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Dear Dr Mundy

INQUIRY INTO REGULATOR ENGAGEMENT WITH SMALL BUSINESS

The Small Business Development Corporation (SBDC) welcomes the opportunity to provide this submission to the Productivity Commission's inquiry into Regulator Engagement with Small Business.

The SBDC is an independent statutory authority of the Western Australian (WA) Government and was established to facilitate the development and growth of small businesses in this State. One of the SBDC's key strategic objectives is to advocate for a fair, conducive and productive environment for small businesses in WA.

A major component of this objective is to investigate and address barriers to entry into, and growth of, the small business sector. Government red tape is one such barrier and as such we have a genuine interest in helping to not only reduce the burden of compliance, but also to help small business operators better understand their regulatory requirements.

The SBDC has considered the questions posed in the issues paper for this inquiry and has provided comments where appropriate. This submission has been structured around a number of key topics, including:

- Red tape and its impact on small business;
- Definition of small business;
- Communication with small businesses;
- Engagement with small businesses; and
- Measuring regulator performance.

Please note that this submission does not represent the views of the WA Government but does represent the views of the SBDC on behalf of the State's small business sector.

Red tape and its impact on small business

The issue of red tape has been a focus of governments around Australia for some time now as it is recognised that complying with regulatory requirement contributes to the costs of establishing and operating a business in Australia, and can act as a significant drag on the nation's productivity.

In this regard, the WA Government established the Red Tape Reduction Group (RTRG) in 2009 to identify and report on opportunities to reduce the burden of existing State regulation and red tape on businesses and consumers. Throughout the RTRG's comprehensive Statewide consultation process, a number of major themes were identified as being a source of great frustration for businesses and the community. These themes included¹:

- government typically has an attitude of strict compliance rather than assistance;
- government generally has a risk-averse culture;
- there is often a lack of coordination between agencies;
- there is generally a lack of clarity about the government's objectives, processes and timeframes;
- there is often a lack of transparency in decision-making processes;
- there can be inconsistent interpretation of rules by government officers;
- there is often a disconnect between the regulator and business; and
- there can be a lack of clear accountability and 'ownership' of decision-making.

In addition to the RTRG initiative, the WA Government also recognised that proposals to amend or introduce new regulation needed to undergo a more thorough assessment of impacts on the community and the business sector than was currently in place. By way of addressing the lack of proper assessment of regulatory proposals, the Regulatory Gatekeeping Unit (RGU) was established within the Department of Treasury in 2009 to administer the system of Regulatory Impact Assessment (RIA) in WA and assist government agencies to meet their RIA requirements.

In WA, RIA is a two-tiered process for assessing new and amended regulation to determine their impacts on business, consumers and/or the economy. For regulatory proposals, a Preliminary Impact Assessment (PIA) must first be undertaken to identify impacts on business, consumers or the economy. If a significant negative impact is identified in the PIA, a Regulatory Impact Statement (RIS) is required to be completed prior to consideration by the decision-maker. The RIS process consists of a Consultation RIS followed by a Decision RIS.

Regulatory impacts on small businesses are typically addressed at the initial PIA stage, where the proponent agency must quantify the number of small businesses impacted by the proposal and specify the nature of these impacts. As part of this process, the SBDC reviews PIAs and provides further comments (such as outlining unintended consequences for small businesses or recommending further consultation) to the RGU. In addition, the SBDC provides direct assistance to

¹ Department of Treasury 2009, *Reducing the Burden – Report of the Red Tape Reduction Group*, Available from: <http://www.treasury.wa.gov.au>. [13 March 2013].

proponent agencies in assessing and minimising the significance of negative impacts on small businesses and working with them to identify transition measures and communicate changes to the sector or affected cohort.

Whilst the RIA process has now been implemented across all WA Government agencies, the SBDC is aware that small businesses continue to feel the burden of government regulation by State regulators, as well as local government regulation (which it should be noted is not subject to the RIA process). In this regard, of particular note is the RTRG's finding that the main source of regulatory burden on businesses in WA comes from quasi-regulation and government administration of them². However, quasi-regulations (such as policies, administrative procedures and business rules) are not subject to the RIA process in WA and the SBDC is not aware of any immediate plans for them to be captured in the future.

Despite these positive red tape reduction initiatives, a recent survey of small businesses in WA conducted by the SBDC³ revealed that 62% of respondents indicated that over the past five years, their business has had to comply with an increased level of regulation. This burden was overwhelmingly reported to be "time consuming" (78% of responses), "confusing" (41%) and "difficult" (31%), with only 9% of total responses claiming that regulatory requirements were "easy".

Furthermore, the results of a comprehensive survey of the state of small business in WA conducted by the SBDC last year also revealed that more than half (54%) of the 999 small businesses sampled spend between one and five hours a week meeting their regulatory requirements, while almost one in four (24.5%) spend more than ten hours a week on compliance.⁴ It should be noted that complying with tax requirements (in particular, completing Business Activity Statements) took the overwhelming majority of time for small business operators, followed by industrial relations then occupational licensing.

The SBDC notes that these findings are broadly consistent with the Australian Chamber of Commerce and Industry's (ACCI) National Red Tape Survey of 2012 which also found that 72% of businesses are spending more time complying with government regulatory requirements than they did two years ago⁵. The ACCI also found that over two in five (42.2%) of all surveyed businesses (ranging from small through to large) reported spending more than \$10,000 complying with regulations annually, with 26.1% spending up to \$50,000 on compliance in a single year. Not surprisingly, nearly two thirds of these respondents considered that complying with government regulatory requirements had a moderate to major impact on their business.

These results demonstrate that there remains a real need for government regulators to address how they firstly design, then communicate, their various rules and

² Ibid, p47.

³ Small Business Development Corporation Ready Response Network 2013, *The Government Regulation Poll*. Available from: Small Business Development Corporation. [5 March 2013].

⁴ Small Business Development Corporation 2012, *State of Small Business Survey*. Available from: Small Business Development Corporation. [7 March 2013].

⁵ Australian Chamber of Commerce and Industry 2012, *National Red Tape Survey*, Available from: www.acci.asn.au. [12 March 2013].

regulations to the small business community. In the SBDC's opinion, more work is needed to minimise ongoing compliance impacts on business.

Definition of small business

The SBDC notes there are a number of different definitions commonly used across Australia to define "small business", which can lead to confusion for small business operators who may be unsure of whether they can apply for government grants or tax incentives for instance, or which industrial relations rules or other regulations apply to their business.

Examples of different definitions include that used by the Australian Bureau of Statistics (ABS), where small businesses are those having less than 20 employees, the Federal *Fair Work Act 2009* which classifies businesses as being small if they have 15 or less employees (for unfair dismissal provisions), and that used by the Australian Taxation Office which bases its definition on annual turnover of less than \$2 million.

The SBDC is certainly of the opinion that introducing a more uniform definition of small business across all jurisdictions would go some way to improving small business operators' understanding of what rules and regulations apply to their business.

In most instances (apart from taxation), using the number of employees is a relatively straightforward way of classifying business size. The SBDC considers that the ABS's use of 20 employees as the threshold for a "small business" is appropriate and one that should be consistently adopted by regulators across Australia.

Communication with small businesses

In general, small business operators are, more often than not, extremely time poor. From the day-to-day job of providing products and services to their customers through to the typically after-hours practice of meeting their industrial relations and taxation requirements, small business operators can often struggle to find the time to read (and understand) government consultation papers and regulatory guidance material or stay abreast of changes to their regulatory/licensing obligations.

Not only are small business operators time poor, but they are also a very diverse sector, with small businesses represented in all 15 Australian and New Zealand Standard Industrial Classifications (ANZSIC)⁶. This diversity can make it very difficult for government agencies to effectively communicate important messages to the sector. The SBDC notes that State and Federal regulators often struggle to communicate changes to particular industries or cohorts, let alone to the sector as a whole.

When undertaking research for this submission, the SBDC found that half of the survey respondents of our opinion poll believed that they had not received adequate

⁶ Australian Bureau of Statistics 2012, *Counts of Australian Businesses, including Entries and Exits, June 2007 to June 2011*. Available from <http://www.abs.gov.au>. [7 March 2013].

information, advice or support from regulators when asked to comply with a new regulatory requirement⁷.

When asked to rate the level of assistance and education that each tier of government provided, the most common response from survey respondents was “not helpful” (41.9%) for Federal government, “somewhat helpful” (41.9%) for State government and local governments were reported as being “not helpful” (40.6%)⁸. The ACCI also reported that businesses consider Federal (27.7%), State (29.1%) and local (38.4%) government communication as being inadequate⁹.

These findings are further supported by the following comments submitted by SBDC survey respondents:

“[The] Australian Securities and Investments Commission at the moment - trying to follow their incorrect instructions to re-register my business name.”

“Being given different information by three different [State Department of] Regional Development and Lands officers and two different local shire officers when attempting to find out who to apply to in order to move an existing wall back in line with the original red line which is drawn on site plans to indicate the licensed premises boundary - an exercise in frustration with potential costs and timelines ranging from negligible to prohibitive and requiring architectural drawings.”

When the SBDC asked these small business operators what they thought government agencies could do to make it easier to understand and/or comply with regulations, the following comments were made:

“Consult with business.”

“Stop changing things continually so at least there is certainty in what is required instead of continual uncertainty and the need to have the knowledge to comply in different ways for things that have occurred in different time periods.”

“Answer their ... phones without a 50 minute wait. Write the instructions on their websites very clearly and concisely and then have a go themselves to see if they work or do like the food safe people and get regular people to test out their websites.”

“For example safe work method statements. Why not just have them all ... on a web site that is free and easily accessible, so businesses know exactly what to do. There are a lot of consultants and safety companies making a lot of money out of this very complex and confusing matter.”

⁷ Small Business Development Corporation Ready Response Network 2013, *The Government Regulation Poll*. Available from: Small Business Development Corporation. [5 March 2013]

⁸ Ibid.

⁹ Australian Chamber of Commerce and Industry 2012, *National Red Tape Survey*, Available from: www.acci.asn.au. [12 March 2013].

[The State Department of] Worksafe says we have to have them, but each business needs to write their own. How exactly, how detailed, for every job...?"

As a number of the above comments mention, small business operators feel that there is a need for enhanced use of government websites to clearly communicate important changes affecting the sector. The extent to which regulators currently use emerging technologies (such as online tools) to improve access to information was a query raised by the Productivity Commission and is something that the SBDC is keen to be addressed by regulators in WA.

In the SBDC's experience, government websites vary significantly in their layout, ease of finding relevant policies and procedures, and staff/divisional contact details. A large number of WA government agencies have so much information on their websites that it can be hard to find relevant documents without using the website search function. In contrast, some WA local government websites have so little information that key policies and planning documents can only be obtained by physically going into the local government office or requesting a copy be emailed or posted out. These two extremes both fail to meet the needs of time poor small business operators – that is, being able to access the right information quickly and with minimal fuss.

In the SBDC's opinion, there are a number of ways that agencies could improve their online communication with small businesses, including e-newsletters, utilising social media and regularly reviewing website content and information placement. In addition, consideration should also be given to making more websites and surveys mobile accessible. In relation to this, the Australian Communications and Media Authority recently released data that shows that almost half of Australia's adult population now owns a smartphone¹⁰. The utilisation of smartphones to access the internet is quite staggering, with 9.2 million Australians using these devices to access the internet in the six months to May 2012.

And this is not just a passing trend as according to Cisco's 2013 Visual Networking Index, the mobile data traffic worldwide in 2012 alone was nearly 12 times the size of the entire global internet in 2000¹¹. Mobile data growth is expected to further increase substantially, with Cisco estimating that global mobile data traffic is expected to grow 14-fold over the next five years.

This illustrates how the business world is evolving as various wireless, fibre and satellite communications technologies are delivering faster access to businesses and households.

Another effective way that agencies can improve the reach of their communication material is to utilise existing networks including through industry associations, Chambers of Commerce and Industry and organisations such as the SBDC and the Statewide network of Small Business Centres. These bodies already have well established membership groups and generally have effective methods in place that

¹⁰ Australian Communications and Media Authority 2013, *Smartphones and tablets – Take-up and use in Australia*, Government of Australia, Available from: <http://www.acma.gov.au>. [18 February 2013].

¹¹ Cisco 2012, *Visual Networking Index: Forecast and Methodology, 2011-2016*, Available from: www.cisco.com. [13 March 2013].

are well suited to communicating messages on behalf of government. On this note, the ACCI survey found that almost 40% of respondents preferred to receive information about regulatory changes via emails from their relevant industry association or Chamber of Commerce, illustrating the importance these bodies play in the business community.

As a matter of course, the SBDC maintains a strong ongoing relationship with the Regional Chambers of Commerce and Industry of WA. This relationship is used to not only disseminate information about upcoming government inquiries and changes to legislation, but also to keep informed of regional issues impacting on the small business sector. The SBDC believes that keeping up to date with small business issues means our business advice can be better targeted, our training programs meet identified business needs and that our methods of communication are effective and current. This intelligence can also be fed back to government agencies in order to enhance systems and processes and improve outcomes for the small business sector.

Engagement with small businesses

The SBDC is a strong advocate for regulator engagement with the small business sector at the very early stages of policy and regulation development, and also at the post implementation stage of the reform. Whilst this is our view, the SBDC is unfortunately unable to state that this viewpoint is mirrored throughout all levels of government in the State.

Indeed, when the SBDC asked survey respondents if they felt that government agencies considered the size and nature of a business when undertaking regulatory compliance and enforcement, 69% indicated that they believed that this was not the case. More worryingly, 69% of respondents also felt that government agencies have not taken any measures to reduce unnecessary compliance costs incurred by small business over the past few years¹².

As small businesses generally do not have dedicated human resource or payroll staff, all changes to the regulatory environment are typically felt directly by the business owner/operator. Other factors that agencies should consider when introducing new or amended regulatory requirements include:

- Ensuring that licence fee structures do not unfairly impact sole traders or micro businesses by requiring they pay the same business licence fee as those that apply to medium and large sized businesses. A suitable fee structure to consider is a tiered system based on employee size groupings i.e. for non-employing businesses, those with less than five employees, those with five to 20 employees and so on for medium and large sized businesses.
- Forms may be filled out by small business owners after hours and as such they may struggle to find the time to complete them if they are overly long or complex.
- Owner operators of small businesses who need to talk to an agency will not have the time to be on hold for long periods of time as they have customers to

¹² Small Business Development Corporation Ready Response Network 2013, *The Government Regulation Poll*. Available from: Small Business Development Corporation. [5 March 2013]

attend to (and in most cases agencies can only be contacted during office/trading hours).

- Complicated regulations and their associated guidelines may be hard to interpret for a small business owner with English as their second language, especially if it is not written in easy to understand language (e.g. without using technical or legal terminology) or where translated version are not available.

In the SBDC's opinion, WA Government agencies can improve their engagement approaches by adopting the following practices:

- Working with the SBDC at the early stages of regulation development to gain a more enhanced view of the potential impacts of the proposed regulation, as well as ensuring they have an appropriate communication strategy in place. To their credit, the WA Departments of Commerce, Transport, Local Government, and Regional Development and Lands have all been very forward in asking for the SBDC's input at various stages of their regulatory development and review process.
- Ensuring that front line agency staff (especially those in call centres and at reception desks) are appropriately trained to ensure queries are promptly and adequately answered or transferred to the appropriate officer (with recorded messages avoided where possible) and that government officers are appropriately trained so they understand the unique environment that small business operates in.
- Reviewing how accessible an agency is to the public – for example an agency should determine whether their clients are placed on hold regularly and for long periods, whether phone numbers and email addresses are provided on their website or simply provided as an online contact form.
- Internal processing times for licences and other applications should be reviewed by agencies to see if there are any ways to speed up the process or make it easier for people – for instance, can forms be lodged online rather than being printed out, completely manually and then dropped off in person or mailed?
- Agencies should consider whether there is an actual need before introducing yet another system where a customer must create a separate account (with login and password) before being able to submit forms online.
- Regular reviews of regulations should be undertaken by agencies to determine whether clients are being impacted negatively by the regulation itself or an aspect of its implementation. Governments should consider requiring post implementation reviews of regulations or including sunset clauses in legislation.
- Agencies should consider adopting more flexible hours (including evening and weekend call centres and site inspections), so the impact on small businesses is minimised. Whilst the cost of this added service would not be justifiable in all cases, regulating agencies with a significant customer base may wish to consider this option as part of their service delivery model.
- Free or low cost workshops or training sessions should be offered to interested parties about new licences or changes to licence requirements.

In terms of best practice, the SBDC also supports the recently developed, 'Achieving best practice consultation with small business: A guide for government'. The guide, which was endorsed by the Council of Australian Governments (COAG) in

December 2012, clearly explains the need, benefit and ways to consult with small businesses that regulators should follow and describes the seven best practice consultation principles in detail. The SBDC would ideally like this guide to be mandated and adopted across government, with individual agency heads held accountable for adhering to these principles.

Another important aspect of engaging with the small business sector is having an appropriate feedback mechanism in place, particularly in relation to complaints handling and dispute resolution procedures. For all WA government agencies in the State, the Public Sector Commissioner's Circular 2009-27 'Complaints Management' must be adhered to. This Circular mandates that all agencies must have in place a complaints management system that conforms to the principles of the Australian Standard on Complaints Handling (AS ISO 10002-2006) which consists of three main steps: enabling people to make complaints; responding to the complaints promptly, fairly and confidentially; and accountability and learning from these complaints.

In regard to disputes involving small businesses in WA, the SBDC has a well established role in resolving business-to-government disputes and is willing to work with other agencies to either resolve specific disputes or assist them to develop internal procedures for resolving issues raised by small businesses.

A further way that agencies can improve their engagement with small businesses is through a centralised community consultation website. The SBDC has previously suggested this in our submission to the Productivity Commission's benchmarking study into Regulatory Impact Analysis processes¹³. Such a website could be managed by the RGU and could provide a list of regulatory proposals that the WA Government was considering and enable interested parties to subscribe and receive notifications of proposals and input their views (without having to go to individual agency websites). Not only could this website publish discussion and consultation papers, it could also publish stakeholder submissions.

This would be expected to not only increase the scrutiny of government decision makers but also potentially lead to a more engaged community.

Measuring regulator performance

The SBDC has considered which aspects of an agency's performance, in particular their engagement practices, could be monitored and reviewed. These measures could include:

- processing times for licence applications;
- response times to customers;
- adequacy of complaint management and dispute resolution procedures, including costs to parties, number of cases resolved and number of satisfied parties;
- number of training sessions and whether any were held regionally;

¹³ Small Business Development Corporation 2012, *Submission to Productivity Commission Benchmarking Study into Regulatory Impact Analysis Processes*. Available from: Small Business Development Corporation. [13 March 2013].

- attendance at training sessions;
- number of applications submitted on time and completed correctly (and if there has been an increase following a particular education campaign or following staff training);
- the number of queries made about a new or amended regulation (again a possible indicator of the effectiveness of an education campaign);
- knowledge of staff (in regards to what types of regulation are enforced by a particular agency and which division manages this particular regulation);
- whether there has been a reduction in the number of regulations applying to a particular industry; and
- number of fee increases over a specified period.

The SBDC believes that monitoring an agency's engagement practices will result in better outcomes for small businesses and the community as a whole. Whilst we recognise that some communication and engagement strategies will require an ongoing financial commitment by the Government, others will require a more significant cultural change and shift in the ways things are done currently.

Concluding statement

The SBDC appreciates being able to submit these comments on how regulating agencies communicate and engage with small businesses in WA and we look forward to the Productivity Commission's findings in relation to this inquiry. As this submission illustrates, there are in the SBDC's opinion, a number of ways that regulating agencies could improve their methods of communication with the community, including with small businesses.

Yours sincerely

Jacky Finlayson
A/EXECUTIVE DIRECTOR

20 March 2013