



"Uniting Small Business"

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Productivity Commission re Regulator Engagement

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The Tasmanian Small Business Council is pleased to provide input into the considerations of the Productivity Commission on the subject of "Regulator Engagement with Small Business"

Scale

Some 96% of all businesses in Australia are considered to be "small businesses" by whatever of the various measures government uses to determine such a conclusion.

With some 2.7 million such enterprises (Australian Taxation Office estimate) it is clear that regulations should be not only be made in such a manner that it is possible and practical to be able to comply with them but informing the regulated on how they should comply.

Australia's vast size, low density and multi layered administrative arrangements creates a significant challenge to good practice in regulator engagement practices.

Contemporary expectations are that regulator engagement should always be of the highest standard but because of the 'tyranny of distance' in this country, especially for Commonwealth agencies and some state jurisdictions, it is most often limited to either the standard letter and printed communication or electronic email.

Differentiation

Small businesses differ from large enterprises in a fundamental way in that they are operated by one or two individuals who act with a focus on productivity i.e. meeting the needs and wants of their clients at a profit.

This is not to say that small business owners don't seek to comply with relevant regulation but rather to set the scene about the environment in which knowledge of regulations is obtained and compliance can be achieved.

Small margins and small gross profits limit the ability of most small business owners to seek out compliance obligations because they just don't have time to do it themselves and can't afford to pay someone else to do it for them. Rightly or wrongly, small business owners rely on the regulator seeking the compliance to find the business and tell them what is required, not that they should have to do an exhaustive exercise to find out what they need to do.

Recommendation: *That upon the registration of a business name, the registrant is directed to a website location, specific to the industry chosen and the state/ territory in which its principal place of business is, which has a link/list of all the regulations or regulatory bodies it is likely to have to interact with.* This could be a joint commonwealth,

state and local initiative and may just highlight how many regulations some sectors of the industry need to comply with. It may also encourage some sectors of the bureaucracy to reduce or modify some of them.

Expectations

Start-up small businesses have little or no expectation on how they expect to be engaged with by relevant regulators. Many have little or no idea of the extent to which they will be expected to comply with the myriad of commonwealth, state and local regulations and for many their current involvement will have been for their local council rates and their driver's license.

For most, they expect to be told that they have a compliance responsibility, the level of it and be informed using the mode of communication most often used in their sector. In many instances, just how they expect the regulator to know about their enterprise is anybody's guess (see Recommendation above).

While regulators are expert in their particular field, small business managers are not expert in every field, thus communication and education will be key drivers in achieving compliance.

Equally, regulations should not be prepared and promulgated as a "one size fits all" solution because this is not so. Regulations should only relate to the degree or level of risk that may be present in the circumstance or enterprise.

Given that the overwhelming number of businesses are small businesses then regulations should be developed and promulgated to meet the small business risk profile and then, if necessary escalated in detail and complexity to meet the lesser number of enterprises where greater risk may be present. By this means they will become relevant and capable of effective implementation by the majority of users. The alternative defies logic.

It is unfortunate that in the most part, and the path used by regulators, is to create complex regulations designed to meet a "worst case" scenario rather than a "most case" reality.

Compliance

Issues around compliance also concern small business managers. If an issue is of such importance (risk) that regulation needs to be prepared then it is incumbent upon the regulator to police their regulation. While it is acknowledged that policing will be time consuming and expensive this fact alone should guide both the need for the regulation, the coverage and the method by which the regulator communicates the obligation.

If a regulation is too costly to police, by comparison with the level of public benefit then the regulation is at worst unwarranted or at best needs to be simplified and thus made relevant to the level of risk. In the most part current regulatory regimes are structured to pass the burden and costs of compliance to those that can least afford it. The Bureaucracy is paid by the public purse to achieve safe outcomes; the small business owner is not.

The reality of the situation is that with hundreds and possibly thousands of regulations that may be applicable the small business operator has no hope of knowing them let alone achieving acceptable levels of compliance.

Regulator Engagement

It is interesting to note the various attempts to address the burden of “Red and Green Tape” have resulted only in recommendations as to how to make it easier to comply rather than address the fundamental question of relevance, risk and efficiency.

Communicating to and with small business operators is difficult if for no other reason than their time is at a premium. Their personal endeavour is the main source of revenue for the business. It is therefore extremely costly for them to attend information meetings and briefings. If they are away from their business they lose income, they have costs of travel and attendance and often have to pay a locum to “hold the fort” at the place of their business.

What has been shown to be effective is to work through and with their relative trade association. While not all small businesses join their trade association (not a Chamber of Commerce) those that do respect the opportunity to learn from their peers and participate in relative trade education. These are the value points and regulators could take advantage of this channel. They should also be willing to pay appropriate costs just as they would if they chose to use public media, trade journals or electronic communication.

Equally it should be noted the one single communication is not enough, there is a need for regular contact and reminder if for no other reason than personnel change. In small business knowledge walks out the door with the individual. It is not part of a complex process of operational procedures that survive the change of staff.

Too rarely do regulators adopt the position that the regulated are clients of the regulator. If they were viewed in this light, the TSBC are positive that the style, intensity, language and commitment to the ‘client’ would have a significantly different tone and the messages would be more readily adopted. It is human nature that we hate being told what to do but if treated with respect and gently ‘sold’ to, we are far more likely to listen to the message, understand our obligations and be more willing to comply. This however has not been the language of regulators as they always have right and might on their side.

There are plenty of negative examples of ineffective regulator engagement (Workplace Ombudsman’s info line where the average waiting time over the last 3 weeks has been 45 minutes) however a positive example is WorkCover Tasmania who distribute a free monthly publication with interesting articles which are relevant to small business workplaces. It is in plain English, has relevant articles and provides practical ways that employers can meet and exceed their obligations.

Value

It would be reasonable for members of the Productivity Commission to ask the question about value.

With all the difficulty and complexity of achieving regulatory compliance in small business is it worth it? Perhaps it is a tempting proposition to simply close down any small business that is found to be non compliant!

In almost every field of endeavour the collective of the small business operators accounts for some 70 to 80% of the total productivity. Small businesses employ about half of the private sector workforce.

A report prepared by Price Waterhouse Coopers and released in June 2007 stated that:

“SMEs across all sectors have played a substantial role in contributing towards wealth generation in the Australian economy. SMEs enhance competition and consumer choice. It is estimated that the total value of family-owned businesses in 2006 was A\$4.3 trillion, which represents a greater value than the total of the ASX market capitalisation of all listed companies **plus** the total value of all managed funds in Australia”

A report commissioned by AMP and released in 2004 describes small business as:

“The engine room of the Australian Economy”

Productivity

Productivity should be a key consideration. Regulations that inhibit productivity must, by definition be bad for the economy. Simplicity and relative applicability will be keys to regulatory effectiveness.

Key Points to achieving effective regulatory engagement with small businesses will be:

- Practicality - a small business is likely to be able to comply
- Education – providing advice about compliance ahead of prosecution
- Communication – talk to small business operators when they are available to listen

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