

V13/6392

Regulator Engagement with Small Business
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

15 March 2013

Dear Dr Mundy,

RE: Regulator engagement with small business

Thank you for the opportunity to comment on the Issues Paper: Regulator engagement with small business.

The Office of NSW Small Business Commissioner advocates on behalf of small businesses in NSW and supports small businesses by,

- providing dispute resolution services,
- delivering quality business advice through Small Biz Connect, and
- speaking up for small business within government.

Since being appointed as the NSW Small Business Commissioner, I have conducted two Listening Tours around the State to hear directly from businesses about the impediments they face that negatively impact on their business growth. I also regularly travel throughout the State to meet with small business operators and listen to their concerns. The clear message I receive is that small business operators are overwhelmed by the compliance obligations required by all three levels of government. From my regular discussions with small business, I estimate that small businesses spend approximately 60% of their total time on compliance obligations. This is a significant amount of time which diverts small businesses from profit generating activities. This submission provides my comments on the key issues in your Issues Paper.

How might regulators reduce compliance burdens on small businesses?

I consider that the number one priority for this Inquiry is firstly, the inability for small businesses to comply with an overwhelming and confusing plethora of regulations and secondly, for regulators to have a flexible response for inadvertent non-compliance by small businesses. This issue also applies to the section Issue "Rationale for treating small businesses differently" which is discussed further below.

From the perspective of most small businesses, there is an overwhelming array of regulations from three levels of government which they must comply with at all times. To add to the confusion, this array of regulations will usually overlap in certain areas, sometime across the same tier of government and sometimes between tiers of

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government. Given the limited resources, capability and sophistication of most small businesses, a significant proportion of small businesses will not have a sufficient understanding of what it needs to comply with certain regulations. In the vast majority of circumstances, small businesses want to do the right thing and comply, even if the rule seems burdensome, unfair or illogical. This is made worse where it has problems or delays in obtaining clear direction from relevant regulator about what it needs to do to meet its obligations.

Given this, there will be many instances of inadvertent non-compliance with regulations, there is a need for regulators to offer small businesses “some slack” when there is non-compliance. Regulators should have the discretion and flexible policies and processes, to treat small businesses differently in these circumstances, such as not enforcing or waiving these potential infringements.

Case study : A flexible response to inadvertent non-compliance

A small business trader was the subject of a random workplace inspection. The trader, who had been operating his business for 23 years, was informed that he required to comply with a certain regulatory requirement to operate his business. Unfortunately the trader had never been informed that this was a requirement for his business. The trader immediately agreed to meet this regulatory requirement but was then told that his business would not be able to trade until this regulatory requirement was granted which could take up to six weeks.

While it is the business owner’s responsibility to understand and comply with their regulatory obligations, the NSW Small Business Commissioner was aware that the a six week delay to this business resuming its trade would result in the business needing to lay off staff as well as meaning no income for the business owner until the licence was obtained.

The Small Business Commissioner’s Office contacted senior management at the relevant government agency and managed to speed up the process of granting the regulatory requirement. This intervention led to the licence being granted in less than 24 hours which allowed the business to resume operation and keep all their staff employed.

Compliance objectives

There appears to be a disconnect between compliance and enforcement regimes and achieving change in behavioural of firms. Often the focus of regulators is to take a heavy handed approach to police and impose significant regulatory obligations on the whole industry just to eliminate or prevent the poor practices of a few bad operators.

Regulators should focus on changing the behaviour of firms in the market, by educating and assisting the majority of small businesses on what they need to comply

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and being responsive to any specific needs of these businesses. Heavy handed enforcement and punitive action should be focused on the small proportion of bad operators.

Many regulatory regimes are too risk adverse and set regulatory standards that are too high, when a lower standard is likely to be acceptable. The result is a significant volume of unnecessary compliance responsibilities is imposed on the vast majority of operators who will do the right thing anyway.

The following case studies indicate some of the compliance difficulties that small business face.

Case study 1: Cutting through the red tape

The Office of the NSW Small Business Commissioner was contacted by a business which was subcontracting to the head contractor of a Roads and Maritime Services (RMS) infrastructure project. The business raised concerns about the onerous amount of documentation required by the head contractor in order for the business to subcontract on the project. This documentation included 13 work, health and safety documents, six industrial relations and human resources documents and five insurance certificates of currency in addition to a statutory declaration that needed to be witnessed by a Justice of the Peace for every invoice submitted.

This example raised two issues:

- This is an onerous amount of information for a small business to supply
- Most of this documentation is not a requirement of RMS as thought by the business, but instead a commercial requirement between the subcontractor and the head contractor.

To make it clear to industry what documentation is required by RMS of head contractors and of subcontractors, the Office has partnered with RMS to articulate what the minimum requirements are. This information will be co-published on the Office and RMS website and communicated to the relevant construction industry groups. The key benefit of this initiative is that subcontractors will be in an informed position when entering into a contract with a head contractor and clearly understand which requirements are commercial arrangements and which stem from RMS.

Case Study 2: Onus on the small business owner

When a small business is non-compliant (either intentionally or unintentionally) the regulator has discretion to apply penalties. However, there is no remedy or compensation available to small business when a regulator makes errors causing inconvenience and in some instances financial loss to a small business.

The Office of the NSW Small Business Commissioner was approached by a small business that was experiencing problems with a council's modified Development Application (DA), involving the granting of extended trading hours and a liquor licence.

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The modified DA was approved, and the business began operating during the extended trading hours and serving alcohol. The council then referred to the business' original DA and claimed that the business did not have the required approvals. When the business explained that council was referring to an out-dated DA, the council acknowledged its mistake and then incorrectly began referring to the neighbouring property's DA and wrote to the Office of Liquor Gaming and Racing to argue that the business was not licensed to serve alcohol at the times permitted. The Office of Liquor Gaming and Racing then contacted the business regarding their licencing rights.

The small business wasted a significant amount of time resolving the mistakes of council. This ultimately impacted on the business' operation and profitability during this period. This example also highlights the poor coordination between state and local government regarding this compliance and enforcement role which has in the end had an adverse impact on business.

Communication

Many regulators put information on their website with the expectation that small business know that it exists, can find it, have read it, understand it and know how to implement it. Small businesses do not have the resources to engage in this undertaking.

Government needs to communicate clearly with the small business sector so that they understand the services provided and how and where to access the information they require. An effective communication strategy with small business operators should consider:

- Targeting the right group – being specific about the type(s) of small business you want to target, and then identify their particular needs, abilities and interests before you communication is designed. For example, accountants, retailers and plumbers will be differing priorities, education and computer literacy levels. English proficiency will also vary between small business operators.
- Type of engagement – multiple channels of engagement are required to effectively achieve engagement with the small business sector. A multipronged approach could include any combination of the following:
 - Utilising the networks available through industry associations, local business chambers and local councils. For example, attending and speaking at regular and special meetings, events and tradeshow. Also contributing content (text or video) to industry journals, magazines newsletters and websites.
 - Approaching small businesses directly where they work.
 - Providing telephone, email and face to face contact points. For example, the Office of the NSW Small Business Commissioner provides dedicated telephone and email support to assist the NSW small business sector.

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Through the Small Biz Connect program the Office also provides face-to-face business advisory services.

- Format and tone – communication needs to be simple and relevant.
 - Overall communication needs to be concise and in plain English
 - The relevance/benefit/risk needs to be communicated up front
 - Jargon and bureaucratic language needs to be avoided
 - Images, simple graphs or other visual elements may strengthen the message
- Demographics of small business operators – In deciding what medium, technology and writing style to use it is important to consider that:
 - 73% of NSW small business operators are aged over 40
 - 68% of NSW small business operators are male
 - 34% of female NSW small business operators work from home
 - Spouses are often involved in a small business. For example, while a tradesman is often male, his female spouse may be heavily involved in the administrative side of the business. This often occurs while she is employed in another capacity and/or raising a family. In this instance, targeting the spouse is very important.
 - Small business operators in some regional areas may have limited access to the internet. Therefore, downloading large documents can be difficult or impossible.
 - It is important to consider whether material requires translation. Twenty-three per cent of NSW small business operators speak a language other than English. Of those, 11% do not speak English well or at all.
 - The Australian Bureau of Statistics provides detailed information on the composition and characteristics of small business operators by industry. This may be helpful to consult in developing a communication strategy.

Regulator practices affecting engagement with small business

The small business sector is notoriously hard to engage. The sector represents businesses from diverse industries and individual businesses are not often part of an industry association. They are also typically very time poor. Feedback received during recent Listening Tours indicates that small businesses acknowledge that they are difficult to engage with, but still want their opinions known.

For Commonwealth and State regulators seeking to engage with NSW small businesses, the following approaches are available through the Office of the NSW Small Business Commissioner:

- The regulatory authority may consult with the Office in the early stages of policy/regulatory development. This would enable resulting regulation to be developed with the needs of small business accounted for rather than retrofitting at a later stage. Given that 96% of all businesses in NSW are small businesses, this would likely be an efficient approach.

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- The Small Biz Connect program has a network of approximately 60 business advisors across the State. This network may be utilised by other agencies (on a fee for service basis) to disseminate information and provide tailored business advice to many small businesses that reflect any changes to the regulator environment in which they operate.
- The Office encourages private sector companies and government agencies to participate in mediation to settle disputes.

The following case study highlights how the Office has provided assistance to other agencies.

Case study 3: Helping Government to be small business friendly

In January 2013 the [NSW Government Procurement: SME Policy Framework](#) was released which is a welcome reform for small businesses in NSW. The reforms increase opportunities for SMEs to gain government business, simplifies contracts and the contracting processes and removes barriers to procurement opportunities.

During the development of this reform policy, the Office of the NSW Small Business Commissioner was consulted by NSW Procurement on several occasions about how to make it easier for small businesses to procure to Government.

One of the main recommendations was that Government should hold “Buyer’s Forums” around the State to give small businesses an opportunity to meet with Government agencies to discuss their service offerings. As a result of these recommendations, NSW Procurement has incorporated this concept into the Policy going forward. The NSW Government plans to conduct metropolitan and regional presentations to small businesses around the State to present and discuss procurement opportunities and explain and discuss the NSW procurement system. The www.procurepoint.nsw.gov.au website will list the schedule of these forums as they are released.

Such an initiative will give businesses a rare chance to engage face-to-face with Government about future procurement opportunities and give many businesses the opportunity to participate in what has traditionally been a difficult procurement process to engage.

Rationale for treating small businesses differently

Regulators should have greater flexibility to small businesses differently from large businesses, because of the disproportionate impact of regulatory and administrative burdens on small businesses and having regard to their limited capacity and resources to comply with regulations.

With this in mind, I submit that regulators need to have a “Think Small Business First” policy when treating small businesses. This means that regulators should exercise discretion, or be able to apply exemptions and more lenient treatment from certain

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regulations for small businesses on a case by case basis (particularly if the potential risk of breach is minor).

To implement this, I suggest that the regulatory framework could have a transparent mechanism (in the legislation or regulations) which authorises the regulator to have specific assist a small business that is affected by the blanket application of a policy or regulation, there is also a need for a transparent mechanism that small businesses Alternatively, the small business could refer the matter to the Small Business Commissioner in that jurisdiction to mediate the issue between the government agency and the small business.

The Productivity Commission should recognise that benefits from such an approach, which improves the sustainability of small businesses, and the flow on benefits to the economy from a healthy, diverse and growing small business sector.

The case study below illustrate the problems for small businesses and the need for regulators to provide a flexible and proportionate response to address the problems.

Case study 4: Environmental Compliance

The Officer of the NSW Small Business Commissioner was approached by a small business regarding concerns that the application of the *Liquid Trade Waste Regulation Guidelines 2009* by local councils is imposing unnecessary compliance burdens on small businesses throughout NSW. It may also not be delivering the objectives of improved environmental outcomes.

The *NSW Government's Country Towns Water Supply and Sewerage Program* provides financial assistance towards capital costs of approved sewerage and water supply infrastructure to local water utilities. To be eligible for financial assistance, local water utilities must comply with the *NSW Best-Practice Management of Water Supply and Sewerage Framework*. This includes implementation of the *Liquid Trade Waste Regulation Guidelines 2009*.

The Office's investigations indicate that some local councils are requiring onerous compliance burdens on small businesses under the *Liquid Trade Waste Regulation Guidelines 2009* which may not be necessary to meet the intended policy objectives. For example:

- Businesses producing hot food are classified as "low risk liquid trade waste dischargers" and therefore generally required to install and maintain a 1,000L grease arrester.
- This "one size fits all" requirement is not be appropriate for small businesses that produce very little grease.

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- There are smaller apparatus available in the market that would better suit the requirements of some small businesses and impose less of a cost burden on businesses.
- Where an exception is granted, the business is still deemed non-compliant and is subject to an additional usage charge of \$12.88/kl. This could cost a small business emitting minimal grease hundreds of dollars a year. It could also have a significant impact on neighboring small business in strata complexes where there is a single water meter.

Our ongoing investigations indicate that there needs to be more flexibility in relation to the application of this policy with respect to businesses' volumes and grease outputs.

Small business definition

The Office of the NSW Small Business Commissioner does not use criteria to define small business. We provide support to any business in NSW that asserts that they are a small business. In practice this has not resulted in the services of the Office being utilised by parties which would not be considered small businesses. In fact, we have found that it is those small businesses which genuinely need assistance that approach the Office.

Any proposal for a single definition of small business based solely on turnover, revenue, borrowings or employees is problematic. For example, a small agricultural business employing only family members might receive significant revenue after harvest. However, it likely incurs significant costs associated with production inputs resulting in a modest profit. Therefore any definition of small business based on revenue may see this type of business ineligible for support and services. Examples such as this are replicated across a vast range of industries.

Yours sincerely

Yasmin King
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15 March 2013

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