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Small Business Study
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Productivity Commission: Regulator Engagement with Small Business

Thank you for the opportunity to comment on the *Regulator Engagement with Small Business Issues Paper*.

The Housing Industry Association (HIA) is Australia's peak residential building industry organisation, representing over 40,000 members. HIA is the only national industry association with membership covering all building professionals across the residential construction sector. Members include builders, trade contractors, manufacturers and suppliers, and building design professionals.

The housing industry has built an inventory of over 9 million houses and apartments across Australia, putting over 350,000 people in new homes each year. The industry also supports a thriving renovation market to upgrade that housing stock, which enhances amenity for residents, improves energy efficiency and provides greater access for an aging population.

Residential construction is worth around \$70 billion to the Australian economy each year and there are over one million people employed across all types of construction. New home building and renovations also generate a significant flow on of economic activity in related retail and manufacturing sectors.

The housing industry is made up of over 85% small business. The small family owned contracting business is the backbone of Australia's residential building industry and is internationally renowned for its productivity. This model is characterised by businesses that are responsible for their own work, set their own hours and move flexibly from site to site.

Over the last decade governments at all levels have eroded the position of small contracting businesses. Federal and state governments have progressively 'deemed' that many classes of contractors should be covered by regulations that had previously only ever applied to employees.

At a federal level these measures have included taxation, superannuation and industrial relations laws. States have also spread the coverage of payroll tax and workers compensation to capture an increasing share of small businesses in their net. In the process small contracting businesses are being strangled in administrative red tape just to establish their own identity. Deeming rules and other regulations add further administrative complexities for small business.

Different definitions of small business are one key problem facing these businesses. Industrial relations, taxation and stoical collection may all use differing definitions ranging from number of employees through to turnover.

If Australia is to remain at the international forefront of residential building efficiency this slow constriction of small contracting businesses must not just be slowed, it must be reversed. There are a range of simple actions that governments could take to make it easier for small business with respect to compliance.

Firstly, all government departments should provide the same minimum level of service. For example, the Australian Taxation Office (ATO) provides assistance in the form of education and practical on-site

assistance with Business Activity Statement (BAS) preparation – as a part of which the Commissioner gives an undertaking that there will be no audit activity arising from such assistance having been given.

This type of approach should apply across the board.

At present, due dates for returns and reports are spread across the calendar, depending on the department or agency. There are multiple definitions of a 'year' for reporting depending on the subject matter.

Likewise, there are multiple definitions of reportable units, wages being an example. Such measurable should be defined in exactly the same way whether it be for PAYG, superannuation, workers compensation or pay-roll purposes.

The current industrial relations and modern award system is unfairly balanced against the small business employers. There is too much focus on institutions like FWA and the Fair Work Ombudsman rather than the needs of the enterprise and its employees.

Of significant concern with the Fair Work laws are increasingly successful union attempts to restrict the engagement of contractors and treat them like employees. A further source of frustration is the lack of flexibility in employment conditions to suit the parties in a small business environment. The alternative option of entering into complex enterprise bargaining negotiations with the unions is not practical for small business. Additionally, small business has once again been burdened by the reintroduction of unfair dismissal rules which in practice amount to a liability to pay 'go away' money.

Finally, the building and construction industry is one of the most heavily taxed sectors of the Australian economy, with corresponding taxation red tape imposing a heavy burden.

The new taxation regulations that require builders to annually report all payments to contractors to the ATO is yet another example of excessive and unnecessary regulation imposed by government on the industry without regard to compliance costs, particularly to small business. These laws in effect penalise builders and principal contractors for choosing to engage subcontract labour by imposing additional red tape and administrative and accounting costs upon them. This distorts efficient resource allocation in the industry and adds unnecessary costs.

While it is important that there are effective polices to ensure that those in the industry are reporting their income and paying tax, these laws are flawed. The regulatory measures are entirely focused on those businesses that pay subcontractors and do not directly deal with those businesses that are not meeting their taxation obligations such as those consumers, businesses and subcontractors in the cash economy and the owner-builder market.

A more appropriate and efficient policy would be to target those entities that are not meeting their taxation obligations rather than exclusively focussing on those that meet their taxation obligations.

Another area of unclear regulation is the Superannuation Guarantee Charge (SGC). There is considerable legal uncertainty as to whether contributions are payable by a principal for any particular contractor they engage, yet company directors are personally liable for any underpayment. This creates a great deal of unnecessary paperwork and cost.

Small business is the engine room of the residential building industry, and this creates a very different challenge for regulators when engaging with the sector, as opposed to typical SME's or big business. We would be pleased to assist further in addressing these challenges

Please do not hesitate to contact me if we can provide any additional information.

Yours sincerely

Graham Wolfe
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HOUSING INDUSTRY ASSOCIATION LIMITED