



AUSTRALIAN  
INSTITUTE OF  
COMPANY  
DIRECTORS

ABN 11 008 484 197

*Professionalism in Directorship*

**Submission**

**To**

**Australian Senate  
Employment, Workplace Relations and Education  
References Committee, and Legislation Committee**

**On**

**Inquiry into Small Business Employment**

**17 May 2002**

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## **Australian Institute of Company Directors**

Australian Institute of Company Directors (AICD) is the peak organisation representing the interests of company directors in Australia. Current membership is over 16,500, drawn from large and small organisations, across all industries, and from private, public and the not-for-profit sectors. Membership is on an individual, as opposed to a corporate basis.

AICD is a federation of seven State divisions, each of which is represented on a National Council. Overall governance of the AICD is in the hands of its National Council which is comprised of the seven division Presidents, plus a National President, two National Vice-Presidents and a National Treasurer. AICD has several national policy committees, focusing on issues such as law, accounting and finance, sustainability, taxation and economics, and national education, along with task forces to handle matters such as corporate governance.

The key functions of AICD are:

- to promote excellence in director's performance through education and professional development
- to initiate research and formulate policies that facilitate improved director performance
- to represent the views and interests of directors to government, regulatory bodies and the community
- to provide timely, relevant and targeted information and support services to members and, where appropriate, government and the community
- to maintain a member's code of professional and ethical conduct
- to uphold the free enterprise system
- to develop strategic alliances with relevant organisations domestically and internationally to further the objectives of the AICD

## **A. Introduction**

The AICD acknowledges the importance of encouraging the growth of small business employment. AICD's view is that the observance of a number of broad fundamental principles, which are detailed below, will encourage small business employment growth. These broad principles should guide the Senate Committee review and underpin any changes made to the Australian small business employment regime.

1. Maintaining a considered policy framework;
2. Simplifying regulation;
3. Minimizing compliance & transaction costs;
4. Preserving the limited liability aspect of companies; and
5. Promoting alternative dispute resolution.

A particular area of concern to the AICD is that of payroll tax. On a number of counts, payroll tax is at odds with several of these broad principles. The AICD encourages the Senate Committee not to ignore payroll tax simply on the basis that it is not a federal tax. Improving payroll tax will do more to assist employment creation in Australia than any other single action. Part C of our submission details our concerns regarding payroll tax and proposes two wide-ranging solutions.

In relation to broad principles 2 and 3, Part D of our submission discusses the growth of compliance requirements and transaction costs (otherwise referred to as 'red tape'). In small businesses much of this burden will often be borne by one or a handful of managers. These requirements distract small businesses from the important task of business generation. Such 'red tape' is ripe for streamlining and we propose that an initiative be undertaken to address our concern.

## **B. Broad Principles to Underpin the Regulation of Small Business**

### ***1. Maintaining a considered policy framework***

Sensationalised public debate has the potential to lead to a 'knee-jerk' policy response. Such a response may lead to inconsistencies with existing regulation and greater transaction and compliance costs that act as disincentives to business. The AICD requests that any review of small business employment has a well thought out and agreed policy framework as its foundation. Any changes made to small business regulation should only be made with reference to this framework.

## **2. Simplifying regulation**

A regulatory framework should aim for simplicity and avoid duplication. It is also vital that when new legislation is developed, its impact on and interaction with existing regulation is considered and addressed.

The introduction of further regulation is not necessarily a key to desirable corporate behaviour. Since there are inherent costs and practical difficulties in devising and enforcing suitable controls in the regulation of business activity, codes of conduct and self-regulation should be encouraged as an alternative. In addition to possessing inherent advantages of flexibility, specificity of focus and the establishment of higher standards than may be possible through statutory control, the cooperation of business through regulation of their activities can be more effective than a system of statutory control. It is important, of course, that any system of self-regulation protect the public interest.

## **3. Minimizing compliance & transaction costs**

There is a need for rational justification of any regulation that has the effect of impeding the freedom to contract and trade. It is essential that the costs imposed on business by government regulation are proportionate to the protection they provide. In an era of increased international competitiveness, unreasonable compliance and transaction costs should not be imposed on Australian business. Businesses will move their activities offshore to avoid the imposition of such costs.

The need for uniformity in relation to directors' duties and liabilities is such an example. If the burdens of directorship are greater in one state, the practical outcome will be that businesses will move their activities to other states to avoid the imposition of those burdens. This will lead to the economic detriment of the offending state. There is also lack of uniformity in relation to directors' duties and liabilities across various Commonwealth legislation. The compliance and monitoring cost associated with such inconsistencies will ultimately be to the economic detriment of Australia and will serve as a disincentive for investment.

Another example is the need to reduce the costs of raising capital for small business. Consideration should be given to adopting a Personal Properties Securities Act similar to that coming into force in New Zealand and in force in the Canadian provinces. The system proposed in the Act is based on simple, computerised notice filing. Such a system reduces the legal costs usually associated with capital raisings and encourages the growth of new forms of financing. This proposal could be added to CLERP 8 perhaps, but would necessitate separate legislation applicable to non-corporate borrowers as well as corporations.

#### **4. Preserving the limited liability aspect of companies**

The concept of limited liability restricts the liability of company members to the amount, if any, unpaid on their shares. The concept of the 'corporate veil' limits the personal liability of directors when discharging company business.

Both concepts are fundamental tenets of the corporate entity that promote an effective and efficient market where risk taking, innovation and job creation are maximised. They have been fundamental to western democracies' economic development. Some inroads have been made into these fundamental tenets in Australia and more are under consideration. Further erosion should be discouraged.

#### **5. Promoting alternative dispute resolution**

Disputes sometimes arise when employees are given shares and appointed directors in family firms. Litigation is slow and expensive. There is a need for greater use of alternative dispute resolution in litigation that arises from these disputes. This trend has already begun in the United Kingdom.

### **C. Payroll Tax**

**The AICD encourages the Senate Committee not to ignore payroll tax simply on the basis that it is not a federal tax. Improving payroll tax will do more to assist employment creation in Australia than any other single action.**

Payroll tax has become a major component of state revenue raising in Australia. Payroll tax is not a desirable form of tax because, by nature, it is inherently anti job creation: for it increases the cost of each marginal employee once the payroll tax threshold is passed. Nonetheless, the AICD recognizes that payroll tax, at least in the medium term, is a reality of Australian commercial life.

The AICD applauds those states that have announced plans to lower the rate of payroll tax. These are led by Victoria which plans to reduce payroll tax to 5.35% in 1 July 2002<sup>1</sup>. It is hoped that other states will, move towards this figure. The highest rate currently imposed is 6.85% by the ACT.

The payroll threshold at which payroll tax becomes payable varies from \$456,000 pa in South Australia to \$1,250,000 in the ACT.

The greatest impediment to employment creation exists for small business which have a dollar payroll just below their relevant state threshold for payroll tax. At this point, the

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<sup>1</sup> Queensland currently has a tax free threshold of \$850,000 but with a rate of 6.4% on payrolls between \$850,000 and \$3.4m and 4.8% on payrolls above \$3.4m. AICD believes this rate schedule especially penalises small business.

impact of payroll tax becomes a massive disincentive to employ additional staff. The AICD urges that the Senate Committee to address this issue – notwithstanding that payroll tax is not levied by the Federal Government.

Assuming payroll tax is to remain for the medium term, but with the rates to be slowly wound back, there are two broad solutions.

The first is to lower the rate of payroll tax in each state and to eliminate (or greatly reduce) the applicable state payroll tax threshold. This has the impact of causing payroll tax, and the associated compliance, to apply to a far larger number of businesses. This is undesirable. Imposing additional taxes on a large number of small businesses will not benefit the Australian economy. The number of jobs created by eliminating the threshold effect would most likely be countered by jobs lost as businesses either wound back their staff to become one person businesses or simply ceased to be economically viable.

The second is to study ways of softening the very high marginal rate applying to businesses about to exceed the payroll tax threshold for the first time. The AICD does not seek to impose a particular mechanism as a solution. Rather, we urge the Senate Committee to convene a group of representatives from all State and Territory governments and to work with a consultant to investigate alternatives. These might include a minor lowering of the payroll tax threshold but the introduction of a graduated payroll tax threshold.

The AICD would be pleased to discuss these alternatives with the Senate Committee.

## **D. 'Red Tape'**

Running a small business has become more burdensome over time with the imposition of a multitude of compliance requirements and transaction costs (otherwise known as 'red tape'). Some of this burden has at its core the admirable goal of promoting environmental and occupational health and safety standards. However, some such requirements are unnecessary and ripe for streamlining.

The objective of streamlining may not easily be addressed by the Senate Committee which will more likely have individual matters brought to its attention by different groups. A consolidated, coordinated and consultative approach is required. To this end, AICD proposes that the Senate Committee convene a group of business organisations for a workshop that seeks to identify those areas in which government regulation might be readily streamlined. AICD would be happy to assist in arranging such an initiative.