



**SMALL BUSINESS**  
**AUSTRALIA**

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13 March 2013

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Regulator Engagement with Small Business  
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Please find attached the submission from COSBOA to the

**Study into Regulator Engagement with Small Business**

For any further information please contact me.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'Peter Strong', written in a cursive style.

Peter Strong  
Executive Director



# Study into Regulator Engagement with Small Business

## A response from the Council of Small Business Organisations of Australia

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## **Introduction**

One of the great concerns for the small business community is the behaviour of regulators who have responsibility for various policy and compliance issues that impact upon their businesses and upon their time as people.

Yet this is an area full of myths and legends. This is an area fraught with political needs and ideology that creates a perception of small business people as either victims of poor policy and over zealous regulator behaviour or a large group of people who can't be trusted to do the right thing.

These beliefs are what fuels debate and in our opinion creates so much noise that assessing the engagement of regulators with small business needs to be properly assessed and the level of problems, whether with the regulators or with the small business community, can be truly measured.

In the end the result of poor management of regulation will be a negative impact on small business, a failure to actually achieve good compliance and a less healthy community and economy.

The areas where regulators interact with small business people include:

Workplace Relations	Workplace Health and Safety
Public health and safety	Building and construction
Signage	Food safety
Business registration and	Fair trading
Gambling, gaming and racing	Tenancy & consumer protection
Environmental management	Planning, heritage & land use
Liquor licensing and management	Roads or transport
Superannuation	Financial & other professional services
Taxation	Transport
Discrimination	Storage
Opening hours	Company structure

No small business has to deal with all of those compliance issues yet many will have to deal with most of these issues.

The small businesses with the greatest contact with regulators will be those that employ other people and those in building and construction; shop fronts; manufacturing, transport, sales of any kind, health and the food sector.

These people in small business do not have experts to assist them. They do not have paymasters, OH&S experts, tax experts, health experts etc. These businesses are people who normally have very good skills in one or two areas and then are asked to be experts on a range of other issues. The behaviour of the regulator becomes a key to achieving compliance. If the regulator expects big business behaviour and knowledge from a small business then the regulator fails.

## **Key issues around our engagement with regulators.**

### **Process and communication**

Working with small business is about working with people. As a result the communications skills of regulators are of vital importance. It is also important to understand the capacity of small business when designing process.

If communications and process are designed for big business and for experts then this will fail in the small business environment and therefore regulation may also fail.

Communications and process designed, generically, for all small businesses will also fail due to the differing nature and needs of each sector. To communicate with a courier driver in the same way as communicating with a pharmacist is seeking failure not success. Process and communications must be designed for the specific industries and workplaces.

Some regulators and their employees are good at this whilst others, many indeed, have the wrong attitude and from that comes a lack of understanding and a regulation environment that is not efficient.

Below are some issues highlighted by our members and observed over many years, indeed decades, of dealing with regulators.

### **‘Belt Notching’ Regulators Vs ‘Clean Belts’**

There is an attitude and behavioural issue for a number of regulators who focus on catching and punishing business people and publishing these outcomes as success. The better regulators aim to work with the business community to achieve an environment of high compliance and efficient businesses where fines and punishments are rarely needed.

Some regulators will catch a business person and punish them and consider their job done; the good regulators will catch and fine a business person and consider their job has just begun. The first type of regulator will create a culture of fear and a lack of trust with no real change in behaviours. The second type of regulator will achieve better compliance through education and improved processes and communication.

Certainly the lowest form of regulation is naming and shaming individuals. Perhaps this has a place but it should be rarely used. If a business person is publicly humiliated it will affect their general health and the health of their employees and their families. In these times of deep consideration of mental health issues the mental health of small business people should also be considered.

Naming and shaming of regulators' staff who communicate the wrong information or make the wrong decisions is rarely, if ever, used. We would never support the naming

and shaming of inefficient or inadequate public servants. The same consideration should be given to the people in business.

### **Attitude of agency leaders**

The culture of an agency is often developed and enshrined by the executive and in particular the Chairman, CEO, Secretary or Director.

If the leader does not understand small business or respect their needs then the regulator will struggle to communicate with small business people and also to develop efficient processes.

A good example of this is the Australian Consumer and Competition Commission (ACCC). Since Rod Sims has been the Chairman of the ACCC communications have improved and processes are changing to meet the needs of the market place not the perceptions of the Chairman. The previous chairman showed good skills and abilities in communicating with large businesses but in our view he showed no understanding in how to communicate with the small business community. He did not understand the difference between big and small business, indeed we always felt that he demanded that small business have the same skills and abilities as big business. As a result the impact of his agency was always questioned and criticised from the small business sector.

There has also been an obvious and measurable change in the approach of the Fair Work Ombudsman since Nicholas Wilson has been in the job. The approach to communications and the language used has changed and become more constructive and useful. Engagement with the small business sector has been obvious and demonstrable. As a result the usefulness of the website has improved and the attitude of field offices has become more professional.

### **Attitude of agency field staff**

A key issue is the interaction between field staff of regulators and small business. This differs from agency to agency and from person to person but some regulators have a reputation for belligerence and bullying. This is mainly an issue at the Local Government level where health and planning issues are managed.

A regulator who walks into a shop or workshop and orders the owner and the staff around is not useful yet, at times, that is exactly what happens. Sometimes this occurs as a “one off” until that field officer is trained in professional communications but in other situations it is obvious that there is an aggressive policing culture in the organisation (which probably stems from the head and the executive).

### **Website usefulness**

This is an area of failure for most regulators. In particular the agencies responsible for safety have websites that fail a main tenet underpinning safety which is good

communications. Many regulators tend to believe that by having a website with the information in a language that is not always 'user friendly' is enough and they've done their job. Having a website helps, but certainly doesn't solve the communication challenge.

It is worth noting that the website for the fair work ombudsman receives positive comment from most of our members.

### **Help line operation**

The feedback we receive on help lines are, in the main, very good. The Australian Tax Office and the Fair Work Ombudsman, in particular, have professional well managed processes and staff.

The negative feedback is around waiting times which can sometimes extend well over an hour. Obviously that is not small business friendly and there needs to be a better solution than expecting people to be able to wait for such a long time for information they need to comply.

### **Policy development and regulator behaviour**

There is an obvious correlation between policy and regulation. This needs to be investigated further. A poorly designed policy will be difficult to police for a regulator. When new policy is developed there should always be involvement from the regulating agencies and small business to ensure that process and communications can be developed that will allow the policy to achieve its outcome. Otherwise the policy itself will fail.

Our members still hear field staff of agencies complain that the rules are not sensible but “they didn’t design the rules they just enforce them”.

### **Reporting styles and language**

Various regulators have different ways of reporting their activities. Some will highlight an increase in the number of prosecutions and actions as a good thing and others will highlight a decrease in the same activity as a good thing. Others will hide the raw number of actions they take, as they are low, and use percentage figures instead. In spite of low numbers they may still make exaggerated statements intimating that problems are severe. This is probably undertaken to provide a justification for their existence or their level of funding.

The reality is that, except for a very limited number of areas, compliance by the small business community is very high.

Last year, for example, there were some 26,000 employers forced to pay money to employees and ex employees. That is around 3%. Yet for many years the Fair Work Ombudsman would make this sound like a disaster of high proportions. The FWO

has changed its language in recent years but will still, at times, exaggerate an issue which makes employers appear to be a group of incompetent people or dishonest people.

More recently the Fair Work Commission has shown that there were some 16,000 unfair dismissal claims in the last twelve month period measured and less than half were found to be unfair. Of the ones that were unfair only 20% were from small business. It is wrong to be unfairly dismissed and it is wrong to have to prove your innocence and/or pay 'go away' money when you have done nothing wrong, but the problem is not at the pandemic levels that some would have us believe.

Another example is the Australian Human Rights Commission which makes a statement that "*A significant number of complaints received each year by the Commission are against small business, which reflects the unique working conditions that occur in many small business environments.*" This gives the impression that there is a major problem. Yet the AHRC only received 2606 complaints last year (considering there are over 21 million people in Australia and over 2 million small businesses this is not an alarming figure) and further analysis by COSBOA shows that most of the complaints were NOT about small business. This is a behaviour that needs changing.

Justifying funding or comments with false and exaggerated claims is not a good behaviour for a regulator.

### **Third party impacts**

There also needs to be a consideration of compliance demands on the suppliers to small business. In particular the regulator's (APRA) pressure on banks has a negative impact on our capacity to get business loans. This is an issue COSBOA is pursuing with APRA.

## ***Examples of behaviour and communication***

Below are several examples of agencies and their behaviour – good and bad.

### **The Australian Human Rights Commission**

The Australian Human Rights Commission (AHRC) is a prime example of poor communications and reporting and a lack of understanding, and apparently any desire to gain understanding, of small business.

Information called "Help for small business" can be found on their website.

This help page includes misinformation and threats. It provides advice on how to achieve compliance, advice that would be impossible for a small business person to achieve. This includes a "guide to vicarious liability" which states "As an employer, you may be liable for the actions of your staff." It then provides a further guide to understand what 'vicarious liability' is and the positive steps you can take to minimise

the risks.” This guide provides advice on ‘reasonable steps’ to take to prevent harassment. There are 17 of these reasonable steps. These steps are suitable for a large business but are nonsensical for a small business. This is not reasonable.

There is no mention of what to do if you, as an employer, are harassed. It seems that an employee harassing an employer is OK. Or the AHRC is so distant from the business community that it believes a small business is not own and run by a person?

The AHRC completely fails as a regulator through its process and communications and also through its lack of understanding and its attitude. It also fails in its job to be fair to all and create an environment that is fair to all. The AHRC vilifies over 2.5 million people, those who are self employed, with its language and the inappropriate use of statistics to justify those statements.

As mentioned above the AHRC states that “*A significant number of complaints received each year by the Commission are against small business, which reflects the unique working conditions that occur in many small business environments.*” This implies that small business workplaces are not good places to be. When COSBOA contacted the AHRC and asked exactly how many of the 2606 complaints they received were about a small business the reply was that they didn’t know and would have to go back through their records to discover the number. The AHRC made a statement based on nothing but guesswork and opinion. Further research into the figures (difficult as it is) shows that around 40% of complaints may be employment related. That is not enough information to vilify a group of 2.5 million people who employ almost 5 million other people.

### **ACT Health Protection Service**

The ACT Health Protection Service has embraced a name and shame culture in dealings with restaurants and cafes. They frequently close restaurants and cafes and go out of their way to make sure the owners are publicly humiliated.

This group has failed as a regulator. This is easily measured as the number of closures has increased since 2010 when they started this policy. The agency seems to have the approach to regulation that the more closures and public humiliations that occur the more likely there will be compliance. Their approach has obviously failed yet they continue to use a process that is flawed.

This is a regulator who notches closures onto its corporate belt and takes pride in their actions. It is obvious to anyone in business that this agency has no idea about communications, process, education or due diligence.

### **Work Safety Agencies**

All the work safety agencies at state level run websites with information for employers. That information is nearly always difficult to read and understand and certainly not engaging. These websites do not help with safety but, rather, inhibit safe practices.



For example the Worksafe Victoria site has four pages of “Employers Rights and Responsibilities”. Assuming that the small business person has time to read and fully understand four pages of gobbledegook, is a common mistake made by regulators.

### **The Australian Taxation Office**

The ATO is a prime example of an agency who engages with industry. The ATO has various consultative forums where they actively seek information and advice on how to improve their communications. They consult with industry at all levels and they get the difference between big and small business.

The Australian Tax Commissioner has a forum dedicated to small business and in the 6 years that COSBOA has been involved in that forum the Commissioner has only missed one meeting. This shows the rest of the employees at the ATO that small business is high on the list of priorities.

Another example of the ATO’s professional approach to compliance management is their method of dealing with the cash economy. Rather than brand all businesses as cash cheats they have analysed the information they gather and they have then targeted individual industry sectors where problems appear to be of concern. They then approach industry associations and together work out a strategy to get the information to the industry that dealing in cash as a way of dodging tax is illegal and hurts the majority of businesses, the honest ones, and also is not good for the economy. Industry and the regulator working together to solve a problem is much more constructive than unfounded hyperbole.

The ATO will always be criticised, that is the natural part of being a tax collector, the ATO will never be perfect but it is an excellent regulator that constantly assesses its performance with small business and seeks new and better ways of doing its job.

## **Recommendations**

As this study proceeds we will develop a range of recommendations to improve the engagement of regulators with the small business person. We will use case studies to seek recommendations from our members and from the small business community.

Current recommendations include:

### **Selection of agency heads to include assessment of their understanding of the small business community**

Any new agency Chairman, CEO or Executive should have a profound understanding of the small business sector, its complications and its needs. This will overcome the problem of leaders of regulation not understanding the market place and creating poor regulatory environments.

### **Provide development opportunities for agency personnel through work experience placements into industry associations**

The placement of agency staff, particularly field officers, into industry associations for 3 month periods would provide that person with a better understanding of issues for small business and better ways to communicate and also develop improved processes. It also would inform the members and staff of the associations about the way government agencies work and better ways of influencing process and policy.

### **Publish aggregated information on compliance, regulator activity and interaction with small business by regulators**

When regulators publish outcome and activities they should all do so in the same format. There should be a statement of how many prosecutions/fines/actions they have undertaken against small businesses and what that is as a percentage of the industry or small business community. This may not be useful across every regulator but certainly with the main agencies it would provide a better picture of the level of non compliance by small business and the performance of the regulator.

Indeed there should be one publication that lists all the agencies that deal with small business and their actions. This should include local government actions and activities either aggregated at the national level or at the jurisdiction level.

We will assist the commission to gather further information on the good and bad regulators. When a cultural change occurs across all levels of government then real regulation with positive results for communities, workers, consumers and businesses can occur.

*COSBOA.*