

A best practice approach to designing and reviewing licensing schemes

Independent Pricing and
Regulatory Tribunal

Introduction

Background

The Independent Pricing and Regulatory Tribunal (IPART) has been asked by the NSW Government to examine NSW licences and identify those where reform would produce the greatest reduction in regulatory burden for business and the community.

PwC has been engaged by IPART to develop a conceptual framework for licence design and review in line with this request. The conceptual framework or 'licensing framework' has been developed based on best practice principles. It is intended to be applied as an assessment tool to both existing and proposed licensing schemes.

Intention of the framework

This report summarises the licensing framework at a high level. The framework is designed to allow people to quickly and easily determine whether licensing is:

- a reasonable option
- appropriately designed
- administered effectively and efficiently
- ultimately the best regulatory response.

The framework can be used to determine whether a particular area that is not currently licensed may be suitable for licensing. It can also be used to evaluate whether there are likely to be significant gains from reforming existing licences. This is more likely to be the case in instances where there has been significant change to the context surrounding the existing licensing scheme. For example, there may be changes in technology, demographics, social norms, regulation, national reform and so on. If the licensing scheme has not been reviewed in the context of these changes, it is necessary to re-assess the fundamental rationale for licensing, as well as its design and administration.

The framework is supported by guidance notes and case studies that show how the framework can be applied in practice.

The framework is not intended to replace the requirements set out by the Better Regulation Office (BRO) or other government agencies. Instead, it offers a targeted approach for considering whether licensing is the best government response. The framework is consistent with the principles of better regulation and the latter stages of the framework should facilitate the analysis needed to meet BRO requirements.

Overview of the framework

The framework involves a series of steps or questions, separated into four major stages:

- Stage 1 – Is licensing appropriate?
- Stage 2 – Is licensing well designed?
- Stage 3 – Is licensing administered effectively/efficiently?
- Stage 4 – Is the licensing scheme the best response?

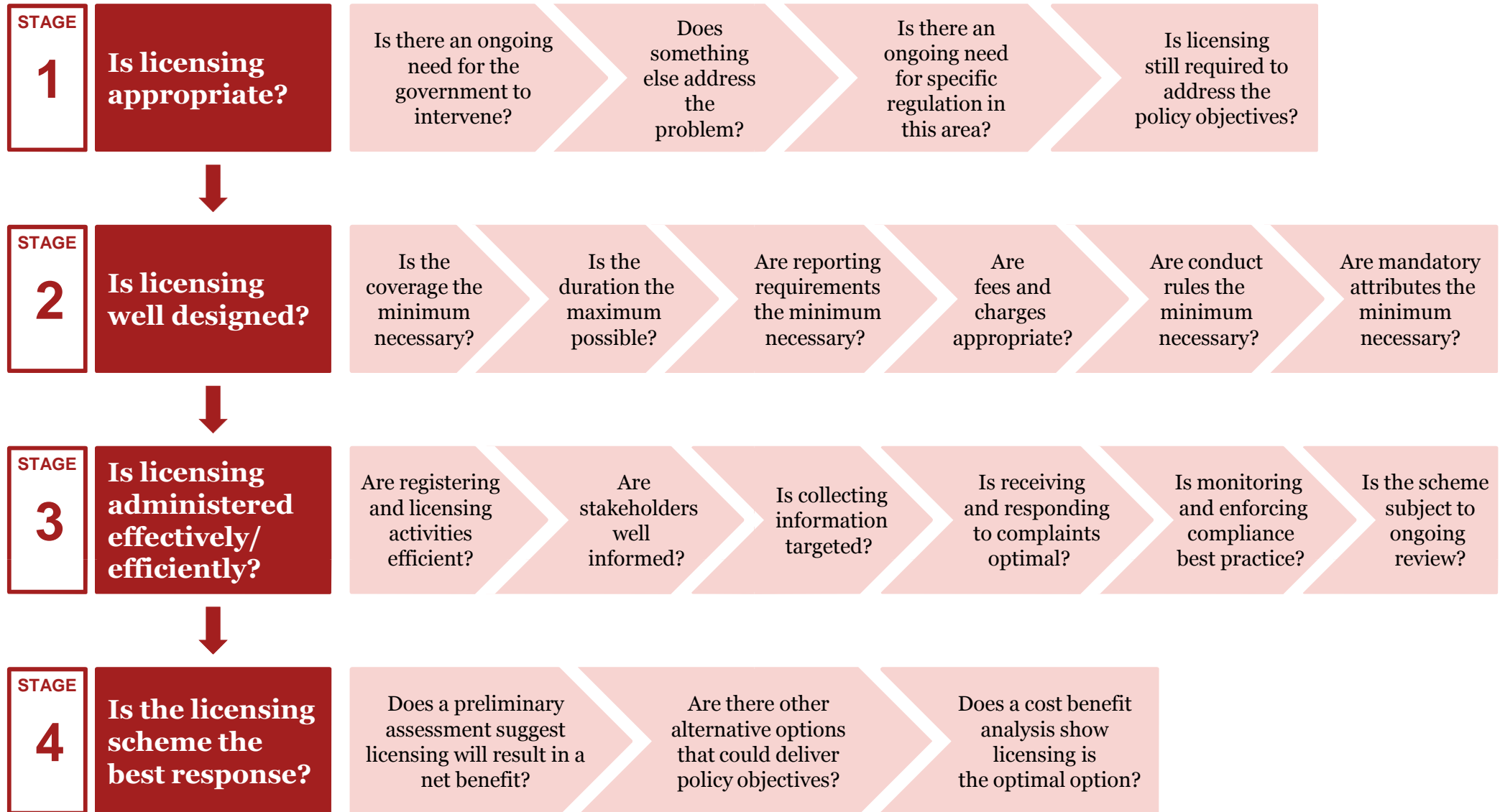
The first stage of the framework looks at what the government is trying to achieve and essentially acts as a screening tool to identify whether licensing should even be considered as a potential option. Stage 1 consists of four consecutive questions. Licensing should be considered appropriate and therefore a potential option if:

- there is an ongoing need for action (ie the first question is answered with a 'yes')
- nothing else addresses the problem (ie the second question is answered with a 'no')
- there is an ongoing need for a regulatory response and licensing is still required to address the policy objectives (ie the last two questions are answered with a 'yes').

Once licensing has been identified as a possible way forward, the design and administration of the potential licensing scheme is assessed (Stages 2 and 3). The questions posed in Stages 2 and 3 should also be answered with a 'yes' in order to say that the licensing scheme is well designed and administered effectively and efficiently.

After considering whether licensing is an appropriate option and assessing the design and administration of this option through Stages 1 to 3, it is still necessary to go a step further and assess whether licensing is actually the best approach to take. This is the aim of stage 4. Rather than a series of questions, stage 4 consists of three steps that walk through the analysis needed to identify the best government response.

Overall framework structure – for existing and proposed licences



Stage 1 – Is licensing appropriate?

1

Is licensing appropriate?

Is there an ongoing need for the **government to intervene**?

- Is there still a clear rationale for the government to intervene in the licensing area being considered?
- Would the risk of detriment still be considered high if the government did not intervene (eg if the existing licensing scheme was removed)?
- Is the ability to remedy this detriment poor (eg would remedies be available to address the problem if licensing did not exist)?
- Is the market unlikely to provide an adequate response to the problem if the government did not intervene (eg would the problem be addressed through other means if there was no licensing scheme)?

Does **something else** address the problem?

- Are there other laws or regulations that exist (eg other than the licensing scheme) that may address the problem? If so, are they insufficient to address the problem?
- In considering the first question:
- Is the need for government intervention identified in the previous step especially high in the current context? If so, does this suggest other generic laws would be insufficient?
 - Is the problem particular to a specific area and hence likely to benefit from direct government action?

Is there an ongoing need for specific **regulation** in this area?

- Does the government intervention still need to be enforced?
- Would it be insufficient to use targeted enforcement of other generic laws that currently exist?
- Would it be insufficient to use a non-regulatory response (eg information campaign, voluntary code of conduct) to address the problem?
- Are administrative sanctions still needed to ensure compliance and enforcement of specific rules?

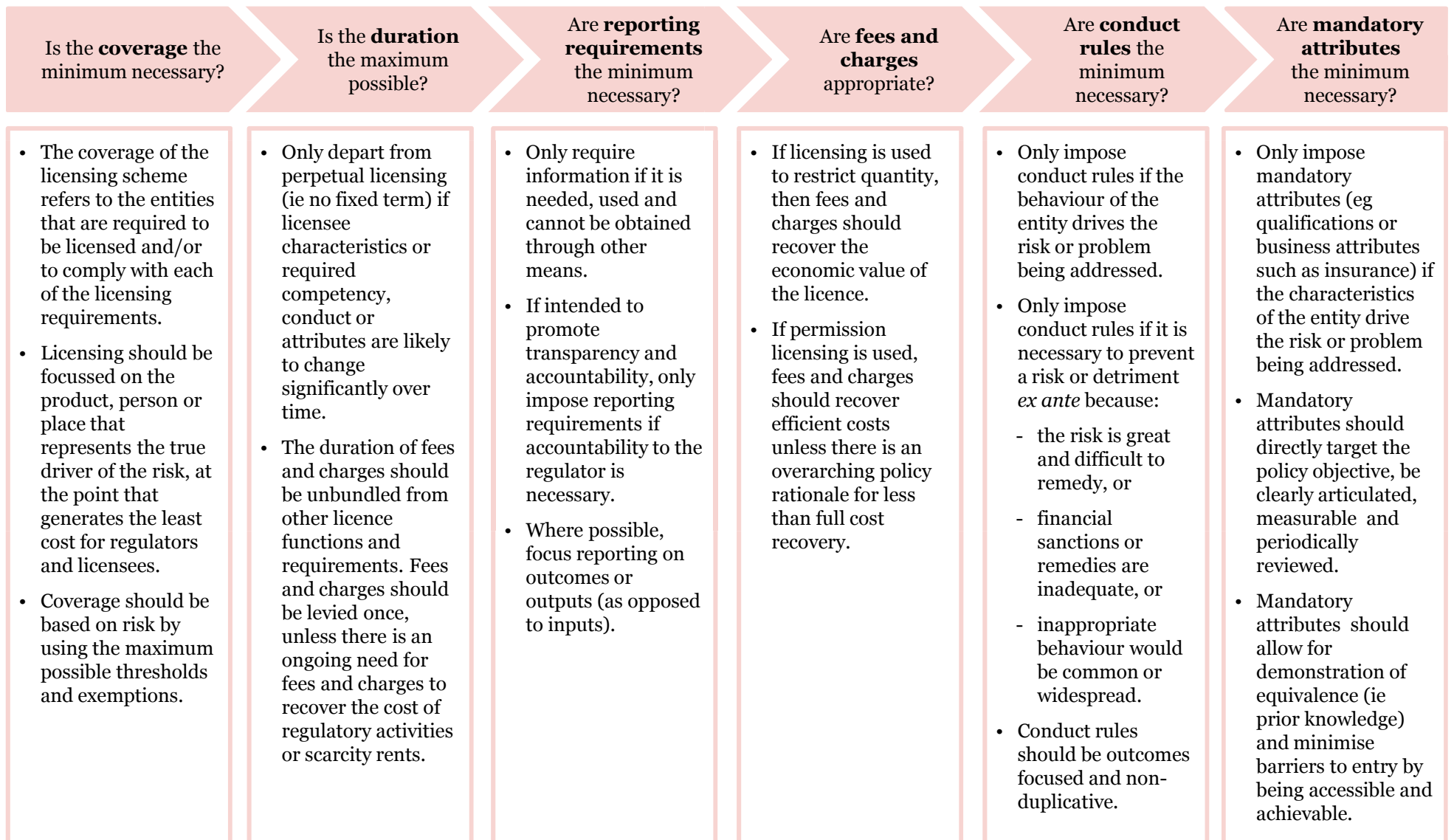
Is **licensing** still required to address the policy objectives?

- What are the objectives of government action in this area?
- Are any of the following function(s) of licensing required to achieve objectives:
 - Mandating attributes?
 - Ensuring minimum competency?
 - Imposing conduct rules?
 - Providing avenues for redress?
 - Restricting the quantity of activities undertaken?
 - Enabling policy-making or enforcement?
 - Generating funds?
- If so, which function(s)?
- Is licensing necessary to achieve this function(s)? Could these functions be achieved by regulatory (or non-regulatory) measures in the absence of licensing?

Stage 2 – Is licensing well designed?

2

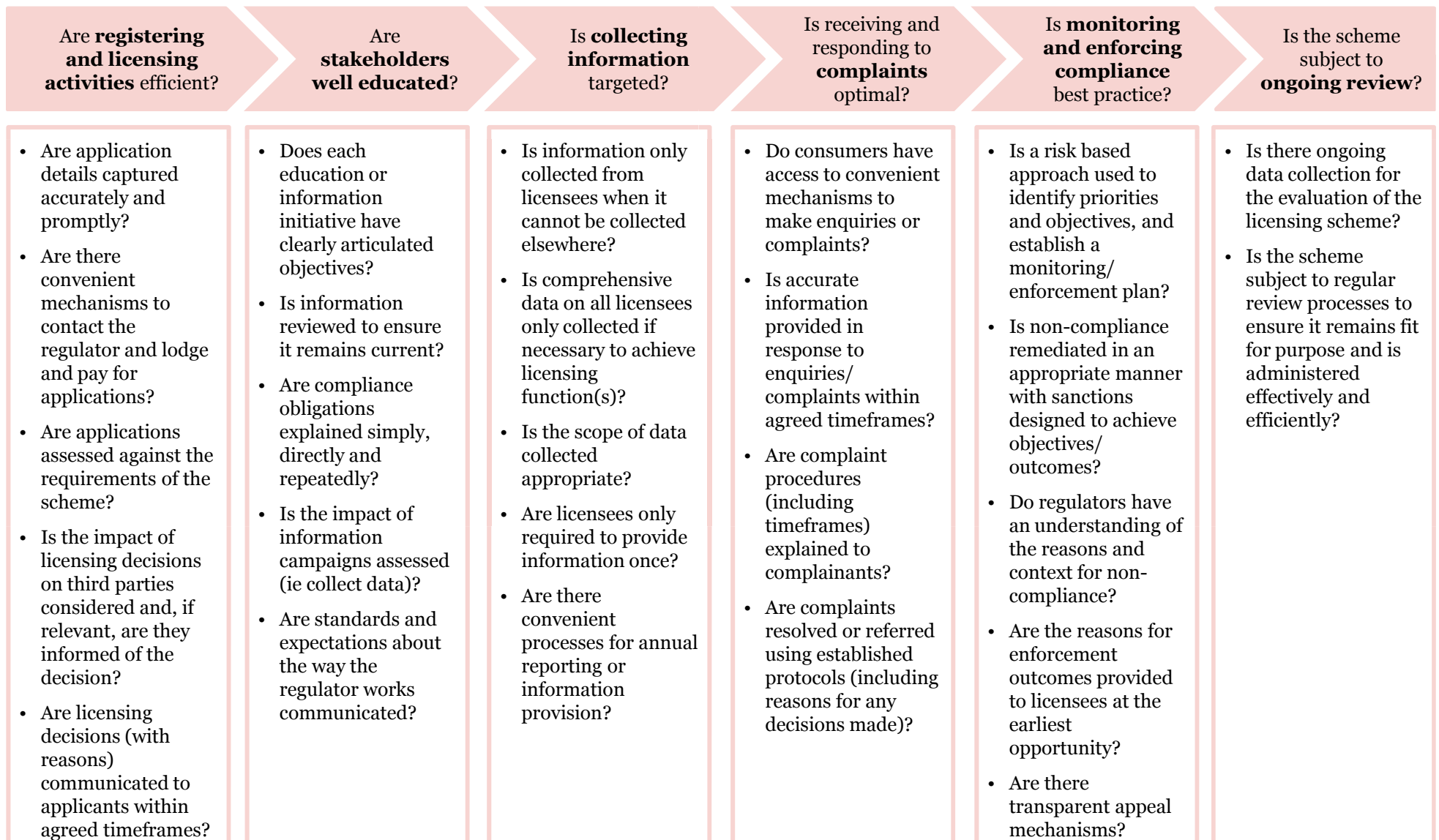
Is licensing well designed?



Stage 3 – Is licensing administered effectively/efficiently?

3

Is licensing administered effectively/efficiently?



Stage 4 – Is the licensing scheme the best response?

4

Is the licensing scheme the best response?

Does a **preliminary assessment** suggest licensing will result in a net benefit?

- Drawing on information and analysis from Stages 1 to 3, a preliminary assessment is needed to assess whether the benefits of licensing are likely to outweigh the costs.
- Identify the key costs and benefits and assess their potential size. To do so, consider the following questions:
 - How significant is the problem being addressed?
 - What impact does (would) licensing have on the problem? That is, how significant are the potential benefits?
 - How costly is licensing (likely to be)?
- The outcome of this assessment will determine whether to progress through the next two steps of the framework.
- Progress through the framework if:
 - an existing licence is being considered, and the assessment indicates the existing scheme may lead to net costs, the impact is unclear or there may be better alternatives to licensing
 - a proposed licence is being considered, and the assessment indicates licensing may lead to net benefits or the impact is unclear.

Are there other **alternative options** that could deliver policy objectives?

- Alternative options should be identified that are relevant to the government's policy objectives.
- Other regulatory and non-regulatory options might include:
 - Targeted information or education campaigns
 - Development of voluntary codes of conduct or accreditation
 - Other measures to empower individuals or consumers
 - Targeted enforcement of generic laws and regulations
 - Imposing conduct requirements through specific regulation (without licensing)
 - Imposing mandatory attributes (e.g. 'fit and proper person' test) through specific regulation (without licensing).
- The option of not undertaking any government action should also be considered in the analysis, taking into account the potential for regulatory failure.

Does a cost benefit analysis show licensing is the **optimal option**?

- For each objective, licensing should be considered relative to other options to achieve that objective.
- Where possible, costs and benefits should be quantified and estimated over time.
- In some instances, it may be appropriate to consider the administrative and regulatory simplicity of a *single licensing regime* as compared to a number of other regulatory and non-regulatory measures to achieve the full range of objectives. This may be relevant where the action is intended to address a number of problems and objectives. In this case, it is appropriate to consider the costs and benefits of the combination of licensing requirements against the range of other options to achieve the relevant objectives.

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