

Mr Gary Banks
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Dear Mr Banks

Submission – Business Regulation Taskforce

Thank you for the opportunity to comment on the review into business regulation in Australia.

As you may be aware, the Small Business Commissioner (SBC) is an independent statutory office created under the *ACT Small Business Commissioner Act (2004)* whose role is, *inter alia*, to “to enhance a competitive, co-operative and fair operating environment for small business in the ACT” (section 3) and to “...monitor and report on the impact of legislation, government procedures and administration of small businesses” (section 11(1)(h)). Similar agencies also exist in Victoria (the Small Business Commissioner), the European Union (the SME Envoy), and the USA (the Small Business Administration’s National Ombudsman). Part of this role includes examining the impact of regulation on small firms, and advocating appropriate policy changes that can create a more “business friendly” regulatory environment. As such, both the goals and the establishment of the Taskforce are strongly supported.

The Particular Significance Of Australia’s Small Businesses

The attention of the Taskforce is particularly drawn to the role of small and micro-sized firms. As the table below shows, these are largest groups of enterprises in Australia.

Composition of Private Sector Firms in Australia¹

	Number of firms	Proportion
Micro-businesses (0-4 employees and self-employed)	952,200	81.80%
Small business (5-19 employees)	169,800	14.59%
Medium enterprises (20-199 employees)	39,300	3.38%
Large firms (200 or more employees)	2,800	0.24%
Total	1,164,100	100%

It is also worth noting that, according to the Australian Bureau of Statistics², about 68% of all small businesses are home-based. These firms are limited in both their staffing (many in fact consist only of self-employed persons) and organisational

¹ Australian Bureau of Statistics (2002), *Small Business in Australia 2001*, ABS Cat.No.1321.0, Canberra: Australian Bureau of Statistics, p.27. Figures exclude agricultural enterprises; totals may not add up due to rounding.

² Australian Bureau of Statistics (2005), *Characteristics of Small Business 2004*, ABS Cat.No.8127.0, Canberra: Australian Bureau of Statistics, p.70; figure excludes agricultural firms.

resources. As such, the regulatory burden frequently falls hardest of them, yet their capacity to handle such compliance is weakest of all. As general principle number 5 on the following page notes, the adoption of a “think small first” approach (rules primarily designed with the compliance capacity of very small firms in mind) is therefore strongly advocated in considering what regulations to repeal, and when framing future laws.

Any discussion about regulation should, I believe, address a number of issues. These include enunciating a set of broad principles that should govern the overall regulation-making process by government, and identifying specific areas in which regulatory changes is necessary. Each of these is addressed below.

General Principles

Previous examinations of compliance in Australia have already enunciated overarching frameworks that should be borne in mind when approaching the issue of regulatory review, such as the Business Council of Australia’s “principles of better business regulation.”³ Like the BCA, I believe that there are a number of generic principles or rules that need to be considered before any regulations are considered:

1. *Accept that failure, error & uncertainty will always occur.* It is not always possible – or desirable – to control all risk. Uncertainty, serendipity, mistakes and ambiguities will always exist, and any laws or policies which purport to control all aspects of business behaviour are unrealistic. A law which attempts to control a miscreant 1%, whilst imposing an unduly heavy burden on the compliant 99%, will always be a bad law. It is also fundamentally opposed to the notion of developing an enterprising culture, in which individuals make (and pay for) their own mistakes and successes.
2. *Desirable business outcomes cannot be guaranteed by laws.* The role of the state is to provide a free, fair and open market place, and to limit or restrict some practices deemed undesirable by the community. Businesses must be free to fail or succeed on their own merits. A measure of personal responsibility must always be accepted by businesspeople, and regulators must accept that the state has only a limited role in governing the behaviour of firms.
3. *There will always be a trade-off between simplicity and equity.* Often, the best laws are those that are the simplest and easiest to understand. They may not be fair to all individuals in all circumstances, but they are able to be complied with. In contrast, regulations which attempt to take into account every possible contingency, and purport to cover every situation, inevitably result in a plethora of laws and an unnecessarily complex environment.
4. *Legislation should be the last option.* Australia already has a well developed system of statute and case law, common commercial practice, and existing regulatory mechanisms that can deal with the bulk of issues requiring regulation. In addition, new or novel issues can often be self-regulated by industry, or through codes of conduct. Wherever possible, the “precautionary

³ Business Council of Australia (2005), *Business Regulation Action Plan For Future Prosperity*, Melbourne: Business Council of Australia, pp.15-24.

principle” (in this case, the use of new laws only as the last option for change) should be adopted.

5. *Think small first.* Most laws in Australia are designed for compliance by large corporations, who have the resources to meet such activities. However, over 80% of our firms are micro-enterprises (that is, they employ less than five people). It would be desirable to adopt the approach where laws are written for micro-firms, and exemptions or particular additional burdens of proof are placed on larger enterprises – this would be an inversion on the current trend, and lead to laws better suited to the bulk of Australian enterprises.
6. *The cost of compliance should be shared between both regulators and the regulated.* The tendency in Australia to devolve all responsibility for meeting compliance onto business means that policymakers are often ignorant of the true burden involved in such measures. This process of externalising costs makes it easy to write rules, introduce more complexity, and then sit back and enforce them. How different would this be if rule-makers had to meet part of this cost themselves?
7. *Incentives should be preferred over impediments.* Many laws are designed to generate socially-desirable objectives, and to penalise those who fail to do so. Rather than imposing a “big stick” approach, it would generally be preferable for government to provide “carrots” for proactive firms, and leave others to miss such opportunities.

Specific Suggestions

There are also some specific issues which, I believe, the Taskforce should consider in its goal to reduce unnecessary regulatory imposts. These are as follows:

1. Uniformity of Business Names Registration

At present, each state and territory administers its own business names registry and requires firms to list with it. Yet registration does not give firms *ownership* of a name – it does not protect them from other parties using the same name as a company name or trademark, for example, or as a website. It also requires firms trading in joint-state environments (such as Canberra-Queanbeyan, Tweed Heads, or Albury-Wodonga) to have two such registrations. It is suggested that state and territory governments consider creating a unified national business names register, possibly under the aegis of ASIC, given the latter’s role in registering corporations.

2. Indexation of the Current \$50K GST exemption

When the Goods and Services Tax was introduced in 2000, a threshold of \$50,000 turnover was established before private sector firms needed to enter into the system (below this, entry was made an optional activity). Since that time, the threshold has not been changed, and in real terms this represents a decline in the entry threshold. The result has been to force many micro-businesses, including part-time and small-scale ventures, into the GST net. It creates a substantial administrative cost for firms and for the Australian Taxation Office. Moreover, it is doubtful that the GST revenue collected is even equal to the ATO’s cost of administration. It is therefore recommended that the threshold be lifted to a more realistic level and indexed in future.

3. Establish Consolidated Definitions

Different regulations use varying definitions when seeking to administer the same businesses. For example, the definition of both an employee and a contractor varies markedly between worker's compensation, industrial relations, occupational health & safety, and income tax laws. The provision of standardised definitions would go a long way towards the creation of a more streamlined administrative and regulatory framework, and lower compliance issues for small firms.

4. Creation Of On-Going Performance Indicators

The Taskforce should also establish a set of benchmarks that can be used to analyse business regulation in future. By benchmarking ourselves against other advanced market economies, we will be better placed to determine if, overall, our regulatory burden compares favourably with the OECD or other relevant economic regions.⁴ It will also provide a continued impetus for reform on an ongoing basis.

5. Self-Employed Persons and Not-For-Profit Organisations

As well as private-sector firms, it is also recommended that the Taskforce take into account the needs of self-employed persons and not-for-profit (NFP) organisations. The ability of charities and similar organisations to achieve social goals through their quasi-business activities is often affected through the imposition of regulatory and other compliance costs. Likewise, many of the micro-businesses referred to above consist purely of self-employed individuals. Both of these are important economic units, yet are often overlooked when discussing regulatory impacts in the business environment.

Conclusion

Overall, the opportunity to review government regulations is welcome, as is the Taskforce's call for public submissions. However, compiling a "wish list" is one thing; actually enacting such changes is another. This is a challenge for both business and government. Should you require any further assistance or clarification of any of the points raised above, I would welcome the chance to work further with you on these issues.

Yours sincerely

Dr Michael Schaper
Small Business Commissioner
10 November 2005

⁴ See, for example, World Bank (2005) *Doing Business In 2005: Removing Obstacles To Growth*, jointly published by the International Finance Corporation, Oxford University Press & The World Bank; and also Dennis, W.J. (2001) *Coping With Regulation: National Small Business Poll*, Washington: National Federation of Independent Business.