



20 Queens Road
Melbourne VIC 3004
PO Box 7622
Melbourne VIC 8004
ABN 76 369 958 788
www.aigroup.asn.au

1 April 2010

Mr Tim Faragher
Project Coordinator - Licensing Reform
EPA Victoria
GPO Box 4395
Melbourne, 3001

Dear Tim

Comments on EPA Licensing Reform Program

The Australian Industry Group (Ai Group) is a leading industry association in Australia. Ai Group member businesses employ around 750,000 staff in an expanding range of industry sectors including: manufacturing; engineering; construction; automotive; food; transport; information technology; telecommunications; call centres; labour hire; printing; defence; mining equipment and supplies; airlines; and other related service industries. Ai Group represents over 4,000 businesses in Victoria.

Ai Group is broadly supportive of EPA Victoria's licensing reform program. Ai Group's comments on the reforms and associated guidelines are set out below and we look forward to continuing close engagement on this and related issues.

1. Key Points

- Ai Group is broadly supportive of the key objectives of EPA Victoria's licence reform program.
- The timeframes for consultation and issue of the new licences are onerous, as are the timeframes for implementation by businesses of the new management systems. Many licence-holders may need to develop management frameworks to address the new requirements and this will require ongoing investment of resources. By necessity such management programs can take some time to implement effectively.
- Ensuring the success of the reform program will necessitate provision by the EPA of an adequate and consistent guidance regime together with allocation of resources to assist industry to adapt to the new framework and assess performance against new licences.
- Ongoing compliance programs should be designed to ensure that the objectives of the licensing reform process are met. Such programs should be risk based and outcome focussed.
- While supportive of the underlying objective the Annual Performance Statement (APS) to simplifying and standardise reporting requirements, the administrative burden

associated with the ongoing underlying monitoring and reporting should not be understated.

- Ai Group seeks clarification of whether ongoing issues with a soil or groundwater contamination issue must be reported in an APS until such time as the issue is resolved.
- Ai Group recommends that reductions in administrative costs realised from implementation of the reforms flows through to industry in the form of reduced licence fees.
- Ai Group is very keen to continue to work closely with the EPA to facilitate and support industry to move beyond compliance through programs such as the Ai Group/EPA Sustainability Program.

2. Reform Objectives

Ai Group strongly supports the key objectives of the reform program to streamline the administration and management of licences and to increase the efficiency of the licensing framework.

In particular, Ai Group welcomes the intention to move to a risk-based approach which is outcome rather than process focussed. The level of administration and detail required to manage a licence should be reflective of the risk to the environment presented by a business.

Ai Group is further supportive of the intention to clarify responsibilities and to improve consistency across licences, provided the move to consistency is based on assessment of risk. For instance:

- Potentially onerous conditions must not by virtue of the drive for greater consistency become default conditions for a sector;
- Consistent and streamlined licences should be supported by an adequate and consistent guidance regime as is discussed further below; and
- Ongoing compliance programs should be designed to ensure that the objectives of the licensing reform process are met. This will require the development of a compliance program that is risk based and outcome focussed.

Subject to these concerns, a move to standardised conditions should ensure that a licence-holder's environmental obligations are easier to understand and comply with, and improve the responsiveness of the licensing framework to industry needs.

3. Consultation on Licensing Reforms

Ai Group was very pleased to co-host the licensing reform information sessions on 11 and 16 March. These events were very well attended by industry and improved industry's understanding of the implications of the licence reforms.

Licence-holders that attended these sessions and others subsequently consulted by Ai Group have raised concerns that the 5 week consultation period on the licensing reform guidelines is very short, particularly given the combination of the broad reaching nature of the reforms and the fact that the consultation period concludes before many licence-holders have received their draft licence(s).

4. Comments on Draft Licences

The timeframes for issue of the new licences is also onerous. A number of companies have expressed concern to Ai Group that the 21 day consultation period for draft licences is too short and that in many cases they do not know when they will receive their draft licence.

In addition, some companies consulted by Ai Group indicated that they would welcome the opportunity to have input into the initial drafting process to address issues of relevance up front so that the consultation period can focus on substantive issues. Other licence-holders have raised the concern that the licence reform package is targeted to “emission control” and would have welcomed the opportunity of including “sustainability” measures in a Part 1 of the new EPA licence in line with EPA’s Corporate licence. The inability to upload documents (site plans) on the EPA feedback line has also been raised as a concern.

Ai Group supports the intention that licences be developed in conjunction with the EPA and the licensed businesses and that drafts will not generally be made available for community comment. Existing mechanisms put in place by licence-holders for liaison with the local community are the preferred mechanism for appropriate community input into licences. Some licence-holders will require substantial EPA support to educate the community about the need for reform and for initial and ongoing consultation as the new licences are implemented.

Ai Group similarly supports the intention that draft notices will not be public documents and seeks clarification of the circumstances in which the EPA might consider that there is a need to consult with community groups.

Further, it is not clear how the intention to implement consistency across licences will translate in practice given the phased roll out of revised licences. For example, if consultation in the second and third tranche of draft licences identifies need for changes not previously identified, is it intended that these changes will flow through to licences previously issued and if so, in what timeframe?

5. Move to Risk Based Assessment

While supportive of the move towards risk based management, it is essential that industry is assisted in the implementation of this change through the provision by the EPA of appropriate information and support.

The EPA’s frequently asked questions (FAQs) on the licensing reform program indicate that associated with the move to more ‘outcome-focussed’ conditions, “A licence-holder will now be able to determine how to achieve the outcomes specified by the conditions in their licences, with support and guidance provided by EPA”. Ai Group is concerned that practical support beyond the issuing of guidelines will be required to assist industry in the implementation of the reforms and seeks clarification of the support and guidance that will be provided by the EPA.

This will be particularly important for new businesses or those with limited understanding of how their operations can affect the surrounding environment. Not all current or prospective licence-holders will have the experience, expertise and indeed the necessary internal resources to conduct risk assessments and design and implement monitoring systems on an ongoing basis.

The success of the reform process will rely on EPA investment of resources to help industry to adapt to the new framework. This support will be required during both consultation and

implementation, noting that the new system may take some time to bed down. Ai Group believes that further guidance and support needs to be provided or refined so that industry can assess their performance against their new licences. This will help to ensure industry and community acceptance of the new system.

The consultation period on draft licences should be utilised by the EPA to identify the need for development of additional guidance. Ai Group would welcome the opportunity to work with the EPA in the development and delivery of practical information and support to industry to assist in this regard.

The Client Relationship Managers (CRM) will be a key point of contact for licence-holders seeking clarification of and guidance on the implementation of the reforms. As a minimum it will be essential that CRMs are provided with adequate resources by the EPA to enable them to respond expeditiously and consistently to such inquiries. Anecdotal evidence from some member companies indicates that in a number of instances prior to the introduction of these reforms, there have been lengthy delays in obtaining responses from CRMs on various issues.

6. Guidelines

In general, the licensing reform guidelines issued by the EPA are relatively clear and self-explanatory in providing an overview of the licensing reform program, its intent and how the process is planned to be implemented.

However, Ai Group has identified the following areas where the guidelines could be improved.

6.1. Licence Management Guidelines

The licence management guidelines detail a number of additional references but do not clarify the purpose underlying the inclusion of these references. For example

- Are the references provided relevant for current 'best practice' operations? Ai Group notes that some EPA support documents referenced in the guidelines are out-dated, e.g. 'PEM: Minimum control requirement for stationary sources'
- In some cases there are multiple references to various documents. This suggests that an extensive knowledge of the background and purpose of these documents is required to assess compliance with some conditions.

This does not seem consistent with the statement that new licence conditions will "Make a licence-holder's environmental obligations easier to understand and comply with", and suggests that either the condition should be changed or guidance be amended and/or simplified.

6.2. Licence Assessment Guidelines

Whilst the process outlined in the guidelines is itself relatively clear, there are potentially significant issues for licence-holders who do not currently possess the internal expertise necessary to undertake this process. Implementation of a risk management approach can be expected to be less onerous for those licence-holders currently operating under an ISO14001 compliant environmental management system. In contrast, for those licence-holders that do not currently operate under a formal environmental management system, implementation of a risk management approach to assess compliance with licence conditions may necessitate engagement of additional staff or external consultants.

It is possible that some licence-holders may opt to continue the monitoring required under current licences as a default position. However, under the guidelines, verification of the appropriateness of this approach will present challenges.

The guidelines provide an overview of an assessment process for a sewerage treatment plant discharging to a waterway and for a schedule 4 waste treatment plant. Ai Group members suggest that guidance for other activities is provided especially for:

- Odour and noise monitoring particularly where ambient monitoring is required; and
- Reuse/application of wastewater to land.

Further, Ai Group seeks clarification of whether it is intended that monitoring processes are required to use EPA approved analytic methods. This requirement would be inconsistent with the intention of the reforms that licence-holders undertake a risk assessment and determine an appropriate monitoring program based on that assessment. It is possible that in undertaking this process, licence-holders may identify non-EPA approved methodologies which facilitate least cost outcomes or are otherwise more appropriate to their needs. This has implications for auditing of monitoring programs. ISO14001 EMS auditors have historically used the licensed monitoring conditions as the basis for assessing compliance. Ai Group member companies have queried the ability of auditors to confirm the appropriateness of monitoring processes once licence-holders commence setting their own regime.

Ai Group also notes that there is an error table 5 of the guidelines – likelihood rating not consistent with methodology (i.e. 'B')

7. Compliance Framework

Ai Group notes that the move to a more risk-based approach to environmental licences coincides with an increased focus by the EPA on compliance. These are very significant reforms and will take some time to work through and Ai Group encourages the EPA to continue to work constructively with industry during implementation of the reforms. We anticipate that implementation may take a considerable period of time and include at least 2 reporting periods (ie financial years).

The EPA's licensing FAQs state that the process of interaction between the EPA and a licence-holder "will result in regular and constructive contact. As such, the environmental performance of a business will continue to be monitored through meetings, random and targeted audits, site visits and inspections. This process will be defined through further development of EPA's new compliance framework." Ai Group requests ongoing close engagement in the development of the framework and notes that the move away from a prescriptive process towards risk based approaches can reduce business certainty and has implications for defences that licence-holders can present in the event of a non-compliance.

The EPA licensing FAQs also state that "Licence-holders and affected third parties also have the option of appealing the final issued licence to the Victorian Civil Appeals Tribunal (VCAT)". Ai Group seeks clarification on this point as it was our understanding that this right of appeal did not extend to third parties.

Ai Group further argues that EPA audited data should not be made publicly available given commercial sensitivities relating to this data.

8. Annual Performance Statements

The objective behind introduction of the Annual Performance Statement (APS) is to reduce red-tape by consolidating licence reporting into one annual statement and by simplifying and standardising requirements. Ai Group is supportive of the intention to make annual reporting more straightforward, however the administrative burden associated with the ongoing underlying monitoring and reporting should not be understated.

While the APS requires submission of less detailed reports than under current reporting requirements, it will not in itself reduce the monitoring or internal reporting burden on licence-holders who will still be required to generate auditable documentation to enable them to determine compliance and will therefore continue to face the associated administrative burdens. (The monitoring requirements may reduce if the move to a risk based assessment identifies that a reduction in the monitoring regime is justified.)

Participants at licensing reform information sessions co-hosted by Ai Group and the EPA also noted the administrative costs relating to the due diligence requirements associated with submission of an APS.

Ai Group seeks clarification of the reporting obligations associated with the general requirement that licence-holders must not contaminate land or groundwater. An incident resulting in contamination would be required to be reported in the APS in the year in which the incident occurred/was identified. However, where an event resulted in an ongoing contamination issue, is it expected that this would be reported annually until such time as the matter was considered fixed in the absence of a further non-compliance? Ai Group also seeks clarification of whether in instances of legacy land or groundwater contamination, is it intended that licence-holders include such matters in their APS.

9. Licence Fees

Implementation of the licensing reform program will reduce the costs to the EPA of administering the licence system. At the same time, licence-holders are likely to incur costs associated with conducting risk assessments and internalising the development and implementation of monitoring systems.

The EPA's licensing reform FAQs note that there will be no immediate changes to licence fees, with the current licence fee regulations to sunset in 2011. Ai Group welcomes the Government's intention to consider the impact of the licensing reform on licence fees and recommends that reductions in the EPA's administrative costs realised from implementation of the reforms flows through to industry in the form of reduced licence fees.

10. Landfills

The EPA itself highlighted during the licensing reform information sessions that the shortage of suitably qualified auditors presented a major risk to the implementation of the licensing reforms to the landfill sector.

Member companies have also raised concerns with Ai Group in relation to the potential cost impact on landfills of the changes and the flow on impact to users of landfill services. This flow on of costs combined with the recently announced increases in landfill levies will directly add to industry costs.

11. Financial Assurance

Based on the current EPA guidelines for calculation of financial assurances Ai Group understands that the value of a financial assurance for a landfill or schedule 4 facility may be expected to increase substantially due to the recent increase in the prescribed waste levy.

We seek clarification about how the EPA intends to calculate financial assurances as a result of this increase and how this may be reflected in any amendments to EPA publications *777 Determination of Financial Assurance for Landfills* and *456.1 Guidelines For Determining Financial Assurances: Schedule 4 Premises*.

We also seek clarification about which other industry sectors the EPA intends to require a financial assurance from noting that a range of other activities can be required to provide a financial assurance under the *Environment Protection (Scheduled Premises and Exemptions) Regulations 2007*.

12. Accredited Licences

On the matter of accredited licences, Ai Group has received feedback from licence-holders that incentives are not commensurate with the additional requirements for an Environmental Management System, Environment Improvement Plan, and auditing requirements. This is supported by the Victorian Competition and Efficiency Commission which advocated removing the requirement for annual audits using EPA-appointed auditors where an effective certified EMS is in place that includes internal and external audits.

13. Moving Beyond Compliance

One of the objectives of increasing the efficiency of the licensing system is to provide licence-holders time to focus on reducing carbon impact, improving resource efficiency and investigating new and more efficient practices.

In the EPA's licensing FAQs it states that the reforms will "Enable licence-holders to change the way they work so that risks of non-compliance are prevented and other environmental challenges (eg. climate change) can be adapted to more rapidly." This is something of an over simplification of reality and overstates what can be achieved in the short to medium term.

The results of the 2009 Ai Group/KPMG survey *Gearing up: Business Readiness for Climate Change* revealed that a majority of Australian businesses has not yet implemented effective strategies to measure their carbon footprints in the short to medium term and indicate the need for comprehensive business support services to assist industry to adapt to emerging carbon constraints.

Ai Group is very keen to continue to work closely with the EPA to facilitate and support industry to move beyond compliance. The Ai Group/EPA Sustainability Covenant is an example of successful collaboration in the provision of funding and support to businesses in the implementation of beyond compliance resource efficiency projects.

14. Concluding Comments

The benefits of the licensing reform program will not be realised without the provision of an adequate and consistent guidance regime and support for licence-holders to adapt to the

new framework. Ai Group is very keen to work closely with the EPA in the implementation of the reforms and in facilitating and assisting industry to move beyond compliance.

Please do not hesitate to contact me on phone (03) 9867 0283 if you have any queries regarding this submission.

Yours sincerely

Vivienne Filling
National Manager
Environment Policy and Membership Services