



REGULATOR ENGAGEMENT WITH SMALL AND MEDIUM BUSINESSES

Submission to the Productivity Commission: March 2013

CHAMBER OF COMMERCE AND INDUSTRY QUEENSLAND

OVERVIEW

The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the opportunity to participate in the Productivity Commission's review of regulator engagement with small business.

CCIQ is the peak employer body representing small and medium businesses across Queensland.

CCIQ firmly believes that the cost and burden of regulatory compliance falls more heavily on small and medium businesses as they do not have the scale or workforce to dedicate resources towards compliance activities in the same way that larger business can. Unfortunately legislation, regulation and other statutory instruments cannot be tailored to business size and for consistency, equity and simplicity must be broadly developed on a one size fits all basis. Therefore it is vital that those responsible for implementing and enforcing regulation recognise and accommodate the particular circumstances of small and medium business, something that CCIQ does not believe has been done particularly well over recent years.

Accordingly CCIQ views this review as one of the most important to our membership and the small and medium business community in Queensland. Indeed CCIQ has significant evidence that in many cases it is the approach of regulators – their communication, advice and support, enforcement and reporting requirements – that has the most significant impact on business owners. However, to be fair a number of state and local government authorities have made attempts to improve their understanding of and relationship with small and medium businesses. This needs to occur consistently at a whole of government level and across jurisdictions in order to substantially reduce the overall cumulative effect of regulation on small and medium business.

CCIQ has for some time been a very loud advocate for the need to address the net or cumulative effect of regulation. Whilst every individual regulation can satisfy the public benefit test and may not be considered excessive, complex or costly in its own right, when viewed as a total sum it creates a regime that is stifling to business growth, innovation and productivity.

By way of example, businesses frequently tell us that they know that they are not fully compliant with everything that they must do – they simply do not have the time or resources to stay up to date, understand and action everything. Most businesses only do that which is absolutely necessary – that which implies the greatest penalty or is most strictly enforced. Therefore simplifying or improving regulation and compliance activities in one area, by default only frees up time to give more attention to other areas of compliance that business have not been able to adequately address. In addition, with the political and parliamentary propulsion to address every issue with new codes, regulations and compliance requirements, the overall compliance burden simply continues to grow thus removing any net benefit of improved regulator engagement.

Accordingly CCIQ believes that the most important and profound way to improve regulator engagement and help regulators to better understand the needs and the context in which small businesses operate is through a focus on cumulative burden. Every regulator should be guided to consider what other agencies already impose on small and medium businesses when developing and designing their regulatory programs, policies and engagement strategies.

To lead the charge against cumulative burden, CCIQ has been working with real small and medium business owners to identify and cost every aspect of business compliance. Over twenty red tape case studies detailing the cost, time, complexity and challenges experienced by Queensland businesses across multiple regions and industry sectors have been completed.

These case studies have helped CCIQ gain important insight into the way in which regulators engage with businesses at a local level and highlighted a number of issues which impose unnecessary cost on business or make compliance more difficult.

Whilst CCIQ believe that these issues reflect a need for significant cultural change in the way regulation is designed, developed and administered, the solution for making regulation more efficient should rightly be identified and led by the regulators themselves – those who hold the depth and detail of the regulatory objectives and instruments. Accordingly for CCIQ the intent of this submission is to draw attention to the issues and provide real business evidence of the red tape challenges that our members have raised.

In support of the evidence and issues raised in the following discussion, CCIQ is also pleased to be able to provide copies of the CCIQ Red Tape Case Studies to further inform the Productivity Commission's study.

KEY DISCUSSION TOPICS

Definition of Small Business

CCIQ firmly believes that an inconsistent and potentially inaccurate definition of what constitutes a small business makes regulatory compliance more difficult. Indeed CCIQ is frequently asked by regulators to help them define small business for the purposes of regulatory design and implementation.

An inconsistent definition of small business affects the application of regulation and compliance. It creates complexity and reduces certainty for businesses who must invest significant time and money initially determining if and to what extent regulation applies to their business. CCIQ case studies highlight numerous examples of businesses spending hours researching regulation and/or spending money seeking independent advice on the applicability and relevance of regulation to their business. Additionally the specificity of what defines 'small business' can further act as a constraint or disincentive to business growth and innovation (particularly when based on number of employees) – if a business faces additional compliance burden then they simply avoid employing more people or expanding operations and output.

Regulation will have a disproportionate cost and burden for any business who does not have the scale of operations and workforce numbers to warrant dedicated staff for particular compliance activities. Scale is very subjective and differs across regions and industry sectors therefore it can be difficult to put an exact number to 'small' business. It is also our firm view that small and medium businesses need to be considered collectively as part of this study and with that in mind we have significant evidence to suggest that it is not until employment reaches approximately 50 employees that the business case and costs of dedicated in-house WHS, HR, environmental and/or financial compliance staff are appointed. Additionally as our case studies highlight, "small businesses" with between 30-50 staff frequently engage external or part time consultants to assist with regulatory compliance as the task of managing the cumulative burden becomes too great for the business owner/manager to adequately complete, yet the costs of dedicated staff cannot usually be justified.

CCIQ believes there is merit in reconsidering the definition of small (and medium) business for the purposes of regulatory design and implementation, particularly where thresholds create a trigger for compliance. As indicated above this needs to reflect scale of workforce and recognise the overlapping and cumulative effect of all aspects of regulatory compliance.

Regulator Practices and Impacts on Small Businesses

1. Advice and Guidance on Regulatory Requirements

Accessible and quality advice and guidance can reduce the time spent by small businesses understanding what is required of them under regulation and also lead to better compliance outcomes.

Accessibility and quality of information and advice is one of the most common issues raised by Queensland businesses – this includes issues of relevance, consistency of interpretation, and balance between specificity and flexibility. Examples of key issues with regulator engagement raised by businesses include:

- Poor communication of changes and amendments to regulation – businesses commonly not even being aware of changes until they are found in breach through audits and inspections – sometimes months and/or years after changes are introduced.
- Rushed regulatory agendas leaving short transitional timeframes for business to be informed of changes and new requirements and make necessary changes within their businesses; lack of understanding of how costly and difficult it can be for businesses to change procedures and process, production lines and technologies and impact on certainty for investment.
- Unacceptable timeframes for response/ approvals and lack of appreciation for the operational impact on businesses caused by delays and uncertainty; examples include phone calls not being returned on disputes, return of permit approvals taking over 3 months to process leaving businesses with expired permits and licences.
- Accessibility and availability of support officers and call centres: most regulator offices operate within business hours (typically 9am-5pm Monday to Friday) which is not appropriate for owners/managers of small and micro businesses who are involved in the daily running activities of the workplace – farmers who are out on the property, tourism operators serving customers, café or restaurant owners working in the kitchens or front service areas.
- Reluctance of regulators to give specific and exact advice; businesses are increasingly frustrated that regulators only provide “general” and non-authoritative advice and guidance on compliance requirements. The result is that businesses either end up being non-compliant or have to seek costly legal/expert advice from consultants.
- Scheduling and suitability of training and information sessions and business perception that “every agency wants to train us in everything – if we attended every single training session we would never work in our business” (Business owner, Wide Bay Burnett Region 2012). Businesses indicate that it is hard to assess which courses are compulsory or not, and which ones are relevant/important to their business from the promotional material they receive. Most training sessions occur within business hours which places pressure on staffing/workplaces, and most are unnecessarily lengthy. Regional areas are normally offered very limited opportunities to attend training/information sessions and when travel time is included are normally unrealistic to attend.
- Continues to be significant overlap and duplication of audit and inspection effort, particularly in regard to food safety, export and quality assurance; for food producers, manufacturers, transporters and retailers this represents one of the most time consuming, inefficient and time consuming aspects of their compliance. There is no coordination between jurisdictions in relation to reporting, documentation and audit processes – whilst each agency applies a “full-cost recovery/ fee for service” model and charges businesses licence fees, audit fees and documentation processing fees.
- Whilst online information sources are useful for businesses to access relevant information at any time, it also creates challenges for business. Common criticism is that

information is non-specific and not “framed” in business language or the way that businesses understand their operations and activities. This leads businesses to find themselves clicking through multiple links and pages, being referred to multiple agencies/websites before finding the information that they need. Businesses are also critical that “government bureaucratic processes” mean that information is not regularly updated; and that because the public service does not operate outside of business hours or on weekends – essential updates or information does not reach businesses efficiently (e.g. road closures, flood updates, export/international market developments).

2. Compliance and Enforcement

Whilst business acknowledge the need for compliance and enforcement activities, achieving a balance between educative and supportive approaches and penalty-based approaches impact significantly on compliance costs and the relationship between businesses and regulators. Compliance and enforcement activities should be used to a greater extent to inform policy and regulatory development and improvement.

Rightly or wrongly businesses have developed a negative sentiment towards compliance and enforcement activities of regulators – they perceive these activities as revenue raising and jurisdictional protectionism. Agencies clearly fail to recognise the indirect costs on business resulting from compliance and enforcement activities such as inspections, audits, and reporting. Examples of key issues with regulator engagement raised by businesses include:

- Skills and capabilities of enforcement and compliance officers: Poor understanding and business knowledge of enforcement officers; continual churn of enforcement staff; inconsistency of interpretation and application of standards, codes and regulatory requirements by enforcement officers; and inability of enforcement staff to accommodate innovative or new approaches which achieve same/similar outcomes. This means that audits and inspections require a degree of “hand-holding” of the regulatory officers and repetitive process of having to explain the nature and practices of their business which increases the cost and burden of compliance.
- Where genuine mistakes or oversights have been made which can be easily rectified/changed by businesses owner whilst the enforcement officer is on premises, no leniency is provided and business is immediately breached (e.g. blown light bulb in fire exit sign which business owner offered to change immediately was not allowed and the business was issues a breach notice and fine)
- Business have observed behaviours where compliance officers become “nit-picky” and identify irrelevant or extremely low risk issues to justify their audit or inspection process “Each time the council officer comes out they must find something to report – they couldn’t possibly give us a 100% compliance sign-off” (Business owner, Central QLD, 2012)
- Businesses also complain that there is lack of clarity and inconsistency related to the application of codes and standards. Whilst codes and standards are technically not “compulsory”, they are increasingly being treated as “enforceable” when it comes to legal liability. For example, if a business does not implement certain standards specifically as

the wording suggests, the legal system is interpreting this as a breach and awarding penalties/breaches against the business.

- Legal/court rulings are also having an unintended consequence on business compliance requirements. For example, if the legal system makes a ruling that includes reference to a code or standard, it changes the initial interpretation and the compliance obligations of businesses. Businesses therefore are facing increasing onus to stay up to date with court decisions to manage their risk and compliance requirements, however there is no consistent mechanism by which this information is being provided to business owners/managers.
- Induction training, ongoing repeat/refresher training and site specific induction requirements for employees is also a challenging and costly exercise for businesses, which in practice provide no additional benefit or protection to employers. Most have differing expiring/renewal timeframes (ranging from 6 monthly, annually through to bi-annually) and require hours of staff downtime at the cost to the business. If the business does not have dedicated HR, WHS, and IR staff then small business also must absorb the cost of engaging consultants and trainers.

3. Business Reporting Requirements

Business reporting and documentation must be minimised to that which is essential and where there is a demonstrated need for the information supplied. Where reporting is deemed necessary the process should be made as simple and efficient as possible. Opportunities to align business systems, processes and terminology with reporting and documentation must be considered a priority and reporting timeframes/deadlines should not interfere with other business priorities.

Reporting and documentation requirements represent a significant area of compliance cost and burden for many small and medium businesses, especially when it detracts from the business owners role in operating the business (in many cases business owners find themselves completing reporting and documentation outside business hours at night or on weekends). Businesses also feel that many areas of reporting are unnecessary and deliver no discernible benefit for the business, nor do the regulators utilise the information recorded and documented.

Every report, procedure, form or log-book that a business must complete requires the investment of business owners' time – this time represents an ongoing direct cost for the business as well as an opportunity cost due to the distraction it requires away from actually running the business. If reporting and documentation simply serves the purpose of demonstrating compliance then there should be a strong argument for applying different approaches – focused on outcomes – to monitoring compliance. Additionally business time should not be used to meet internal agency reporting and information requirements.

Businesses however are embedded in a vicious cycle of reporting and documentation. Documentation and reporting is becoming the proxy for compliance outcomes – particularly in the regulatory environment where the onus of proof is unfairly placed on employers. For example, when a workplace claim is made, regardless of the efforts and actions of business owners, unless they can provide unquestionable and detailed written evidence then they will

almost always be found liable. However, despite the vast amounts of paperwork, reporting and documentation, business owners are still finding themselves having claims awarded against them, leading them to question the value of business reporting requirements and/or seeing reporting as an unnecessary cost.

Some additional issues relevant to business reporting requirements and which impose additional and unnecessary cost include:

- Requirement for long term storage of business records (typically hard copy) despite significant advancements being made in archiving and data storage technologies. In most cases this is simply to satisfy a “possible” future need for audit and inspection purposes, but in practice represents a significant cost to business who must find and pay for office space and storage equipment.
- Slow uptake of electronic lodgement which in some cases is still replicated with the need to additionally lodge paperwork, forms and reports in hard and multiple copies. For example some financial and company reporting provides online submittal, but requires additional lodgement of multiple electronic backups and hard copies. Again this represents additional cost for business that must pay for postage and ensure they have the required equipment/devices to produce electronic copies. One business provided an example of being fined for only submitting one, rather than two, electronic backup copies.
- Inconsistency of units of measure, reporting periods and cost components. Businesses express frustration with the inconsistency across agencies and jurisdictions in reporting formats; it also presents an issue that in many cases information requested from regulators requires manipulation as it does not align with businesses own reporting processes and systems. Many businesses find themselves keeping and updating separate spread sheets and databases just so they can capture information for regulators.
- Businesses are also exasperated by the non-business friendly approach to reporting timeframes and deadlines. Timing varies across regulators ranging from anniversary date, financial year and calendar year and frequency for most government reporting varies from monthly through to 5-yearly. Not all regulators send reminders or renewal requests, leaving businesses with the difficult task of managing reporting requirements. There is generally little flexibility available to businesses to alter reporting timeframes to better suit peak operating periods and business processes. For example, businesses find it unreasonable for regulators to request reports or conduct compliance inspections during June and July, when must undertake taxation and end of financial year activities.

Australian Bureau of Statistics (ABS) reporting has been raised by many small businesses across Queensland as a particular example of poor regulator engagement. In almost all instances the requests for information and business data by the ABS demonstrates poor understanding of the business operating environment: short timeframes and poorly considered due dates (for example annual returns on business performance due mid July, when businesses are busy completing end of financial year activities and long before business have had a chance to finalise annual sales and performance reporting); data requests inconstant with the units of measure and standard business reporting; frequency of

requests and targeting of failure to share requests across balanced selection of businesses (e.g. businesses feeling like they are targeted and receive multiple and repeated requests within an annual period); and no flexibility of ability for small businesses to be “excused” from reporting due to business circumstances and hardship (e.g. one business reported to CCIQ that they were fined for not submitting reports despite not being operational during a particular period due to natural disasters).

4. Consultation and Feedback Mechanisms

Consultation is important as it helps regulators understand the impacts of their compliance requirements and also ensures that all costs and benefits of regulatory proposals are considered when designing regulation.

However small businesses are typically only disadvantaged by consultation: many do not have the technical expertise or practice in addressing targeted consultation questions and issues paper; they often struggle to communicate and quantify their impacts in the formats/way expected by regulators; and their issues whilst significant to the scale of small business operations and profitability can be sidelined by the interests of large well-resourced organisations.

It can also be an issue that cost-benefit analysis and impact assessment is guided by number of respondents and frequency of a particular issue being raised. For this reason small business issues can often be disregarded as isolated or low priority issues. Most small businesses will not ever participate in consultation activities or make submissions – is it unreasonable to expect that they ever will – that is precisely the reason why businesses are members of industry organisations and representative groups. Therefore there must be mechanisms to ensure that a single submission from organisations or groups representing a collective group of stakeholders carry weight in the consultation process.

It is also fair to say that businesses are increasingly sceptical and disinterested in regulator consultation activities – businesses have communicated to CCIQ that where they have provided responses or submissions in the past they believe that their issues were not addressed or acknowledged adequately – which acts as a disincentive to contribute again in the future. This reflects the fact that it is normally fairly uncommon for stakeholders to receive feedback or acknowledgement of their input.

Finally timeframes for consultation, whilst it does vary across regulators and issue, is typically insufficient to allow businesses time to understand a proposal, assess its impacts and prepare written responses whilst also managing business operations. Regulators have also demonstrated difficulty in reaching small business for notification purposes and businesses frequently comment that they were not made aware of important consultation programs. Whilst most jurisdictions have consultation protocols or guidelines in place specifying minimum standards for timeframes, notification and consultation procedures, CCIQ believes that there is no independent monitoring of compliance and regulators are not being held accountable to these protocols.

Improving approaches to small businesses engagement

CCIQ believes that any best practice framework for regulatory development, implementation and small business engagement must include the imperative to better understand the direct and indirect costs that small and medium business face when complying with regulation. To this end significant cultural change can be achieved through improved and more transparent approaches to cost-benefit analysis and regulatory impact assessment processes. Whilst most jurisdictions have enhanced RIS/RIA/RAS processes in place, limited priority and rigour continues to be placed on adequately satisfying the “requirement” for RIS/RIA/RAS for new or amended regulation. Additionally there is not yet consistent and thorough application of RIS/RIA/RAS to legislation, statutory instruments, standards and other policy that imposes requirements or expectations on businesses.

In addition to the need to reduce the overwhelming burden of regulation, there is no doubt that all government agencies need to improve the way that they inform and educate businesses about compliance obligations; and that there needs to be urgent improvements to government service delivery and the way government agencies support businesses with compliance.

There is a significant opportunity for the all levels of government to deliver significant reductions in the cumulative burden and cost of red tape for small business through the streamlining and simplification of regulatory compliance including through the following initiatives:

- Supporting small and medium businesses with timely and targeted information about regulatory compliance and changes to regulation (including reductions and/or repealed requirements as the deregulation agenda progresses). A degree of caution should be exercised however if and when recommending a ‘one stop shop’ or single online location for all small business; information is only useful if the language and information is framed in a way logical to small business owners and genuinely replaces all other sources of information, otherwise it can have the opposite effect and create a need and/or perception to still seek out multiple sources of information and advice.
- Reviewing existing online resources and publications. This would include improving the language and way that regulators communicate with small and medium businesses to increase understanding and reduce the complexity of compliance.
- Developing tools to aid small and medium businesses in the process of compliance. For example, the use of online tools/workflow systems to schedule and track compliance requirements, templates and reporting tools to reduce the time of compliance, and development of tools and standardised conditions for voluntary self-regulation.
- Provision of training and accreditation services to allow business owners to complete their own audits and or/compliance management to reduce the cost of external consultants and allow businesses to schedule compliance at times most suitable to their circumstances.
- Undertake a review of the frequency of compliance, renewals and reporting to determine if small business with low regulatory risk and/or history of good compliance can shift to alternative models of reduced frequency and reporting by exception.

- Significant work also needs to be done independent of politics and government to develop a suit of alternative tools to regulation; and at the same time to educate government, parliament, business and the community about the benefit and effectiveness of non-regulatory approaches to address policy issues.

Finally CCIQ is also very supportive of some of the work occurring internationally to support small and medium business with compliance. The examples from the European Union noted in the Issues Paper (page 12) including “Think Small First’ principle to avoid unnecessary burdens on small business and ‘reverse onus’ approach where rather than automatic inclusion, small and micro business are excluded from regulatory compliance proposals unless a case for their inclusion can be demonstrated. CCIQ believe these examples offer very real opportunities to reduce the unbalance that exists for small business who do not have the scale and resources to comply with regulation in the same way as large businesses.