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Dr Warren Mundy
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Productivity Commission
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Dear Dr Mundy

Regulator Engagement with Small Business – Draft Report

Thank you for the opportunity to respond to the Productivity Commission (PC) Draft Report on *Regulator Engagement with Small Business June 2013*. My key submissions on the PC's draft recommendations are set out below.

Differential treatment for small businesses

I strongly support the PC's recommendation in the Draft Report that governments and regulators should provide different treatment for small business wherever this would maximise net benefits to the community. I also support the PC's recommendation that when designing such regulation, governments and regulators should undertake formal regulatory impact analysis, however I submit that this recommendation should be amended to state that *governments and regulators should undertake formal regulatory impact analysis on the specific costs and benefits imposed on small businesses*.

Different treatment for small businesses and formal regulatory impact analysis of the specific benefits and costs imposed on small businesses will reduce compliance and regulatory costs for small business. Regulators will be required to specifically recognise and have regard to the disproportionate costs of regulation on small businesses.

As stated in my earlier submission, 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 regulations for small businesses on a case by case basis (particularly if the potential risk of breach is minor). The focus should be on the desired outcome not the process of regulation.

Appropriate compliance for small businesses

I strongly support the PC recommendation that regulators should have a demonstrated capacity and willingness to:

- Be flexible and proportionate in their enforcement, with a consistent focus on outcomes.
- Minimise unnecessary compliance and reporting costs imposed on small business, including the cumulative burden derived from engagement with multiple regulators.
- Understand the needs and constraints of small business generally and those specific to their business or industry.

I support an educative and facilitative approach to compliance for small businesses. It is essential that regulators understand that:

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

Streamline information requests, reporting and regulatory interaction

I strongly support the PC's recommendation that there is likely to be more scope for regulators to tailor their engagement, where feasible and cost effective, to the characteristics of small businesses.

I submit that there should be greater use of initiatives by regulators to streamline information requests, reporting and regulatory interactions for small businesses. For example:

- A "one business, one licence" approach. This may include formal arrangements between government agencies for one regulator to undertake compliance checks or inspections on another regulator's behalf, to minimise the overall interaction burden on the small business.
- Adopting the "Report Once Use Often" framework of the Australian Charities and Not for Profits Commission and participating Federal government agencies.

Effective communication with small businesses

As noted by the PC, a small business is not just a big business on a smaller scale but one that operates in a fundamentally different way, and may lack the time, knowledge and often motivation to distil the relevant compliance requirements. Therefore, regulators should develop a multi-channel strategy to more effectively engage with the diverse types, and significant number, of small businesses including:

- (a) Tailored information to specific businesses in question e.g. easy to read brochures or fact sheets.
- (b) Telephone engagement and face to face interaction, which is very important for small businesses.
- (c) Liaising with industry associations, local business chambers to disseminate the requirements to their members. However, as many small businesses are not members of industry associations, this approach should complement rather than substitute for the regulator's own interactions with small businesses.
- (d) Utilising best practice customer service for regulatory transactions like Service NSW is implementing across NSW is strongly encouraged by all regulators.
- (e) Easy to navigate websites that adapt for technology devices.
- (f) Utilising new technology such as smartphone and tablet applications which are tailored for small business customers.

I also support more use of stakeholder advisory groups by regulators, particularly where there is inadequate representation of small businesses in that industry sector.

Sufficient resourcing and capability for regulators

I strongly support the PC recommendation that regulators have sufficient resourcing to enable them to administer and enforce regulation effectively and efficiently. As noted in the PC's recent study *Local Government as Regulator*, local governments are routinely under resourced for their regulatory functions, and the evidence suggests that this problem has not yet been addressed.

I support the PC's recommendation for regulators to improve their human resource capability. Better skilled regulatory staff means more effective communication with small businesses and a greater understanding of the small businesses being regulated, and ultimately improved regulatory outcomes for communities.

I also support resourcing and information sharing between regulators, especially where there are skill and resource shortages in regional areas. Specific mechanisms to improve the efficiency of limited regulatory resources include standardised systems and processes and flying squadrons to undertake the same regulatory function across many local councils in regional areas.

My detailed submission in response to each of the PC's recommendations in the Draft Report is set out in the **Attachment**.

Thank you for giving me the opportunity to provide comment.

Yours sincerely

 Yasmin King
NSW Small Business Commissioner
14 August 2013

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<p>1.1 Small business definition – multiple possible</p>	<p>I support the recommendation that a single definition of small business should not be applied by Government. A single definition may be problematic as it may exclude those businesses genuinely in need of assistance based on a technicality in the wording of the definition. 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 will also likely incur significant costs associated with production resulting in only a modest profit for the business. Therefore any definition of small business based on revenue may see this type of business being ineligible for support and services.</p> <p>Similarly, it is not uncommon for some start-ups, building firms and farming enterprises have significant value of assets and/or business loans in order to undertake rapid growth, without necessarily having the commensurate expertise or resources to adequately manage their financial and business issues.</p> <p>Accordingly, my office does not use a specific definition or criteria for small business and relies on businesses to classify themselves as a small business. In my experience this allows any small businesses with a genuine need of assistance to contact my office for assistance.</p>	
<p>2.1 Evaluate impacts when designing regulation; consider implementation & enforceability</p>	<p>I strongly support the PC's recommendation 3.2 in the Draft Report that governments and regulators should provide different treatment for small business wherever this would maximise net benefits to the community.</p> <p>I also support the PC's recommendation that when designing such regulation, governments and regulators should undertake formal regulatory impact analysis, however I submit that this recommendation should be amended to state that <i>governments and regulators should undertake formal regulatory impact analysis on the specific costs and benefits imposed on small businesses.</i></p> <p>Different treatment for small businesses and formal regulatory impact analysis of the specific benefits and costs imposed on small businesses will reduce compliance and regulatory costs for small business. Regulators will specifically be required to recognise and have regard to the disproportionate costs of regulation on small businesses, as well as identifying areas where regulation can be reduced to address small business concerns. As noted in the PC's draft report, small businesses are likely to be more heavily affected by compliance compared with larger businesses because of limited resources, capability and sophistication and the lack of economies of scale.</p> <p>I am concerned by the PC's finding that of the regulators who identified adopting a risk based approach, that less than half</p>	

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	<p>reported providing differential treatment to small businesses. The primary reason given for lack of differential treatment of small business was that the regulator aims to facilitate compliance by all businesses, regardless of size. Therefore, there is significant scope, opportunity and need for regulators in general to change their practices and provide differential treatment for small businesses.</p> <p>As stated in my earlier submission, 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 regulations for small businesses on a case by case basis (particularly if the potential risk of breach is minor). The focus should be on the desired outcome <u>not</u> the process of regulation.</p> <p>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 the specific ability to 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.</p> <p>Finally, in my role as an advocate for small businesses, I have been working with NSW and Federal government departments and agencies in the design of proposed regulatory strategies and to facilitate learning across regulatory functions and more widespread understanding of good engagement approaches with small businesses.</p>
<p>2.2 Clarity of government's expectations & acknowledgment of risk</p> <p>2.3 Appropriate regulator culture needs to be facilitated</p>	<p>I support the recommendation that government should acknowledge that some risk cannot be eliminated. I strongly support the comments of government agencies and business groups that have suggested that risk aversion can lead some regulators to require excessive evidence of compliance or to rely on overly harsh enforcement approaches which do not adequately take into account small business efforts required to mitigate risks and a realistic assessment of the risk posed by the individual businesses.</p> <p>Further, 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 seek to comply anyway.</p>
<p>3.1 Remove unnecessary</p>	<p>I strongly support the removal of unnecessary complexity in regulation and offering small businesses a standard compliance</p>

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<p>complexity; offer small business standard compliance solution or option to innovate</p> <p>3.2 Differential treatment for small business in regulation delivery or design</p>	<p>solution or option to innovate. A “deemed to comply” option (with clear, prescriptive rules or steps to follow) is important for many small businesses that prefer to be told what to do in order to comply.</p> <p>I also 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 regulations for small businesses on a case by case basis (particularly if the potential risk of breach is minor). The focus should be on the desired outcome <u>not</u> the process of regulation.</p>	<p>As noted in the PC’s draft report, regulators’ approach to compliance and enforcement should have a demonstrated capacity and willingness by regulators to:</p> <ul style="list-style-type: none"> • Be flexible and proportionate in their enforcement, with a consistent focus on outcomes. • Minimise unnecessary compliance and reporting costs imposed on small business, including the cumulative burden derived from engagement with multiple regulators. • Understand the needs and constraints of small business generally and those specific to their business or industry. <p>I support educating and assisting small businesses to comply with regulations as opposed to heavy handed enforcement and punitive action. Heavy handed enforcement should be focused on the small number of rogue operators in an industry.</p> <p>Most small businesses seek to do the right thing and comply, even if the rule seems burdensome, unfair or illogical. This is made worse where the business has problems or delays in obtaining clear direction from relevant regulator about what it needs to do to meet its obligations.</p> <p>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, sometimes across the same tier of government and sometimes between tiers of government. Given the limited resource and capability of most small businesses, a significant proportion of small businesses will not have sufficient understanding of what needs to comply with certain regulations.</p>
<p>4.1 Achieving compliance:</p> <ul style="list-style-type: none"> • educative & facilitative approach • streamlined processes • inspections & audits commensurate with risks • cooperation & recognition of other related processes <p>4.2 Sufficient range of enforcement tools</p> <p>4.3 Timely processes & decisions</p>	<p>I support the PC’s finding that there is usually considerable scope for regulators to be responsive in their delivery of regulation to small business needs and capacities. I support the PC’s recommendation that there is likely to be more scope for regulators to</p>	<p>I support the PC’s finding that there is usually considerable scope for regulators to be responsive in their delivery of regulation to small business needs and capacities. I support the PC’s recommendation that there is likely to be more scope for regulators to</p>

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where appropriate

5.2 Streamline information requests/reporting processes

5.3 Consultation & processes for complaints handling, review of decisions & mediation

tailor their engagement, where feasible and cost effective, to the characteristics of small businesses.

I support the PC's view that formal arrangements between government agencies in related regulatory areas for one regulator, agency or certifier to undertake compliance checks or inspections on another regulator's behalf, to minimise the overall interaction burden on the small business. A "one business, one licence" approach would also be highly beneficial to small businesses. I have advocated for similar approaches and have recently been working with some NSW government agencies to progress these initiatives further.

I submit that there should be greater use of initiatives and practices by regulators to streamline the information and reporting requirements on small businesses. This includes regulators making data requests to be tailored around the data that is already being collected by businesses by other regulators. The "Report Once Use Often" framework of the Australian Charities and Not for Profits Commission and participating Federal government agencies is a positive development which would have significant benefits for small businesses if a similar initiative was adopted by State and local council regulators. This will reduce the burden of providing the same or similar information to multiple regulators.

As stated in my previous submission, regulators should ensure that information and advice on regulatory requirements is readily available, up-to-date, reliable and provided in brief, clear and user friendly formats, using language that is easy to comprehend. Many regulators put significant amounts of complex information on their website with the expectation that small businesses 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 or capability to engage with regulators under these circumstances. As noted by the PC, a small business is not just a big business on a smaller scale but one that operates in a fundamentally different way, and may lack the time, knowledge and often motivation to distil the relevant compliance requirements.

An effective multi-channel engagement for the diverse types, and significant numbers of small businesses includes:

- (a) Tailored information to specific businesses in question e.g. easy to read brochures or fact sheets.
- (b) Telephone engagement and face to face interaction is very important for small businesses. This includes providing education and training close to the small business location and at times convenient to small businesses. The nature of many small businesses means that nights and weekends are the only time they may be available to engage on these issues.
- (c) Liaise with industry associations and local business chambers to disseminate the requirements to their members. However, as many small businesses are not members of industry associations, this approach should complement rather than

substitute for the regulator's own interactions with small businesses.

(d) Utilising best practice customer service for regulatory transactions like Service NSW is implementing across NSW is strongly encouraged by all regulators. This includes training customer service staff on best ways to provide information to particular types of small businesses.

(e) Easy to navigate websites that adapt for technology devices.

(f) Utilising new technology such as smartphone and tablet applications which are tailored for small business customers.

(g) Adapting the information as small business practices evolve (For example, the growth in home based businesses).

I also support more use of stakeholder advisory groups by regulators, such as those used by the Australian Competition and Consumer Commission (ACCC) as a means to identify better ways to achieve compliance and ensure small businesses are adequately consulted on changes to regulatory requirements. In my advocacy role, I am a member of various stakeholder advisory groups as a representative of small businesses in NSW, including the ACCC's Small Business Consultative Committee and a member of the Consumer Reference Group of the Australian Energy Regulator (AER), a constituent part of the ACCC.

I support the initiatives of the AER to empower consumers and small businesses to engage on major regulatory decisions through the Consumer Challenge Panel and Consumer Reference Group. For major regulatory decisions and expenditure review the AER provides small business and consumer representatives with expert input, funding and support to better engage on complex technical, financial and regulatory issues so that these groups are better represented and their views are heard and considered on these issues.

6.1 Sufficient resourcing.

6.2 Staff skills & capacities.

6.3 Transparency & accountability in decision making

6.4 Evaluation/review; sharing information; monitoring/reporting performance; develop & report

I strongly support the PC recommendation that regulators have sufficient resourcing to enable them to administer and enforce regulation effectively and efficiently. As noted in the PC's recent study *Local Government as Regulator*, local governments are routinely under resourced for their regulatory functions, and the evidence suggests that this problem has not yet been addressed. I agree with the PC's finding that when regulators are not adequately resourced to effectively enforce all regulations within their ambit, either more risks to communities go unmitigated or the costs of mitigation are pushed on to those regulated (including small businesses). In a tightening financial environment, the impacts of these compliance costs are increased on small businesses.

Many regulators, specifically local councils, are not equipped with sufficient resources to undertake regulatory activities that they



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<p>engagement principles.</p>	<p>are responsible for. In addition to this, appropriately skilled staff can be difficult to employ especially in regional areas. I support the PC's recommendation for regulators to improve their human resource capability. Better skilled regulatory staff means more effective communication with small businesses and a greater understanding of the small businesses being regulated, and ultimately improved regulatory outcomes for communities.</p> <p>I support the resourcing and information sharing between regulators, especially where there are skill and resource shortages in regional areas. Specific mechanisms to improve the efficiency of limited regulatory resources include:</p> <ul style="list-style-type: none"> • Standardised systems and processes to enhance the regulatory capacity and capability of local government. This will provide consistency in approach and greater efficiencies through savings made by not "reinventing the wheel" for processes and systems in each local council. • Flying squadrons performing the same regulatory function across different local councils. This would be particularly beneficial for planning large infrastructure projects are being rolled out. • Training and collaboration between councils.