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Business Regulation Benchmarking – Role of Local Government
Productivity Commission
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CANBERRA CITY ACT 2601

SMALL BUSINESS SUBMISSION TO BUSINESS REGULATION BENCHMARKING – ROLE OF LOCAL GOVERNMENT ISSUES PAPER

The Small Business Development Corporation (“SBDC”) welcomes the opportunity to provide feedback from a Western Australian small business perspective on the Productivity Commission’s Issues Paper, *Business Regulation Benchmarking – Role of Local Government*.

INTRODUCTION

The SBDC is an independent statutory authority of the Government of Western Australia established to facilitate the development and growth of small businesses in this State. One of the agency’s key strategic goals is to improve business skills and knowledge in the small business sector by providing accurate and timely business advice on a range of topics, including establishing a business, regulatory obligations and compliance requirements.

During 2010-11, the SBDC’s Small Business Advisory team handled a total of 37,495 telephone, email and face-to-face enquiries from prospective and existing small business operators in Western Australia. Enquiries related to local government licensing and compliance obligations were among those received by the SBDC over this period.

A key role of the agency is to identify and advocate for the removal or reduction of red tape impacting on the State’s business community, including influencing the development of new or amended legislation and regulations by government agencies. The SBDC also works to influence government agencies, key decision makers, reviews and inquiries to ensure the impacts of policy decisions on the small business sector in Western Australia are properly understood and that negative aspects (including compliance burdens) are minimised and appropriate transition measures are in place in support of business.

The SBDC also offers a free Small Business Advocacy Service that provides confidential guidance and support to Western Australian small business operators in their dealings with government at all levels; local, state and federal. The Advocacy Service can assist small businesses by investigating issues, providing useful contacts and links to other services, and facilitating solutions in relation to:

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GPO Box C111, Perth WA 6001

Telephone: 131 BIZ (131 249) Facsimile: (08) 6552 3399 Toll free: 1800 199 125

Email: info@smallbusiness.wa.gov.au

www.smallbusiness.wa.gov.au

- business licensing;
- trading with government;
- negotiating planning issues; and
- addressing instances of red tape.

The Advocacy Service also works with business and industry associations to identify and help overcome red tape issues that may impact on particular business cohorts or segments of the small business sector, such as licensing requirements for specific occupations (for example, motor vehicle repairers) or types of businesses (for example, home based businesses).

SMALL BUSINESSES & LOCAL GOVERNMENT IN WESTERN AUSTRALIA

The SBDC welcomes the Productivity Commission's program of performance benchmarking, in particular this study into the role of local government in business regulation and how local government regulatory decision-making impacts on small businesses.

The small business sector is significant; there were an estimated 202,811 small businesses in Western Australia as at June 2009, accounting for 95% of all businesses in the State¹. More than a third (35%) of these businesses employ staff, with the remainder (65%) being non-employing businesses. Estimates indicate that small businesses employ around a third of the State's labour force.

Small businesses operate in an environment of regulations, covering many aspects of their daily operations, and which are set by all tiers of government. As is well understood, small businesses are typically disproportionately and detrimentally impacted by government regulations and compliance burdens, and any moves to reduce this impost would be greatly welcomed by the sector.

Local governments in Western Australia have regulatory oversight of many areas of business and the community, and hence a wide range of small businesses are directly impacted by the interaction with local government. This includes home-based businesses, industrial/manufacturing businesses, eating houses, and mobile/itinerant businesses, among others.

In Western Australia, there are currently 140 individual local governments (consisting of Shires, Towns and Cities) with 1,300 elected members, 14,500 employees and 2.2 million constituents². Local governments in the State vary dramatically in terms of both geographical size and population. The Shire of East Pilbara is Australia's largest local government area, covering approximately 372,000 square kilometres (an area larger than Victoria), while the smallest in Western Australia is the metropolitan Shire of Peppermint Grove which covers just over 1.5 square kilometres.

As at January 2010, there were only 67 electors in the regional Shire of Sandstone, compared to 125,812 electors in the metropolitan City of Stirling³. According to

¹ ABS publication 8165.0 *Counts of Australian Businesses, including Entries and Exits, June 2007 to June 2009*, released 16 February 2011

² Western Australian Local Government Association website (<http://www.walga.asn.au/about/>), accessed 14 October 2011

³ Western Australian Electoral Commission website (http://www.waec.wa.gov.au/voting/local_government_elections/local_government_in_western_australia.php), accessed 14 October 2011

official data, 43 per cent of local governments in Western Australia have less than 1,000 electors (with 29 per cent of these having populations of less than 1,000 people) and 18 per cent of local governments have less than 500 electors (with 11 per cent of these having populations of less than 500 people)⁴.

The Western Australian Department of Local Government is the state agency responsible for supporting the local government sector in Western Australia. The Minister for Local Government administers the *Local Government Act 1995* ("the LG Act"), which enables the State's local governments to make local laws in such areas as infrastructure and property services, recreational facilities, health and community services, planning and building approvals, and the administration of local elections. Local laws are defined as subsidiary legislation which is capable of disallowance by either House of Parliament under section 42 of the *Interpretation Act 1984*.

The peak body for local governments in the State is the membership-based Western Australian Local Government Association ("WALGA") which lobbies and advocates on behalf of its members.

In August 2010, the State Government entered into the Western Australian State Local Government Agreement with the peak industry bodies, WALGA and the Local Government Managers Western Australian Division. Under this Agreement, the State Government recognises that local governments play a significant role in community governance, while the local government sector recognises that the Government of Western Australia is responsible for strategic issues of State interest. Underpinning the Agreement is the understanding that the relationship is not one of a sharing of powers but, rather, a delegation of powers by the State to local governments.

Red Tape Reduction Group

In January 2009, the then Treasurer, the Hon Troy Buswell MLA, established the Red Tape Reduction Group ("RTRG") as one of a number of initiatives aimed at reducing the regulatory burden in Western Australia. The RTRG – which was co-chaired by the Member for Scarborough, Mrs Liza Harvey MLA, and the Member for the Mining and Pastoral Region, the Hon Ken Baston MLC – was tasked with identifying, reporting and recommending measures to reduce the compliance burden on the community of excessive and at times redundant regulation. The RTRG was supported by a secretariat within the then Department of Treasury and Finance, with assistance provided by the SBDC.

As part of an extensive program of consultation throughout the State, the RTRG held 62 meetings with key stakeholders, including both small and large businesses, industry associations, local governments and individuals across 12 regional centres and six metropolitan locations. Through this engagement process, the RTRG heard directly many examples of business and community frustration at the burden of red tape in Western Australia. While participants generally understood the need for regulations, they lamented that there was often a lack of a common-sense approach to their design, application and administration. The RTRG also received 64 written submissions from a range of stakeholders.

⁴ Department of Local Government website (<http://dlg.wa.gov.au/Content/Community/LGReform/WALGFacts.aspx>), accessed 14 October 2011

The RTRG's final report, *Reducing the Burden – Report of the Red Tape Reduction Group*, released in February 2010, identified 720 red tape issues⁵. The report included 107 short, medium and long-term recommendations that provide a blueprint to significantly reduce the burden of excessive regulation and red tape on Western Australian businesses and consumers. Key recommendations include:

- reforms which aim to reduce the regulatory burden by improving the culture, performance and accountability of government agencies;
- reforms which aim to maintain an impetus and mechanisms for ongoing red tape reduction by government; and
- reforms designed to address specific areas of concern raised during the consultation process. The report contains 16 specific reform chapters across a broad spectrum of government activity, including local government operations.

Local government regulatory issues were specifically considered in Chapter 15 of the report. It identified that local government decision-making impacts on a broad spectrum of business operations; of the top ten issues raised during consultations, five related to areas that local governments played a role in (being: planning, environmental licences and approvals, liquor licensing, local government operations, and building).

A fundamental finding of the report was that the majority of the regulatory burden on business in Western Australia did not directly come from legislation or regulations passed by Parliament, but rather from quasi-regulations (such as policies, procedures and business rules) and their administration by government. According to the report⁶:

In Western Australia it is estimated that there are currently 844 Acts and 761 statutory rules in force, amounting to approximately 63,500 pages of regulation. Adding to the regulatory burden is the enormous amount of departmental policies, rulings, explanatory memoranda, advisory notes and so on.

The report identifies that the most significant issue with quasi-regulations is the lack of transparency and accountability about how they are created, administered and reviewed. There is generally no parliamentary scrutiny of quasi-regulations in Western Australia and the RTRG report made a number of recommendations to improve the accountability and transparency of government agencies making and administering these regulations. These include⁷:

Recommendation 4.5: Western Australian government agencies should be required to publish internal policies and guidelines used in decision-making processes; and

Recommendation 4.6: All new and amended quasi-regulations should be subject to a Regulatory Impact Assessment process and the results of this process should be made publically available.

⁵ See www.treasury.wa.gov.au/cms/content.aspx?id=4039

⁶ RTRG report *Reducing the Burden – Report of the Red Tape Reduction Group* p.23

⁷ *Ibid* p.6

The SBDC notes with disappointment, however, that since the release of the report in February 2010 there has been little progress in implementing the RTRG measures, particularly in relation to the State Government providing leadership in working with local governments to lessen the burden on the small business community.

Given this, the SBDC welcomes the Productivity Commission's review of the role of local government and its impact on business regulation. The remainder of this submission raises a number of issues for consideration from a small business perspective, under the following four broad themes:

- Coordination and consistency;
- Accountability and transparency;
- Capacity and competency; and
- Accessibility and service.

COORDINATION AND CONSISTENCY

While Western Australia has approximately 10 per cent of the nation's population, it has more than 25 per cent of all local governments in Australia. In the Perth metropolitan area, there are 30 local government authorities for just over 1.5 million inhabitants, averaging 50,000 people per metropolitan local government. There are also 110 local government authorities covering the non-metropolitan areas of the State, with an average of approximately 5,400 people per regional local government.

Currently, significant differences exist between the local laws introduced by local governments in Western Australia. These are most pronounced in regards to the planning and approvals processes for businesses, particularly for those that work from or at home (i.e. home based businesses) – see the following case study.

Case Study

The fees and restrictions imposed by local governments on people operating home based businesses is a common issue raised with the SBDC Advocacy Service. Local governments in Western Australia retain significant discretion to consider their community's needs and the impacts on local amenity when considering applications for businesses to be operated from or at home.

It is the responsibility of local governments to adopt policies and local laws that promote a range of sustainable employment and business opportunities for the social and economic wellbeing of their communities, including home based businesses. The issues raised with the SBDC generally do not relate to the granting of approvals *per se*, moreover the lack of consistency and application of regulations between (often neighbouring) local governments and the arbitrary fees used.

In Western Australia, there are considerable differences between local governments in relation to the regulation of home based businesses. Inconsistent rules apply to: the types of business that can be run from home; hours of operation; signage; noise and other emissions; maximum floor space; storage requirements; client/staff parking; and number of employees.

There are also substantial variations in the amounts charged by local governments for applications for home based business licences and renewals. In the Perth metropolitan area, application fees can cost from around \$130 to over \$320, while annual renewals range from nil cost to \$70. The SBDC is aware of one particular metropolitan local government that doubles

the usual application fee for a home occupation licence if the business has already commenced trading, by way of penalty. It is also noted that in some regional locations, the local government does not even have a home based business licensing system in place.

The SBDC recognises that local governments often need to charge a certain level of fees on a cost-recovery basis for processing applications, especially for businesses requiring health and safety inspections, but the lack of consistency and non-standardisation of fee structures raises equity issues for small businesses across the State.

For other businesses, there are also differing requirements across local governments regarding the planning and development process. For example, during the RTRG consultations, the Housing Industry Association of Western Australia highlighted inconsistencies between metropolitan local governments in relation to the complexity of their development applications and when an application is required to be submitted. These variations in planning requirements impact on small businesses and ultimately end consumers. As the RTRG reported, "some developers may avoid projects in certain areas where they have experienced delay or difficulties in the past and others may choose not to enter the market at all."⁸

In its examination of planning and development issues, the RTRG found that the major concerns of businesses centred on the complexity of the processes involved, delays in approvals (and subsequent costs to businesses during this period), and the inconsistencies between local government requirements and processes.

For many years, the Government of Western Australia and the SBDC have recognised that different local government requirements were negatively affecting the small business sector in this State. In this time, there have been numerous attempts to encourage greater alignment between local government authorities in relation to their administration, business licensing and regulations, including the following:

- In the mid-1990s, the SBDC developed a set of template licensing forms for use by Western Australian local governments, but was unable to win support from a critical mass of local governments for their adoption.
- In 2000, the Western Australian Government introduced a Model Scheme Text ("MST") as part of the Town Planning Amendment Regulations 1999 to encourage greater consistency in local government zoning schemes. The MST included for example definitions for five types of home based businesses (such as home office, home occupation, etc), among other things. The intent behind introducing the MST was to align local governments' Town Planning Schemes ("TPS") as and when they were reviewed and updated. This process was meant to be undertaken at least every five years.
 - In 2005, the SBDC surveyed all of the then 144 local governments to assess the extent to which the MST had been incorporated into their TPS. Of the 100 responses received, 35 per cent of local governments reported that they had adopted the MST as part of their TPS. However, the then Department of Planning and Infrastructure advised the SBDC that only seven or eight local governments had in fact progressed their TPS through the official review and approval process since the MST was introduced.

⁸ Ibid p.102

- The remaining local government authorities had not adopted the MST, even though this new requirement had been in place longer than the supposed length of any TPS.
- Exacerbating this situation was the fact that there were no penalties attached to local governments for not complying with the requirement to review their TPS within five years.
- In 2005, the then Federal Government established the Regulation Reduction Incentive Fund (“RRIF”) to provide local government authorities throughout Australia with incentives to achieve regulatory and compliance reforms that would benefit small business, particularly home based businesses. Under the RRIF’s competitive grants process, projects in Western Australia received \$1,156,885 in initial funding with two consortia of local councils and two individual shires selected to develop online systems for the purpose of lodging building and health permits online, along with an application tracking process in some cases.
 - This initial funding was meant to act as an incentive for local governments to implement changes to streamline processes for small businesses. While this investment resulted in the successful implementation of electronic lodgement systems in most of the selected local governments, only a small number of other local councils have since then adopted these online systems.
 - Although having been well received by both building firms and the public, the majority of local governments in Western Australia have not adopted such electronic lodgement systems and without further external impetus and funding, this is unlikely to expand to other applications that would benefit small business.
 - In 2005, the Small Business Ministerial Council (“SBMC”) established a joint Local Government and Small Business Officials working group to investigate ways to reduce the regulatory burden on home based businesses and establish best-practice local government regulations. The working group developed a set of draft guidelines to promote a more consistent approach to licensing home based businesses and a less onerous regulatory environment (including, for example, “as of right” criteria).
 - Although endorsed by the SBMC, the Local Government and Planning Ministers’ Council failed to adopt the proposed guidelines due to lengthy delays in seeking officials’ approval, changing personnel and competing priorities. As a result, the draft best practice regulatory guidelines were never formally ratified.

In order to address both the staffing and revenue pressures and the disparity in the planning and approvals processes across local governments, the State Government is presently encouraging the amalgamation of small groups of local councils. To date, successful amalgamations and collaborative groups have been formed in the Goldfields-Esperance and greater Geraldton-Greenough regions. However, given there are still 140 local government authorities in Western Australia, further significant reform should be a priority.

An additional concern that the SBDC has from a small business perspective is the lack of coordination in decision-making, particularly across tiers of government. The

SBDC Advocacy Service is frequently involved in cases where small businesses are detrimentally impacted by poor communication and coordination between local government authorities and other government agencies.

Case Study

Over a number of years, the SBDC Advocacy Service has been assisting a prospective tourism operator in a regional area of Western Australia to work through the planning and approval issues he was experiencing with the local government and multiple State agencies.

Difficulties arose as the land which the small business operator had leased was controlled by both the local Shire and the Department of Water, however, there was no clear ultimate decision-maker in regards to the use of the land. The business owner encountered significant delays and often received conflicting advice and information over several years regarding the approvals required to commence operating his business from that site.

The extensive red tape and frustration involved in the long, drawn-out process ultimately lead the prospective entrepreneur to abandon his proposed business concept, at considerable personal and financial cost.

Recommended Measures

In the SBDC's opinion, the amalgamation of numerous local government areas would be a logical and rational step, especially for those areas that are especially small by way of geographical area or population size. However, it is recognised that this is a long-term goal which would require considerable time and effort to achieve.

In the short to medium-term, the SBDC supports ongoing dialogue with local governments and their representatives to facilitate greater consistency in local law making across local government areas. As a starting point, the SBDC would like to see all local governments adopt the MST as part of their TPS and to continually review their regulatory processes to see how they can be more small business friendly.

In relation to improving communication and coordination between government bodies at different levels, the SBDC supports the following recommendations made in the RTRG report⁹:

Recommendation 4.3: Western Australian Government agencies should be encouraged to create single portals for information required in multi-agency approval processes.

Recommendation 4.4: The Western Australian Government should introduce a 'lead agency' framework for multi-agency decision-making processes.

ACCOUNTABILITY AND TRANSPARENCY

The LG Act requires local government authorities to forward copies of proposed local laws to the Minister for Local Government (and other relevant State Ministers where appropriate) in fulfilment of their advisory function. The Department of Local

⁹ Ibid p.49

Government then examines the proposed local laws on behalf of the Local Government Minister and gives specific consideration to:

- whether the proposed local law is adopted under the correct Act of Parliament;
- whether the proposed local law is in conflict with the LG Act and any other law;
- matters raised previously by the Joint Standing Committee on Delegated Legislation; and
- State Government policy issues.

In June 2010, the Director General of the Department of Local Government distributed a circular¹⁰ to all local governments advising that from 1 June 2011 all local laws would be subject to the State Government's new Regulatory Impact Assessment ("RIA") process. The RIA process provides a systematic analysis of new and amended regulatory proposals through a Preliminary Impact Assessment and, where significant negative impacts on business, consumers or the economy are identified, a more detailed analysis and consultation through a Regulatory Impact Statement.

The Department of Treasury, which has overarching responsibility for the RIA gatekeeping process, has advised the SBDC that the commencement date for the catchment of local laws has been indefinitely deferred and that over the immediate future they will not be subject to RIA. The SBDC believes that subjecting proposed local laws to the RIA process would improve overall accountability and transparency of local government decision-making from both a small business and broader community perspective.

A number of cases have been raised with the SBDC Advocacy Service about local governments commencing the enforcement of local laws or regulations that had previously existed but were not enforced. These involved signage requirements and commercial vehicle parking restrictions (see case studies below).

Case Study

The SBDC Advocacy Service was contacted by a regional small bed and breakfast operator regarding an issue with signage. Approximately 12 years ago, the business owner had erected a number of small signs on the town's main road directing traffic to his business. The SBDC was advised by the local government that approval had not been given but that the presence of the signs was tolerated.

However, in mid-2011, following complaints by community members regarding general signage along the main road (and not specifically his signs), the Council advised the small business owner that the signs had to be removed within seven days or the Council would remove them.

Although the local government claims that approval was not originally granted for the erection of the signs, the local government's tolerance of them created an expectation for the business operator that their presence was permitted.

¹⁰ Circular No. 06-2010

(<http://dlg.wa.gov.au/OpenFile.ashx?Mode=446E37686749376A356D684D2B6E6D6D4D6E555273773D3D&ContentID=4D5A4C41546735687865773D>), accessed 18 October 2011

Case Study

The SBDC became involved in preparing advice to the Minister for Small Business in response to concerns raised by a residents association in the northern Perth suburbs following a local government's decision to amend the local TPS.

Prior to the amendment, the local government tolerated the parking of commercial vehicles on residential lots and had not enforced the existing regulation that no more than one commercial vehicle may be parked on any lot within the City (regardless of lot size or zoning).

The proposed amendments to the TPS provided a 'graded' approach so that the number of commercial vehicles permitted to be parked on a given lot depended on the lot size and zoning.

The SBDC advised the Minister that the proposed amendments were reasonable measures to protect the amenity and safety of residential areas within the City and certainly did not go beyond what other comparable local governments had in place. However, it was recognised that a number of small businesses who presently parked multiple commercial vehicles on their property were likely to be negatively impacted by the amendments, notably by the substantial cost of the planning application (\$6,600 per application).

In the SBDC's opinion, the local government's tolerance of the parking of commercial vehicles up until that time had created an expectation among small businesses in the locality that it was an acceptable practice and that business and community support for the proposed amendments may have been more widespread if the existing regulations had been enforced.

Issues occur when an expectation has been created that a small business may operate in a certain way (and make commercial decisions in this respect) due to an historical non-enforcement of a particular local law, only for the local government to make a decision to enforce that law.

Recommended Measures

The SBDC supports the introduction of the Western Australian Government's RIA process to local laws as soon as practicable in order to improve regulatory oversight of decision-making by local governments, and provide a clearer distinction between local governments' policy-making and decision-making duties.

Although detailed consideration and drafting would be essential, the requirement for local governments to publish key performance indicators and statistics relating to local law compliance (potentially linked to funding), could act as an incentive for local governments to ensure local law enforcement is maintained.

CAPACITY AND COMPETENCY

The SBDC notes that some Western Australian local government areas have a smaller population than many primary schools, with 18 per cent of local governments in the State having less than 500 electors (the State's smallest local government authority only had 67 electors in 2010).

Just like small businesses themselves, very small local governments often have problems attracting qualified and competent staff for specialised positions (such as managerial roles, town planners, engineers and building surveyors), particularly in regional and remote areas. The lack of appropriately skilled and experienced council

staff can lead to poor or inconsistent decision-making, which can have a detrimental impact on small businesses.

In July 2010, the Local Government Reform Steering Committee undertook research that revealed that few Western Australian local governments had a plan in place for the management of their assets, finances or workforce. The research indicated that 68 per cent of local governments did not undertake corporate business planning, 81 per cent conducted limited or no planning for asset maintenance and renewal, and 36 per cent undertook limited or no strategic planning.

The case study below highlights an example, which is especially apparent in regional areas of the State, of where decision-making and local government advice to small business can be inaccurate or deficient, potentially due to a lack of specific expertise in specialised positions.

Case Study

A small business owner contacted the SBDC Advocacy Service following issues she was experiencing with the planning department of her local government. The client wanted to start a mobile hairdressing business in a regional location but was advised by the Manager of Planning, Building and Health at the local government authority that she would have to apply for planning approval, despite no building or premises being used.

In investigating the matter, the Advocacy Service discovered that no local law existed pertaining to itinerant businesses. Despite this, the Manager of Planning, Building and Health advised the client that she needed to present a business proposal to the Council and that the proposal would be advertised for public comment before a decision was made to approve the application.

Following advice from the Department of Local Government, the SBDC contacted the Shire to advise that given no local law existed to prohibit the proposed business the local government could not impose the requirements mentioned above. In line with this advice, the local government agreed that the mobile hairdressing business could begin trading but also undertook to design and implement an itinerant business policy.

Recommended Measures

It is recognised that attracting labour to both metropolitan and regional areas is a significant issue not only for industry but for all levels of government. The SBDC believes that the amalgamation of some local governments – particularly in regional and more remote areas of the State – would offer significantly improved services to local communities and small businesses.

Small regional local governments are unlikely to have the population size or diversity to supply suitably skilled and qualified local government officers for specialist positions ranging from finance, planning, health and safety, compliance and human resources. Amalgamating local governments is likely to enable councils to attract and retain better skilled officials, to the benefit of improved local decision-making.

ACCESSIBILITY AND SERVICE

A common complaint made by small business is that local governments have an ingrained culture that is not supportive or understanding of their needs. The SBDC Advocacy Service frequently deals with complaints from small business operators who have encountered what they perceive as poor customer service or a general anti-business approach by local governments to processes, timeliness of service and communication.

Small businesses often report finding local governments inflexible and having an attitude of strict compliance rather than assistance (i.e. "we're here to enforce", rather than "we're here to help"). These concerns echo the RTRG report's finding that the performance of government agencies overall (not limited to local governments) was generally not conducive to supporting the growth and development of small business in Western Australia.

As the RTRG report identified, "Changing the regulatory culture of government agencies is the biggest challenge facing the Government in implementing its reform agenda to reduce the regulatory burden on our community."¹¹ Accordingly, the report stated¹²:

The most effective mechanism to encourage culture change is to introduce incentives. Commonly used incentives to change the culture of agencies are transparency and accountability.

Lack of flexibility and the pedantic bloody-mindedness of some local governments have the potential to stifle local small business growth and cost prospective business operators significant amounts of money, as the following case study demonstrates.

Case Study

The SBDC Advocacy Service assisted a client who wanted to start a daytime kennel facility for dogs. According to the client, all required paperwork was submitted to the local council in the correct format and manner. The local government advised the client informally that the council had reservations about the business but assessed the application as per the standard procedures.

However, the client's application was refused in the first instance as the local government required noise and waste surveys. In line with this, the client engaged specialist consultants to conduct the surveys and provided full reports on re-submission of the application. The client also provided examples from similar businesses in Western Australia and across Australia.

The business application was refused on a second occasion, this time due to a lack of parking at the premises. In reply, the client made modifications to the physical layout of the business to address the local government's requirements regarding parking.

The application was then refused a third time, the reason cited being a lack of suitable landscaping. While the proposed business site was a vacant lot, the local government required landscaping improvements (including specifying the inclusion of mature tree planting) at a cost of \$20,000.

Unfortunately, due to the hurdles encountered and the lack of common-sense demonstrated by

¹¹ Red Tape Reduction Group report *Reducing the Burden – Report of the Red Tape Reduction Group*, p.51

¹² *Ibid* p.51

the local government, and despite the assistance of the SBDC Advocacy Service, the client withdrew the business application, citing the large financial outlay and amount of time already spent on the whole process as dooming the business proposal before it even got off the ground.

Anecdotally, it has been reported back to the SBDC that local governments appear to expedite matters after the SBDC Advocacy Service becomes involved and advocates on behalf of a particular small business operator. Although the influence that the SBDC is able to exert often leads to a positive outcome for the small business, this is not something that the agency is able to sustain long-term for all aggrieved small business operators in the State. It goes without saying that this does not provide comfort to the countless number of existing and prospective small business operators who battle local governments without the assistance of the SBDC Advocacy Service.

The RTRG report also noted small business complaints about poor customer service levels resulting from the inconsistent interpretation of legislation, policies and rules across all levels of government. The major causes of inconsistency in interpretation were identified as¹³:

- rules are not written in 'plain English' and are difficult to understand;
- rules are often ambiguous and allow significant latitude for individual interpretation;
- staff are not provided with clear guidelines on how to interpret the legislation/regulation; and
- guidelines which clearly state examples of how the rules are applied aren't provided to applicants.

Recommended Measures

The SBDC believes that local governments should publish and make publicly accessible internal policies and guidelines used in decision-making processes, including clearly defined timeframes for common applications and approval processes. This view is echoed in the RTRG report and is a recommendation applicable to all tiers of government.

CONCLUDING STATEMENT

The SBDC has suggested a number of recommended measures throughout this submission in relation to the role of local government in business regulation around the four key themes of coordination and consistency, accountability and transparency, capacity and competency, and accessibility and service.

Application of the RIA Process

The introduction of the RIA process by the Department of Treasury to local laws would provide an immediate improved model of regulatory oversight of local government decision-making. The RIA process was recognised in the RTRG report as an "extremely positive step" to improving transparency and accountability¹⁴.

¹³ Ibid p.46

¹⁴ Ibid p.48

Adoption of Model Scheme Texts

It is regrettable that the significant work undertaken by the likes of the SBDC and the Department of Planning has not progressed further, and that a large majority of local governments have yet to fully embrace and adopt the MST and its model definitions. There continues to be considerable differences between local government authorities in terms of the restrictions and costs they place on home based businesses and other businesses.

The SBDC would therefore welcome further promotion of the benefits of the MST by the Department of Local Government and measures to increase its adoption and acceptance by the State's local government authorities.

It is noted that the RTRG report recommended that "any metropolitan local government seeking variation to model laws should require Ministerial approval"¹⁵. The report also recommended that "All local laws should be reviewed and consolidated" and the *Local Government Act 1995* amended "to require local governments to list all local laws that are outside the proposed model laws in their annual report."¹⁶ The SBDC is very supportive of both of these suggested measures.

The creation of information portals for multi-agency decision making

The RTRG report highlighted Landgate as an example of an agency taking a positive approach to information sharing. Landgate, a Western Australian statutory authority, maintains the State's official register of land ownership and survey information and is responsible for valuing Western Australian land and property. Landgate has led an across-government initiative to create a single portal for businesses to access a range of information held by a variety of government agencies without needing large infrastructure upgrades to overcome incompatible systems.

A project similar to that pursued by Landgate, at a local government level, has the potential to deliver significant benefits to small businesses, lower costs and facilitate the sharing of information between agencies. A portal that included model definitions or home occupation licensing information across all local governments would, for example, allow small businesses to easily access key information and make comparisons from a single online point.

Amalgamation of local government areas

A long-term recommendation, the amalgamation of local government authorities in both metropolitan and regional Western Australia would provide substantial benefits to small businesses and the wider community. In local government areas with low population catchments, enlarging the pool from which local government appointments can be made is likely to improve skills and experience levels, leading ultimately to better and more consistent decision-making.

The SBDC notes that in June 2011 the Minister for Local Government announced that an independent analysis of the governance structure of the Perth metropolitan area would be undertaken. The Metropolitan Local Government Review Panel,

¹⁵ Ibid, Recommendation 15.4, p.151

¹⁶ Ibid p.151

which is chaired by leading academics, released an issues paper on 31 October 2011 (with submissions due by 23 December 2011). The Panel's objective is to submit recommendations to the Minister for Local Government by June 2012 on appropriate boundaries and governance models for local governments in the Perth metropolitan area.

Yours sincerely

~~Jacky Finlayson~~
~~MANAGING DIRECTOR~~

3 November 2011