public health and safety risks as it concerns the supply of materials rather than any construction activities. Any person engaged by a consumer to erect a kit home must hold a general building contractor licence.

Rather, licensing serves to protect consumers from the risk of financial loss from the collapse of a kit home supplier's business by imposing probity, insurance, contractual and information disclosure requirements. It also provides consumers a right of redress in the event of poor quality dealings.

Provisions in the *Home Building Act* benefit kit home purchasers in a number of ways:

- The Act imposes a maximum deposit (ten per cent for a contract price of \$20,000 or less and five per cent for a contract price more than \$20,000) which significantly limits the financial risks faced by consumers in the event of default by a kit home supplier. This provision directly addresses the market failure which led to significant losses by consumers in 1990 who had paid deposits of a much higher percentage than is now permitted.
- The Act mandates certain contractual provisions (including a minimum cooling-off period) and the disclosure of information which limits the risk that consumers will agree to unfair contracts. This is important as consumers would generally have less expertise in contractual matters than the supplier of a kit home.
- The legislation allows claims against kit home suppliers to be made to the Home Building Division of the Consumer, Trader and Tenancy Tribunal (CTTT) for disputes of up to \$500,000 (compared to \$30,000 under general fair trading legislation).
- The Act also provides that a licensee must hold Home Warranty Insurance where the value of the contract is greater than \$12,000 which may protect consumers from loss due to the insolvency, death or disappearance of a contractor.

The maximum deposit and contract provisions significantly limit consumers' exposure to loss if kit home suppliers become bankrupt, die or disappear before a contract is fulfilled.

The dispute and insurance protections associated with licensing appear to be of less benefit to consumers. While the value of a kit home contract may exceed the \$30,000 limit applying to general claims to the CTTT, it is unlikely that the maximum deposit would exceed this amount (this would require the value of a kit home contract to be more than \$600,000). Thus, fair trading legislation would allow the hearing of disputes in most cases. In addition, all consumers can sue for breach of a contract through normal legal processes.

While the expansion of Home Warranty Insurance to kit home suppliers was thought necessary to protect consumers, no successful claims against kit home suppliers have been initiated since the introduction of licensing¹⁴. This indicates that Home Warranty Insurance cover is not benefiting purchasers of kit homes.

The Better Regulation Office believes that licensing of kit home suppliers is unnecessary, providing that maximum deposit and contractual requirements continue to apply. Retention

¹³ The administration of licences issued under the *Home Building Act* is undertaken across a range of functional areas and cannot be accurately costed for each class of licence. As such, costs were estimated by attributing costs equally across all licences.

¹⁴ A survey of insurers identified only one potential claim against a kit home supplier which has not yet been lodged (Office of Fair Trading advice, 5 February 2009).

of these requirements would require legislative amendment as the provisions currently apply to licensees only. As with the supply of any other service, entering into a suitable and fair contract can help to protect consumers.

There would also be value in continuing to allow disputes about kit homes to be heard by the Home Building Division of the CTTT for contracts valued at up to \$500,000. Even though a claim of this value is unlikely, it is desirable to ensure consumers can make claims for the full value of a contract given that a kit home is one of the largest purchases a consumer will make.

Recommendation 6

The kit home supplier licence under the *Home Building Act* should be removed.

Recommendation 7

The *Home Building Act* should be amended to confirm that kit home suppliers must continue to meet contract and information disclosure requirements (Sections 16D-16E of the Act), and that disputes about kit home suppliers may continue to be heard by the Home Building Division of the Consumer, Trader and Tenancy Tribunal.

Removal of the licence will reduce ongoing costs for kit home suppliers by at least \$188,000 in licence application and renewal fees and time spent applying for licences and filling out the paperwork to become eligible for insurance. In addition, the cost of Home Warranty Insurance is passed on to consumers, so removing the requirement for insurance on a kit home valued at \$100,000 will save a consumer around \$800. Removing the licence will also make it cheaper and simpler for interstate suppliers to sell goods in NSW. The most important consumer protections associated with maximum deposits and contracts will be retained.

5. LIFT MECHANIC

NSW is the only jurisdiction in Australia to require lift mechanics to be licensed.

The *Home Building Act 1989* requires a residential building contractor licence in the category of mechanical services for work on escalators, inclinators and garage doors, as well as lifts¹⁵. It is an offence to operate without a licence, with a maximum penalty of \$2,200 for an individual and \$110,000 for a corporation.

Although the mechanical services licence category covers activities beyond those of a lift mechanic, it is considered appropriate that this review consider the full range of activities under the licence.

Licensing was introduced as a consumer protection measure. There are 402 mechanical services contractor licensees.

Applicants must be at least 18 years of age, a fit and proper person (of good repute, having regard to character, honesty and integrity) and they or their employees must have a minimum of two years acceptable practical experience in carrying out the relevant class of work.

All contractors licensed under the *Home Building Act* are required to include certain provisions in contracts, meet a range of information disclosure requirements and hold Home Warranty Insurance for work greater than \$12,000 in value¹⁶. Licensees must not be debtors to the Home Building Service, or be bankrupt, disqualified or the subject of an unsatisfied Consumer, Trader and Tenancy Tribunal (CTTT) order. Licensees must not have had an unreasonable number of complaints or penalties or have performed work subject to a large number of insurance claims.

Stakeholder views

Three submissions addressed licensing for lift mechanics. None supported the retention of the mechanical services contractor licence due to the duplication with occupational health and safety legislation and the ability to demonstrate proficiency through a trade certificate.

Assessment

Licensing imposes costs on industry in the form of licence fees and the time taken to apply for and renew a licence. Licence fees range from \$243 for a one-year licence for individuals (\$179 for an annual renewal), to \$387 for a one-year licence for corporations (and \$316 for an annual renewal).

The cost to Government of administering mechanical services licences is unknown, however, it is estimated to be around \$16,000 per year¹⁷.

¹⁵ Clause 8(b) of the *Home Building Regulation 2004* includes in the definition of residential building work any fixed apparatus such as a lift, an escalator, an inclinor or a garage door by means of which persons or things are raised or lowered or moved in some direction that is restricted by fixed guides.

¹⁶ Home Warranty Insurance Data indicates that the premium for Home Warranty Insurance is likely to be around 0.8 per cent of the value of the contract.

¹⁷ The administration of licences issued under the *Home Building Act* is undertaken across a range of functional areas and cannot be accurately costed for each class of licence. As such, costs were estimated by attributing costs equally across all licences.

By restricting lift installation to suitably qualified persons, licensing provides an assurance that the work will be undertaken safely. This reduces the risk that there will be negative safety impacts on the contractor, the consumer and third parties.

Licensing also provides for the hearing of consumer claims of up to \$500,000 by the Home Building Division of the CTTT, and requires the contractor to hold Home Warranty Insurance for work greater than \$12,000 in value.

While these protections could protect consumers in certain circumstances, the usefulness of the mechanical services licence is limited in practice. The licence was introduced to protect consumers, but there are a range of other requirements which achieve the same objectives more effectively.

Many activities relating to mechanical services are considered 'specialist work' which may only be performed by an appropriately licensed or certified tradesperson. For example, a licensed electrician must undertake all electrical wiring work.

In terms of assuring health and safety, occupational health and safety (OHS) laws apply to most of the activities covered by the mechanical services contractor licence, and these requirements are more comprehensive than conditions under the licence. All lifts, escalators and moving walks must be registered annually with WorkCover NSW in accordance with Australian Standard AS1735. WorkCover can compel an owner to address any outstanding maintenance issues.

The licensing of contractors that work on lifts, escalators and moving walks duplicates, and does not provide additional benefits to, requirements under the OHS regulatory framework. This framework provides a more comprehensive and appropriate way to achieve passenger safety and customer protection policy objectives than the mechanical services contractors licence.

These safety requirements do not extend to the installation and maintenance of garage doors. However, the potential safety risks associated with garage doors do not appear to justify licensing. Training on the safe installation of garage doors can be provided by manufacturers. Safety concerns which relate to garage door design and manufacture are best addressed through product safety standards.

The mechanical services contractor licence is in many cases duplicative and places unnecessary requirements on the tradesperson. Although relatively low, the costs of the licensing scheme outweigh the benefits. On this basis, the Better Regulation Office does not believe that there is a need for the licence.

Recommendation 8

The mechanical services licence class under the *Home Building Act* should be removed.

Removal of the licence will reduce ongoing costs for mechanical services tradespeople by at least \$128,000 per year in licence application and renewal fees and time spent applying for licences and filling out the paperwork to become eligible for insurance. In addition, the cost of Home Warranty Insurance is passed on to consumers, so removing the requirement for insurance would save a consumer \$240 for a job valued at \$30,000. Removing the licence will make it cheaper and simpler for people from interstate to work in NSW. There will be no reduction in safety for consumers as the licence duplicates other more effective requirements.

6. MOTOR VEHICLE REPAIRER

NSW and Western Australia require licensing for motor vehicle repairers and the ACT has a similar scheme of compulsory registration.

In NSW, the *Motor Vehicle Repairs Act 1980* (the Act) requires anyone carrying on a vehicle repair business to hold a repairer licence that specifies the classes of repair work that the business is authorised to undertake. A repairer licence is not needed if a person does not have a business but repairs vehicles owned by themselves, their families or friends for no fee. The maximum penalty for breaching this requirement is \$110,000.

Licensed repair businesses must employ tradespeople who are 'certified' by the Office of Fair Trading for the class or classes of repair work being performed, or are appropriately supervised apprentices. The holder of a repairer licence must not personally do any repair work in connection with his or her business unless he or she is also certified. The maximum penalty for breaching these requirements is \$2,200.

There are currently 12,869 licensed motor vehicle repairer businesses and 114,128 tradesperson's certificates recorded on the register¹⁸.

Licensing was introduced in 1980 to ensure a minimum standard of repair work. The licensing scheme was amended in 2001 to increase consumer protection mechanisms and to include law enforcement tools to combat vehicle re-birthing.

To be granted a repairer licence, an applicant must be at least 18 years of age, be a fit and proper person and have sufficient equipment and financial resources to carry on a business. An applicant will be refused a licence if they have been convicted as an adult within the previous 10 years for theft of vehicles or parts, or receipt or unlawful possession of stolen vehicles or parts. If evidence arises that they are involved in such crimes, a repairer is given notice to show cause for why their licence should not be revoked.

Licensees must nominate the place(s) at which they carry on a business, maintain a register of sales, stock and parts movements, and submit an annual statement updating their licence details. Licensed repairers and their employees must inform the police if they suspect that vehicles, parts or accessories in the licensee's custody may have been stolen.

Police may at any reasonable time, and without a specific warrant, enter and inspect premises licensed under the Act. Police may inspect records in relation to traceable parts, and require explanations of entries in the records.

Stakeholder views

The Better Regulation Office received five submissions related to licensing for motor vehicle repairers. Four strongly supported licensing on the basis that it improves customer protection and deters criminal behaviour in the industry. No submission favoured removal of licensing.

The Australian Automotive Aftermarket Association (AAAA) noted that the Act defines 'repair work' to include alteration of the vehicle, which can be interpreted as including the fitting of accessories such as audio systems or wheel trims. The AAA argued that the Act should be clarified and that this type of work should not be required to be licensed.

¹⁸ As there is no requirement to renew certificates, the register may include certificates that are inactive.

Assessment

Licensing imposes costs on industry in the form of licence fees and administrative costs in applying for and renewing the repairer licence. An initial application fee of \$580 and an annual renewal fee of \$180 apply. The one-off fee for a tradesperson's certificate is \$56.

The cost to Government of administering the scheme was \$3.3 million in 2008. The scheme's costs are met by revenues from licence fees.

The risks to consumers associated with motor vehicle repair services are relatively high. Many consumers engage the services of a motor vehicle repairer each year, and the quality of repair work (including the parts used) is difficult for most consumers to assess. In addition, the scope for illegal activity is high. Dishonest conduct or inadequate repairs can have large adverse impacts as a motor vehicle is one of the most valuable possessions that a consumer will own, and poor quality repairs can cause serious injury or death to consumers and third parties.

The submissions noted the importance of the licence for consumer protection, specifically by ensuring that repair work is completed by persons with a minimum technical qualification and to adequate safety standards. The submissions also noted the importance of the licence for preventing crime and for increasing the level of trust and confidence in the industry. The benefits of the licensing system associated with consumer protection, vehicle fleet safety and law enforcement are discussed separately below.

Consumer protection

The licensing scheme protects consumers by ensuring that work done to a motor vehicle for payment is performed by an appropriately qualified tradesperson. The requirement that a repair business must employ only certified tradespeople ensures a minimum standard of vehicle repair work. Consumers are further protected from unscrupulous repairers by only granting licences to people who are fit and proper persons and also have the financial resources to successfully operate a business.

The Office of Fair Trading investigates complaints about repair work. In 2007-08, 304 complaints were investigated. Of these, only six people were prosecuted for a total of 13 offences. The offences related to carrying on or advertising the business of a motor vehicle repairer without a licence, the employment of uncertificated tradespeople and the failure to produce records to the Motor Vehicle Repair Industry Authority. A total of \$13,818 was awarded in fines and costs.

Licensing fees provide the revenue to fund several consumer protection measures:

- The technical advisory telephone service of the Office of Fair Trading provides free advice on repair issues to both consumers and repairers. The service has five full-time staff. Over the past five years, it has received an average of 14,500 enquiries per year¹⁹.
- Dispute mediation services are performed by five full-time inspectors of the Office of Fair Trading. They conduct investigations, inspect repair workshops and mediate disputes. Over the past five years, an average of 1,351 disputes has been mediated each year²⁰.
- The Contingency Fund established in the Act provides customers with up to \$30,000 per claim in compensation for incompetently completed vehicle repair work where the

¹⁹ *Motor Vehicle Repair Industry Authority Annual Report 2007 – 2008*, NSW Office of Fair Trading, October 2008, pp6-7.

²⁰ *Motor Vehicle Repair Industry Authority Annual Report 2007 – 2008*, NSW Office of Fair Trading, October 2008, pp6-7.

costs of rectification cannot be recovered from the repairer. Over the past five years the Contingency Fund has paid out a total of \$289,501 in compensation to consumers. In the two-year period 2006-08, there were 23 claims at an average of \$5,242 per claim²¹.

- The Education and Research Fund established by the Act has, over the past five years, provided \$455,868 in grants for the promotion of activities related to consumer rights, road safety and apprenticeship training in the motor vehicle trades²².

Consumers are further protected by disciplinary action that can be taken against licensed repairers by the Office of Fair Trading. The most common reasons for disciplinary action are that repair work that is below standard or that business is conducted in a dishonest or unfair manner. Nineteen matters were formally considered by the Office of Fair Trading in 2006-07 and four in 2007-08²³.

In the absence of the licence, general fair trading legislation would still protect consumers in the event of poor quality work. However, the specialised advisory, investigative and mediation functions that are funded through licence fees are of significant benefit to consumers. In the absence of licensing revenues, it is likely these services would need to be reduced or abolished.

Vehicle fleet safety

Repair work may pose a safety risk to road users if critical systems, for example brake, steering or liquefied petroleum gas systems, are not repaired to an acceptable standard. Licensing protects the safety and roadworthiness of the NSW vehicle fleet by requiring all work done by a repair business to be undertaken by an appropriately certified tradesperson. Certification is, therefore, the key mechanism by which the licensing scheme promotes vehicle fleet safety.

Requiring motor vehicle repairer businesses to employ qualified tradespeople has major benefits for the safety of the NSW vehicle fleet. Removal of licensing (and certification) would increase the risk that repair work on vehicles could be performed by businesses that employ under-qualified tradespeople.

The Roads and Traffic Authority supports licensing as a means of ensuring vehicle fleet safety because it provides assurance of the probity of a motor vehicle repair business and the skills of its employees.

Under the *Passenger Transport Regulation 2007*, public passenger vehicle operators must use a licensed repairer for maintenance work done to their fleet. This ensures that public passenger vehicles are maintained by qualified persons, thereby assuring the safety of the travelling public.

Certification is not the only means to ensure a tradesperson has the necessary skills to undertake motor vehicle repair work. For example, the employment of suitably skilled (rather than 'certified') tradespeople could be made a licence condition. Repair businesses would then be responsible for checking formal qualifications to determine who is suitably skilled.

²¹ *Motor Vehicle Repair Industry Authority Annual Report 2007 – 2008*, NSW Office of Fair Trading, October 2008, p6 and *Motor Vehicle Repair Industry Authority Annual Report 2006 – 2007*, NSW Office of Fair Trading, October 2008, p6.

²² Data provided by the Office of Fair Trading.

²³ *Motor Vehicle Repair Industry Authority Annual Report 2007 – 2008*, NSW Office of Fair Trading, October 2008, p10 and *Motor Vehicle Repair Industry Authority Annual Report 2006 – 2007*, NSW Office of Fair Trading, October 2008, p11.

However, the Better Regulation Office considers that certification is a cost effective way to signal the skills of a tradesperson. A tradesperson is required to submit information to the Office of Fair Trading (rather than an employer) and must pay a relatively small fee, but these costs are balanced by the need to be certified only once rather than each time they commence work with a new employer. Certification removes the need for a repair business to check the validity and suitability of an employee's qualifications, which would be more burdensome than simply confirming they are certified. Centralisation of this process also ensures that a consistent approach is being implemented.

It is noted that certification does not expire, even though the skills needed in a trade may change over time. If a tradesperson continuously works in a particular class of repair it is likely that their skills will remain current. If this is not the case, skills may become out of date. While this could be addressed by introducing renewal or ongoing education requirements, it is unlikely the benefits of such changes would outweigh the additional burden imposed on tradespeople, repair businesses and Government.

Law enforcement

Licensing is also used as a law enforcement tool in relation to vehicle theft and re-birthing. Re-birthing is the process by which a stolen vehicle is altered, re-registered and used or sold as a legitimate vehicle. Parts from stolen vehicles may be used in this process.

The licensing scheme attempts to stop criminals from establishing repairer businesses by restricting anyone who has a recent conviction for theft of vehicles or parts, or for receiving, or unlawful possession of, stolen vehicles or parts, from being granted a licence. It also helps in the detection of illegal activity by requiring licensed repairers and their employees to inform the police if they suspect that vehicles, parts or accessories in their custody may have been stolen. The powers that police are given through the licensing scheme to enter a repairer's premises at any time and to inspect records are seen as important crime deterrence tools.

The cost to the NSW economy of car re-birthing is estimated to be approximately \$170 million per year, which represents about 70 per cent of the national total²⁴. Analysis by the NSW Police Force suggests that professional theft and re-birthing activity in NSW has increased as a percentage of the theft rate from 20 per cent in 2002 to 32 per cent in 2007²⁵.

The repairer licence is only one of many activities aimed at vehicle theft and re-birthing so it is not possible to assess its contribution to crime reduction with any certainty. However, it is a useful component of the suite of crime prevention tools and its removal could lead to reduced rates of detection. NSW Police considers licensing to be a critical element in crime prevention and minimisation.

The Better Regulation Office considers that the licensing of motor vehicle repairers plays a role in assisting law enforcement efforts.

Summary

Since there is no net cost to Government in administering the licensing scheme, there are benefits for consumer protection, safety and law enforcement, and licensing is supported by industry, the Better Regulation Office believes the licensing scheme for motor vehicle repair businesses should be retained.

As outlined above, one submission noted that 'repair work' can be interpreted to include the fitting of accessories. Motor vehicle accessories, such as audio systems and wheel

²⁴ Motor Trade Legislation Amendment Bill Second Reading Speech, the Hon John Watkins MP, Minister for Fair Trading, 24 October 2001.

²⁵ Data provided by NSW Police Force, 12 December 2008.

trims, are produced for retail sale and for fitting by the purchaser. In most cases, they do not alter the performance or safety characteristics of a vehicle and therefore do not present a risk to the safety of consumers or vehicle road worthiness. The Better Regulation Office believes that the licensing requirements should only apply to businesses which undertake genuine repairs or install accessories which affect the performance, safety or security of a vehicle (such as car alarms). The definition of 'repair' in the Act should be clarified so that altering a car with accessories is not classed as a 'repair'.

Recommendation 9

The motor vehicle repairer licence under the *Motor Vehicle Repairs Act 1980* should be retained.

Recommendation 10

The *Motor Vehicle Repairers Act* should be amended to clarify that the licensing requirement does not apply to the fitting of accessories which do not affect the performance, safety or security of a vehicle.

Retention of the licence will maintain a low level of regulatory burden on motor vehicle repairers in NSW in return for continued consumer protection, road safety and crime prevention benefits. Repairers moving from interstate will still need to meet the licensing requirement but will only face minor costs and should not be deterred from working in NSW.

7. OPTICAL DISPENSER

NSW is the only Australian jurisdiction requiring licensing for optical dispensers. The last State to remove the licensing requirement for dispensers was South Australia, in 2007.

Licensing was introduced in 1963 ostensibly to protect public health and safety. The rationale for licensing was that dispensing of optical appliances could pose a risk to the public if a prescription were not correctly dispensed or if a consumer were not properly briefed on the correct use of the appliance (this may be especially relevant for contact lenses).

The *Optical Dispensers Act 1963* (the Act) requires anyone carrying out optical dispensing to hold a licence issued by the Optical Dispensers Licensing Board (the Board). Medical practitioners and optometrists are exempt from the requirements of the Act.

The Act defines optical dispensing as the interpretation and dispensing of prescriptions for optical appliances, i.e. any contact lens and spectacle lenses or any other appliance designed to correct, remedy or relieve any refractive abnormality or defect of sight. Optical dispensing also includes the taking of facial measurements for optical appliances, the fitting of optical appliances for sale (except contact lenses²⁶) and the sale of optical appliances.

It does not include the sale of optical appliances to any optical dispenser nor any sale of optical appliances preceding their sale to an optical dispenser.

The Act provides eligibility criteria for licence applicants. Optical dispensers must hold approved qualifications (a Certificate IV in Optical Dispensing) and be of good character. There are around 1,500 licence holders.

Stakeholder views

Three submissions were received and all supported retention of licensing on the grounds of public health and safety.

One submission argued that licensing optical dispensers provides significant public benefits, including through restricting the sale of novelty contact lenses in NSW.

Another commented that consumers have a right to expect that a dispenser will have a standard of competency and that the optical appliance is accurate.

Assessment

Licensing imposes costs on industry in the form of licence fees and administrative costs in applying for and renewing a licence. A \$90 fee is payable when a licence application is lodged and the annual renewal fee is \$70. Licence fees fund the Board's activities. In 2007-08, the Board's revenues were \$156,000 and expenses were \$116,000.

The low level of the fees and the large number of licence holders suggests that licensing does not impose a large burden on industry or restrict labour mobility.

²⁶ The 'fitting' of contact lenses is done by a registered optometrist or a registered medical practitioner when prescribing lenses.

The licensing scheme provides a mechanism for lodging and handling complaints about licence holders. In 2006-07, three complaints were received, two of which were dismissed with no action. The third was referred to the Health Care Complaints Commission and settled by conciliation between the parties. No complaints were received in 2007-08.

There were no prosecutions for dispensing optical appliances without a licence in 2006-07 or 2007-08.

The data on complaints and prosecutions indicates that few issues arise which cannot be resolved by a consumer. Given the large number of optical dispensing transactions that occur each year, it appears that in practice, the consumer risks associated with optical dispensing are low.

The Better Regulation Office considers that there is a strong case for the NSW Government to discontinue the requirement that optical dispensers be licensed. Other jurisdictions do not require licensing to manage health and safety risks and there is no evidence that consumers in any of those jurisdictions have been physically harmed by the absence of licensing. There are no apparent reasons why NSW should be different.

If the licensing requirement were removed through repeal of the Act, anyone who undertakes optical dispensing would be covered by the Code of Conduct for Unregistered Health Professionals in Schedule 3 of the *Public Health (General) Regulation 2002* (the Code)²⁷. The Code applies to a range of unregistered health practitioners including dietitians, masseurs and naturopaths. The Code requires that unregistered health practitioners: provide services in a safe and ethical manner; adopt standard precautions for infection control; not practice when under the influence of alcohol or drugs; not financially exploit clients; not misinform clients; and not engage in a sexual or improper personal relationship with a client. The Code is enforced by the Health Care Complaints Commission (HCCC). Compliance with the Code would assure consumers that an optical dispenser meets minimum standards for the delivery of health services.

Repeal of the Act would remove the provision for consumer complaints to be made to the Optical Dispensers Licensing Board. However, with minor amendment to the *Health Care Complaints Act 1993*, complaints about breaches of the Code by optical dispensers could be made to the HCCC.

The minimum standards in the Code are less stringent than those currently enforced by the Optical Dispensers Licensing Board. As optical dispensing is essentially a retail function with minimal consumer risks, the professional standards imposed through the Act are unnecessarily high. However, as customer contact may be closer than in some other types of retailing, it is appropriate that optical dispensing be subject to the minimum standards of conduct prescribed in the Code. Generic fair trading laws would offer consumers an adequate level of protection for other consumer issues.

Currently, only licensed optometrists and licensed optical dispensers may sell contact lenses in NSW²⁸. If licensing of optical dispensers were to be removed, the sale of sight correcting contact lenses would continue to be controlled through requirements for an

²⁷ The Code applies to health services provided by health practitioners who are not required to be registered under a health registration Act (including de-registered health practitioners), and health practitioners who are registered under a health registration Act who provide health services that are unrelated to their registration.

²⁸ The *Optical Dispensers Act* provides that novelty contact lenses fall within the definition of an optical appliance.

optometrist's prescription and the expectation that the optometrist will appropriately advise the consumer on the correct use of contact lenses.

One submission argued that the licence should be retained because it helps to manage the sale of non-sight corrective novelty contact lenses. The Optical Dispensers Licensing Board requires dispensers to provide customers with instructions on the correct use of lenses²⁹, recognising the health risks associated with novelty contact lenses. In addition to the health risks common to all contact lenses, novelty lenses are more likely to be shared which can increase the risk of spreading eye infections. However, health and safety objectives relating to the sale of novelty contact lenses can be achieved without licensing.

In particular, the Code of Conduct for Unregistered Health Professionals could be amended to require that an unregistered health practitioner may not supply novelty contact lenses unless they hold tertiary qualifications in optical dispensing and supply certain health and safety information at the point of sale. This would ensure that health and safety protections are maintained, while not unduly restricting the sale of novelty contact lenses which could increase costs to consumers.

On this basis, the Better Regulation Office does not believe there is a net benefit in licensing optical dispensers.

Recommendation 11

The optical dispenser licence should be removed by repealing the *Optical Dispensers Act 1963*.

Recommendation 12

The *Health Care Complaints Act 1993* should be amended to remove references to the *Optical Dispensers Act* and to ensure that optical dispensers remain covered by the Act.

Recommendation 13

The Unregistered Health Professionals Code of Conduct should be amended to require that an unregistered health practitioner may not supply novelty contact lenses unless they hold tertiary qualifications in optical dispensing and supply specified health and safety information with all novelty contact lenses sold.

Removal of the licence will reduce ongoing costs for optical dispensers by \$173,000 per year and make it easier for interstate dispensers to work in NSW. There will be no reduction in safety for consumers as they will still receive information about the safe use of novelty contact lenses with any purchase and have complaints about optical dispensers heard by the Health Care Complaints Commission.

²⁹ Enforcing compliance with the *Policy on the supply of Plano, Novelty and Coloured Contact Lenses* is part of the Board's role in ensuring professional conduct by registered optical dispensers.

8. PROPERTY INSPECTOR (PRE-PURCHASE)

NSW was identified as the only Australian jurisdiction to require licensing for property inspectors (pre-purchase). A property inspector (pre-purchase) does visual inspections of homes and writes reports on the results. Pest inspections and inspection of specialist (plumbing or electrical) work are not covered by this licence.

The licence is called a 'building consultancy licence' and is issued under the *Home Building Act 1989* (the Act). A person must not contract to do inspections of homes without a building consultancy licence. Maximum penalties are \$110,000 (corporation) and \$2,200 (individual). There are 556 licences on issue, and individuals may hold multiple licences.

Licensing was introduced in 2004 to protect consumers by ensuring that pre-purchase property inspections are undertaken only by qualified persons who pass prescribed probity requirements. It was introduced in response to complaints by consumers that reports could be written by unqualified persons. This review provides the opportunity to consider the effectiveness of, and ongoing need for, licensing after five years of operation.

Licence applicants must be at least 18 years of age, fit and proper persons (of good repute, having regard to character, honesty and integrity). They must hold, or be eligible to hold, a licence to contract to do or supervise general building work, and have completed additional units of competency in: assessing construction faults in residential buildings; assessing construction of domestic scale buildings; assessing structural requirements of domestic scale buildings; and writing complex documents. The licence is provided free of charge to eligible applicants.

A building consultancy licensee is required to include certain provisions in contracts and disclose particular information to a consumer. Licensees must not be debtors to the Home Building Service, bankrupt, disqualified or the subject of an unsatisfied Consumer, Trader and Tenancy Tribunal order. The licensee must not have had an unreasonable number of complaints or penalties or have performed work subject to a large number of insurance claims.

In contrast to the requirements under a general building licence, a building consultant is not required to hold Home Warranty Insurance or provide a cooling off period for the consumer, and is not limited to a maximum deposit for the work. This reflects the different scope of pre-purchase property inspections compared to building contracting work.

While NSW was identified by the Productivity Commission as the only Australian jurisdiction to require licensing for property inspectors (pre-purchase), Queensland also requires a licence to undertake a completed residential building inspection, though this only applies to newly built homes. To obtain this licence an applicant must have a building inspection qualification, a builders licence or accreditation as a building surveyor or assistant building surveyor and five years relevant experience.

Stakeholder views

Two submissions were received and both supported the retention of licensing for property inspectors (pre-purchase). Arguments for retaining the licence were that pre-purchase inspections play a significant role in the largest transaction most consumers will make, that many buyers strongly rely on the reports, and that the licence establishes minimum standards for inspection reports.

The Masters Builders Association submitted that the licensing requirement should be extended to pest inspections.

Assessment

Building consultancy licences are provided free of charge to holders of a building licence. However, there are some compliance costs associated with meeting the additional requirements to obtain a licence and administrative costs in the time taken to apply for and renew the licence.

The cost to Government of administering the licensing scheme for building consultants is unknown, however, it is estimated to be around \$22,000 per annum³⁰.

Building inspection reports provide information and assurance to consumers about the visual state of the home. Given that the purchase of a home is one of the largest transactions a person will make, there is some value in requiring minimum qualifications and education of the people providing the inspection reports.

However, the benefits of licensing property inspectors (pre-purchase) are highly circumscribed by the limited scope of the reports and their usually heavily qualified nature. The inspections are visual only, and will not necessarily confirm the degree of any structural problems or the cost of rectification. A pre-purchase inspection does not include termite and other pest inspections which consumers may mistakenly presume are covered. Thus, a visual inspection which meets the minimum requirements of the licensing scheme will not significantly reduce the risks associated with a property purchase.

The licence requires completion of building qualifications specific to visual inspections, however, this is in addition to holding a building licence. The building licence itself requires extensive educational qualifications and a minimum of two years relevant industry experience. Courses in visual inspection will be of limited value for many experienced builders, yet only experienced builders are eligible to apply for a building consultancy licence.

The most important prerequisites of being able to competently provide a pre-purchase inspection report are skills and experience in building. It appears that general building skills and experience would provide a more reliable indication of the likely quality of a service provider than a building consultancy licence. On this basis, a visual inspection by a licensed builder with relevant experience, such as in residential building works, would provide sufficient advice to the consumer.

Other States provide guidance to consumers about how to seek and what to expect from visual property inspections. For example, Victoria suggests that consumers choose a qualified inspector such as a builder or an architect.

The Better Regulation Office does not believe there is a net benefit in licensing building consultants to undertake pre-purchase property inspections. Provision of advice to consumers about selecting a suitably skilled person to undertake an inspection – most likely a person with building skills (such as a licensed builder or someone with equivalent skills) and experience in residential building – would benefit consumers without the costs of the licensing scheme.

³⁰ The administration of licences issued under the *Home Building Act* is undertaken across a range of functional areas and cannot be accurately costed for each class of licence. As such, costs were estimated by attributing costs equally across all licences.

Recommendation 14

The building consultant licence class under the *Home Building Act* should be removed

Recommendation 15

The Office of Fair Trading should provide, on its website, guidance to consumers about selecting a person with relevant experience to undertake a pre-purchase property inspection.

Removal of licence will make it easier for suitably experienced people to work as inspectors and for people from interstate to work in NSW. The industry will save an estimated \$39,000 from the removal of mandatory education requirements. These reforms will increase the pool of qualified builders offering property inspection services, thereby increasing competition, which improves choice for consumers and can lead to lower prices.

9. STRATA MANAGER

NSW and the Northern Territory are the only jurisdictions to require strata managers to be licensed.

The *Property, Stock and Business Agents Act 2002* (the PSBA Act) provides that a person carrying on the business of a strata manager or a community manager must hold a strata managing agent's licence or a certificate of registration in relation to strata management functions. As at December 2008, there were 1382 licensed strata managing agents in NSW and around 1,500 strata certificate holders.

A strata scheme is a collection of individual properties on one block, each with their own separate title and a share in the common property. In NSW, there are around 67,000 strata schemes with around 700,000 individual lots³¹. Around 3.5 million people live in, work in or own units in strata schemes in Australia, around 1.5 million of whom are in NSW³². Approximately 62.5 per cent of strata buildings have a strata managing agent³³. Strata schemes are regulated under the *Strata Schemes Management Act 1996* (the Strata Act).

The Strata Act provides that each strata scheme will have an owners corporation and that the owners corporation has principal responsibility for the management of the scheme. It also provides that an owners corporation may be assisted by the executive committee of the owners corporation, by a strata managing agent or by a caretaker.

The Strata Act provides that if an owners corporation delegates any of the following functions, it may only delegate them to a member of the executive committee of the owners corporation or to a strata managing agent:

- the preparation of estimates for administrative and sinking funds
- levying contributions
- receiving, receipting, banking, having custody of, and spending money
- taking out insurance
- entering into contracts for common property, and
- conducting meetings, handling correspondence and maintaining records.

Community schemes are regulated under the *Community Land Development Act 1989*. A community scheme comprises land that is subdivided into lots and shared property, known as association property. Management of association property is the responsibility of an association made up of all the individual lot owners. The Act provides for the delegation of an association's functions to a strata managing agent, similar to the delegation of functions of an owners corporation. There are around 350 community schemes and 900 neighbourhood schemes in NSW³⁴.

Licensing and registration for strata managing agents was introduced to protect consumers by ensuring that managers pass prescribed probity criteria and have professional training so they can undertake their tasks competently. The qualification requirement for a licence is the successful completion of NSW Course no. 9674 –

³¹ Office of Fair Trading advice to Better Regulation Office, 2 December 2008.

³² Dynamic Property Services, Submission to Better Regulation Office Review *Licensing of Selected Occupations*, 28 November 2008.

³³ *Policy Directions Statement 2008*, Institute of Strata Title Management (NSW).

³⁴ Schemes range from rural subdivisions with irrigation channels as association property to large closed communities with private roads, high security and extensive recreational facilities such as marinas and golf courses.

Certificate IV in Property (Strata Management). The qualification requirement for a certificate of registration is the successful completion of three preparatory study modules. Licensees are also required to undertake Continuing Professional Development (CPD) training each year to maintain their skills.

For an individual to be eligible for a strata managing agent licence, the person must be at least 18 years old, be a fit and proper person, have the necessary qualifications, not be disqualified and pay any necessary fees. A person must be at least 16 years old to be eligible for a certificate of registration.

For a business to be eligible to hold a strata managing agent licence, each director of the business must be fit and proper, the business and its officers must not have been disqualified, at least one director must hold a licence, and the business must pay levies payable on the granting of the licence.

Under the PSBA Act, fees paid by licence applicants may be paid into the Property Services Compensation Fund (the Compensation Fund) which can be used to compensate persons who suffer pecuniary loss because of a manager's failure to account for money entrusted to him/her.

Most other States and Territories regulate the industry in some way, as outlined below:

- Victoria has a compulsory registration scheme with public access to information on registered managers. However, Victoria does not require a manager to have completed a certificate level qualification in strata management.
- Queensland requires a body corporate manager to comply with the Code of Conduct for Body Corporate Managers and Caretaking Service Contractors. The Code aims to protect consumers through probity requirements and record keeping but does not require educational qualifications.
- South Australia requires record keeping and audit reports of trust accounts.
- Western Australia has an industry administered accreditation program which involves minimum competency requirements and professional development training.

Stakeholder views

Stakeholders' submissions indicate overwhelming support for the retention of licensing for strata managers. The Better Regulation Office received 62 submissions about the strata manager licence and of these, 60 expressed strong support for licensing. The main reasons given were:

- NSW is a leader in the field of strata scheme management and other jurisdictions are moving to greater regulation of strata managers
- strata managers handle large sums of money on behalf of owners corporations and the licensing scheme provides a way to limit dishonest managers
- strata management is complex and requires technical knowledge
- the costs of the licensing scheme are small, and
- industry self-regulation is a long term goal but the industry is not yet mature enough to implement an effective self-regulation approach.

Assessment

Licensing and certification imposes costs on the property management industry, and ultimately on owners corporations who engage the services of a strata managing agent. The application fee for a strata managing agent's licence is \$419 and the annual renewal

fee is \$304. The application fee for a certificate of registration is \$107 and the annual renewal fee is \$73.

There are also costs associated with attaining the necessary educational qualifications and CPD training. A Certificate IV course costs \$456 per semester. If the course is undertaken part-time over three semesters, the cost of the educational qualification would be \$1368. The cost of CPD training depends on the fees charged by the various service providers. For example, the Real Estate Institute of NSW courses satisfy the entire annual CPD requirement (12 points). These cost \$199 for members and \$245 for non-members. Licence holders are required to keep records of their CPD activities for at least three years.

The licensing scheme is self funding. The Office of Fair Trading has advised the estimated cost of administering licensing for strata managing agents is \$340,341 in 2008-09.

Probity and education requirements

The functions performed by a licensed strata managing agent (or the holder of a certificate of registration under the supervision of a licence holder) involve handling owners corporation funds. The probity requirements reduce the risk that a strata manager will be dishonest, or make errors or poor decisions when exercising their responsibilities. The potential benefits are great as large sums of money are held in owners corporation trust funds. The size of funds is growing rapidly due to recent legislative requirements for strata schemes to have 10-year sinking fund budgets. The exact amount held in trust is not known, but is estimated at around \$2 billion³⁵.

Requirements related to educational qualifications and CPD training also benefit consumers by ensuring strata managing agents and certificate holders have and maintain a minimum standard of knowledge. This is important given that strata management requires knowledge of, and compliance with, numerous State and Commonwealth legislative requirements regarding property, business, occupational health and safety, and privacy.

Many stakeholders supported qualification-based entry requirements. The required educational qualification – a *Certificate IV in Property (Strata Management)* – includes compulsory units in property law, trust accounting, business law principles, property management services, strata management services, building styles and defects, planning and recording a meeting, maintaining financial records, and computerised file maintenance.

CPD training may include trust accounting principles and audit requirements, risk management, strata community managers, business practices, and legislation and compliance. These topics were developed by a Consultative Reference Group with representatives from the property industry, the training sector and the Office of Fair Trading.

While the PSBA Act provides that a strata managing agent licence cannot be renewed unless the licence holder has complied with requirements for annual CPD training, the Office of Fair Trading has identified non-compliance to be a problem³⁶. This is being addressed through increased compliance activities³⁷.

³⁵ Office of Fair Trading communication to Better Regulation Office dated 19 December 2008.

³⁶ The Office of Fair Trading undertook a compliance audit of CPD for property agents in 2007 as part of a broader review of CPD. 200 agents were audited and around 25 per cent were found to be non-compliant. Non-complying agents were issued with a warning. In July 2008, the Office published *Commissioner's Guidelines for Continuing Professional Development* which clearly state that failure to comply with the CPD requirement may result in the refusal of an application for renewal of a licence.

³⁷ A further compliance audit is scheduled for the first half of 2009.

Regulatory approaches in other jurisdictions do not require educational qualifications and do not, therefore, provide these benefits to consumers.

By restricting practice in the industry to qualified and competent people, licensing reduces the risk of poor management negatively impacting subsequent owners of lots in a strata scheme and the owners and residents of neighbouring properties.

Licensing also helps to address the difficulties property owners would have in employing a suitably qualified managing agent and in monitoring their performance. Consumers are infrequent purchasers of these services and would be unlikely to have the same level of knowledge and information as industry professionals. New owners entering a strata scheme will have little influence on the choice of strata manager.

Consumer redress

Licensing provides a mechanism for consumer complaints and for disciplinary action against licence holders who do not perform their duties to the required standard.

Between 1 January 2003 and 31 December 2008, the Office of Fair Trading received 738 strata-related complaints. The largest number of complaints concerned mismanagement by strata managers (118), poor maintenance (68) and unsatisfactory performance (56).

In the three year period 2005-06 to 2007-08, the Local Court issued fines to 45 licence holders under the PSBA Act, and the Office of Fair Trading issued penalty notices to 260 licence holders. It is not known how many of these fines and penalty notices were issued to licensed strata managers³⁸, but strata agents licences account for five per cent of licences issued under the PSBA Act.

Licensing also provides a revenue stream for funding consumer protection activities, including the Compensation Fund. A person may make a claim against the Compensation Fund if they have suffered a monetary loss because of a licensed strata managing agent's failure to account for money or other valuable property that was entrusted to the licence holder. The Fund covers instances when the licensed property manager cannot be found, has died or is insolvent.

Between 2002 and mid 2008, 25 claims totalling \$166,487 were paid by the Compensation Fund in relation to default by a strata manager on money held in an owners corporation trust account.

The Compensation Fund is an important protection for consumers who do not have the resources to take legal action³⁸ against a licensed strata managing agent.

Regulation in other States and Territories does not provide a revenue stream for consumer protection measures such as the Compensation Fund.

Summary

The Better Regulation Office considers that the benefits of licensing for strata managing agents and certification strongly outweigh the costs.

NSW is a leader in the regulation of strata and community schemes in Australia. It has the largest number of strata schemes, some of the most complex titling schemes, and the largest amount of money held in trust funds. More than 40 per cent of people who live in, work in or own units in strata schemes in Australia are covered by the NSW licensing scheme and this is growing strongly. Industry forecasts suggest that that in 25 years time,

³⁸ Data on prosecutions is not disaggregated by licence type.

more than 3 million people will reside in a strata community in NSW, and half of those who live in greater Sydney³⁹.

No submissions said the fees are unduly high or that they impose a burden on businesses. The large number of licensees (1,382) suggests that licensing does not present a barrier to entry. The costs of the required educational qualifications and CPD requirements do not appear to impose a major burden on the industry.

Licensing and certification provides valuable customer protection in the form of educational and probity related entry requirements. The large amount of money managed by strata managers on behalf of owners corporations warrants strong consumer protection measures.

The Office of Fair Trading receives many complaints about strata managers. Licensing is an effective way to take disciplinary action and provide access to a Compensation Fund.

Non-licensing approaches taken in other jurisdictions may provide savings in terms of licence fees and licensing system maintenance costs. However, these approaches forego many of the benefits associated with imposing certain entry criteria and requirements for ongoing education. Removing the licence would increase the risks to large sums of owners corporations' funds handled by strata managers, slow down and increase the costs of dispute resolution, and make compliance and enforcement activities more difficult.

Stakeholders support a national self-regulatory approach as a longer term goal. At the national level, work has been undertaken through the National Community Titles Institute to develop competency standards for a Certificate 4 Course within the Australian Quality Training Framework along with Diploma and Advanced Diploma requirements. This is a significant step towards a professional vocational qualification which can be adopted nationally.

The Better Regulation Office supports the development of a harmonised national system which enhances professional standards and enables strata managers to practice throughout Australia.

Recommendation 16

The strata managing agent licence under the *Property, Stock and Business Agents Act 2002* should be retained.

Retention of the licence will mean that strata managing agents are still required to complete a Certificate IV course, pay licence renewal fees of \$304 per year and meet the costs of ongoing professional development which amount to several hundred dollars per year. However, these costs are balanced by the large benefits of enhanced consumer protection and stronger consumer confidence in the industry. Interstate strata managers will still need to obtain a licence to work in NSW, but the availability of a national education qualification makes it easier to comply with the requirements.

³⁹ *Policy Directions Statement 2008*, Institute of Strata Title Management (NSW).

10. STRUCTURAL LANDSCAPER

NSW, Queensland and Victoria⁴⁰ are the only Australian jurisdictions requiring structural landscapers to be licensed.

Under the *Home Building Act 1989*, anyone who contracts to do structural landscaping work valued at more than \$1,000 is required to hold a licence. Structural landscaping includes construction of pergolas, cabanas, driveways, paths, retaining walls, water features and ornamental ponds. There are 1,946 licensed structural landscapers in NSW.

Licensing was introduced to protect consumer health and safety by ensuring that structural landscaping work is undertaken by qualified persons who pass prescribed probity requirements and hold appropriate insurance.

Applicants must be at least 18 years of age, a fit and proper person (of good repute, having regard to character, honesty and integrity) and they or their employees must hold a Certificate III in Horticulture (Landscape).

All contractors licensed under the *Home Building Act* are required to include certain provisions in contracts, meet a range of information disclosure requirements and hold Home Warranty Insurance for work greater than \$12,000 in value. Licensees must not be debtors to the Home Building Service, or be bankrupt, disqualified or the subject of an unsatisfied Consumer, Trader and Tenancy Tribunal order. Licensees must not have had an unreasonable number of complaints or penalties or have performed work subject to a large number of insurance claims.

Maximum penalties for contracting to do structural landscaping work without a licence are \$2,200 for an individual and \$110,000 for a corporation.

Stakeholder views

Two submissions specifically commented on licensing for structural landscapers and both supported retention of licensing. The submissions argued that licensing protects consumers and third parties by ensuring a minimum standard of work. It was suggested that if licensing did not exist, legal claims against negligent and faulty work would increase. Licensing was not considered to be an onerous regulatory burden.

Assessment

Licensing imposes costs on industry in the form of fees paid by licensees and the time taken to apply for and renew a licence. Licence fees range from \$534 for a one-year licence for individuals (\$357 for an annual renewal), to \$1,072 for a one-year licence for corporations (and \$534 for an annual renewal). Stakeholder submissions indicated that the fees are not a barrier to entry into the market and do not constrain industry activity.

The cost to Government of administering the structural landscaper licensing scheme is unknown, but is estimated at around \$79,000 per year⁴¹.

⁴⁰ In Victoria, anyone who undertakes domestic building work over \$5,000 must be registered and demonstrate adequate skills and experience. Structural Landscaper is a specific category under the Domestic Builder Limited Class.

⁴¹ The administration of licences issued under the *Home Building Act* is undertaken across a range of functional areas and cannot be accurately costed for each class of licence. As such, costs were estimated by attributing costs equally across all licences.

Structural landscapers create significant installations, such as driveways, retaining walls and steps, which must be structurally sound for the safety of users and adjacent properties. Licensing minimises the risk of unsafe construction by requiring appropriate qualifications and experience. Probity requirements also provide an assurance to consumers that a licensed structural landscaper will undertake work honestly.

Stakeholders commented that the technical nature of structural landscaping work leads to a significant information asymmetry between the tradesperson and consumer. The qualification for structural landscapers involves a 900 hour Certificate III level course. This requirement helps to ensure an appropriate standard of work.

The licensing scheme also benefits consumers by providing means of redress in the event of substandard work. Consumers may complain through the Home Building Service within the Office of Fair Trading which is fully funded by home building licence fees. From 2006 to 2008, the Service investigated 232 complaints about structural landscapers and issued 147 rectification orders. The large number of complaints and rectification orders suggests that the ability to seek redress under the *Home Building Act* provides significant benefits to consumers.

Any consumer may use the General Division of the Consumer, Trader and Tenancy Tribunal (CTTT) for resolution of claims less than \$30,000. The value of structural landscaping work may in some cases exceed this threshold. Licensing allows claims against structural landscapers to be made to the Home Building Division of the CTTT for disputes of up to \$500,000.

Home Warranty Insurance protects consumers from loss or damage if they cannot recover compensation or have defects rectified due to the insolvency, death or disappearance of the contractor, where the value of the contract is greater than \$12,000 in value. This may include breach of statutory warranty, non-completion of work and faulty design.

Structural landscaping work is highly technical and can pose a significant safety risk to consumers and third parties such as neighbours. Faulty or poorly conceived work may be difficult for a consumer to identify. The consequences of substandard work can also take time to be revealed which could impact on subsequent owners of a property.

Given the safety risks associated with structural landscaping work for consumers and third parties and the relatively low cost of the licensing scheme, the Better Regulation Office considers that the benefits of licensing outweigh the costs.

Recommendation 17

The structural landscaping licence class under the *Home Building Act* should be retained.

Retention of the licence will maintain a small regulatory burden on structural landscapers in NSW of at least \$357 per year in licence fees and the cost of other compliance activities. Qualified structural landscapers from interstate who wish to work in NSW will still need to apply for a licence but this will be offset by improved consumer confidence in the industry and the protections for consumers and other people who would suffer from poor quality landscaping work.

11. WOOL, HIDE AND SKIN DEALER

NSW is the only jurisdiction in Australia to licence wool, hide and skin dealers.

The *Wool, Hide and Skin Dealers Act 2004* ('the Act') requires anyone who acts as a dealer in NSW to be licensed. The maximum penalty for acting as a dealer without a licence is \$11,000 or 12 months imprisonment, or both. The maximum penalty for an unlicensed person pretending to hold a licence is \$5,500.

A wool, hide or skin dealer is defined as a person who buys untreated wool, hides or skins of sheep or cattle for the purpose of selling them. It is an offence to deal in wool, hides or skins as defined under the Act without a licence issued by the NSW Police Force. There are 38 corporate and 80 individual licensed dealers.

Exemptions from the need to hold a licence apply to any goods sold at public auction and to overseas buyers purchasing wool at an auction, co-operative societies that have bought goods to prepare for sale by auction and anyone buying wool, hides and skins for education or research.

Licensing was introduced as a crime prevention measure to help detect and prevent theft of wool, hides and skins, and fraud.

To be issued with a licence, a person must pass certain probity checks. The Act requires licensed dealers to register their premises with police, record all sales of wool and retain records for five years, and refuse and report suspicious wool, hides or skins. The Act provides police with the power to enter dealers' premises at any reasonable time and to inspect and seize records.

Stakeholder views

Four submissions were received about this licence. There were differing views on the need for licensing to prevent theft and fraud. In relation to compliance costs, all stakeholders noted that the burden of the licensing scheme to industry is very small.

It was suggested that the benefits of licensing could be broadly achieved through existing regulations, for example through the record keeping rules for the Commonwealth Government's Wool Levy Poll and existing criminal and trade practices laws.

Assessment

There is no fee for the licence. Stakeholders confirmed that licensing imposes only minor costs on industry in the form of the time it takes to apply for a licence every three years and the time it takes to maintain records and respond to police inquiries. The cost of licensing does not appear to constrain entry into the market, labour mobility or competition.

The cost to Government of administering the licensing system is estimated to be \$10,000 per year. This includes costs associated with police checks of dealers' premises and sales records. Rural Crime Investigators were established in 2002, and monitor wool, hide and skin dealers amongst their other duties. There are 33 Investigators operating across NSW. Compliance and enforcement activities related to licensing are not conducted by general duties police officers.

The licensing scheme was primarily created to prevent crime in the wool industry. In 2001-02, theft of wool accounted for one per cent of the total number of thefts from Australian

farms and theft of sheep (which is a related crime) accounted for 33 per cent of thefts⁴². In 2001 (prior to the introduction of licensing), 28,179 sheep were stolen in NSW in 293 separate incidents. In 2008, approximately 8,000 sheep were stolen in 117 incidents, which is a 60 per cent drop in the number of incidents⁴³. Over the same period, the NSW sheep flock fell to a larger extent than the national average reduction of 26 per cent⁴⁴. Thus, the number of thefts in NSW fell by more than the number of sheep over the period.

The reduction in theft of sheep from 2001 to 2008 may be explained by several factors, including the introduction of the licensing scheme and the establishment of Rural Crime Investigators.

The benefits of the licensing scheme are limited by the fact that it only covers a small portion of wool sold in NSW. Around 85 per cent of wool produced in Australia is sold by growers through auction and about 15 per cent is sold by growers directly to dealers. In NSW, it is estimated that less than two per cent of wool is sold directly to dealers⁴⁵.

Other states do not have a licensing scheme for wool dealers. This is despite the fact that dealers in states such as South Australia and Western Australia trade four times as many bales of wool as dealers in NSW.

The key benefit of licensing is in creating law enforcement tools used in investigating stolen wool, hides or skins. The NSW Police Force considers that these tools are valuable and that licensing has been effective in helping to deter and reduce rural crime. The key tools include a database of dealers and the address of their premises, a power for police to enter dealers' premises at any time without a specific search warrant, an ability to review five years of sales records and a requirement that dealers must refuse and report suspicious wool, hides and skins.

Although the objectives of the licensing scheme could be achieved through other existing regulatory and non-regulatory means, licensing effectively provides these benefits and offers a number of advantages. In particular:

- The licensing scheme establishes a requirement to collect sales records for every purchase of wool by a dealer. Sales records are also maintained for the Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF) under rules for the collection of the Wool Levy Poll. However, these records are less comprehensive than those collected under the NSW requirements as the NSW licensing scheme requires the seller to present formal proof of their identity (such as a driver's licence) and for this to be recorded. It also requires dealers to keep records for purchases of bio-clip and fellmongered wool. The licensing requirements therefore ensure that all sales of wool are recorded and that the identity of the seller is verified.
- A condition of licensing is that dealers must refuse and report offers of potentially stolen wool, hides or skins. Whilst the *Crimes Act 1900* imposes a general obligation on persons to refuse stolen goods, there is no general requirement to report offers of stolen goods to police.
- The licensing regime enables police officers to enter and inspect the premises and records of a dealer at any reasonable time. Police use that power in the course of

⁴² Marissa McCall, "No. 266 Results from the 2001-2002 National Farm Crime Survey", in *Trends & Issues in Crime and Criminal Justice*, Australian Institute of Criminology, October 2003, p4.

⁴³ Statistics provided by the NSW Ministry for Police.

⁴⁴ Peter Weeks and Tim McRae, *Australian cattle and sheep: Industry projections summary*, Meat & Livestock Australia, January 2008, pp4-5; David Guzman, "Sheep numbers to hit an 80-year low" in *The Rural*, 7 August 2008.

⁴⁵ In 2007-08, NSW produced 138 million kilograms of greasy wool. In the same period, NSW dealers traded in 13,815 bales of wool, or up to 2.82 million kilograms if each bale weighed the maximum permissible 204kg. This represents just over 2 per cent of all wool produced in NSW.

monitoring general industry activity. Without the licence, police would be required to apply to a magistrate or the registrar of a local court for a specific search warrant, and comply with the procedures associated with the execution of a warrant. Whilst an application for a warrant can be made by telephone, doing so would nevertheless place an additional burden on police officers that is not required under the current licensing regime. Removal of the licence would therefore limit the flexibility of police to make ad hoc visits to dealers' premises and remove their value as a deterrent against illegal activity.

The Better Regulation Office finds that licensing is a cost effective way to achieve crime prevention objectives and does not hinder market activity.

Recommendation 18

The wool, hide and skin dealer licence under the *Wool, Hide and Skin Dealers Act 2004* should be retained.

Retention of the licence will mean that people who deal in wool, hide and skin must continue to maintain comprehensive records and spend some time every three years applying for and renewing their licences. However, this is not a large burden on dealers in return for enhanced crime prevention in the industry. The absence of a licence fee means that the licensing requirement should not deter people from working in NSW.

APPENDIX A

LIST OF SUBMISSIONS TO ISSUES PAPER

Eighty-nine submissions were received, two of which are confidential.

1. ACE Body Corporate Management, Stephen Raff, Chief Executive Officer
2. ACE Body Corporate Management – Balmain, Andrew Jakes
3. Association of Artist Managers Australia, Millie Millgate, Executive Director
4. Australasian Dispensing Opticians Association, Edward G. Butler, Secretary
5. Australian Automotive Aftermarket Association, Grahame McCraw, State Manager NSW/QLD
6. Australian College of Community Association Lawyers Inc, Francesco Andreone
7. Australian Elevator Association, Norm Argent, Executive Director
8. Australian Hotels Association (NSW), Sally Fielke, Chief Executive Officer
9. Australian Manufacturing Workers Union, Paul Bastian, State Secretary
10. Australian Timber Flooring Association Ltd., Randy Flierman, Chief Executive Officer
11. Australian Wool Exchange, Mark Grave, Chief Executive Officer
12. BCS Strata Management, Greg Freeman, Chief Operating Officer NSW & Licensee
13. Bilson, Brendan
14. Bugz Pest Control Pty Ltd, Lisa Dixon, Operations Manager
15. CHU, John MacGregor, Regional Manager NSW/ACT - CHU
16. Community Titles Institute South Australia, Anna Edwards, Education Manager
17. Conti Property Group, Joe Conti, Managing Director
18. Conti Property Group, Casey Zammit
19. Conti Property Group, Nicole Di Cristo
20. Conti Property Group, Mario Cipollone
21. Conti Property Group, Matthew Thompson
22. Dobrow Valuations, W.L. Dobrow, Registered Valuer
23. Dowling Management Services, Sue Dowling, Strata and Community Title Manager
24. Dynamic Property Services, Wally Patterson, Managing Director
25. Ferguson, David
26. Fletcher International Exports Pty Ltd, Roger Fletcher, Managing Director
27. GK Strata Management Pty Ltd, David Terry
28. Habitat Property Services Pty Ltd, John Andrews, Managing Director
29. Harvie Strata Management Pty Ltd, Mariana Carinus, Strata Managing Agent
30. Harvie Strata Management Pty Ltd, John Little
31. Ian McNamnee & Partners, Jan Browne
32. Illawarra Strata Management, Tracey De Jesus
33. Inland Woolbrokers Association Inc, Gordon Litchfield, Chairman
34. Institute of Automotive Mechanical Engineers (INC), Frank R. Burgess, AM, Chief Executive Officer
35. Institute of Strata Title Management, Jackie Zelinsky, General Manager
36. Insurance Council of Australia, Kerrie Kelly, Executive Director and CEO
37. Jameson & Associates Unit Services Pty Ltd, George Vumbaca, Managing Director & CEO
38. J.R Strata Services
39. Linders Property Group, Daniel Linders, Director/ Licensee in Charge
40. Macquarie Bank, David Gonano and Andrew Taylor, Executive Director and Associate Director
41. Madel Invest Pty Ltd, Jason Howitt
42. Makinson & d'Apice Lawyers, Ian McKnight
43. Maria Linders Strata Consultancy, Maria Linders

44. Mason & Brophy Strata Management Pty Ltd, Peter Daly, Director
45. Master Builders Association of New South Wales, Peter Meredith, Director - Housing
46. Media, Entertainment & Arts Alliance, Simon Whipp, National Director
47. Meissner Management, Sharron Meissner [no document to be attached to this submission]
48. Monteath Strata Management, Robert Monteath
49. Moore Stephens Sandra Felli, Director
50. Motor Traders' Association of NSW, David Smith, Senior Manager - Divisional Services
51. Music Managers Forum Australia, Nathan Brenner, Vice Chair
52. Music NSW, Jane Powles, Director - Corporate
53. National Community Titles Institute Secretariat, Matthew Amber, President
54. New South Wales Strata Management Pty Ltd, David Nicholas, IT/ Strata Manager
55. New South Wales Strata Management Pty Ltd, Marianne Tooker
56. New South Wales Strata Management Pty Ltd, Richard Tooker, Director
57. NRMA, Chris Siorokos, General Manager, Corporate Affairs
58. Optical Dispensers Licensing Board, John Jackson, Chairman
59. Optometrists Association Australia (New South Wales), Andrew McKinnon, Chief Executive Officer
60. Owners Corporation Victoria, Rob Beck, General Manager
61. Platinum Strata Management, Debbie Gawne
62. Platinum Strata Management, Peter Gawne
63. Potts, Brian
64. Primal Entertainment, Dierdre Le Blang
65. Pristine Living Management Pty Ltd, Guylaine Perombelon
66. Private Treaty Wool Merchants of Australia Inc, Peter Morgan, Executive Director
67. Property Owners' Association of NSW Inc, G.P. Keleny, Vice President
68. Real Estate Institute of New South Wales, Sam Kremer, Legal Counsel
69. Real Property Services Pty Ltd Darryl Stevenson, Director
70. RHM Consultants Pty Ltd, Max Moretti, Managing Director
71. Roads and Traffic Authority, Les Wielinga, Chief Executive
72. Shortus, Louise
73. Strata Associates Pty Ltd, Alastair Smith, Director
74. Strata Partners, Phil Vandervaere
75. Strata Partners, Paul Bailey, Director
76. Strata Plus Pty Ltd, Stuart Denney
77. Strata Real Estate Services, Murray Cameron
78. Strata Title, David Porter
79. Strathfield Strata Management Pty Ltd, Denis Bakac
80. TAFE NSW, Kathy Rankin, General Manager Training and Education Support
81. The Landscape Contractors' Association of NSW Limited, Jennifer Richards, Chief Executive Officer
82. The Law Society of New South Wales, Hugh Macken, President
83. The Musicians' Union of Australia, Terry Noone, Federal Secretary
84. The Real Estate Brokers Pty Ltd, Sharyn Machin
85. Unique Strata, Peter Wilson
86. Urban Development Institute of Australia, Adrien Byrne, Policy Officer
87. Whatsoncentralcoast, Debbi Lalor
88. WorkCover NSW, Jon Blackwell, Chief Executive Officer

APPENDIX B

STAKEHOLDER MEETINGS

Australian Hotels Association
Institute of Automotive Mechanical Engineers
Institute of Strata Title Management
Master Builders Association
Media, Entertainment and Arts Alliance, Musicians Branch
Ministry for Police
NSW Department of Health
Office of Fair Trading, Department of Commerce
Office of Industrial Relations, Department of Commerce
Real Estate Institute of NSW
Roads and Traffic Authority
Urban Development Institute of Australia (NSW)