

Relative Costs of Doing Business in Australia: Retail Trade

**SUBMISSION by the OFFICE OF THE
AUSTRALIAN SMALL BUSINESS COMMISSIONER**

JULY 2014

We are writing to provide some observations on small business aspects of the *Relative costs of doing business in Australia: Retail Trade* interim report, principally on the small business environment within Australia. The thrust of this submission is primarily based on practical insights and the Office's experience of everyday operations in the retail sector. In doing this, we take a broad view on the cost of doing business that is inclusive of day-to-day operational costs (such as, raw materials and wages) and costs that are part of the wider business infrastructure, such as regulatory compliance costs and access to information and justice.

The cost impact of the wider business infrastructure can be as important to the profitability of a small business as the day-to-day operational costs. This may be a guiding factor in choosing where to set up a business globally. Issues like political stability, the effectiveness of institutions, rule of law and the quality of regulatory systems have a critical impact on the profitability of business and negative impacts can also be viewed as business costs.

In our observations, we provide coverage of some of specific issues that have been raised with our Office by small business and impact the costs of retail trade in Australia. However, our observations focus on two pillars of government responsibility that relate to the overall business infrastructure:

1. the ability for small businesses to access information and improve their management skills; and
2. how small businesses can strengthen their business practices by resolving disputes through efficient methods that support their trade and on-going business relationships.

Specific issues

Through our engagement with small business, a number of issues have been raised with us concerning matters that impact the cost of operating a retail business in Australia.

Discrete issues that have been raised and observed by us include:

- The impact of online shopping and purchases from overseas retailers – although the impact of greater competition through e-channels has been raised, there are also opportunities for domestic retailers by changing the way in which they operate. This includes potential cost savings over a “bricks and mortar” approach and opportunities to trade into foreign markets at an historically low cost;
- Market dominance of larger businesses inside a smaller retail market can impact the ability of small business to compete where small business may have a lesser ability to negotiate the price paid for inputs and terms of trade more generally;
- The impact of penalty rates on business operations, particularly on the ability to flexibly use employees and for owners to choose when they personally work in a small business;
- Concerns about consumer confidence impacting business profitability;
- The challenge for small businesses in certain circumstances to gain fair retail leasing terms, and
- A reported rise in the cost of transport and courier costs.

Please let us know if you would like further detail on any of these issues.

Framework for governmental activity

Government has a role in improving the business environment, with two enduring core responsibilities; namely provision of information and justice. These pillars have a critical impact on the profitability of business and negative impacts can be viewed as business costs.

Our Office has a credo that '*No small business should fail through lack of access to information*'. The facilitation of access to information is a core responsibility of government. It is appropriate for government to commit resources to information and other supporting services, especially where the behaviour of businesses participating in a particular sector is regulated. Access to information is a key component of a competitive marketplace.

The second enduring core responsibility of government when intervening to regulate business is to provide an appropriate system of justice. Previously, provision of justice focused on placing wrongdoers in prisons. Refinements and sophistications over time have developed various means of providing systems of justice, which are not confined to punishment of offences against the Crown but extend to finding justice for those in private conflicts. Alternative dispute resolution has emerged as an appropriate measure for according justice in business dealings.

A small business focuses on plying its trade or profession. Disputes will arise from time to time, but small businesses will often not have the skills and resources on hand to deal with these incidents that arise in the course of business but are not a part of the *ordinary* course of that business. These types of business disruption are not easily catered for by small business and, depending on the particular dispute, can impact small business disproportionately (particularly where there is unequal bargaining power).

In applying the pillars of access to information and justice, a deregulation lens should also be adopted. The government's red tape reduction programme aims to reduce unnecessary red tape costs on individuals, businesses and community organisations. There are five key areas of focus – namely volume, duplication, consultation, post-implementation reviews and the role of regulators. In addition, the Council of Australian Governments, by working at the national and state/territory levels, is focused on improving the environment in which Australian businesses operate and to enhance productivity in the national economy.

In prompting business to contribute to the deregulation agenda, our Office invites small businesses to question why a regulation exists and, if this question does not produce a satisfactory response, it is likely that the regulation is ripe for deregulation action. Further, we encourage regulators to adopt a facilitative approach to administration of regulation, with a focus on educating to comply rather than leaping to enforcement of compliance. Another observation we make is to note the savings and benefits to business of deregulation and to include, as a component of benefit, the reduction in emotional stress associated with compliance. Though difficult to quantify, reducing stress for small business is a real benefit of deregulation.

Access to information

By accessing appropriate information and resources, small businesses are empowered to work smarter, compete more effectively and reduce the costs of operating their business. This relates to small business operators getting the right information, adopting the right

business management practices to utilise that information (and propel the business) and accessing the right advisors. These are a focus of our Office in engaging with small business.

Our Office regularly meets with people who are very enthusiastic when they go into a business and who are prepared to work 100 plus hours a week. However, good management practices are key to the success of these small businesses. Business owners wear many hats and have many responsibilities, and it is often not feasible to be an expert in all areas of business management; a small business operator is rarely a lawyer, accountant, marketer and strategist all in the one package. Seeking professional advice can provide valuable information and services to assist business operators in the management of their business.

Our Office encourages business operators, particularly those who are executing a contract or signing a retail lease, to get professional advice. This professional advice often brings attention to obligations that a business operator may not be aware of, saving businesses significant time and money. We stress that when using an advisor, the approach should not be to merely get a “yes” or “no” on a contract and get out of there as quickly as possible to avoid additional charges. Entering into a business arrangement is an important decision and it will have continuing implications for the business. A practical approach is to have the professional advisor highlight in different colours what each of the parties must do. This approach provides clarity of the obligations and allows small businesspeople to return to the document in the future and more easily find their way about.

Another critical factor for small business is linking with industry and professional associations and chambers of commerce. By subscribing to such associations, business operators are able to access networking and educational opportunities. Drawing on the skills and expertise in such networks allows business operators to reduce their business costs. In this context, our Office has also encouraged industry and professional associations and chambers of commerce to continue to develop educative aids for their small business members, including considering accreditation courses.

Access to justice

The cost of a dispute for small business is not just the financial cost of the lost business and the cost of pursuing resolution (such as legal costs), but also the opportunity cost and emotional stress involved. The opportunity cost includes what the small businessperson would otherwise have achieved for the business using their time and effort. For small business, resolving a dispute takes someone out of the business. Added to this cost is the emotional stress that disputes have on small business operators.

A particular difficulty of small business disputes is that they do not generally arise in the ordinary course of operating a small business. They tend to arise periodically and in unusual circumstances. Accordingly, small business operators may not identify an emerging dispute until a late stage and they will not necessarily have developed the skills to resolve the dispute. Through the early identification of emerging disputes, financial and time costs can be dealt with easily, incurring much less of a financial cost to both parties. This also means that business relationships that are critical to running a small business may be maintained.

Effective alternative dispute resolution, that operates with speed, at low cost, informally and collaboratively, will generally be of greater benefit to small business – principally because it facilitates parties continuing their commercial relationships. Also, the potential cost of legal proceedings will in many small business disputes outweigh the amount in dispute. Drawn out legal proceedings with the possibility of appeal may also mean that parties do not deal with each other commercially while the action proceeds and the breaking of this business relationship is likely to persist beyond.

The success rate of mediation of small business disputes is extremely high. Mediation conducted or organised by the State Small Business Commissioners consistently exceeds a success rate of 80%. It also can be more effective than other approaches, like test case funding, since it can apply to any dispute and not merely to issues that are gauged to have sufficient “legal merit”.

Our Office recently launched an online dispute resolution portal – *Dispute Support*. The online portal was developed in collaboration with states and territories, and consolidates dispute resolution information, resources and services available for small businesses across Australia. This single portal provides easy, tailored access to the most appropriate low cost service available to small business operators to resolve disputes, while also providing information on dispute resolution processes and strategies for avoiding and managing disputes.

By ensuring that small business has easy access to justice through alternative dispute resolution one of the potentially costliest parts of operating a small business is relieved. For disputes that ultimately require determination by the courts, streamlined processes for lower-value disputes are also beneficial for small business.

Conclusions

Two significant ways to relieve the relative costs of Australian small business retailers are to ensure that small business is able to access:

1. the right information and skills; and
2. efficient dispute resolution services.

These are key roles for government. However, there is also a responsibility on small business to adopt good management practices, access skills that they do not possess (such as through the use of professional advisors) and operate in a way to minimise and manage disputes.

Through a deregulation lens, further reduction in relative costs may be achieved by adopting a facilitative approach to the administration of regulation, principally by focusing on education to comply rather than leaning to enforcement.