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The Productivity Commission

Regulator Engagement with Small Business

PO Box 1428

Canberra City ACT 2601

small.business@pc.gov.au

Please find attached a third submission from COSBOA to the

Study into Regulator Engagement with Small Business.

For any further information please contact me.

Yours Sincerely

Peter Strong

Executive Director



Study into Regulator Engagement with Small Business

A Third Submission from the Council of Small Business Organisations of Australia August 2013

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COSBOA has completed a detailed study into small business and their interaction with regulators and views and experiences of these interactions.

We commenced the study in April 2013 and the information was gathered over an eight week period. We developed a website where small business people could provide their thoughts and information.

There were a total of 881 visits to the specially designed website with a total of 130 detailed responses.

We promoted the website, through which the study was managed, across many industry associations, through social media outlets and also through business.gov.au. The promotion also included support from the National Australia Bank and the ATO. Traffic to the website was generally representative of population, with the exception of the over-representation from the ACT. However, given the subject matter, it is perhaps unsurprising the Canberra business community was strongly engaged.

There were many good and considered responses in the comments sections of the survey.

Much of the data aligned with findings that the Productivity Commission reports from other sources which suggest that the information being received is consistent.

Outcomes and Conclusions

The overriding message from the responses is that regulators need to communicate clearly what are their needs and expectations, and also provide some empathy on their part to the reality of what it means to be a small business operator. These are core issues to improving regulator performance in the eyes of small business.

Small businesses found it straightforward to understand what they were required to do by regulators (53%). Understanding of the small business, however, was not seen as a key feature of those who were straightforward to deal with.

The opposite was true for those identified as most problematic to deal with. They were reported as not being straightforward to understand, not providing clear instruction about requirements, and not understanding the business and the practical difficulties of responding to obligations. The failure to understand the business was regarded as part of the problem for those regulators that had poor relations with small business, suggesting it compounded the problem of poor communication but was not necessarily a requisite to improvement.

The importance of communicating in the appropriate language and form was also reflected very clearly in responses to the question about who was the most useful in helping small businesses comply.

In order, industry associations, business peers and third party services providers such as lawyers and accountants were reported to be most useful. This suggests that there is some element of a “translation service” role that small businesses require.

Of the options available to regulators to directly communicate more effectively, traditional information sources were preferred over digital and more interactive media.

Regulator provided printed material (66%) and the regulators’ own website (55%) were regarded as the most useful means by which regulators communicated directly. Direct visits from regulated (34%) lagged well behind this provision of information through these “static” media.

Despite the fact that social media such as Twitter, Facebook, blogs and chat rooms offer the opportunity small business owners to seek very assistance specific to their business, these media scored poorly, with only 9% regarding them as useful. There was a high proportion who reported that they did not know how useful those media were, however (35%) suggesting that designed and delivered correctly, these media could be more valuable over time.

In terms of regulatory agencies that were most straightforward to deal with, the standout was taxation agencies, which received more than twice the positive commendations than the next most straightforward.

The regulatory areas nominated as most problematic were more evenly split, with pay and condition, and financial those most nominated.

Regulatory Philosophy – Recognising Difference, and Flexibility versus Prescription

The study sought to test the underlying causes of difficulties experienced by small businesses in complying with regulatory requirements.

The compliance barriers or difficulties experienced by small businesses caused by communications problems could lie in the regulatory approach taken by agencies. Or, they could lie in the design of the regulation themselves, which would mean that changes to regulatory practice would not be helpful.

With regard to these issues, the questionnaire sought to test whether small businesses would prefer precise directions as to what to do or whether they would prefer regulators to be flexible in dealing with small businesses.

Respondents indicated that they overwhelmingly considered BOTH regulatory design and regulator behaviour contributed equally to regulatory compliance cost. (70%)

Similarly, asked whether they preferred the certainty as to what they were required to do to comply with regulation, or whether they would rather the regulatory had the discretion to allow small businesses to apply some flexibility in how they conducted themselves, there was a preference for flexibility, but not overwhelmingly so. This indicates that then small business community and the various sectors have differing views, likely to be driven by the differing circumstances of industry.

There was, however, a very strong sentiment that regulators should treat small businesses differently to large businesses.

A big majority (69%) felt that the small businesses should be treated differently. The most popularly nominated reasons related to resources; that the cost of compliance falls disproportionately on small business and that small business did not have the resources to employ specialist advice and assistance.

Definition of Small Business

The different definitions of small business employed by different agencies was regarded as a cause of problems. However, there was no overwhelming preference for a single definition among those options offered. The most popular was that small business should be defined as those with fewer than 20 employees.

We collected a range of comments from the study and these are listed below – they provide a the sense of personality and real life experiences to the findings.

Selected Comments

Between APRA, ASIC and the ATO, it's a problem with different regulators regulating different bits. A classic example of this muck-up is Regulation 7.04(a) of SIS. Some industry funds insist on forcing all employers who make payments to register with their fund (harks back to the 1950's). it would be the same if all the banks called an employer up every time there was a salary payment directed to them. Because of the multiple regulators, the ATO can't protect the employer from the red-tape imposed by

the registration requirement. Regulation 7.04(a) bans public offer funds (e.g. AustralianSuper, REST, AMP) from forcing the employer to register. APRA wouldn't have enforced one single case since the law in 2007. Public Offer funds continue to send registration paperwork (red-tape). ASIC is silent (not really their jurisdiction. Meanwhile, the member's money does not get allocated and the employer is belted with red-tape by scores of "excited" funds seeing a great opportunity to get lots of employees and now able to impose more regular contributions (monthly) etc etc .

FairWork won't even advise you the correct wages for an employee, what hope does a small business have!

Can't nominate a single group, as the experience is not consistent. At times, the ATO is fine, then you can have a poor experience. The same with Occupational Health and Safety,

Clearly defined regulation that is articulated in plain language. Advice must also be sent by physical mail and electronic mail since often either form may be lost or missed. Need to reinforce messages.

Lots of information and entities in market place to support WHS which is great. Main issue is that there is so much information that it is a big job for SMEs to sift through all of it to know what's relevant for them. NSW has a SME starter kit that is dated 2001. A good solution even if outdated.

ATO in relation to PAYG payments and on-line processing. They are both helpful and considerate of our needs; though waiting times on the telephone are completely out of touch with the day to day reality of a small business (ie: one cannot afford to wait on hold for an hour).

We are regulated by ASIC, Austrac, NSW OFT, ATO. None of them are straightforward. They all give me panic attacks.

ASIC / ACCC - inconsistencies in their approach to regulating the entire market. Some competitors appear to deliberately breach regulations and the regulator does not take action. Noise is made by the regulator that they are doing things in the enforcement area but businesses continue to operate in breach. The burden for operating a business is that we must have a robust process to ensure compliance which adds cost and slows the ability to get product to market whilst other industries don't appear to have the same level of scrutiny which provides them with a competitive advantage or lower cost to do business.

FWO.....Provides positive advice and assistance....not a Policeman at first call

A local government planning department that provides initial advice (either pre or post application) on a proposal in a timely manner that is clear and has the input of a senior officer. This is the best way to ensure that the attitude of the department through the assessment process is consistent and there are no unwelcome surprises (such as a refusal or unacceptable conditions) when a decision is made. The completion of tasks within the timeframe specified by the department is also important. The 'appeal' process for a planning decision occurs through a different entity (VCAT) whose timeframes for a hearing are so long that it is a discouragement to lodge an appeal.

The ATO appears to go out of its way to help and inform - it is the fools that design the system that I worry about

I need a professional to act on my behalf and the tax office is about the only one that will allow that. the rest of the regulators are really hard for my representative to deal with

Fair work Ombudsman mediator was straightforward, good timekeeping and seeking a fair/good outcome for all parties. Helpful, with advice that can be acted upon, not immediately punitive.

Bureaucratic little people who love the feeling of power. When a dubious decision was queried they retreated into silence & stalling tactics that resulted in irreparable damage to my business.

To give you a quick overview of our industry we write loans up to \$2000 our average loan is under \$900.00. Under new laws coming out 1/7/2013 we will return \$236.62 in 4 months, which is below our cost to write and maintain the loan. Further to this we have compliance costs and other regulatory costs we cannot recover, such as.

COSL charge for receiving complaint even though the client has not been thru our internal dispute process which is a requirement before proceeding to external dispute resolution. They charge us from \$165 for receiving a phone call from the client whether its justifiable or not. To dispute it cost thousands regardless whether you win or loose. We are forced to take out professional indemnity insurance. This has an excess of \$5000.00. Totally pointless as our largest loan is \$2000 and average below \$900. You write the loan off and be well ahead. The Labor government have introduced regulation capping what we can charge, setting it way below our operating costs even after a parliamentary commission recommended they do a cost analysis on what it will cost to write a loan. We have brain dead politicians regulating industries without a clue of what they are actually doing and the snow ball effects on the economy. Regulators need to have experience working in the industry before being allowed to regulate industries!!

Formally challenging - no small business has the time for that. We are overrun with regulations and paperwork. To the point we are selling up as it is too taxing anymore.
