Chapter 6

Reducing the Burden of Regulation

> Reducing the regulatory burden on small firms is one of the greatest spurs to entrepreneurship…Small firms have reduced capacity to absorb unproductive requirements because they have less capital as well as fewer managerial resources. [Small and Medium Enterprises] identify high compliance costs, extensive and complicated paperwork and economic regulations that prohibit certain activities as the most onerous burdens they face.[1]

6.1 This chapter is concerned with assessing the affect of regulation on small business and identifying measures to minimise or reduce the burden. The diversity of small business and its concerns, and the broad scope of the inquiry's terms of reference, mean that it has not been possible to examine specific regulatory issues in any detail. Instead, the focus is on examining the main sources and causes of regulatory burden, the efficacy of current policies and programs to minimise the burden, and possible improvements.

The role of regulation

6.2 'Regulation' commonly refers to both 'black letter' laws such as acts of Parliament, regulations, ordinances and by-laws and the growing body of so-called 'grey-letter law' or quasi-legislation such as codes of practice. It also embraces the administrative procedures and reporting requirements which, from the point of view of those affected, form part of the total 'regulation package'. Although regulation carries some negative connotations of restriction and control, bureaucracy and red tape, it is important to remember that governments regulate to protect and advance the public interest or the interests of a segment of the community. Regulations are often made in response to community concerns and demands: for example food safety regulations, gun control laws and occupational health and safety legislation. A demand for governments to regulate is one of the most common community responses to an identified problem.

6.3 Regulation also plays an important role in protecting the small business sector. The proper regulation of financial services, tenancy laws and various types of legal reporting requirements can protect small business operators from the activities of unprincipled competitors or suppliers. Competition policy and trade practices legislation can also be a means of protecting the interests of small business. The WA Small Business Development Corporation (SBDC) commented that, from a small business perspective:

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1 *OECD Small and Medium Enterprise Outlook, 2000 Edition*, OECD Paris 2000, p. 17

> Government regulation should therefore not be seen as wholly undesirable, but rather a process that should seek to balance the need for adequate protection of the community as a whole, without unnecessarily detracting from the core activities of small business operators. To achieve such a balance, government regulation must be easy to understand, not unnecessarily onerous or time consuming, and the need for regulation justified and communicated.[2]

The burden of regulation

6.4 Regulation also brings costs. Governments incur administrative costs such as those associated with providing information, changing computer systems, or enforcing regulations. Business and other sectors of the community may also incur costs in complying with regulations. These compliance costs include direct costs, such as product labelling and inspection charges and indirect costs such as time spent on record-keeping. By diverting financial and managerial resources away from productive activities, compliance costs reduce a firm's capacity to innovate and maximise operational efficiency.[3] The totality of compliance costs is known as the 'burden of regulation'.

6.5 Governments and legislators have been concerned about the burden of regulation on small business for some time. A series of inquiries or reviews since since 1990, including the Small Business Deregulation Task Force (the Bell Task Force), have examined the issue. The Australian Chamber of Commerce and Industry (ACCI) regular surveys of critical issues facing business consistently rank regulatory concerns, particularly the frequency and complexity of tax changes, as among businesses' greatest concerns.[4]

Measuring the burden of regulation

6.6 Measuring the burden of regulation is difficult, partly because compliance activities are not always easy to separate from other business activities. For example, revenue records may be kept for both internal financial management and taxation purposes. Despite these difficulties, attempts have been made in Australia and other countries to quantify the burden. The main finding is that taxation (46 per cent), employment (35 per cent) and environmental regulations (19 per cent) are responsible for most of the burden of regulation in Australia and other OECD countries.[5]

6.7 Small businesses across the OECD spent an average of $US25,000 per firm on complying with taxation, employment and environmental regulations in 1998,[6] or

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2 Submission No. 47, Small Business Development Corporation of Western Australia, p. 3

3 OECD, *Businesses' Views on Red Tape—Administrative and Regulatory Burdens on Small and Medium Enterprises*, OECD, Paris, 2001, p. 32

4 Submission No. 37, Australian Chamber of Commerce and Industry (ACCI), p. 7

5 OECD, *Businesses' Views on Red Tape*, p. 21

6 ibid., p. 23

an average of $US4,610 per employee.[7] In contrast, medium businesses spent an average of $US1,500 per employee and larger firms spent an average of $US900 per employee. Australian figures are slightly below the OECD average.[8] The Bell Task Force estimated in 1996 that the average Australian small business spent 4 hours a week on government paperwork, of which 3 hours related to taxation, and $A7,000 a year on related costs including external advice and the costs of the operator's time.[9] Bell found that the aspects of regulation that are of greatest concern relate to the quality of regulation and its administration, including issues of complexity, uncertainty, the pace of change and the nature of record keeping requirements.

6.8 The burden of regulation falls most heavily on small business because the bulk of compliance costs are fixed costs, which apply irrespective of the size of the firm, and therefore account for a greater proportion of small firms' managerial and financial resources. For the same reason, micro-businesses, particularly those that employ people, are likely to suffer an even greater compliance burden than other small businesses. The OECD explained that the 'dramatic regressive' nature of regulation can have a snowball effect as resources devoted to compliance run down firms' financial reserves, making them more vulnerable to financial distress, reducing opportunities for growth and restricting job creation; unit margins are increased to cover costs, which may adversely affect productivity; and the owner/manager spends time away from management of the business and generating sales and revenue.[10] Constant changes to regulatory requirements also make it more difficult for business to plan and make sound investment decisions and may inhibit investment, with flow-on effects for productivity and profitability. An excessive burden of regulation may also have the effect of reducing the level of compliance. The committee heard evidence that, when the burden of regulation becomes too great, some small businesses are likely to throw up their hands and cease complying.

6.9 The extent and nature of the burden varies significantly from business to business, depending on the industry sector and sometimes also location. The compliance burden of the GST, for example, is likely to be far greater for businesses such as grocery retailers with large sales volumes and a mixture of GST-exempt and GST-liable products at one end of the spectrum, compared with business consultants with a small number of customers at the other end. Businesses in regional areas without easy access to advice and assistance from government, accountants or occupational health and safety inspectors can face an additional compliance burden.

6.10 There is a general acceptance that, across the OECD, the cost of complying with regulations is increasing each year.[11] Small business operators and their advisers confirmed that this is also true in Australia:

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7 ibid., p. 21

8 ibid., p. 21

9 *Report of the Small Business Deregulation Task Force,* p. 14

10 OECD, *Businesses' Views on Red Tape*, p. 24

11 ibid., p. 30

> All this paperwork and red tape…has not eased up over the years. In fact, I have been in business for many years and I think it is becoming more and more complex all the time rather than simplified.[12]

> I must say that I do not think I could survive another two years of simplification like the last two! I have been deluged with so much paper that I cannot grasp where anything has been simplified. I can certainly grasp the fact that my compliance staff, of which I have two, are tearing their hair out and there do not seem to be enough hours each week for them to comply. I have a total staff of 20, so it astounds me that I have to have a very expensive computer system and that amount of staff time applied to compliance. I have been in business basically on my own for 40 years, and 40 years ago I could do the paperwork on the back of an envelope. Nowadays, it takes two staff and a computer and I still cannot do it—in fact, I have given up. I now walk away from it and say, 'I pay you; you do it. It is beyond me. I have to go and make some money.' So I no longer attempt to do it myself. On top of that, I engage outside accountants to check up on what they are doing to make sure that they have got it right.[13]

6.11 ACCI appeared to agree, submitting that the burden of regulation on small business is likely to have increased since 1996, largely as a result of the introduction of the New Tax System and new environmental regulations.[14] The government had established the Bell Task Force to further its pre-1996 election commitment to halve the burden of regulation on small business. On the advice of the Office of Small Business, the great majority of the commitments made in *More Time for Business*, the government's response to the Bell Task Force report, have been implemented.[15] When asked whether the result had been a halving of the regulatory burden, the Office of Small Business responded:

> The government's objective is to reduce the overall regulatory burden on small business. When the commitment was made in 1996 and then taken up by the Bell task force following the election, it concluded that the 50 per cent policy objective for a substantial reduction should not be seen as some sort of arithmetic goal as such. A number of initiatives such as changes to the ABS data collection have seen substantial reductions in the paperwork burden. More importantly, there has been an increasing systemic change in how policy and regulation is made to better account for the needs and considerations of small business. One of the most recent was last September when the government announced that proposals to go to cabinet need to be assessed for their impact on small business by the Office of Small Business and a statement has to be made to cabinet in the documentation so cabinet is fully aware, when making decisions, of the potential impact on small

12 Mr Edward Smith, Member, Great Southern Area Consultative Committee, *Hansard*, Albany, 18 July 2002, p. 89

13 Mr Graeme Hollidge, *Hansard*, Adelaide, Roundtable, 10 October 2002, p. 1007

14 Submission No. 37, op. cit., p. 11

15 Office of Small Business, response to Question on Notice, Attachment A

> business. I am pleased to say that is being implemented and, on an operational level, we are seeing an increasing amount of material coming through.[16]

6.12 While quantitative measures of regulatory burden have their limitations, they do provide a very useful indicator of the *effect* of regulation on business and changes over time. It would be possible and instructive to use the same survey methodology that Bell used in 1996 to measure the time and money now spent on compliance. Regular quantitative and qualitative assessments of the regulation burden on small business would also provide a means of tracking changes over time and identifying problem areas. This would best be done by developing a consistent methodology for monitoring regulatory burden in Australia and by Australia participating in regular OECD surveys of the type undertaken in 1998 and reported in 2001.

Recommendation Seventeen

The committee recommends that the Commonwealth Government undertakes a follow-up to the Bell Task Force survey of the time and money that small business spends on compliance related matters. The committee also recommends that the Commonwealth Government, in consultation with state and territory governments, develops a consistent methodology for measuring the compliance burden of government regulations. It also recommends that the Commonwealth proposes to the OECD that it undertakes regular reviews of the effect of compliance on small and medium enterprise, with Australian participation, as a further means of tracking changes in the regulatory burden over time.

Components of regulatory burden

6.13 Both the volume and quality of regulation determine regulatory burden. Good quality regulations are consistent with other regulations, flexible enough to be implemented efficiently by business, achieve their objectives as simply as possible and are easy to understand. Changes should be predictable and manageable. The quality of the administration, including the information provided by governments and government responses to requests for advice or decisions on applications, is also important.[17]

The volume of regulation

6.14 The sheer volume of regulation and pace of change are major sources of regulatory burden. Without an active program of red tape reduction, the number of regulations that business must comply with will increase each year, as parliaments pass new laws and amend others. There are approximately 100 Commonwealth organisations, national standards setting bodies and ministerial councils with the power to prepare and administer regulations as well as a multiplicity of state, territory

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16 Mr Antony Brugger, Acting General Manager, Office of Small Business, Department of Industry, Tourism and Resources, *Hansard*, Canberra, 6 August 2002, p. 560

17 OECD, *Businesses' Views on Red Tape*, pp. 33–36

and local government regulatory agencies. Each year these bodies produce thousands of pages of new regulations to add to the thousands of pages that already exist;[18] each year about 140 proposals for regulatory change at Commonwealth level require a Regulation Impact Statement because of their impact on business.[19]

6.15 The Recruitment and Consulting Services Association (RCSA) explained how the volatile regulatory environment for employment adds to the workload of their members:

> …many small business owners run their business during traditional business hours 8.30am to 5.30pm and use the hours before and after to update documentation and research new legislation. Members rely on scanning the media, and their membership of the RCSA to ensure that they are up to date on changing legislation, and more importantly on how it affects their business.[20]

6.16 A chartered accountant with a small business clientele identified the need to keep track of the constant changes to superannuation legislation as a major issue:

> …superannuation has only been changed about 50 times in the last 10 years! How do you keep up to date? How does small business keep up to date with these changes in legislation? From an accounting point of view, it has been very difficult to do that. But, from a small business point of view—as they do not have the skills to understand what has been going through—it has been quite difficult and in some ways unfair on them to have to have dealt with those legislative changes.[21]

6.17 Clearly, from these comments, change is a particular problem when the arrangements to inform business of changes, and in particular of the implication of those changes for their business, are less than satisfactory. This appears to be an area where governments can do more to reduce the burden of regulation and will be taken up as an issue later in this chapter.

6.18 One tool that has been suggested to limit the inexorable increase in regulation is the regulatory budget. The logic underlying this concept is that, in an environment favouring balanced or surplus budgets, there is more incentive for governments to reduce or contain administrative costs than to contain compliance costs, which are largely unseen and not monitored.

6.19 The Productivity Commission indicated that this approach, while potentially providing some discipline or constraint on regulatory inflation, has never been used in Australia or overseas and has a number of problems. These include an undesirable constraint on regulation that would have a net community benefit, the lack of a clear

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18 Mr Gary Banks, Chairman, Productivity Commission, *Hansard*, Canberra, 17 October 2002, p. 1013

19 ibid., p. 1015

20 Submission No. 41, Recruitment and Consulting Services Association, p. 1

21 Mr Harold Handley, *Hansard,* Roundtable, Adelaide, 10 October 2002, p. 1009

basis for establishing budgets and a greater stringency being applied to new, compared with existing, regulation.[22] The committee notes these comments and agrees that they provide a good basis for rejecting the notion of regulatory budgets. A less prescriptive requirement, such as a consolidated, annual register of Commonwealth regulatory changes could be compiled from the regulatory plans that agencies are now required to produce. The register could be included in the annual report of the Productivity Commission on regulation review and also published separately on the Business Entry Point. A consolidated register would highlight the extent and nature of new and amended regulation and provide a useful running record or checklist for businesses and their advisers on regulation changes. Ideally this approach should be replicated at all three levels of government.

Recommendation Eighteen

The committee recommends that the Commonwealth Government maintains and publishes an annual consolidated register of regulatory changes with a summary of their objectives and impact on business as a tool to monitor the growing body of regulation. State and territory and local governments should consider a similar mechanism.

The quality of regulation and its administration

6.20 Conflicting or inconsistent requirements from the different tiers of government are also a source of regulatory burden. The Bowen Collinsville Enterprise explained that arrangements for regulating aquaculture developments in Queensland require operators to seek licences from two state agencies and two Commonwealth agencies, but the guidelines and policies used to assess applications are not consistent.[23] The submission argued that:

> The complex web of licensing, approvals and regulations, and the lack of a coordinated approach to the process from different agencies is leading to significant delays in the process. A prawn farm proponent in Bowen Shire has been advised by their planning consultants that it will take 2 ½ years to navigate the proposed project through the various processes. Each approval (GBRMPA, EPA, DPI, Environment Australia) is assessed independently of each other. There is little formal discussion between agencies, and often there is disagreement between agencies on standards, practices and policies.[24]

6.21 The committee notes with approval that the Queensland government, which has an active program of red tape reduction, is developing a more coordinated approach to regulation of aquaculture in Queensland.[25]

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22 Productivity Commission, response to Questions on Notice, 15 November 2002, p. 13

23 ibid., p. 1

24 ibid., p. 4

25 Letter from Mr Tom Barton, Queensland Minister for State Development, 16 May 2002

6.22 The quality of regulation continues to be a problem. The OECD report on regulatory burden on small and medium enterprises found that Australian small businesses are among the most critical of the quality of regulation: 69 per cent considered that regulations are not easy to understand; 89 per cent considered that regulations do not achieve their objectives as simply as possible; 88 per cent considered that regulations are not flexible enough to be implemented efficiently; 75 per cent considered that regulation changes are not predictable; 77 per cent considered that regulations are not consistent with each other; and, 62 per cent considered that it is not possible to comply fully with all regulations.[26]

6.23 The submission from the Small Business Development Corporation in Western Australia conveyed a similar message arguing that small business considers itself not only to be over regulated, but to be regulated by governments that do not adequately understand its needs or circumstances. Concerns include unidentified and unintended consequences, unnecessarily complex or onerous processes, insufficient lead time or insufficient support to assist the sector manage change.[27]

6.24 While the quality of administration of regulations in Australia is rated more favourably,[28] there are still problem areas, including timeframes for decisions. The committee was told that Salisbury Council in South Australia has reduced the time for a decision on 'non-notified applications' to 3.2 days, but other councils still take up to 5 months.[29] A representative of the Brisbane Office of Economic Development pointed to the need for agency response timeframes to match the environment in which small business operates:

> …we have to make an effort to try and ensure that the legislation matches what modern society and business require… It is no use saying you need 12 months to approve something when that small business might need it in three months. We have to find a way to match the three months.[30]

6.25 This problem could be overcome if clear service standards that are supported by business as workable in the commercial environment are attached to any new or amended regulatory requirement, involving a decision or service from government. Estimates of the administrative costs of regulatory proposals should be based on the resources required to provide the appropriate level of service. Issues related to improving the quality of regulation are discussed further in the section on Regulation Impact Statements.

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26 OECD, *Businesses' Views on Red Tape*, Table 3, p. 117

27 Submission No. 47, op. cit., p. 15

28 OECD, *Businesses' Views on Red Tape*, Table 4, p. 119

29 Mr Greg Waller, Director, Development and Environment Services, Salisbury City Council, *Hansard*, Adelaide, 10 October 2002, p. 945

30 Mr Richard Joel, Chief Executive Officer, Brisbane Office of Economic Development, *Hansard*, Brisbane, 12 September 2002, pp. 756–57

Comment

6.26 The regulation impact assessment processes introduced by the Commonwealth and all states and territories apart from the Northern Territory (which is in the process of introducing a tool to assess business impacts) should ensure that regulatory quality issues, including business impacts, are examined carefully for all new or amended legislation. However, there is currently no equivalent scrutiny applied to existing regulations apart from instances of specific or *ad hoc* reviews or red tape reduction exercises. The committee considers that the Commonwealth and state and territory governments and local councils should each undertake an ongoing program of systematic review of regulations affecting business to assess whether they are still necessary and achieving their objectives as simply and efficiently as possible. Particular attention could be given to areas where regulatory requirements, including administrative arrangements, unnecessarily burden business, for example through poor drafting, duplication, unnecessarily rigid requirements or the interaction with other regulatory requirements. Reviews could also consider whether the regulations are being administered in way that minimises the compliance burden.

Recommendation Nineteen

The committee recommends that all levels of government introduce rolling programs of regulatory review to assess whether existing regulations are continuing to achieve their objectives as simply and efficiently as possible and to identify the need for any changes to regulations or administrative requirements.

Complexity of regulations resulting from multiple jurisdictions

6.27 The three tiers of government in Australia, and instances of overlapping responsibility add a significant layer of complexity to the regulatory environment. This complexity can be addressed or reduced in various ways. For example, mechanisms such as the Business Licence Information System (BLIS) draw together or coordinate the licensing requirements of all levels of government. Overlap and duplication can also be reduced at source by careful design of new or amended regulations, for example, by modifying an existing form to incorporate new requirements. Model or template laws and uniform legislation simplify compliance for businesses that operate across more than one jurisdiction. The most ambitious reform proposals involve removing one or more layers by creating single jurisdictions for particular policy areas.

6.28 Measures that aim to draw together requirements of each tier of government, such as the Business Licence Information System (BLIS), the Business Entry Point, or one-stop shops or services, such as the Small Business Assistance Officer program, need to be supported by formalised agreements and processes of information sharing between agencies and levels of government. The committee was told that this does not occur in all cases at present.[31] There is also a more general need for improved

31 Submission No. 23, Great Southern Area Consultative Committee, p. 4

information sharing on regulatory reform initiatives across each level of government. This issue was identified by the Western Australian SBDC, which has developed a website to share information on initiatives to benefit small business.[32] The Local Government Association of South Australia also identified the need to give some attention nationally to how jurisdictions, including local government, might better exchange best practice information in relation to small business support and deregulation. It suggested that the Development Assessment Forum is an effective model in the planning field which could achieve more if better resourced.[33]

6.29 Consistent or common approaches to a problem also help to minimise problems associated with multiple jurisdictions. Witnesses from Western Australia advised the committee that they had attempted to introduce a model scheme for home-based business so business across the state would be subject to the same local laws, forms, and application processes.[34]

6.30 There was no unanimity on the merits of proposals to move to a single industrial relations system. Participants in a roundtable in Perth took different positions: while acknowledging the benefits of a single system, they were also wary about relying on a single system, particularly a national system, to reflect local needs. This is a particular concern in relation to industrial relations where the policies and programs of the main parties often differ significantly. Business people took the view that a single national system could be an advantage if it was more aligned to their priorities but a disadvantage in other cases.[35] The result is that they may prefer to have 'a bet each way'.

6.31 The committee sought advice from the Productivity Commission on mechanisms to promote greater regulatory consistency across multiple tiers of government. The Commission pointed to the requirement in the Regulation Impact Statement (RIS) procedures for agencies to identify the interaction between a proposed regulation and existing regulation, from whatever tier of government. It also identified a range of bodies that play a role in regulatory reform or review from a multi-jurisdiction perspective, including the Council of Australian Governments (COAG), Ministerial councils, national standards setting bodies, the Australian Local Government Association, National Competition Council, and the Commonwealth-State Committee on Regulatory Reform (CRR), which reports to COAG on national competition policy and regulatory reform, and noted the role of the Mutual Recognition Agreement.[36]

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32 Mr George Etrelezis, Managing Director, Small Business Development Corporation of Western Australia, *Hansard*, Perth, 17 July 2002, p. 14

33 Submission No. 90, Local Government Association of South Australia, p. 6

34 Mr George Etrelezis, op. cit., p. 20

35 Chair, *Hansard*, Melbourne, 25 July 2002, p. 316

36 Productivity Commission, response to Questions on Notice, pp. 17–22

6.32 It is not readily apparent whether one of these existing bodies or mechanisms would be appropriate to draw together and monitor the systematic regulatory review efforts of the Commonwealth and states and territories as recommended in the previous section and to undertake a program of cross-jurisdictional review or whether a new body is required. For example, the CRR, which appears to have a role in regulation reform supporting COAG, has no separate organisational support and relies on the existing resources of member governments to undertake the task.

Comment

6.33 The committee considers that there is a need for a standing cross-jurisdictional body with an agenda of regulation reform and review, focused on reducing regulatory burden, backed up by appropriate resources and authority. It has a preference for a ministerial level body with a clear brief of pursuing a continuing program of cross-jurisdictional regulatory reform, but is mindful of the range of different mechanisms and the need to avoid duplication. It therefore recommends that the Productivity Commission, given its charter of advising the Commonwealth Government on regulatory reform, be asked to report on the most appropriate mechanism for undertaking a continuing program of cross-jurisdictional regulatory reform and to coordinate the ongoing programs of regulatory review.

Recommendation Twenty

The committee recommends that the Productivity Commission be asked to report to the Council of Australian Governments (COAG) on the most appropriate body to monitor and manage a continuing program of cross-jurisdictional regulatory review and coordinate the rolling programs of regulatory review to be undertaken by all tiers of government.

6.34 The remainder of this chapter focuses on issues relating to regulation raised during the course of the inquiry.

Information, advice and assistance

6.35 In order to comply, small business needs easy access to accurate, up-to-date and clear information on regulatory requirements and, ideally, the implications for their business. Current arrangements clearly fall short of providing this level of support.

6.36 The submission from ATSIC argued that the lack of 'easily accessible, easily comprehended information' at all levels of government, increases the burden on those new to business,[37] and is a particular problem for Indigenous business people who may lack the education, and in some cases mastery of the English language, needed to digest complex, technical information. CPA Australia submitted that many small business operators do not even know what they need to know, and as a result:

37 Submission No. 87, Aboriginal and Torres Strait Islanders Association, p. 2

> They can operate in some areas unaware of their compliance obligations. This is particularly the case for changes in awards and conditions of employment where a business does not belong to an employer association. Often ignorance of compliance obligations only surfaces after a business has made and implemented a decision that breaches requirements.[38]

6.37 Regulatory information is available from the Business Entry Point and state and territory government equivalents. While providing a useful service, internet-based information is not a complete solution. Not all small businesses have access to the internet and for those that do, finding the relevant information is not easy. The Business Entry Point in particular does not locate all regulatory information in a single area. A small business operator explained:

> I know the government has been quite proactive in putting a lot of information on web sites, but finding that information is still very difficult. I know the government has a small business web site that has certain small business information on it but, again, the way that is structured is perhaps not suitable for most small businesses, and you can spend a lot of time trying to find that sort of regulatory information and other information, which may or may not be there. It would be a suggestion to keep web sites up to date and to perhaps look at the structure of those web sites, so that compliance issues, regulations and other governmental information is available for small business in a centralised location.[39]

6.38 Education and information is particularly important at the time of regulatory change, so that businesses and their representatives or advisers are informed of the new requirements. Guidelines do require agencies to consult with business at an early stage about proposed regulation and new or amended regulation, but the committee was told that these are often not adhered to. As a result, the National Farmers' Federation reported that it is very difficult, even for industry associations, to keep up to date with all the changes:

> People in business spend their time trying to earn their money, making a living and focusing on the bottom line. It is very easy to see how they would not go and surf various web sites just to see whether a change has been made to the law that may impact upon them. That is a lot of the feedback we get from government departments: 'It was on the web site.' We say, with all due respect, small businesses do not go looking for that; they need to have their attention drawn to it. So it is very hard.[40]

6.39 Reaching the more than one million small businesses is clearly a challenge for government. CPA Australia suggested that education or awareness programs for new or amended legislation should follow the GST model of central development of information resources with distribution through as many diverse channels of the small

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38 Submission No. 18, CPA Australia, p. 6

39 Mr Paul Wilson, *Hansard*, Sydney, Roundtable, 15 August 2002, pp. 681–82

40 Mrs Su McCluskey, General Manager, Policy, National Farmers Federation, *Hansard*, Canberra, 6 August 2002, p. 501

business network as possible.[41] Accountants are a useful point of contact for businesses that are not members of industry associations. Industry associations and small business associations can also play a valuable role by tailoring information to the needs of their members, for example, preparing model or template contracts, and identifying implementation issues. An industry association representative advised the committee that they can distribute information easily now more than 60 per cent of their members are on e-mail.[42]

6.40 The committee was told that the Commonwealth Government has introduced a syndication program to electronically distribute packets of information about matters such as regulatory changes to organisations such as CPA Australia and industry associations. This is a potentially valuable development, and the Commonwealth should undertake an evaluation of its effectiveness as an information distribution mechanism within the next 12 months, in close consultation with the small business community. Other members of the small business network such as BECs and ACCs, as well as state government agencies responsible for small business and local councils, should be included in the syndication program. If this is not possible in the short term, there needs to be some e-mailing or other information distribution system for these agencies.

6.41 Businesses also need easy ways to find out about existing regulatory requirements when the need arises, for example when they first decide to employ. As most small businesses see their accountants at least once a year, CPA Australia suggested that governments provide accountants with fast and easy access to regulation information and resources to which they can direct their clients. Information needs to be in a more useable, accessible form than that currently provided through the Business Entry Point or state government equivalents, because 'like small businesses, many accountants do not have time to web-surf to find information or to chase from agency to agency.'[43] CPA Australia suggested that government consider a 'virtual small business department'. The virtual department would provide a higher level of integration and useability than the Business Entry Point, which requires that businesses search or 'shop' across a range of websites. As one roundtable participant commented:

> We cannot get away from the government stuff but we need to make it very easy. I think we can make it easy by providing a clearing house of easily understood information, rather than find that small business owners have to shop from point A to point B to point C to find that information.[44]

6.42 The upgrade to the Business Entry Point in late 2002, while an improvement on previous versions by linking users directly to a specific entry under the relevant Commonwealth, state or territory website, still falls short of the level of integration envisaged by most witnesses.

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41 Submission No. 18, op. cit., p. 18

42 Mr John Gaffney, *Hansard*, Melbourne, Roundtable, 25 July 2002, p. 384

43 ibid., p. 15; see also Submission No. 63, National Farmers' Federation

44 Mr Danny Keep, *Hansard*, Launceston, Roundtable, 26 July 2002, p. 449

6.43 Business also needs help in interpreting regulations, once located. Regulations are often detailed and complex and few are set out in plain English or accompanied by plain English explanations.[45] There is also little or no information on how they apply in practice. CPA Australia voiced a common complaint when it stated that 'Government sets the rules for compliance but is often slow in giving practical guidance about the implications or implementation of those rules'.[46] Small businesses need such practical guidance on implementation because they lack the specialist staff who interpret compliance requirements for larger organisations. A representative of the independent retail sector advised the committee that, without such support, many small businesses are likely to fall foul of the law through lack of understanding.[47] Occupational health and safety legislation is an example of where business needs assistance in identifying how legislation applies in practice:

> If you are a small business and you have to wind your way through it yourself, it is quite difficult. If you have a look at some very large organisations, they will run training courses for a week on the management of occupational health and safety. You cannot do that in a small business, so we have to help them do it. When the legislation is drafted, I do not think the total ramifications are really thought through, to use the term used earlier, at the micro business level.[48]

6.44 A number of suggestions for assisting small business to identify and meet their compliance obligations were made in addition to the proposal for a virtual department:

- training courses or seminars for small business, perhaps tailored to specific industries, to assist small businesses to determine if they are compliant;[49] the RCSA suggested that government should consider funding industry associations to provide seminars on new or changed requirements;[50]
- advisers who can visit a business on request to assess their level of compliance and any need for change, as occurred with financial record keeping in the initial stages of the GST implementation;[51]
- a clearing house of information in an easy to understand format;[52]
- a single point of contact in government for small business with compliance enquiries, using a case manager approach, along the lines of the approach being introduced by the Environment Protection Agency (EPA) in Queensland;[53]

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45 Submission No. 37, op. cit., p. 25

46 Submission No. 18, op. cit., p. 15

47 Mr Peter Wise, General Manager, Tasmanian Independent Wholesalers, *Hansard*, Launceston, 26 July 2002, pp. 401-402

48 Mr Peter Cowley, *Hansard*, Melbourne, Roundtable, 25 July 2002, p. 371

49 Ms Mary Storch, *Hansard*, Roundtable, Sydney, 15 August 2002, p. 685

50 Mr Charles Cameron, Recruitment and Consulting Services Association, *Hansard*, Melbourne, 25 July 2002, p. 320

51 Mrs Beverley Farmer, *Hansard*, Albany, Roundtable, 18 July 2002, p. 135

52 Mr Danny Keep, op. cit., p. 448

- ensuring that all the relevant information is available with every potential point of contact. For example, when small businesses register for PAYG prior to engaging employees, information could be provided on superannuation and WorkCover obligations if required; similarly when registering for WorkCover, they should receive information on tax obligations;[54]
- a repository of forms, tax tables and other information related to employment on the internet;[55] and
- a Business Referral Service, as operating in Queensland, to provide business with access to experts and detailed information on government regulations.[56]

Comment

6.45 While some progress has been made in providing information to business on regulatory requirements at the Commonwealth and state and territory levels, it has been uneven and there remains a long way to go. Small businesses and their representatives made it clear to the committee that they need more advice and assistance than most levels of government currently provide, particularly in identifying the implications of regulatory change for their business. Governments at all levels need to consider a range of initiatives to provide the assistance required. These include business referral services—comprising both a single point of telephone/e-mail contact in government and a 'case manager' approach to ensure that any question is satisfactorily addressed. Circulation of the first draft of a Regulation Impact Statement can be one way of improving and enhancing consultation on proposed regulation.

Recommendation Twenty-one

The committee recommends that the Commonwealth and state and territory governments introduce a range of initiatives to assist small business to identify, understand and implement new and existing regulatory requirements. Information programs for small business should involve all components of the small business network.

Quality and flexibility of regulation and its administration

6.46 The quality of regulation and its administration is important. Good quality regulation can be easily understood and implemented, achieves its objectives as simply and efficiently as possible with predictable and manageable changes. Business needs flexibility, fairness and time to adapt to regulation especially for major

53 Ms Helen Jentz, *Hansard,* Brisbane, Roundtable, 13 September 2002, p. 844

54 Ms Judith Hartcher, Business Policy Adviser, CPA Australia, *Hansard*, Melbourne, 24 July 2002, p. 202

55 Mr Paul Wilson, op. cit., p. 707

56 Productivity Commission, responses to Questions on Notice, 15 November 2002, p. 10

changes.[57] Legislative phase-in periods can be an important element of good quality regulation:

> Small businesses require adequate notice whenever major regulatory changes are made by decision makers. They must be provided with adequate time to acquaint themselves with impeding changes and implement processes to conform with new regulatory requirements. The lack of in-house expertise already discussed means that small business operators also require assistance in making a transition to any new regulatory framework. The negative impact of major regulatory changes can also be reduced through proper phase-in periods. [58]

6.47 A study on the effect of tax compliance on small business identified the short time frame for implementation as contributing to the burden associated with the New Tax System:

> …too many reforms were pushed through in too short a time frame. Australian businesses needed more time to adjust to changes than a three-year timetable would allow.[59]

6.48 Flexibility and a facilitative, educational approach, in place of an enforcement or 'policeman' mentality, is also important.[60] It is not regulation as such that most business objects to, but inflexible or unrealistic administrative requirements and heavy-handed enforcement. The complexity and technicality of some of the occupational health and safety (OHS) requirements and the large penalties for breaches are concerns for some small businesses.[61] Approaches that encourage and reward good practice, such as reducing workcover premiums for businesses with appropriate OHS risk management plans, as occurs in New South Wales,[62] and free initial assessments by OHS specialists were commended. Longer timeframes for making payments or providing information can also be important. One small business operator told the committee that:

> I do not think that the government is going to change things so that you do not have to follow XYZ regulations, but what might help us is if we had more time, as small business operators, to comply. I will give you an example. For the period ending 30 June, superannuation has to be paid on 28 July. That is only four weeks. Would it really hurt anyone if you gave us another four weeks or another 10 weeks to do that? I cannot see that extending the period of compliance for payment of superannuation is really going to upset anybody's superannuation funds or limit the amount of money that it makes…the emphasis should not be on 'we do not want to comply'—because I think we all agree that it is not going to happen—but

57 Mr George Etrelezis, op. cit., p. 13

58 Submission No. 47, op. cit., pp. 12–13

59 Submission No. 68, Dr Binh Tran-Nam and Dr John Glover, p. 19

60 Submission No. 66, p. 3; Submission No. 82, p. 8

61 Submission No. 82, op. cit., p. 8

62 Ms Helen Jentz, op. cit., p. 851

> rather on making it easier for us to comply and giving us more time to comply.[63]

6.49 Overly complex or prescriptive record keeping, reporting and administrative requirements add to the burden. The taxation and superannuation reporting requirements are said to continue to impose an 'undue impost' on small business. To avoid this outcome in future, it was suggested that small business be given an opportunity, perhaps on a fee for service basis, to trial proposed arrangements before implementation.[64] The committee agrees with this proposal and with the suggestion that the detailed administrative arrangements associated with any change to superannuation legislation involving choice of fund should be first trialed with small business.

Licensing and business start-up requirements

6.50 The number of licences required to start a business can be an impediment to business formation. Most licences are imposed at either the state or local government level although there are also Commonwealth requirements. The committee heard that up to 26 licences and approvals may be required to operate a petrol station and general store in Tasmania and, depending on the products or services offered by the business, and up to 11 extra may be needed.[65] Several years ago there had been 48 separate licences required to open a tourist resort on a Queensland island.[66] Many licences involve a cost or charge to the applicant.

6.51 A key government commitment in *More Time for Business* was for Commonwealth and state and territory governments to agree to pursue common licence approaches and streamline licensing requirements. The Business Licence Information Services (BLIS) in each state and territory allow business to identify all the licences required, be they Commonwealth, state or local government, depending on their proposed business activities. In Queensland, the SmartLicence system is particularly helpful, taking applicants through a series of questions about their proposed business and, based on their responses, linking them to appropriate licence application and information forms.[67] Few, if any of the licensing services allow business people to complete and lodge all licence requests on line. The committee believes that such one-stop service should be the ultimate goal of business licensing services and that the three tiers of government should consider how this could best be achieved. If necessary, additional Commonwealth funding should be provided for this purpose.

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63 Ms Emma Larkins, *Hansard*, Sydney, Roundtable, 15 August 2002, p. 703

64 Mr Craig Sloan, Vice Chairman, Canberra Business Council, *Hansard*, Canberra, 6 August 2002, p. 473

65 Submission No. 9, Tasmanian Independent Wholesalers, p. 12

66 Mr David White, *Hansard*, Roundtable, Brisbane, 13 September 2002, p. 855

67 Mr George Etrelezis, op. cit, p. 26

6.52 There also appears to be scope to reduce the number of licences required. The committee was told that a new licence has been proposed for the motor trades industry in Western Australia, even though an existing licence could be modified to accommodate the requirement.[68] Best practice would suggest that whenever a new licensing requirement is identified, consideration should be given to amending an existing licence to incorporate the new requirements. The BLIS registers of existing licences are a useful starting point for any such exercise.

6.53 Some states and territories have moved towards integrated or multipurpose licences. A review of licensing requirements in Queensland resulted in the elimination of at least 50 licences.[69] Other useful developments include providing rewards or concessions for businesses that demonstrate good compliance with requirements over time, for example by reducing the requirements for reporting and extending licence periods from one year to three years.[70] The committee considers that all levels of government should review their licensing, including licence renewal arrangements, to identify areas where requirements can be eased, streamlined or simplified, without compromising the underlying objective.

Taxation

6.54 The compliance requirements associated with taxation and the New Tax System, including the Goods and Services Tax (GST) in particular, are a major concern for many small business people. At one end of the spectrum, the committee heard that some businesses have chosen to move to the 'black' or cash economy 'simply to cut down on time and paperwork':[71]

> The GST has brought about an administrative system which means that people who are on the cusp move out of legitimate businesses. The typical example of that would be a repairer who might run a small repair shop who decides that he is sick of sitting up all day Saturday or at night-times filling out GST forms to complete his BAS.…The record-keeping requirements for car dealerships—for used car dealerships particularly, and these are the ones which are likely to drift into the black economy—are fierce. New Zealanders were smart enough to have one type of input tax. We have notional and real input tax credits, and we have to keep a double accounting system on them. We have to track them to each vehicle. People are caught up in a massive amount of record keeping and there is a temptation for them to simply disappear into the black economy.[72]

6.55 The Western Australia Small Business Development Corporation (SBDC) identified taxation and GST reporting as 'by far the most onerous regulatory burdens

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68 Mr Peter Fitzpatrick, Executive Director, Motor Trades Association of Western Australia, *Hansard*, Perth, 17 July 2002, p. 9

69 Mr David White, op. cit., p. 855

70 ibid.

71 Mr Craig Sloan, op. cit., p. 470

72 Mr Peter Fitzpatrick, op. cit., p. 5

that have been placed on the small business sector'. Feedback from the SBDC's Ready Response Network indicated that that 54 per cent of respondents believed improvements could be made to GST reporting options. The Corporation concluded that:

> This data suggests that GST reporting is the most notable regulatory impediment to the small business sector. The further streamlining of GST reporting will reduce administration costs and permit small businesses to spend more time on core business activities leading to improved opportunities for small business growth and employment.[73]

6.56 The problems experienced with the administrative arrangements and initial reporting requirements for the New Tax System and communication with the Australian Taxation Office (ATO) suggest the need for a more client-focused approach to small business. The committee notes the ATO advice of its current consultative arrangements, including the Small Business Consultative group and the Small Business Advisory Group, and proposals for industry or issue based consultation to involve small business. However evidence to the committee of problems with the implementation and administration of taxation regulations suggests that these do not go far enough in identifying the special needs and circumstances of small business or assisting it to meet its taxation obligations.

6.57 The committee considers that the ATO needs to take a number of measures to improve the current level of service to small business. More regular meetings with small business operators and grass roots representatives are an important means of identifying any emerging or residual problems with taxation policy or administration, developing a more facilitative, educational role and improving the standard and content of information and advice, whether by means of telephone contact, the ATO website or printed information. All changes to taxation forms, reporting requirements or administrative arrangements affecting small business should first be trialed, as far as possible, with a representative group of small business people from a range of industries.

6.58 The compliance costs associated with the GST remain a major concern of the Gold Coast National Federation of Independent Business (NFIB), which estimates that the costs for small business at $60 per $10,000 of turnover, compared with 60c per $10,000 for larger business.[74] A similar message came from the Australian Property Institute, which argued, along with the NFIB, for some form of payment or subsidy to businesses for their work in collecting the GST.[75]

6.59 In 1999, the Review of Business Taxation (the Ralph review) considered whether small business should be compensated for its disproportionate compliance burden in undertaking taxation functions on behalf of government. It noted estimates

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73 Submission No. 47, op. cit., p. 7

74 Submission No. 14, National Federation of Independent Business (Gold Coast), p. 2

75 Submission No. 53, Australian Property Institute, p. 2

that small business incurs almost 40 per cent of the estimated $9 billion taxation-related compliance costs incurred by Australian business[76] and judged that there is a need to recognise and respond to this disproportionate burden. However, the review concluded that compensation arrangements would not be workable:

> …the diversity of functions performed and the diversity of small business itself made it difficult to design an effective response that could be delivered efficiently through the tax system. The Review is firmly of the view that some recognition of this [disproportionate compliance burden] is justified and this was a supporting argument in favour of reducing small business costs directly associated with the business tax system.[77]

6.60 The Simplified Taxation System (STS) was proposed as the means of reducing the costs.[78] The STS was introduced from 1 July 2001; eligible businesses could elect to use the system in their 2001/2002 tax returns.[79]

6.61 A team of academics studying the effect of the changes to the new taxation system on small business questioned whether the STS will achieve its stated objective. Their initial impressions are that the $1 million turnover criteria may be too low and that many small businesses may not be aware of or eligible for adoption of the Simplified Tax System:

> A few tentative views can be expressed. Options of cash accounting, simplified depreciation and trading stock offer few advantages to many small businesses. The STS is unsuitable for businesses with high creditors and low debtors. The STS offers little to businesses with low levels of depreciable plant and equipment, or which already account on a cash basis. A low STS threshold unaccountably excludes many otherwise eligible enterprises with high turnover levels.[80]

6.62 The ATO responded that the STS provides an alternative method of determining taxable income for eligible small businesses and is aimed not at all small businesses but primarily at small, closely held family businesses with few or no employees and relatively simple financial arrangements. The STS will reduce the level of tax paid and the compliance costs of participating small businesses.[81] The ATO estimates that over 95 per cent of businesses in Australia should satisfy the STS criteria.

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76 *Report of the Review of Business Taxation*, July 1999, para. 114

77 ibid., paras 336–42

78 ibid.

79 ATO website: http://www.ato.gov.au/content.asp?doc=/content/Corporate/mr200230.htm

80 Submission No. 68, op. cit., p. 20

81 Australian Taxation Office, response to Question on Notice, 6 August 2002

6.63 On take-up rates, the ATO stated that since the STS first applied for the financial year ending 30 June 2002, it was not yet possible to determine a take up rate, although interest in the system is steadily increasing.[82]

Comment

6.64 Evidence during the inquiry indicates that the introduction of the New Tax System has further added to the disproportionate compliance burden that small businesses face in undertaking taxation collection functions on behalf of the government. The committee notes the Ralph review finding that designing appropriate arrangements to compensate small business for the compliance burden is problematic and its proposal for the STS to reduce some of the compliance burden. Concerns have been raised about whether the STS will benefit the majority of small business in the way that the Ralph review envisaged although it is too early to form a judgement on this matter. However, the committee believes that there is an onus on government to closely monitor and review the take-up of the STS over the next year and report to Parliament at the end of 2003. The government should also commission appropriate research on the extent to which the STS reduces the compliance burden of participating small businesses. In the event that the take-up of the STS is limited or any evidence that it is not reducing the compliance burden for participants, government should examine alternative measures to reduce the compliance burden of the taxation system on small business.

Recommendation Twenty-two

The committee recommends that:

- **the Commonwealth Government reports to Parliament at the end of 2003 on the takeup of the Simplified Taxation System (STS) across the small business sector and on the extent to which the STS has reduced the compliance burden of participating businesses; and**

- **in the event that there is not both a significant takeup of the STS and evidence that the STS is producing the benefits expected in terms of reduced compliance burden, the Government should examine other measures to reduce the compliance burden of the taxation system on small business.**

6.65 Evidence from small business people and their representatives indicated that, while the changes that have been made to the arrangements for the NTS, including the BAS, have been an improvement on the original reporting requirements, further simplification is needed.[83] In response to a question on whether further changes to the BAS were under consideration, the ATO stated:

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82 ibid.

83 Submission No. 47, op. cit., p. 7; Submission No. 19, Restaurant and Catering Association, p. 21; Submission No. 26, Retail Traders Association of Tasmania, p. 3

> Business and instalment activity statements were introduced in July 2000. They were subsequently redesigned by the ATO in February 2001 to accommodate the simplification changes to goods and services tax (GST) and pay as you go (PAYG) income tax instalments (which included the introduction of GST reporting options 2 and 3). Design of the forms was done in consultation with taxpayers, tax practitioners, industry groups and Treasury...In recent consultation with the community, feedback from taxpayers indicates that the activity statement forms should not be changed. Taxpayers and tax practitioners are familiar with the current designs. At this point in time the ATO is not looking at changing the current design of the activity statements. Should new forms be created to accommodate legislation requirements, the structure of these forms will be consistent with the existing design.[84]

6.66 One limitation of the changes is that they do not cater for the circumstances of all small businesses. The submission from the Council of Small Business Organisations of Australia (COSBOA) noted that independent grocery stores are unable to use the simplified accounting methods or BAS reporting option either because their turnover is in excess of $2 million or because they operate bar code scanning systems.[85]

6.67 The National Association of Retail Grocers of Australia (NARGA) also criticised the restrictive requirements of the simplified GST accounting methods introduced to assist smaller food retailers. NARGA noted that most independent grocers are not able to satisfy the requirements for adoption of the method. The committee is concerned about the apparent delay by the Australian Taxation Office in addressing these concerns. It urges the Commonwealth Government to hold discussions with representatives of small food retailers as soon as possible with a view to implementing changes that better reflect their circumstances.

6.68 The need for further education and assistance remains. Several submissions and witnesses, particularly from regional areas, reported that there are still many small businesses that have not yet come to terms with the new tax system including the GST and need further advice and assistance.[86] This is a problem in remote areas where there is no ready access to the skills of bookkeepers and accountants.[87] The committee considers that there is an onus on the Commonwealth government to address this by providing more hands-on assistance with GST related matters, including bookkeeping and accountancy advice, in these areas in the short term. A training strategy to develop

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84 Australian Taxation Office, Response to Question on Notice, BAS

85 Submission No. 56, Council of Small Business Associations (COSBOA), Attachment, p. 1

86 Business and Professional Women Australia, response to Question on Notice, 26 January 2002; Submission No. 6, Gulf Savannah, pp. 6–7

87 Submission No. 6, ibid., pp. 6–7

bookkeeping skills of small business people or service providers in relevant regions will be necessary to meet the longer term need.[88]

Recommendation Twenty-three

The committee recommends a follow-up education and assistance program for the New Tax System to ensure that all small businesses, particularly in regional areas, are aware of the requirements and have access to appropriate assistance. The program should be developed in conjunction and consultation with the various accountancy organisations, Area Consultative Committees and Business Enterprise Centres from regional areas and other members of the small business network.

6.69 Concerns about aspects of the Personal Services Income (PSI) legislation were raised by several organisations including the Institute of Engineers, Australia (IEA) and the Association of Professional Engineers, Scientists and Managers, Australia (APESMA), the Managers and Professionals Association and the Professional Officers Association of Victoria. According to the IEA, 9,000 of its 65,000 members are contractors who are affected by the legislation which limits work-related taxation deductions for income generated by personal services, even where the income is earned through a company or partnership, unless one of four tests are satisfied. The IEA argues that the tests do not take account of the unique circumstances of engineering contractors, reducing their profitability and, in some cases, threatening the viability of their business. While contractors can individually seek determinations from the Australian Taxation Office (ATO) to clarify their situation, IEA argues that this is costly and time-consuming. A better solution, in their view, is for the ATO to provide a ruling clarifying the application of the legislation to the circumstances of engineering contractors.[89]

6.70 APESMA similarly argued that the legislation has imposed additional costs on a significant number of genuine independent contractors and consultants and needs revision or clarification to ensure that it reflects the circumstances of genuine contractors.[90]

6.71 The committee urges the Commonwealth Government to respond to the concerns of many professional and other contractors by clarifying the operation of the PSI legislation as it applies to genuine contractors.

Employment

6.72 As noted, the compliance burden associated with employment regulations is second only to that associated with taxation. One of the main problems is the complexity of the system and the lack of accessible information materials in plain

88 ibid., pp. 6–7

89 Submission No. 16, Institute of Engineers, pp. 1–3

90 Submission No. 2, APESMA, pp. 5–6; 10

English. Awards, which cover many small businesses, are a particular problem. The recent award simplification process does not appear to have addressed this concern. The Australian Catholic Commission on Employment Relations (ACCER) submitted that:

> … the presentation of industrial legislation, regulation and awards, and importantly the rights and responsibilities of employers and employees, be set out in an easily understood format and written in plain English. The current revision of awards for the purposes of simplification has predominantly concentrated upon the removal of non-allowable matters. There is a real need to rewrite awards, as well as legislation and regulation, in a manner that is free of jargon, legalese and ambiguity.[91]

6.73 The Capital Region Enterprise and Employment Development Association (CREEDA) which also identified this as a problem, proposed a solution involving more interactive assistance on employment related issues, and awards in particular, through the Business Entry Point (BEP). Under the proposal, which they stated could be implemented through proven, albeit leading edge, software, a business wishing to employ someone in a particular occupation would access the relevant section of the BEP and, in response to a series of prompts, enter relevant information about the proposed employment. The system would advise the appropriate pay and condition entitlements and produce a draft letter of offer. This proposal overcomes the need to find and interpret the relevant award, or indeed, for the awards to be rewritten in plain English (although that would presumably assist). The software used to develop an intelligent system of this kind is apparently currently in use by Centrelink and the Department of Veterans' Affairs to calculate payment of entitlements. CREEDA's advice is that, while the software is expensive, 'there is great potential to provide a very real service to small businesses that will provide no end of help in the industrial relations area'.[92]

6.74 There may be potential to develop a more general software tool to assist small business to identify and interpret their broader employment obligations. The CPA Australia proposal for a software tool to allow a simple comparison of the relative costs of employment for casual, permanent part-time and contractors, aims to address another aspect of the problem, and was discussed in Chapter 3. There are other aspects of employment obligations that are also a concern, including the need to identify the whole range of employment obligations including workcover payments and occupational health and safety obligations.

6.75 A particular source of confusion is the 'plethora of legislation, both state and Commonwealth, using different and conflicting definitions of employees and contractors for particular purposes, while the common law tests are subjective, uncertain and for practical purposes unreliable.'[93] The ACCER submitted that some

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91 Submission No. 31, Australian Catholic Commission on Employment Relations, p. 15

92 Mr Julian Webb, Chief Executive Officer, CREEDA, *Hansard,* Canberra, 8 October 2002, pp. 937–38

93 Submission No. 46, Housing Institute of Australia, p. 8

employers do not realise that the definition of employee for superannuation purposes includes an independent contractor where the contract is wholly or principally for labour.[94] The Bell report had recommended introduction of a common definition of employee to address this problem. The Office of Small Business advised that, while the government is sympathetic to this, achieving a common definition is an extremely complex task that is likely to require more resources than the benefit would justify.[95] Instead, it is ensuring that new regulatory proposals draw on existing definitions so that greater consistency is achieved over time.

6.76 A related concern is the different monetary thresholds that govern different employee entitlements or related obligations: the Albury Wodonga Area Consultative Committee noted that the threshold for a requirement for PAYG is wages in excess of $115 a week; for superannuation it is wages in excess of $450 a month; and for Workcover (in Victoria) it is wages in excess of $7,500 per year.[96]

6.77 One consequence of this complexity is that, 'faced with regulatory requirements that appear vast, complicated, expensive to comply with and, most importantly, often uncertain and ambiguous, [small business] can be reluctant to commit to engaging more employees'.[97] CPA Australia made a similar point but also suggested ways of addressing the problem:

> The employment system is becoming more complex, legalistic and difficult to navigate without access to specialised skills and knowledge. While tax compliance still tops the list of small business concerns, the paperwork associated with employment is increasing. Small business owners—and, to some extent, their advisers—have difficulty distinguishing between employment categories such as casual, part-time and contractor, which puts them at risk of claims against them. Access to information is essential, and the opportunity exists to ensure compliance information is coupled with management information that can add value to a firm. Our submission highlighted some options to improve small business difficulties with employment. These include multichannel delivery of compliance information, bringing together government resources in a 'virtual department', better use of advisers as an avenue to small business, the development of cost benefit analysis tools, and education and training strategies.[98]

6.78 Other suggestions on ways of making compliance with employment regulations simpler and more manageable for small business include:

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94 Submission No. 31, op. cit., pp. 19–20

95 Office of Small Business, response to Question on Notice: Progress with implementation of the Bell Task Force report recommendations accepted by the government, Attachment A, p. 5

96 Submission No. 44, Albury Wodonga Area Consultative Committee, pp. 3–4

97 Submission No. 49 Australian Industry Group, AESA, p. 5

98 Ms Judith Hartcher, op. cit., p. 201; Submission No. 18, op. cit., p. 12

- as a longer term strategy, bringing all employment on-costs together into a single monthly payment to one entity which distributes allocations to appropriate agencies—both state and federal;[99]
- a software based tool, along the lines of software for comparing bank loans, that allows small business to make an easy comparison of the different forms of employment, in terms of direct wage costs, oncosts (such as casual loading and superannuation), and compliance obligations;[100]
- training programs for employers such as those recently introduced by the ACT government, to help make small business 'employment ready'; and
- employment management schemes similar to the group apprenticeship schemes under which a community-based organisation functions much like a labour hire firm, taking responsibility for the compliance obligations associated with employment, with the business paying a premium of the employees' time.[101]

6.79 A number of specific employment-related concerns were also raised. Some employers are concerned that employees do not recognise and value the employer contribution to their superannuation. The costs and obligations associated with occupational health and safety requirements are a problem for some small businesses, particularly in those states with a requirement to pay for the costs of inspections. Businesses in regional areas of Western Australia advised the committee that they pay a higher inspection charge than businesses in metropolitan areas to cover the time spent on inspectors' travel.[102] The committee notes that the government has announced that it will ask the Productivity Commission to inquire into the various work-related health and safety arrangements in each state and will develop terms of reference for the inquiry in conjunction with the states.[103] The committee considers that small business should be consulted in developing the terms of reference for that inquiry.

Comment

6.80 Compliance with employment-related regulations is clearly a major issue for small business and the costs, complexity and uncertainty can make small business reluctant to employ. Commonwealth and state and territory governments need to explore ways to make compliance simpler and easier for small business. The committee does not consider that deregulation or an exemption or 'tiered requirement' for small business is an appropriate way of addressing the problem, because it would require compromise of important public interest objectives and also lead to the development of small business as a second class employer, exacerbating its difficulties in recruiting suitable, skilled staff.

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99 Submission No. 18, op. cit., p. 16

100 Ms Judith Hartcher, op. cit., p. 214

101 Submission No. 18, op. cit., p. 16

102 Submission No. 23, op. cit., p. 2

103 Office of Small Business, Response to Question on Notice, Attachment A, pp. 5–6

6.81 A better approach is to consider some of the useful and practical suggestions submitted during the course of the inquiry. The committee is particularly attracted to proposals to develop intelligent software tools that can identify the totality of employment-related obligations and payments that apply to a specific type of employment relationship. At the state or territory level, training programs, workshops and manuals to assist small business to understand their employment obligations, would assist many small and micro-businesses.

Recommendation Twenty-four

The committee recommends that the Commonwealth and state and territory governments develop a range of strategies, including software tools, information materials and training programs to assist small business to identify and understand their employment-related obligations.

Unfair dismissal

6.82 Consistent with survey rankings of small business concerns, unfair dismissal did not arise as a major issue during the inquiry: other issues such as the need for improved business management, problems with recruiting suitable employees, the compliance burden associated with the New Tax System and the total framework of employment obligations were far more prominent. Where unfair dismissal laws were raised as a concern, the main issues were a lack of understanding in how to dismiss staff consistent with the law, the costs and complexity of the current processes for determining claims and the uncertainty of outcomes. Family Business Australia commented that the 'general feeling is that…the Unfair Dismissal legislation and process is cumbersome, time consuming and often difficult and tricky to work through'.[104] The Canberra Business Council commented that:

> Small business has been somewhat spooked by the spectre of unfair dismissal and some of the resulting outcomes as these matters are treated by the legal system. More certainty is needed in this area.[105]

6.83 Changes to the processes and requirements for unfair dismissal can make a difference: following the introduction of the *Workplace Relations Act 1996*, unfair dismissal cases in the Commonwealth jurisdiction fell from 14,499 for the twelve months ending 1996 to 8,631 for the twelve months ending September 1997; following changes to procedures and requirements in August 2001, the number of cases fell from 8,287 for the 12 months prior to September 2001 to 7,298 for the 12 months prior to September 2002.[106] The annual number of cases is now half of what it was six years ago.

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104 Submission No. 62, Family Business Australia, p. 1

105 Submission No. 36, Canberra Business Council, p. 3

106 Data from the Department of Employment and Workplace Relations provided to Senator Andrew Murray

6.84 There were several suggestions for improving on the current arrangements, including a small claims procedure for determining cases where the employee seeks compensation rather than re-instatement and where the amount of compensation sought is within prescribed limits.[107] A similar suggestion was for a process to allow quick and simple *prima facie* assessment of the merits of a claim, before conciliation:

> The conciliation is all about how much I will pay and how much he or she will accept. Why is that the first port of call? I do not understand. That should be the last port of call. The first port of call should be the arbitration where some third-party organisation—court, government or whatever—says, 'Yes, you were unfairly dismissed; your employer did not abide by the regulations,' or, 'No, you were not unfairly dismissed.' Then, if the unfair dismissal is kept standing, you work out how much it is worth. I do not understand why the money comes first. I think either 93 or 97 per cent of cases are settled before arbitration. That is phenomenal.[108]

6.85 Evidence clearly indicates that there is a need for better training and information for small business on unfair dismissal requirements and procedures. The recent government-commissioned report on the effect of unfair dismissal laws on small and medium enterprises found that more than 60 per cent of all small businesses are not aware of the recent changes to the Commonwealth legislation governing unfair dismissals and that more than 30 per cent of businesses do not know whether they are covered by Commonwealth or state/territory laws on unfair dismissal.[109] The CPA Australia survey found that 42 per cent of small businesses do not know how to dismiss staff in line with the legislation, 62 per cent believe that the process is complicated and 30 per cent believe they will always lose an unfair dismissal claim.[110] The Greater Southern Area Consultative Committee also identified the need for more training on this issue.[111] In a roundtable discussion a small business adviser told the committee that:

> I think one of the issues for small businesses is that they treat business like family and staff like family members and then they do not know how to let family members go. So their expectations are probably more family based… I often find that people keep staff on who are unsuitable because they do not actually know how to get rid of them. So many people let a three-month trial period go by because they do not know how to deal with it.[112]

6.86 The Albury Wodonga ACC argued the need for simplified information to employers and for training seminars to be free of charge and at more suitable times:

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107 Submission No. 31, op. cit., p. 18

108 Ms Emma Larkins, *Hansard*, Sydney Roundtable, 15 August 2002, p. 694

109 Harding, D., *The Effect of Unfair Dismissal Laws on Small and Medium Businesses,* Melbourne Institute of Applied Economic and Social Research, 29 October 2002, p. iv

110 Submission No. 18, op. cit., p. 3

111 Submission No. 23, op. cit., p. 5

112 Ms Linda Hailey, *Hansard*, Roundtable, Sydney, 14 August 2002, p. 636

> It is inappropriate to conduct seminars during daytime hours with a $70 price tag and expect to attract small business operators. The Albury seminar had approximately 20 participants out of 5000 to 6000 small businesses in the region.[113]

6.87 The committee notes that, at the time of this report, the information on the Commonwealth laws on the Business Entry Point comprised a copy of a leaflet on recent changes to the Commonwealth law, with a link to the DEWR website for more information. A detailed search of that website provides an entry that allows enquirers to order a copy of the Booklet, *Hiring and Firing, Are You Complying*? for $26. On training, the Department of Employment and Workplace Relations advised that their regional offices regularly conduct both free and fee-for-service seminars about the operation of Commonwealth unfair dismissal provisions and that a hotline has been established to provide information about the changes introduced in August 2001.[114] The committee considers that all information seminars and information materials on unfair dismissal requirements for small business should be free of charge and, in the case of training programs, held at times and places convenient for small business.

Comment

6.88 Small business concerns about unfair dismissal indicate the need for greater training and support, including clear information materials, both with regards to hiring staff and the dismissal process. Information materials should be disseminated through the small business network, including industry associations, accountants, BECs and ACCs, together with information to help employers determine whether they are likely to be covered by Commonwealth or state legislation. Internet-based information also needs to be more helpful than the current Commonwealth material.

6.89 Proposals for providing a simplified and cheaper process for resolving claims also have merit.

Recommendation Twenty-five

The committee recommends that the Commonwealth and state and territory governments develop a range of suitable, free of charge, information materials and training programs on unfair dismissal legislation for small business. Information materials should be disseminated widely, including through the small business network. The committee also recommends that the Commonwealth Government introduces a simplified process for considering unfair dismissal claims.

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113 Submission No. 44, Albury Wodonga Area Consultative Committee, p. 4

114 Submission No. 54, Department of Employment and Workplace Relations, p. 10

The Regulation Impact Statement

6.90 The Regulation Impact Statement (RIS) is the main mechanism at Commonwealth level, and in states and territories, to improve the quality of regulation. The Commonwealth government requires that a RIS be prepared for all reviews of existing regulation, proposed new or amended regulation and proposed treaties, which would directly or significant affect business or restrict competition. Proposing agencies must assess the options for achieving a policy goal, the costs and benefits of each option, and recommend the most effective and efficient option. Agencies are also required to outline the consultation undertaken with business and any other affected parties. The Office of Regulation Review (ORR) in the Productivity Commission is responsible for providing advice to agencies on the RIS process and requirements and for reviewing whether proposed RISs conform to requirements.

6.91 All states and territories apart from the Northern Territory, which is introducing a form of business impact review, have some form of regulation impact assessment. The RIS process is designed to ensure that regulations are only introduced where the benefits outweigh the costs, minimising any 'unnecessary' or unavoidable burden of regulation. It is clear from evidence to the inquiry that the RIS process as it stands and is currently implemented is not a complete or adequate tool for minimising the burden of regulation.

6.92 For the RIS system to be effective, there needs to be a genuine embrace and application of the underlying principles: examination of the need for regulation, consideration of options including less prescriptive requirements, consultation with affected parties and cost benefit analyses based on detailed proposals for implementation. This is not happening to the extent required at present, either at the Commonwealth level or in the states. A member of the Queensland Government's Red Tape Reduction Task Force told the committee that:

> The process of RISs, I believe, should be the way the whole thing is done. There should not be a need for an RIS. If you took what is required in an RIS, if you have a problem you go and talk to people who are going to be affected by it at the very start. As I see it at the moment, we seem to be getting a lot of regulation written and the last thing to be done is a regulatory impact statement. This is then seen as a damn burden on everybody. It is not given much thought and a lot of people see it as a waste of time. People look at it as a fait accompli, the regulations will be coming through anyway, and doing that is not adding anything to it. But if the process of the regulatory impact statement was the total process and you went at the very beginning and called the people together who were going to be affected by it and looked at it at that point, then you could be looking at some alternatives to black letter regulation—that is, you could have some codes of conduct, some guidelines, some self-regulatory situations.[115]

115 Mr David White, *Hansard,* Roundtable, Brisbane, 13 September 2002, p. 842

6.93 While substantial progress has been made in increasing the attention given to the RIS process at the Commonwealth level, there are still too many instances where sponsoring agencies propose legislation without adequately considering the impact on business. Eleven agencies were identified as not reaching an adequate performance against the RIS guidelines in 2002–2001. A far larger number only satisfy the guidelines after further prompting and advice from the ORR.[116]

6.94 Analysis of compliance costs appears to be far from adequate in many cases. While the current guidelines require agencies to estimate compliance costs, these need not be quantified, although 20 per cent of RISs did provide quantitative estimates in 2000–2001. The Office of Regulation Review advised that it will now place greater emphasis on encouraging agencies to quantify costs, because 'it is easy to dismiss something that does not have a number on it'.[117] The committee strongly endorses that direction and believes that the guidelines should be amended to require that quantitative assessments of compliance costs are provided for all RIS, unless there are compelling reasons why this is impractical. Even in cases where the need for regulation is inherently compelling, estimating compliance costs is an important discipline, requiring close consultation with affected sectors and more careful consideration of the arrangements for implementation of the regulation.

6.95 Post-implementation reviews of RIS were suggested as a means of promoting greater accuracy and accountability in relation to compliance estimates.[118] The proponent of this approach argued that the estimates associated with the change to the New Tax system were completely unrealistic:

> The regulatory impact statement said it would cost $7 million; sorry, it was some very minor amount. When they prepared the regulatory impact statement all they did was to say, 'Okay, it will take 15 minutes to fill in the form.' They did not take into account that it took three or four hours to get the information and collate it to actually complete the form. No-one went back and reviewed whether the regulatory impact statement was correct. There needs to be some kind of mechanism that can do it and then come with suggestions as to how legislation can be amended to meet the regulatory impact statement. The regulatory impact statement was the intent of parliament, but if the legislation in effect does not meet the intent of parliament then it should really be amended to meet that initial intent.[119]

Post-implementation reviews would provide some greater discipline on sponsoring agencies to develop accurate estimates.

6.96 The committee sought the views of the Productivity Commission on this proposal. The Commission considers that the principle has merit, but cautioned that

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116 Mr Gary Banks, op. cit., p. 1018

117 ibid., pp. 1015–16

118 Submission No. 73, National Institute of Accountants, p. 3

119 Mr Gavan Ord, Technical Policy Manager, National Institute of Accountants, *Hansard*, Launceston, 26 July 2002, p. 439

the costs of a systematic review of all RIS is likely to be very high and by implication, may not be cost-effective. An alternative approach may be to review a sample of regulations, particularly those most likely to impose a significant burden, on a regular basis.

6.97 The committee was also told that there is a view that regulators do not give adequate attention to the effect of proposed legislation *in the context of the current requirements on business* but rather consider each change in isolation. The Small Business Development Corporation of Western Australia commented that:

> The introduction of regulatory requirements each has a cumulative effect on the small business sector. While the imposition of a single regulatory requirement may in itself have only a minor impact on a small business, the cumulative effect of many such regulatory requirements can bog down a small business operator with excessive paperwork and result in a negative impact on the business. For this reason decision makers must consider the holistic impact of government regulation on the small business sector. Regulatory compliance cannot be thought of in terms of discrete requirements, but rather an overall requirement.[120]

6.98 While the current Commonwealth RIS guidelines require that agencies consider interaction with other requirements and the need to avoid duplication and inconsistencies, there is no way of knowing how well this is achieved in practice. Much relies on the sponsoring agency correctly identifying possible points of interaction, but this is not aided by the fact that there appears to be no 'master list' of all government regulations.[121] In these circumstances, consultation with those affected and with other tiers of government, where relevant, are the main means of identifying areas of duplication or overlap.

6.99 One apparent limitation of the RIS as a tool to reduce regulatory burden is that it is targeted at the policy aspects of proposals, rather than the detailed administration of regulation, which can be a major source of regulatory burden. The committee considers that the Commonwealth should examine whether the RIS can be amended to provide a greater attention to the administrative aspects of regulation or, if this is not appropriate, whether another mechanism is required to ensure that administration is given adequate attention.

Recommendation Twenty-six

The committee recommends that the Commonwealth Government amends the Regulation Impact Statement (RIS) guidelines to require that agencies provide quantitative estimates of compliance costs, based on detailed proposals for implementation and administration. It also recommends that the Commonwealth Government commissions regular reviews of the accuracy of compliance estimates in the RIS for regulations with a major impact on business.

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120 Submission No. 47, op. cit., p. 16

121 Productivity Commission, response to Question on Notice, No. 2, 15 November 2002, p. 4

Recommendation Twenty-seven

The committee also recommends that the Commonwealth and all state and territory governments review their current regulation impact assessment arrangements to ensure that they meet best practice standards with regards to minimising the compliance burden on small business.

Local government issues

6.100 Evidence to the committee was generally critical of local government development, administration and enforcement of regulation. This appears to reflect, in part, a reduced acceptance of the importance of the matters subject to regulation and a lower tolerance of the 'final tier' of regulation. The following comments are indicative:

> Today—if you leave out issues like taxation—most of the issues that affect small business are at a local government level. Small businesses are worried about where the planning is coming from, what their rates are and whether they will get their permits, so local government is a real issue for them.[122]
>
> Regional Businesses are finding too many barriers, with most relating to red tape and charges imposed by Local Government.[123]
>
> …local government is often viewed as the last obstacle when it comes to doing business, because it is just another layer of government.[124]
>
> We are finding that the straw that finally breaks the camel's back is when a council imposes a cost but is not remotely interested in the fact that that is added to a cost that is imposed by a state government instrumentality, and they, in turn, are not interested in what the council does or what the federal government does. We are constantly adding single straws and eventually the camel's back breaks. I will leave it at that for the moment.[125]

6.101 Submissions and evidence from local government often acknowledged the problems that councils face in improving the quality of administration of regulation. Councils are said to be inadequately resourced for their range of responsibilities, which are increasing in number and complexity. Planning and related matters are a case in point:

> Councils probably struggle just as much with the complexity of what land use planning schemes now require and the rolling in of environmental issues, licences and those sorts of issues, particularly as they are primarily

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122 Mr Richard Joel, Chief Executive Officer, Brisbane Office of Economic Development, *Hansard*, Brisbane, 12 September 2002, p. 763

123 Submission No. 85, Ipswich Area Consultative Committee, p. 1

124 Mr John Ilhone, Director, Southwest Group of Councils, *Hansard*, Perth 17 July 2002, pp. 46–47

125 Mr Allen Roberts, *Hansard*, Roundtable, Melbourne, 25 July 2002. p. 366

> responding to either state legislation or community expectation. In the last 10 years at least, there has been a significant increase in community expectations about environmental performance, amenity, urban design and those sorts of issues, which councils are seeking to implement in a policy sense and then apply…councils would acknowledge that there has been an increase in regulatory control through planning schemes in that regard…They may get elected on rates, roads and rubbish, but they are now faced with making decisions that are far more wide reaching than they ever had to make before. They have to approve things that they did not have to approve. They are approving recycling plants, when town-planners have always only been basically responsible for approving buildings and things like that. They are approving power plants. Approving a whole range of new industry, be it large or small, is very difficult. Sometimes we get regulations that are still 10 years behind where we are trying to take the world and that causes confusion and difficulty.[126]

6.102 There is clearly an enormous variation in councils' resource bases and their capacity to provide a high quality regulatory service. Councils in metropolitan areas were generally seen to be better resourced and able to respond to and focus on the needs of business. Some councils have also been active in introducing services to assist business and others clearly consult closely with their local business community. However there is no formal requirement for the level of consultation that is now recognised as essential to quality regulation. In the words of one witness:

> Nowadays local governments can make a local law in about a fortnight and they can impose legislation—in a fairly undemocratic process, in our view; there is no regulatory impact statement process—that sometimes applies $2,000 or $3,000 to a site that will be built upon. This is rampant at the moment and it is not uniform. It is that pace and cost of change to industry that I think is driving the big businesses to get bigger and the small businesses to either shut or specialise.[127]

6.103 It was suggested that a requirement for a Regulation Impact Statement process at local council level would go some way to overcoming this problem.[128]

6.104 Small business representatives also made suggestions for changes to local government processes, in requesting:

- a manual to guide business through planning approval and other application processes;[129]
- contact points or persons to guide business through the process;[130] and

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126 Mr Malcolm Griffin, *Hansard*, Roundtable, Brisbane, 13 September 2002, p. 843

127 Mr John Gaffney, *Hansard,* Roundtable, Melbourne, 25 July 2002, p. 386

128 Mr Allen Roberts, *Hansard*, Roundtable, Melbourne, 25 July 2002, p. 366

129 Submission No. 85, Ipswich Area Consultative Committee, p. 2

130 Mr Ian Abernethy, *Hansard*, Roundtable, Launceston, 26 July 2002, p. 462

- one procedural manual to combine the varying record keeping requirements (eg. for environmental purposes, workplace health and safety etc).[131]

6.105 Home-based business is an area where local government regulations are considered to be impeding business growth and development. Complaints include lack of consistency from council to council as well as some policies being out of touch with the realities of home-based businesses operation. For example, the committee was told that a council north of Perth precludes a home-based business from operating except between nine and five on Monday to Friday, even if it is simply a consultancy business using internet and e-mail based communication;[132] some local authorities require home-based businesses to re-register every 12 months, and pay a fee, while others charge no fees at all.[133] The result is that many home-based businesses operate 'underground', sometimes in contravention of the regulations in the hope that they will not be enforced.[134]

6.106 To address this, and to promote greater consistency, the government of Western Australia has developed a model law for home-based business. But the committee was told that the real challenge is to have the 80 different councils in the state agree on the one set of policies underpinning the law.[135]

Comment

6.107 Local government faces perhaps greater challenges in dealing with regulatory demands than the other tiers of government because, like small business, it lacks economies of scale in terms of financial and managerial resources. Common approaches and information sharing across local councils have the potential for promoting more efficient use of resources as well as increasing consistency. The area where this appears to be the greatest need at present is the regulation of home-based businesses. There would be benefit in developing a consistent or model approach to the regulation of these businesses across Australia.

6.108 Local councils also need to consider approaches to improve consultation with business on the development and administration of regulations, including options such as business service charters as developed in South Australia. Given the limited resources at local government level, the committee is reluctant to recommend a compulsory RIS at this stage. A better approach would be for state governments to introduce model or template legislation for use by local governments in introducing

131 Mr Mark Leyland, *Hansard*, Roundtable, Brisbane, 13 September 2002, p. 846

132 Mr Larry Davies, General Manager, Employment, Department of Training Western Australia, *Hansard*, Perth, 17 July 2002, p. 69

133 Mr John McIlhone, op. cit., pp. 46–47

134 Mr Ian Davis, Member, Canberra Business Council, *Hansard*, Canberra 6 August 2002, p. 475; Mr John McIlhone, op. cit., pp. 46–47

135 Mr John McIlhone, ibid., p. 47

regulations governing business activities within their jurisdictions. This would promote greater consistency within each state or territory and reduce the workload associated with regulation development at local council level.

Recommendation Twenty-eight

The committee recommends that the Commonwealth and the states and territories, in consultation with local government, develop national model legislation for home-based business.

Recommendation Twenty-nine

The committee recommends that all states and territories develop model legislation for use by local governments in developing regulations within their jurisdictions.

Tenancy laws

6.109 Some submissions and evidence, primarily from retailers, raised concerns about tenancy laws. The Australian Retailers Association (ARA) submitted that the regulation of retail tenancy laws is the most important issue for its members. The National Federation of Independent Business (Gold Coast) (NFIB) which has a large proportion of members in the retail industry, also raised tenancy arrangements as a major concern. Both organisations are concerned that the anti-competitive arrangements that apply to lease renewal and rent review periods in major shopping centres, particularly in regional areas. Restrictions on the development of new shopping centres in some locations are said to provide owners of existing shopping centres with a monopoly position, resulting in harsh lease arrangements such as five year leases with no options to review, formula based rental reviews during the period of the lease, and a requirement for retailers to disclose turnover figures as a means of extracting a benefit during lease negotiations.[136]

6.110 Both the ARA and the NFIB recommended uniform national retail tenancy legislation as a solution. The ARA recommends that best practice uniform retail tenancy legislation, which prohibits compulsory disclosure of turnover, be introduced with the agreement of the state and federal governments, through COAG.[137] In a similar vein, the NFIB strongly urged the committee to pursue the recommendations of the 1997 report of the House of Representatives Standing Committee on Industry, Science and Technology (the Reid report), for a uniform retail tenancy code for consideration by COAG. The Reid report made a number of related recommendations about key elements of the uniform code including the need for options to renew for

136 Submission No. 4, Australian Retailers Association, pp. 20–22

137 ibid., pp. 20–22

sitting tenants.[138] The Government did not take up that recommendation as it stood, apparently due to the difficulties anticipated with obtaining agreement from a number of jurisdictions. It did however recommend minimum standards for retail tenancy laws, including the prohibition on the mandatory rent increase clauses. These have been introduced in all states and territories apart from the Northern Territory.

Comment

6.111 The committee did not have an opportunity to consider this issue in any detail as it was raised in a minority of submissions and evidence. With that caveat, on the evidence presented to it, the measures introduced to date do not appear to have addressed the concerns of small retailers. While there may be a case for states and territories to retain their own retail tenancy laws to meet local needs and circumstances as some suggest, there appears to be a need for the Small Business Ministers Council to revisit the extent to which current laws protect small retailers from unfair practices by shopping centre owners and the need for further reform.

138 Recommendations, *Finding a Balance—Towards Fair Trading in Australia*, Report of the House of Representatives Standing Committee on Industry, Science and Technology, May 1997.