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28<sup>th</sup> May, 2002

The Secretary,  
Senate Employment, Workplace Relations and Education References Committee,  
Suite S1.61, Parliament House,  
CANBERRA ACT 2600

**SUBMISSION TO ENQUIRY**

Please accept this as my submission to this enquiry.

Yours faithfully,

**David H.Price,**  
**Business Facilitator and Trainer**

## **INDEX TO SUBMISSION**

- Executive Summary
  
- Small Business and Compliance - the context
  
- Proposals for consideration by the Committee.
  
- Introduction to D.H.Price

**(This submission consists of eleven (11) pages)**

## EXECUTIVE SUMMARY

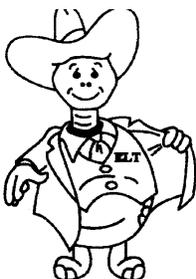
“Employment”, as discussed in “Unravelling the threads”, Department of Workplace Relations and Small Business, 1998, identified that in the determination of who is, or is not an employee, there were many issues to consider and this publication spent 57 pages looking at these issues.

When people in small business consider “employing” someone, they ask themselves a number of questions and start from the same reality as any other potential employer. “Full time” jobs, “life-long” careers, are long gone, so people are “employed” on short term arrangements, to meet the needs of the moment. If the cost of “employing” a person, on whatever basis is chosen, does not represent a financial return to the employer, sooner rather than later, it is not going to happen.

“Compliance”, as in “developing a culture of compliance” means that any business needs to review all its operations and to become a “learning community”. For a small business to go through the processes to achieve this will require exceptional courage and substantial expense, for which there may not be a return for some time.

Therefore, before the small businesses of Australia take up the challenges that this will present, there needs to be a change management process put in place that will require planning beyond the current “five minute” fix mind set of governments at all levels and of all political persuasions.

“The National Advisory Group on Local Employment Initiatives” provide an excellent blueprint for such a change management process ; to this could be added proposals set out in the Karpin Report and other reports which were not implemented for whatever reasons. **NOW** IS THE TIME to re-visit such reports and proposals for answers to the questions raised in the terms of reference of this enquiry.



*Small Business and Compliance-  
the context.*

The purpose of this paper is to set out, on a broad canvas, “the world of small business” and then paint some of the broad brush issues that best identify the context of compliance in small business.

This paper is a start, one of a number of papers that would be produced over time and as that guru of small business compliance, Winnie the Pooh, recommends, let us start at the beginning, with :

- **WHAT IS A SMALL BUSINESS ?**
- **HOW CAN WE DIVIDE SMALL BUSINESS ?**
- **SAMPLE, ( get up the nose) ISSUES**

### **WHAT IS A SMALL BUSINESS ?**

For the purposes of this paper, a small business will be designated as a for profit enterprise with ten to fifty employees, where up to five people own the business, make the decisions, have invested their own money in the business and work in the business. In the case of a not for profit enterprise, there would be ten to fifty employees, but the enterprise would be “owned” by the community at large.

This approach precludes franchises, subsidiaries of larger businesses, but could include members of a buying group if in all other respects, the members of the buying group were independent businesses.

A micro business, that is a business that employs less than ten people , will be the subject of a subsequent discussion paper.

### **HOW CAN WE DIVIDE SMALL BUSINESS ?**

**For the purposes of discussion, we will divide small business into :-**

- For profit enterprises (FPE)
- Not for profit enterprises (NFPE)

## FOR PROFIT ENTERPRISES

The divisions here are :-

- ❖ Sole - Trader
- ❖ Partnerships
- ❖ Corporations

(Trusts, hybrids and other exotica will not be covered here)

## NOT FOR PROFIT ENTERPRISES

- ◆ Associations (incorporated ones only)
- ◆ Companies limited by guarantee
- ◆ Co-operatives, incorporated under Co-operatives legislation

(Foundations, bodies incorporated under charter, or specific legislation, will not be covered here )

## ISSUES

### COMMON ISSUES

- Industry codes of practice (eg FSR)
- Regulatory codes (eg VETAB in NSW)
- Governance generally
- Compliance (especially "culture of compliance ")
- Quality / other standards

### FPE ISSUES

### SOLE TRADER

- **cannot have workers' compensation insurance**
- regulatory codes not adaptable to sole trader
- costs of compliance
- fragmented application of law (e.g ? independent contractor )

(For a discussion on last point, see "Unravelling the threads- who is , or is not an employee", 1998, DEWRSB)

## PARTNERSHIP

- "sole trader" for purpose of workers' compensation
- joint and several liability of partners
- lack of understanding of issues in a partnership
- status of a partnership, in different circumstances

## CORPORATION

- one director, one shareholder ; problems of
- " but it is my money" problem
- no understanding of duties of a director
- governance issues

## ***NFPE ISSUES***

## ASSOCIATIONS

- **"directors" or members of a management committee**
- many masters problem
- obtaining professional indemnity insurance
- addressing the "not for profit " issues

## COMPANIES LIMITED BY GUARANTEE

- A “public”, not a “private” company
- Role and duties of a director
- Succession planning for boards of directors
- Membership vs ownership

## CO- OPERATIVES

- legislative issues
- conflict between being a “member” and a director
- membership and ownership issues
- governance issues

Let me now give an example of how compliance can confuse any business, but particularly a business that does not have and could not afford, staff who can master the complexities of compliance :-

### **XYZ PTY.LTD.**

This company produces products, that are visible, competitive on the world market and seen as “leading edge” ; in Australia, the directors of this company , two individuals must :-

- ❖ comply with corporations law
- ❖ establish a “culture of compliance”
- ❖ meet international standards for their product
- ❖ “unravel the threads” as to who is an independent contractor, who is an employee, to whom they owe a “duty of care”, have many different codes of practice, because they offer products in different markets and answer to :-

- (1) ASIC
  - (2) ACCC
  - (3) ATO
  - (4) Courts with different jurisdictions, roles
  - (5) Diverse regulators, who never talk to one another, or to XYZ Pty.Ltd.
- ❖ understand cross-cultural issues
  - ❖ apply international law, including regulatory regimes of other places.
  - ❖ be prudent, far-sighted managers, focused on financial success.

This must all be achieved simultaneously within a labyrinth of rules and regulations on workplace relations, taxation, superannuation, occupational health and safety, local government, statutory bodies, regulatory agencies and the diverse “communities of interest” that demand to be heard, or they mount boycotts, demonstrations, etc., which result in “knee jerk” rules and regulations that mean yet more costly policies and procedures, but provide no tangible or financial benefit to anyone involved.

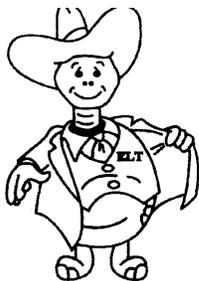
## PROPOSALS FOR CONSIDERATION

- (1) Consider again the recommendations found in the reports from “The National Advisory Group on Local Employment Initiatives”
- (2) Resource a body to train, accredit and support business facilitators and trainers, to enable small, medium and large businesses to develop into “learning communities”
- (3) Establish and then maintain for more than “five minutes” one-stop shops, where people in business can be informed, in **plain english** what the rules and regulations that impact on their business are.

(4) Enter into dialogue with “centres of excellence” in other countries about business practices and funding mechanisms that have made money for governments, not cost them money.

(5) Encourage regulators and regulatory bodies to see their requirements in a “holistic” context, rather than a one-off context, to reduce duplication and frustration in business regulation.

Finally, to actually do something that people at all levels of business and government could take some ownership and pride in would be a major step forward for all who now and in the future , “ call Australia home”.



David has evolved his experiences as an analyst and counsellor

David H.Price,  
Business Facilitator and Trainer

***Introduction to.***

However, it is his passion coupled with his use of training courses to test the validity or otherwise of his understandings, that makes what he describes as his infotainer style so effective.

Based on this background, David has created what he describes as the "**Tortoise approach**", which is an integrated, holistic, approach for the transfer of basic business skills and knowledge to people of all ages and stages in life. This approach has at its heart a series of applied cognitive development techniques that have been identified as a result of the field work done by David, particularly over the last twenty years.

David does not offer taxation, legal or other prescribed advice as he is not qualified to do so; what services he does offer are at the "introduction to" level, rather than at the specialist or expert level. The business facilitation services are offered under the registered business name "**The Enterprising Tortoise**", the infotainment / training courses, products and services are offered through a virtual institute, "**The Institute for Enterprising Tortoises**", with both these activities being resourced by the information products offered by "**The Knowledge Tortoise**".

**( These three names are claimed to be common law trademarks by David and he is the principal of all three Tortoise activities.)**

## DISCLOSURE OF PROCESS USED IN UNDERTAKING ASSIGNMENTS

The basic process used has four steps :-

- an analysis of the issues identified is carried out
- an information exchange is undertaken
- the analysis and exchange lead to an educational transaction
- the results of the educational transaction are then evaluated to determine if the designated outcome has been achieved.

These steps are the starting point and are modified by mutual agreement , to suit the needs and the circumstances of the individual situation involved.