Time For Business

Report of the
Small Business
Deregulation Task Force

November 1996

© Commonwealth of Australia 1996

This work may be reproduced in whole or in part for studying or training purposes subject to the inclusion of an acknowledgement of the source and no commercial usage or sale.

ISBN 0 642 25960 7
DIST 037/96

The Hon John Howard MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

On behalf of the Small Business Deregulation Task Force I have pleasure in submitting our report, *Time For Business*.

The level of interest in the work of the Task Force and the evidence of significant paperwork and compliance burdens on small business, demonstrates the need for action to be taken. The objectives set by Government were both challenging and time consuming. Without doubt the Task Force's greatest challenge was the need to maintain revenue-neutrality.

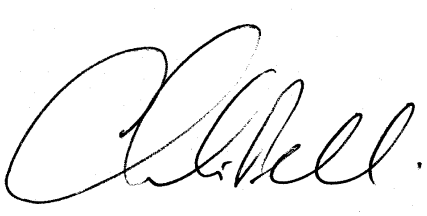
The Task Force believes that the report reflects the major concerns of the small business community. Our recommendations are designed to make a substantial difference to the paperwork and compliance burden imposed by governments both in the near and longer term. This will give small business more time to run and grow their enterprises.

The Task Force would like to acknowledge the valuable contributions to our work made by small business operators, industry associations, Local Government representatives and State, Territory and Commonwealth government officials. Their interest and enthusiasm for our task made our job much easier.

The Task Force would also like to record its appreciation for the valuable assistance and support provided by all the members of the Secretariat. Our report owes much to the contributions and dedication of the Secretariat staff.

The Task Force commends our report for careful consideration and looks forward to the Government's response.

Yours sincerely



Charlie Bell
Chairman

1 November 1996

Contents

Letter from Chairman to Prime Minister		**iii**
Terms of Reference		**vii**
Small Business Deregulation Task Force membership		**viii**
Key findings		**1**
Chapter 1	**Introduction**	**12**
Chapter 2	**Reforms under way**	**19**
Chapter 3	**Reducing the taxation compliance burden**	**28**
Chapter 4	**Helping small business employers**	**47**
Chapter 5	**Statistical collections**	**60**
Chapter 6	**Streamlining government processes and regulations**	**69**
Chapter 7	**Changing the regulatory culture**	**90**
Chapter 8	**Making it easier to deal with regulatory government**	**95**
Chapter 9	**Making business easier**	**106**
Chapter 10	**Improving the regulatory system**	**114**
Chapter 11	**The way forward**	**129**

Appendix 1	**Recommendations**	**136**
Appendix 2	**National Small Business Summit, June 1996 Charter of Principles**	**149**
Appendix 3	**Snapshot of small business**	**151**
Appendix 4	**Research methodology and analysis**	**154**
Appendix 5	**List of submissions received**	**159**
Appendix 6	**Consultations**	**167**
Bibliography		**175**

TERMS OF REFERENCE

1. The Small Business Deregulation Task Force will review the compliance and paper burden imposed on small business.

2. The Task Force will have six months to report to the Government on revenue neutral measures that could be taken to reduce the paper and compliance burden on small business by 50 per cent.

3. Matters to be taken into consideration by the Task Force's investigations shall include, but not be limited to:

(a) • statistical collections
(b) • taxation compliance with particular reference to the administration of:
  - Fringe Benefits Tax
  - Capital Gains Tax
  - Superannuation Guarantee Charge
  - Business taxes
(c) • Commonwealth regulatory requirements
(d) • an assessment of the interaction with State/Local Government business regulation and compliance requirements and, in cooperation with the States, examine the overall regulatory environment; and
(e) • the potential contribution of existing Commonwealth and cross-government regulation reform mechanisms to the Government's regulation reform objectives.

4. The Task Force will advise on implementation strategies which contribute to the development of a Regulation Efficiency Program. In doing this, the Task Force will be mindful of the need to ensure that the momentum of the Government's overall deregulation program is maintained.

5. In undertaking this Review, it is expected that the Task Force will have regard to existing studies and relevant overseas developments in reducing compliance costs in the areas identified, and consult with business and community groups as appropriate.

6. In relation to 3(e), the aim is not to formally review the existing mechanisms but to examine the contribution they make to reducing the paperwork and compliance burden on business. In doing this, the Task Force is invited to suggest ways of improving the existing regulation reform processes so that they better meet the Government's reform objectives, taking particular note of the role played by the Office of Regulation Review. The Task Force is also invited to identify business priorities for regulation reform.

National Small Business Summit

The National Small Business Summit, held on 12 June 1996, asked the Task Force to consider the proliferation of regulatory instruments, including the possible development of guidelines on the use of quasi-regulations and to develop benchmarking and compliance cost assessment.

SMALL BUSINESS DEREGULATION TASK FORCE MEMBERSHIP

Mr Charlie Bell (Chairman)
Managing Director
McDonalds Australia Limited
Pennant Hills, NSW

Ms Lynda Dean
Executive Director
Thursday Plantation Laboratories Ltd
Ballina, NSW

Mr Roger du Blet
Managing Director
Reduct Pty Ltd
Brisbane, QLD

Ms Claire Grose
Lawyer
Freehill Hollingdale & Page
Sydney, NSW

Mr Simon Hegarty
Chartered Accountant
KPMG
Launceston, TAS

Mr Mark Kuperholz
Managing Director
Everco Wiring Systems
Melbourne, VIC

Mr Greg Taylor AO
Secretary
Department of Industry, Science and Tourism
Canberra, ACT

Secretariat Staff

Mr Grahame Cook (Secretary)
Mr Brien Armstrong
Mr Steven Crabb
Mr Robert Egan
Mr James Finley
Ms Kim Hofmeier
Mr Sean Innis
Ms Kim James
Mr Murray Radcliffe
Ms Dusanka Sabic
Ms Fiona Smith
Mr Barry Telford
Mr Stuart Wilson

Key findings

The small business community is frustrated and overwhelmed by the complexity, and cost of dealing with government regulation and paperwork. Small businesses often do not understand their compliance obligations and have an underlying fear of penalties from doing the wrong thing. The Commonwealth Government, its departments and agencies must implement a broad and sustained program of action to reduce the burden and give small business operators more time to operate and grow their enterprises.

There needs to be a substantial change in the culture of government. Governments must remove unnecessary regulation and improve the quality of administration. Proposed regulation needs careful scrutiny to ensure the burden on small business is minimised.

Departments and agencies responsible for regulation must monitor the impact of their paperwork and compliance requirements on small business and report annually on their progress in reducing the burden.

Defining burden

Burden is the additional paperwork and other activities that small business must complete to comply with government regulations. It is the time and expense outlaid that is over and above normal commercial practices. The burden includes lost opportunities and disincentives to expand the business.

The *Working Overtime* survey[1] found that on average small business spends 16 hours a week on administration and compliance activities. Of this, government paperwork and compliance account for around four hours. Taxation matters absorb three hours and one hour is spent on other activities.

On average, total compliance costs are $7 000 a year. Of this, $3 000 is spent on external advice. These figures do not capture the lost opportunities and disincentive effects created by the paperwork and compliance burden. These effects also contribute to the sense of frustration many small businesses have expressed and it results in a less productive economy.

Taxation; employment; the administration of regulation; coordination between government agencies; and poor regulation scrutiny and review processes are all areas small business wants reformed.

EXISTING PROCESSES

The Task Force report is one part of the broader program of reform presently being undertaken by the Commonwealth, State and Territory governments. The principal elements of the reform package are the Commonwealth Regulation Review Program,

[1] *Working Overtime,* Small Business Deregulation Task Force, Background Paper 3, 1996.

simplification of taxation and corporations law, removal of redundant regulations and the National Competition Policy Legislative Review Process.

TAXATION

Difficulties with the taxation system were the most important issues small business raised with the Task Force. The system is too complex in terms of the number of taxes, the uncertainty of the law, the frequency of changes, the difficulty of interpretation, the burden of record keeping and the costs of compliance. Small businesses want simplicity and certainty in taxation matters. They see minor inequities being more than compensated by savings in record-keeping, accounting fees, time and anxiety.

Fringe benefits tax

For many in small business the fringe benefits tax (FBT) represents the worst aspects of the taxation system. It is difficult to understand and compliance is costly. Those compliance costs are dead weight loss for small business and the economy generally.

To reduce the complexity, compliance costs and paperwork associated with FBT the Task Force recommends it should be amended to:

- introduce a simplified valuation formula for motor vehicles;
- exempt meals from FBT and introduce a simplified formula for assessing the deductibility of meal expenses under the Income Tax Assessment Act;
- exempt car parking and taxi travel from FBT;
- align the FBT year with the income tax year at 30 June, and
- change the so called arranger provisions so that the onus of paying FBT lies with the supplier of the benefit.

The Task Force was unable to develop a strictly revenue neutural package of FBT initiatives but believes that the recommondations would reduce compliance costs.

Optional pay as you go and voluntary payments

The provisional tax system does not suit the circumstances of many small businesses. They are often unable to predict their income with confidence, and can have difficulty managing their cash flow.

Provisional tax payers should be able to opt out of the provisional tax system and elect to pay quarterly instalments based on current business receipts. Taxpayers should also be able to make voluntary payments and have these credited to provisional tax at any time.

These initiatives would offer greater flexibility and easier compliance for small business.

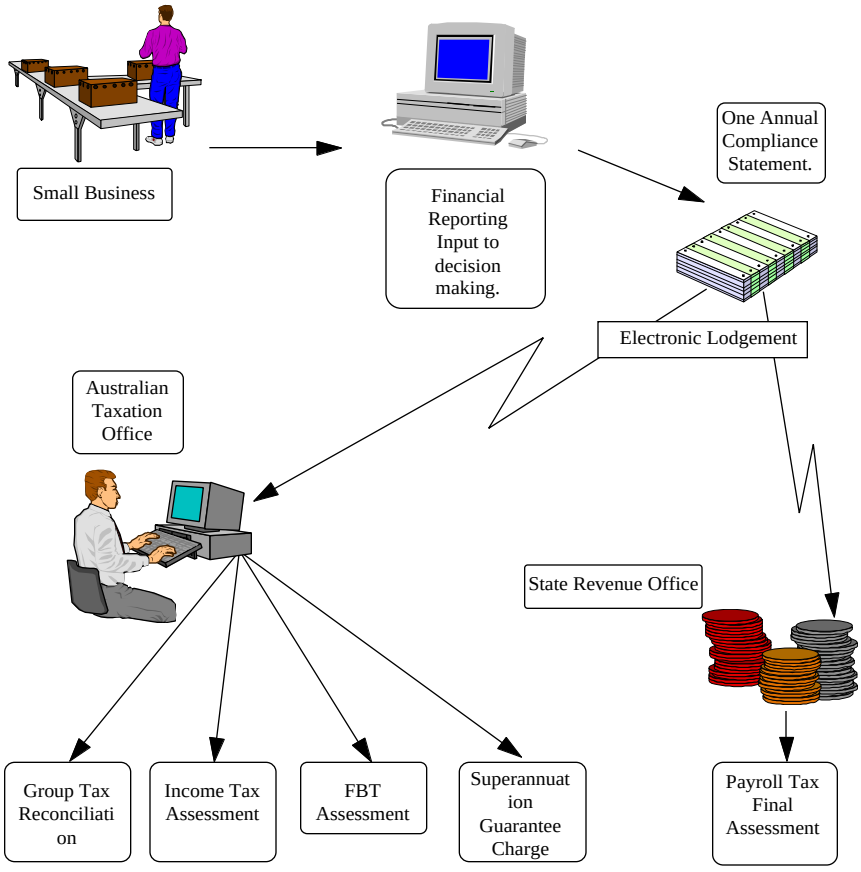
Easier ways to handle the paperwork

The taxation compliance burden could also be reduced by simplifying record keeping and reporting arrangements.

The Australian Taxation Office should:

- allow tax payers to use an asset register with third party certification to eliminate the need to keep capital gains' source documents for many years;
- introduce an annual compliance statement to eliminate the present requirement to lodge up to seven different returns; and
- allow group certificates to be issued at the end of a financial year or on request by a departing employee.

Small Business Deregulation Task Force
Annual Compliance Statement Life Cycle



REFORMING THE TAX SYSTEM

Sales tax

The wholesale sales tax system is complex, creates market distortions and areas of competitive disadvantage. The compliance burden is high and record-keeping is onerous with the burden falling disproportionately on manufacturers and wholesalers.

Sales tax problems stem from its fundamental design structure of classifications and exemptions.

There needs to be a major review of the sales tax system. The approach recently put forward by the Institute of Chartered Accountants to reduce the number of classifications and exemptions is one way of reducing complexity and compliance costs.

Income Tax Assessment Act

The Income Tax Assessment Act and Fringe Benefits Tax Act are complex with many examples of anomalies that result in excessive paperwork and compliance costs.

The Government should initiate a review of these Acts with the aim of reducing overall compliance costs.

Payroll tax

Differences between jurisdictions on how payroll tax is levied and different administrative arrangements increase compliance costs for small business.

To overcome this, the States and Territories should accelerate their efforts to harmonise payroll tax legislation and their administrative arrangements.

EMPLOYMENT ISSUES

Small business finds the regulatory environment covering employment relationships overly complex, confusing and unsuited to its needs. Greater flexibility, employment arrangements that reflect commercial circumstances, and more practical information and assistance is essential.

The Commonwealth Government's labour market reform legislative proposals will help overcome some problems, but more needs to be done in the areas of industrial relations processes, occupational health and safety, workers' compensation and superannuation.

Industrial relations system

Present industrial relations arrangements create uncertainty about obligations, and act as a disincentive to become an employer or to increase the number of employees.

The Task Force's submission to the Senate Economics References Committee supported the thrust of the Workplace Relations Bill and advocated a simple and flexible system to resolve industrial issues at the workplace.

Small business supports the proposed changes to the unfair dismissal laws, but needs reassurance that the Government will respond if the changes do not deliver the desired outcomes.

The Australian Industrial Relations Commission is seen as process driven and not user friendly. Accessible forums and simple transparent processes are needed.

Many small businesses do not understand logs of claims. They can inadvertently find themselves a party to an award and a new set of obligations and responsibilities.

To address these employment issues, the Government should:

- require the Department of Industrial Relations to review the new unfair dismissal laws after 12 months of operation to check that they are providing a balanced and flexible approach for small business;
- ensure that Rules and Regulations needed to give effect to the Workplace Relations legislation have regard to the needs of small business; and
- provide small business with better information on the industrial relations system, its regulations and processes.

Definition of employee

Commonwealth, State and Territory governments use a range of definitions to describe an employee. This means that small business must refer to numerous pieces of legislation to determine the details and amounts to be paid for different work arrangements. Most businesses do not have the time nor the skills to sift through legislation and have to pay advisers for assistance.

To address this, governments should develop a standard core objective definition of employee and apply this in all regulation. A first step would be for each level of government to coordinate the development of an information matrix covering all employment relationships.

Occupational health and safety

Many small business operators have difficulty understanding their occupational health and safety (OH&S) obligations and responsibilities. Standards and codes of practice are not tailored to their needs and they often need professional assistance.

OH&S regulation should recognise the needs of small business for less complex regulation. To achieve this, governments should:

- require the Labour Ministers Council to exert greater control and to be accountable for the delivery of nationally consistent OH&S policy, programs, standards and codes of practice;

- ensure accountable and transparent OH&S arrangements; and
- require all jurisdictions and Worksafe Australia to provide small business with simple and practical guidance on meeting their obligations.

Workers' compensation

Present workers' compensation arrangements are not well suited to small business, particularly those operating in more than one jurisdiction.

In particular, industry based premiums and return to work arrangements do not accommodate small business needs.

The Labour Ministers Council should develop nationally consistent workers' compensation principles, including common benefits and provision for mutual recognition of insurance policies written in other jurisdictions. Premiums should be risk related where this is a good indicator of performance. Otherwise a base premium with penalties and bonuses based on performance and the implementation of OH&S management strategies should be applied.

Small business should have the option of forming groups to negotiate lower premiums and better strategies for rehabilitation, accident prevention and return to work arrangements.

These changes would be of practical assistance and reduce compliance costs.

Superannuation

The interaction of the superannuation guarantee with award provisions is a source of complexity and confusion. There are particular difficulties with the payment of superannuation for casual employees.

The proposed changes in award coverage and the provisions to take cash in lieu of superannuation announced in the Budget will go some way to relieving this burden. Other measures that should be taken include:

- an education campaign to re-enforce the difference between the payment of the levy and the superannuation guarantee charge;
- giving casual employees who work for less than three months the option of taking wages and salary in lieu of superannuation contributions; and
- exempting full time secondary school students from the superannuation guarantee.

STATISTICAL COLLECTIONS

Statistical collections are a source of considerable irritation for small business even though they represent only a small proportion of the overall burden. Small business is concerned about the approach of the Australian Bureau of Statistics (ABS), the extent of duplication of information sought, the timing of surveys and the lack of relevance of the results.

The ABS is already implementing a commitment to reduce the burden it places on small business by 20 per cent. Other measures that would reduce the overall burden without jeopardising the benefits statistics provide include:

- requiring government statistical collections to pass through a central clearing process before they are undertaken;
- improving questionnaire design, explanations for surveys and collection arrangements;
- increasing representation of small businesses on statistical advisory committees; and
- increasing the number of surveys for which users have to pay.

STREAMLINING GOVERNMENT REGULATIONS

Small business is constantly challenged by the array of rules and regulations covering every area of business activity. The Task Force examined the paperwork and compliance costs in a number of areas - the building industry, environment, food, chemicals, pharmacies and child-care.

The Task Force proposes that:

- Local Government works with States and Territories to change its approval processes to reduce duplication of building and development regulations;
- the three levels of government develop a reform strategy for referral and concurrence in the building and development industry by 1 July 1997;
- the mutual recognition and accreditation processes established by the Intergovernmental Agreement on the Environment be further developed and implemented;
- a comprehensive review of the regulatory burden on the food industry be undertaken with the terms of reference to include regulation reform, enforcement and compliance, packaging and labelling, inspection of food premises and standards setting;
- the Productivity Commission to inquire into and report on the most efficient and effective way to regulate industrial, agricultural and veterinary chemicals;
- an on-line electronic prescription information, claim lodgement and payment processing for the Pharmaceutical Benefits Scheme be introduced; and
- the Commonwealth Government withdraw from the regulation of child care and leave the responsibility to the States and Territories.

CHANGING THE REGULATORY CULTURE

The culture of regulators and policy makers must change for long-term improvements in regulation to be maintained.

The Task Force supports the Commonwealth Government's initiative to develop service charters for government agencies. These charters can be powerful tools for driving cultural change and for delivering quality service to clients.

The Government should:

- establish service charters quickly for all departments and agencies;
- ensure clients are involved in their development and monitoring; and
- establish a business regulation free call service.

MAKING IT EASIER TO DEAL WITH GOVERNMENT

Small business spends valuable time finding out what its obligations to governments are and then more time providing the same basic information to government agencies at Commonwealth, State and Local levels.

The most time consuming information exchanges for a small business occur when it starts up; when circumstances change and when it provides periodic reports and returns to government.

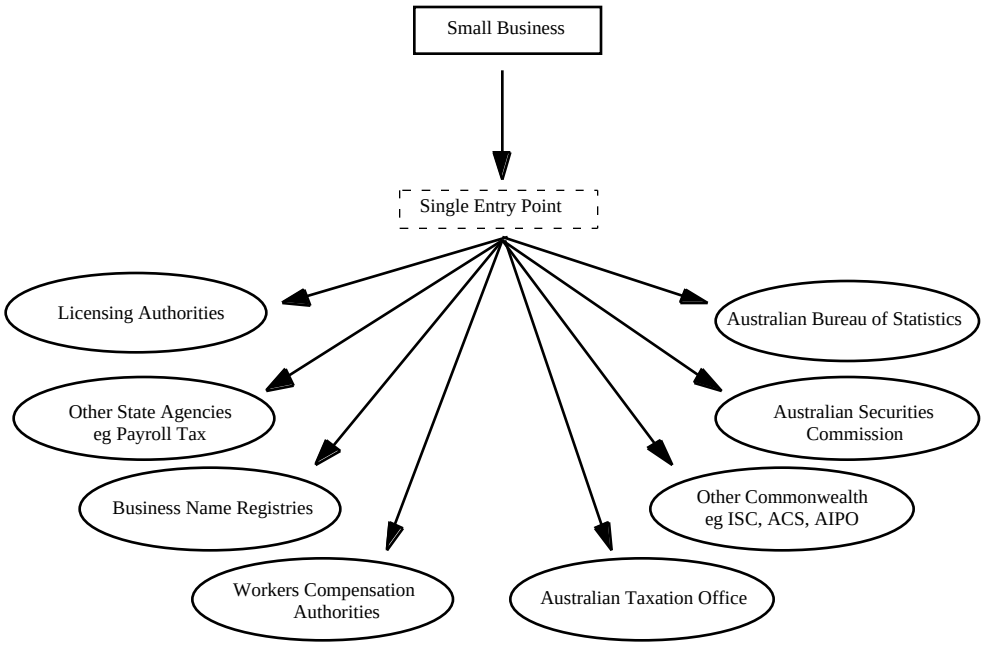
A major problem is the lack of coordination across the three levels of government as well as across different government agencies. Small business wants a one-stop-shop where all business transactions with all levels of government could be conducted. The Task Force recommends that:

- a comprehensive business information service be developed by expanding and enhancing existing services;
- the number of forms for licensing, registration and reporting be reduced; and
- a unique business number and single entry point be developed for receiving and distributing information from business.

These initiatives would simplify dealings with a range of departments resulting with fewer forms and lower compliance costs for small business.

The initial establishment costs could largely be recovered in the medium term from savings that participating agencies will accrue.

GIVING INFORMATION TO GOVERNMENT



ASSISTING SMALL BUSINESS REDUCE THE BURDEN

The Government can do much to reduce the compliance burden on small business. But to capture the full benefits of compliance reductions, small business may also need to change.

Many small business have management and record keeping systems that fall short of best business practices. Improving these systems can assist small business reduce compliance costs.

Commonwealth, State and Territory governments have in place a number of programs to assist small business improve their management systems. The Task Force recommends that these programs be reviewed and that best practice principles for delivering assistance be developed and implemented.

IIMPROVING THE REGULATORY SYSTEM

Improvements should be made to the way the Commonwealth develops and monitors its regulations, and to the role played by the Office of Regulation Review. Strengthening the existing gate keeper processes is the key to ensuring that new regulatory proposals impose the minimum possible burden.

Action to improve the regulatory system should include:

- regular reviews of regulation;
- publication of regulation reviews before they are due to start;
- seconding expertise from the Office of Regulation Review to the Department of the Prime Minister and Cabinet;
- better education for departments in regulatory analysis;
- requiring Ministers to obtain a regulation impact statement certificate before taking a new proposal imposing regulation to Cabinet;
- requiring taxation amendments to be subjected to regulation impact assessment processes; and
- tabling regulation impact statements in Parliament when the legislation is introduced.

THE WAY FORWARD

The Task Force has interpreted the Government's commitment to reduce the paperwork and compliance burden as a policy objective rather than an arithmetic requirement. This approach recognises the difficulties in obtaining reliable measurements of all the elements of burden.

The Task Force has made more than 60 recommendations across a broad range of regulations of concern to small business. The recommendations will make a substantial contribution towards reducing the paperwork and compliance burden on small business.

The recommendations will also change the way institutions and individuals behave and help ensure that regulation is the minimum necessary to achieve government, business and community objectives.

The recommendations likely to have the most substantial impact are:

- simplifying the fringe benefit tax regime;
- developing a single annual compliance statement for taxation obligations;
- reviewing the Income Tax and FBT Acts to address compliance difficulties and anomalies;
- creating national consistency with workers' compensation and OH&S regulations;
- exempting casual employees from the superannuation guarantee charge;
- creating a comprehensive business information service;
- reducing the number of forms small business must deal with;
- establishing a unique business number and a single entry point;
- introducing service charters for government departments and agencies;
- improving regulation scrutiny, review and reporting processes; and
- establishing effective consultation and accountability to the small business sector.

Other recommendations cover a broad range of issues, including implementation mechanisms.

The existing regulation reform processes will also contribute substantially to achieving the Government's paperwork and compliance burden reduction objective.

MONITORING GOVERNMENT PERFORMANCE

Maintaining the momentum for reform will require effective monitoring mechinisms to be put in place. This requires:

- the adoption of a national set of performace indicators;
- benchmarking of performance;
- monitoring and reporting on the implementation of the Task Force recommendations;
- monitoring and reporting on overall progress with regulation reform;
- effective involvement of small business; and
- a further benchmarking survey in 1998-99.

Action Plan

The Government should establish an implementation team to develop a plan to implement the Task Force recommendations. The Commonwealth Cabinet should consider the plan as early as feasible in 1997.

The Commonwealth should work closely with the States and Territories to implement those reforms which are cross juridictional in nature and a strategy be considered for adoption by the first Council of Australian Governments meeting in 1997.

CHAPTER 1 INTRODUCTION

The Government asked the Task Force to advise on revenue-neutral ways to halve the paperwork and compliance burden on small business. The Terms of Reference directed the Task Force to examine statistical collections, the administration of several taxes including fringe benefits tax, federal regulatory requirements, the interaction between the different spheres of government and the contribution of existing reform mechanisms to the Government's regulation reform objectives.

This report is the result of six months intensive consultation and research. During this period nearly 370 submissions were received and analysed, and meetings held with more than 250 small business operators, industry associations and government officials. The Task Force commissioned focus groups research, a review of previous studies, and a survey to measure the compliance burden. Several workshops and eleven case studies were undertaken with the assistance of industry associations and expert individuals.

The objectives set by Government were both challenging and time consuming. The need to maintain revenue-neutrality and not consider taxation policy limited the scope and nature of the recommendations.

Task Force approach

Task Force members concentrated on listening and understanding the concerns of small business. The objective was to develop recommendations that would make a meaningful and practical difference.

The Task Force accepted the key findings of *Lessons Learnt*[1] , including that the prospects of successful reform are highest under a strategy of incremental changes and where sufficient attention is given to implementation issues. The Task Force has, therefore, only made recommendations capable of being implemented. In this, it has worked closely with government agencies and sought to built on existing reform initiatives. The package of recommendations described in this report are practical and provide a solid basis for reform.

The Task Force also considered the underlying purpose of regulation in its deliberations. The burden associated with legitimate regulation needs to be considered against the needs of society as a whole.

[1] Small Business Deregulation Task Force, *Lessons Learnt,* Background Paper 1, August 1996.

What is a small business

The Task Force defines a small business as:

- independently owned and operated;
- most, if not all, capital contributed by owners and managers;
- closely controlled by owner/managers who make principal decisions; and
- having turnover of less than $10 million.

Most small businesses have less than 20 employees in non-manufacturing industries and less than 100 employees in manufacturing industries.

The messages from small business

Small business across Australia told the Task Force they are 'doing it tough'. It is even tougher they say, because of the large number of regulations imposed by the Commonwealth, State, Territories and Local governments[2].

Surveys show that government compliance costs are not the highest concern of small business[3], but it is clear that small business is confused and weighed down by the complexity of dealing with government. This is reflected in time lost, expenses incurred, business opportunities not pursued, anxiety and frustration.

There are a number of key messages from small business in relation to the paperwork and compliance burden:

- While small business accepts the need for a degree of government intervention and is prepared to meet its fair share of the burden, small business people typically feel over-whelmed by government requirements and unable to cope. Importantly, small business operators are afraid of doing the wrong thing and will let business opportunities pass rather than take issue with government authorities.
- There is a difference in perception between government regulation reformers and small business. While the former point, with some justice, to significant reforms, small business believes, rightly or wrongly, that the situation is worse today than it was yesterday and that little is being done to fix it.
- Small business people say consistently that there is a need to change the culture of regulation; it is often the behaviour of regulators as much as the regulation itself which is the cause of concern.
- Policy makers, often unconsciously, are the root of many of the problems as they largely determine the requirements small business must meet in an environment isolated from practical operating experience. Policy makers need to be more accountable for the decisions they make and need to understand the impacts of those decisions on small business.
- Small business wants certainty and simplicity from government and is prepared to give up some equity to get it.

---

[2] The Task Force adopted a broad definition of regulation to include legislative and non-legislative actions by government to which small business were required to comply and for which some cost to business was incurred.

[3] Small Business Deregulation Task Force, *Small Talk*, Background Paper 2, August 1996.

- Wasted time was the clearest message of all. For small business people, time spent complying with government requirements is time lost from running and growing the business or from their restricted leisure time.
- The major sources of compliance burden are taxation requirements and employment-related regulations. However the lack of coordination between governments and government agencies and need for better processes to scrutinise and review also rank highly.

What is needed from government

Meeting the Commonwealth Government's target for reducing the burden on small business will not be easy. Previous efforts to reduce compliance costs have had mixed success and many in the small business community are cynical about this current effort.

There are no quick ways of reducing the compliance burden. Real, sustainable, gains take time to deliver and require a strong and sustained commitment from government. In the past, the momentum for reform has often died quickly following the release of a major report or announcement of a major initiative. Avoiding this will require sustained political commitment and leadership supported by rigorous and empowered administrative arrangements.

Government must develop a strong, coordinated and comprehensive program of action to deliver real gains. The program needs clear objectives and practical implementation mechanisms for progress to be made.

The paperwork and compliance burden

The term 'burden' is the paperwork and compliance activities that government requires of small business that are over and above normal commercial practices. Burden includes lost opportunities and disincentive effects resulting from paperwork and compliance costs.

To identify the burden, administrative activities that are part of normal business practices must be separated from activities relating to requirements that are imposed by external agencies. There will be a degree of overlap between what a business would normally do (keep some accounts, provide a safe workplace) and regulatory requirements. A conceptual model of burden is illustrated in diagram 1.1.

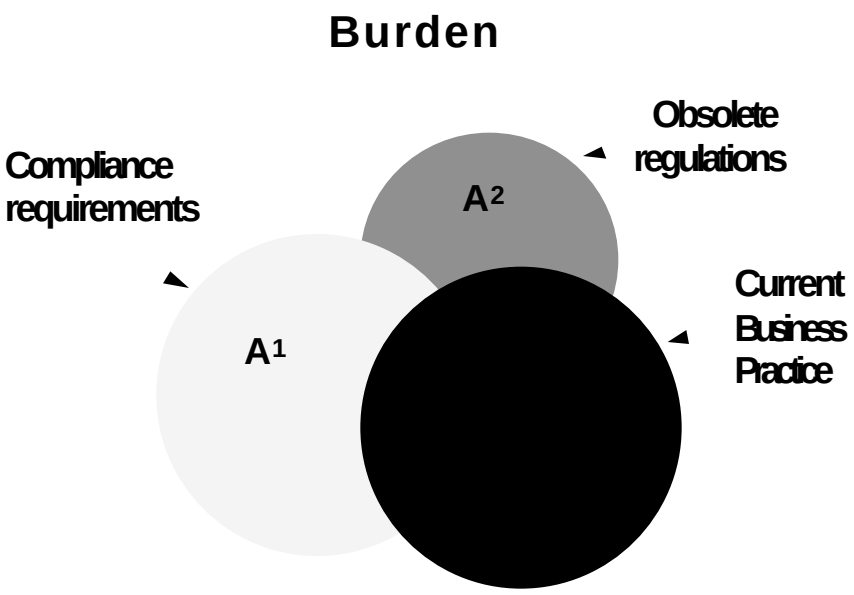


Diagram 1.1

The area marked A^1 in the diagram represents the additional paperwork and compliance costs or excess time the regulation places on small business. Compliance requirements need to be brought closer to best business practice. Those firms that are not at best practice will often find the burden larger because their internal procedures make compliance activities more difficult. The more clearly aligned current business practices are to best practice and to regulatory requirements, the lesser the burden a business is likely to face.

Unnecessary or out-of-date regulation (A2) can also place an additional burden on small business. This is because compliance is sometimes required for regulation that may have been overtaken by time or can no longer be justified.

Understanding burden

The Task Force commissioned qualitative research into the level and elements of paper and compliance burden reported by small business based on the conceptual model. Six focus groups were conducted covering both manufacturing and non-manufacturing businesses to determine the type, level and extent of burden faced by the small business community.

The study, published as *Small Talk*, showed that personal attitudes to the concept of regulation will affect a small business operators perception of the burden of complying with the regulation. The study found that the perceived unfairness of the fringe benefits tax (FBT)[4] contributed to the feeling of burden. Similarly, unfair dismissal was raised time and again even though only a small number of businesses have been directly affected by the processes.

[4] According to the Australian Tax Office, only 6.5 per cent of all small businesses pay FBT, but the fear of non-compliance and the complexity of the scheme made it top of mind and it was raised in almost all forums.

The complexity of regulations, the frequency of complying and coping with constant changes, and the time needed to comply with the record keeping requirements, added to the frustration felt by small business. The researchers concluded that the small business community was feeling besieged.

The *Small Talk* report established a clear reference point and highlighted the importance of the perception of burden on the beliefs and actions of small business[5].

Time spent on tax and other areas of compliance

To find out how much time small business spends on government paperwork and compliance, the Task Force commissioned Yellow Pages to undertake a national benchmark survey.

This survey, published as *Working Overtime*,[6] provided an up-to-date and comprehensive quantification of the hours spent on the paperwork and compliance burden by small business. The survey found that a small business spends four hours each week on compliance matters. The annual cost to small business of taxation and other compliance was $7 000 per year. As these compliance costs are additional to the normal operating expenses, they can cut significantly into operating profits.

The study did not measure the full cost of burden as disincentive effects were not included. It did, however, give some indication of the opportunity costs with half the proprietors in the survey saying that they would devote the extra time gained by reducing burden to running their businesses.

Other aspects of burden

The disincentives that result from the perceived impact or difficulty of regulation are difficult to quantify. A small business may not expand into the export market because the regulatory requirements are too onerous, or because of the perception of a difficult or uncertain regulatory environment in a particular region or industry. This belief may be so strong that the business many not even check the perceived impediments with government or industry organisations.

Disincentives can stifle innovation and be a barrier to expansion and employment. There is little doubt that the economic impact of disincentives is quite large. Disincentives would, however, have relatively little impact on those 35 per cent of small businesses which have no intention of growing or expanding.[7]

The involvement of Commonwealth, State, Territories and Local governments in regulating the same areas of activity presents another significant burden. While a

[5] Full details of the study were published as *Small Talk - Group Discussions with Small Business about Paper and Compliance Burden,* Background Paper 2, August 1996.

[6] The survey was published as *Working Overtime - A National Survey of the Paperwork Burden on Small Business,* Background Paper 3, October 1996.

[7] Yellow Pages, *A Special Report on Small Business Growth Aspirations and the Role of Exports,* February 1995.

study in Tasmania[8] has shown there is not a great deal of actual overlap between the Commonwealth and the State, there are examples where two or more spheres of government regulate a particular industry. The Commonwealth, States and Territories have sought to avoid potential overlap by progressively clarifying responsibilities in common areas of activity. From a small business perspective, however, having to deal with multiple agencies across Commonwealth, State, Territory and Local Government in establishing and running a business represents unnecessary duplication.

Inefficient and ineffective processes, including inadequate delegation and coordination, also contribute significantly to small business burden. This results in lost time and costs associated with unnecessary delays in processing and approvals; and duplication of reports and information provided. Inadequate information and inconsistency in interpretation can result in uncertainty about processes and outcomes which affects business confidence.

Business also suffers a great burden from delays and uncertainty while waiting for licences or applications to be processed.[9] These costs can vary depending on whether a business is being established, expanding or continuing. For example, delays of 16 days in gaining approval for a $2 million building development is estimated to add costs of up to$91 000.[10] This uncertainty in the business climate and the resultant opportunity costs can have a significant economic impact on small business.[11]

Research and consultation also identified so called psychic costs - the non-monetary effects of stress and anxiety which often arise from uncertainty about a firm's obligations. Businesses with limited management resources are most susceptible to such costs and it can have a significant impact on small business operations.

A course of action

In examining issues of concern and possible solutions the Task Force considered that the Charter of Principles endorsed by the National Small Business Summit in June 1996 provided a sound basis for action.[12] The Task Force also based its decisions on the following basic principles:

- there is a legitimate and understandable role for industry regulation and information collection in a modern society;
- regulation and data collection should be the minimum required to achieve the stated objectives;
- regulation should be developed in consultation with the groups affected and in a transparent manner;

---

[8] Stenning. *D, Review of State & Commonwealth Business Licensing Procedures,* Tasmanian Department of Treasury & Finance and the Commonwealth Department of Industry, Science & Technology, Hobart, 1994.

[9] Productive Cultures. 1993

[10] Op cit

[11] Pearce. D, Stoeckel. A, and Harris. D, *What's Holding Business Back?,* Centre for International Economic, Gonna Print, Canberra, 1993

[12] Full text of the Charter of Principles is at Appendix 2.

- regulation should be administered by the sphere of government most directly concerned;
- regulation should be designed, administered and enforced in a manner which minimises the paperwork and compliance burden on small business;
- provision of clear and simple information about obligations and compliance requirements must be freely available;
- regulators should have a good understanding of the circumstances of small business in developing and administering regulations; and
- there must be a clear delineation of regulatory responsibilities and effective accountability mechanisms.

The remainder of this report concentrates on those elements of burden identified by the consultations, submissions and research as causing the most problems. These are either entirely within the Commonwealth purview or in which the Commonwealth has a role in conjunction with the States and Territories.

CHAPTER 2 REFORMS UNDER WAY

All spheres of government are undertaking regulation reform, but the perception of small business is that the regulatory burden is getting worse, not better.

Commonwealth, State and Local governments recognise that a best practice regulatory regime is important for an internationally competitive business environment. The reform of government regulation helps reduce industry costs and enhances the efficiency of the Australian economy.

Impediments to reform

While governments support regulation reform in principle they often see regulation as an easy response to perceived problems. Those groups calling for regulation are often well organised and vocal, whereas those who bear the costs are diffuse and it is difficult to include their interests when making decisions.

A similar situation is faced when reform of existing regulation is being considered. Small businesses in particular areas of activity often seek regulation or oppose deregulation as a means of protecting or enhancing their competitive position.

Past experience shows that success in achieving regulatory reform is critically dependent on political commitment and support[1]. To underpin political commitment, both transparency of processes and community-wide support are necessary for successful ongoing reform.

Transparency involves governments being open about their intentions to regulate, consulting widely and making public the analysis underpinning new regulations. Increasing transparency boosts political commitment by making those in government in a sense hostage to good process. Community-wide support for regulation reform is also likely to be greater if all groups can see that regulation making processes are open and fair.

Despite the many attempts to review and reform regulation, small business claims the benefits of reduced regulatory burden are yet to be seen. The burden of regulation falls most heavily on small business, not because they are more heavily regulated, but because they have the least capacity to cope. This suggests that governments face a substantial challenge in making real sustainable improvements.

Small business accepts that regulations are necessary to protect the interests of the community in areas such as health, workplace safety, the environment and to enforce basic notions of fairness. They are concerned, however, that regulations are often poorly developed, impose excessive costs and in some cases fail to meet their stated objectives.

---

[1] Small Business Deregulation Task Force, *Lessons Learnt*, Background Paper 1, August 1996.

Good regulatory practice

Governments in Australia have collectively identified best practice principles for regulation in the Council of Australian Governments' *Principles and Guidelines for Ministerial Councils and Standard Setting Agencies*. This requires new standards to be developed according to principles of good regulatory practice and to be accompanied by a regulation impact statement. More recently, good regulatory practices were agreed in the Charter of Principles agreed by Small Business Ministers at the June 1996 National Small Business Summit (see appendix 2). In addition, various State, Territory and Commonwealth guidelines, such as the Commonwealth's Guidelines for Regulatory Impact Statements, also identify elements of best practice.

The essence of best regulatory practice is that:

- regulations should be developed using transparent processes that have specific time frames, clearly identified responsibility and effective (and informed) consultation;
- regulation should be introduced only when the public benefit outweighs the public costs involved. It should be adopted only where it is the most efficient and effective means of achieving the desired outcome. To determine this, all regulations should be subjected to a cost-benefit analysis, such as that required under a regulatory impact statement;
- the impact of a regulation on small business should be identified in the regulation impact statement;
- regulation impact statements, or other analysis of regulations, should be made public;
- regulations and regulatory systems should be coordinated with other levels of government to ensure there is not duplication and overlap;
- regulations should be reviewed regularly to ensure that they are still necessary and that their benefits outweigh their costs; and
- regulators should be accountable for their administrative decisions.

Regulation impact statements

It is not possible to undertake good policy development without undertaking, either implicitly or explicitly, the steps that are involved in the regulation impact statement process. A regulation impact statement should include:

- a clear statement of the objectives of the regulation based on the nature and magnitude of the problem;
- alternative approaches for dealing with the problem including self regulation; market-based instruments, such as taxes, subsidies and tradeable permits; information strategies; and reliance on the legal system;
- an assessment of the expected benefits and costs to the community of each alternative approach to regulation;
- an analysis of the impact of the regulatory proposal on business, consumers, government and the community. Ideally, the regulation impact statement process should lead to selection of the regulatory option that maximises the community's net benefit;

- public consultation to enhance transparency and confidence in regulation review and reform; and
- the establishment of future review mechanisms for new and amended regulations.

Existing arrangements for review and reform

In most jurisdictions regulation review and reform arrangements depend on the form of the regulation. Most jurisdictions, including the Commonwealth, require proposals for primary legislation[2] to be accompanied by a regulation impact statement. For subordinate legislation, most States and Territories have subordinate regulation Acts which often require new regulations to undergo analysis similar to that contained in a regulation impact statement. A number of these Acts also include sunset clauses which ensure that existing regulation is reviewed on a regular basis.

All jurisdictions have made progress in moving their arrangements towards the best practice model identified above. There are, however, significant performance gaps and both best practice and mediocre practice can be found in various jurisdictions.

There are a number of existing regulation reform processes that will substantially contribute to reducing the paperwork and compliance burden faced by small business. The following assessment of a number of the main national and Commonwealth initiatives gives an indication of the possible gains for small business.

Commonwealth Regulation Efficiency Program

The Commonwealth Government is committed to establishing an overall Regulation Efficiency Program to overcome the excessive costs to small business of complying with Australia's taxation and regulatory regime. The Regulation Efficiency Program comprises a number of other initiatives of which the Task Force is only one. The recommendations of the Task Force will contribute to the further development of the program.

Improved gatekeeping functions - the Commonwealth has introduced a Legislative Instruments Bill to increase Parliamentary scrutiny of statutory rules and regulations that are made by Ministers or officials. In many cases it is such delegated legislation which business confronts in its dealings with government. The Legislative Instruments Bill has a number of desirable features including:

- a requirement that legislative impact proposals (which have the same basic requirements as regulation impact statements) be developed for new subordinate legislation;
- the quality of legislative impact statements will be subject to external scrutiny by the Office of Regulation Review;
- new legislation will be subject to five year sunset clauses; and
- existing regulation will be subject to phased review.

[2] Primary legislation refers to Acts of Parliament. These are usually considered by Cabinet in each jurisdiction before being introduced to Parliament. Subordinate or delegated regulation refers to all rules or instruments which have the force of law, but which have been made by an authority to which Parliament has delegated part of its legislative power. National standards refer to regulation made by Ministerial councils, comprising Commonwealth, State and Territory Ministers, which are usually enacted through State or Territory Parliaments, or adopted by reference in State law.

Reviews under the Commonwealth Legislative Instruments Bill should lead to substantial improvements in Commonwealth subordinate legislation.

A Legislative Review Program - the Commonwealth has extended the scope of the review program under the Competition Policy Agreement beyond legislation that restricts competition to include any legislation that confers costs or benefits on business. The Commonwealth has also required consideration of the compliance and paper burdens on small business. The Treasurer released the Commonwealth legislation review schedule on 28 June 1996. It sets down a program of 98 separate reviews to be undertaken by the year 2000 (see further discussion below).

A Regulation Repair Program - the Commonwealth has a commitment to a regulation repair process which aims to amend unnecessarily convoluted legislation to improve its accessibility. Under the policy, each Minister is required to prioritise legislation within their portfolio for repair and to report to Parliament on progress. A timetable will be established across all portfolios with the finalisation of all legislation by 2001. The Attorney-General's and Treasury portfolios are currently developing the program.

Special reviews for specific areas of the law - a number of special review processes established by the former and present governments are currently taking place such as the projects to restructure and rewrite legislation using plain English, including the corporations law simplification program and the tax law improvement project.

National Small Business Summit - the Minister for Small Business chaired a Summit of small business Ministers from State and Territory governments, as well as representatives from Local Government, on 12 June 1996. The Summit agreed on a Charter of Principles which included that assessments of legislation and regulations should include detailed analysis of the impact on small business. In addition, governments agreed that they should seek to minimise the burdens that administration and regulations impose. A further Summit is planned for mid-1997.

Removal of redundant regulations - such as elements of the Commerce (Imports) Regulations and the Customs (Prohibited Imports) Regulations foreshadowed at the National Small Business Summit is a necessary part of good regulatory review process. While their removal is unlikely to significantly reduce the burden on small business, it is likely to have a useful psychological impact on the business environment.

National Competition Principles Agreement

The Council of Australian Governments signed a Competition Principles Agreement in April 1995 which committed governments to develop a timetable by June 1996 for the review and, where appropriate, reform by the year 2000, of all existing legislation which restricts competition, unless it can be clearly demonstrated to be in the public interest.

All jurisdictions provided the Task Force with their legislative review programs under the Agreement. While the key focus of the legislative review program is on competition restrictions, some jurisdictions, such as the Commonwealth, have extended the scope of the review to include other criteria. For example, Tasmania has extended the

review process to consider the broad impacts on Tasmanian businesses, including paperwork burdens and compliance costs.

Although taxation laws have been excluded from the legislative review process, the Task Force believes they should be subject to equivalent scrutiny.

Once legislation is scheduled for review, the Competition Principles Agreement requires that the review involves:

- clarifying the objectives of the legislation;
- identifying the nature of the restriction on competition;
- analysing the likely effect of the restriction on competition and the economy generally;
- assessing and balancing the costs and benefits of the restriction; and
- considering alternative means for achieving the same result, including non-legislative approaches.

Commonwealth reviews

The more detailed regulations with potentially high costs of compliance generally lie in the province of the States and Territories, however there are a number of Commonwealth reviews relevant to small business.

The review of the *Industrial Relations Act 1988* will affect the terms and conditions under which people are hired and fired.

The Wallis inquiry into financial systems generally concerns large businesses, though it will also have an impact on financial advisers and insurance brokers who often are small business operators. The extent to which the inquiry may streamline access to credit and other matters relevant to small business is unclear. Its recommendations could also have implications for the States and Territories and their proposed reviews.

Other reviews that could lower regulatory burden include:

- tourist visas;
- bankruptcy;
- mutual recognition;
- rural sector reviews to the extent that they impact on small farm businesses;
- superannuation;
- intellectual property provisions; and
- review of the *Agricultural and Veterinary Chemical Act 1994.*

State and Territory reviews

Occupational legislation

Many occupational reviews are in the health sector and include dentists, doctors, lawyers, optometrists and pharmacists. Others include painters, real estate agents and electricians. Specific occupations will be reviewed in one State or Territory, however where several States or Territories have scheduled a review for the same occupation, it may be reviewed nationally.

Possible benefits of these reviews include administrative streamlining, reduced paperwork, greater freedom of trade, and more flexible and performance-based regulation. Licensing requirements based on track record will allow competent and capable operators to enter new markets more easily.

Any relaxation of restrictions on trade, however, while benefiting some small businesses, will disadvantage others who currently benefit from the restricted environment.

Business licensing
These include business licensing reviews of child care facilities, education providers (both universities and TAFE), employment agencies, hairdressers, hospitals (public and private), nursing homes, retirement villages, meat processing and taxis.

With less prescriptive regulation, these areas could offer many new opportunities to small business, as well as for those already established. For example, higher education providers are regulated in most States and Territories with accreditation and monitoring procedures for standards and modes of delivery. Removal or redesign of these regulations could provide significant benefits particularly as existing requirements are often more onerous for small operators than larger businesses or public institutions.

Child care regulations tend to require licensing as well as prescribing qualifications of child care personnel, building and environmental standards, minimum staffing and content requirements. These requirements can be quite prescriptive and impose significant compliance costs.

Natural resource management
Reviews dealing with natural resource management that are likely to impact on small business cover environment protection Acts, fishery and forestry Acts, nature conservation Acts and coastal protection. Fishery Acts, for example, restrict methods of fishing and the type of catch allowed, as well as requiring licensing and authorisation.

Agriculture
Numerous Acts regulate the marketing and production of agricultural products, including barley, dairy, dried fruit, chicken meat, potatoes, sugar, wheat, pigs and wine. Dairy industry Acts can license, set farmgate prices as well as standards for dairy produce and premises. Egg industry Acts are also very restrictive - in Tasmania not only must egg producers be licensed but producers must consign all second grade eggs to the Board for processing.

Product standards
Key areas for review of legislation relating to product standards include agricultural and veterinary chemicals, censorship, clothing, electrical goods, fair trading Acts, food, meat and therapeutic goods.

Food standards concern many food manufacturers and retailers, a significant proportion of which are small businesses. Regulations determining which additives

may be used, along with various labelling requirements, can impose significant costs. More outcome-oriented regulations may reduce compliance costs.

States and Territory regulation of therapeutic goods is heavily regulated, mainly in relation to retailing.

Occupational health and safety
All States and Territories, except Tasmania, have scheduled occupational health and safety Acts for review, and most have also scheduled reviews for dangerous goods and their transport.

Occupational health and safety Acts, which set standards for workplace practices and layout, are often prescriptive, input oriented and lack flexibility. Reforms could yield significant compliance savings for small business as well as savings resulting from fewer accidents which could also flow from more effective regulation.

Other reviews, such as those of shop trading hours, will clearly have a direct impact on small business.

Overall, the Competition Principles Agreement legislative review process has considerable scope to reduce the regulatory and compliance costs on small business. Some of these benefits may result from fundamental regulatory change, including removing restrictions on competition, introducing competitive neutrality, and moving to performance-based regulations. Others will come from administrative changes, such as streamlining procedures and reducing paperwork.

National mutual recognition of regulations

The mutual recognition scheme for goods and occupations ensures that most goods produced or imported into one State or Territory under the laws of that jurisdiction can be sold freely throughout the country. Similarly, members of registered occupations in one jurisdiction can automatically gain entry to an equivalent occupation in other jurisdictions. In addition to overcoming different State and Territory laws, mutual recognition provides a strong incentive to developing consistent national standards where these are necessary. The benefits of mutual recognition will increase with the inclusion of New Zealand in the scheme.

National transport reform

The National Road Transport Commission has completed an extensive review of the Road Transport Reform (Dangerous Goods) Regulations and circulated a draft of rewritten regulations for public comment. Amendments to the *Dangerous Goods Act* have been drafted to reflect changes to the regulations and will be introduced into Parliament shortly. The review considered constraints to the industry which currently apply. The draft removes those regulations that cannot be justified and rewrites others to be more flexible and less prescriptive.

The regulatory review process being conducted by the National Road Transport Commission has made useful progress in reducing the administrative burden for small businesses in the road freight industry, but the process of reform needs to be continued.

Simplification of taxation and corporations law

The corporations law simplification process aims to restructure and rewrite the legislation in a more understandable form using plain English. It also seeks to improve the actual operation of the legislation especially by removing unnecessary obligations.

The First Corporate Law Simplification Act came into force in late 1995. An exposure draft of a second Simplification Bill was released in 1995 for comment but has not yet been introduced. Proposal documents on the topics for the third Simplification Bill, which is expected later this year, have been released for public comment. The program is expected to be completed by a fourth Bill.

A number of industry representatives were critical of the audit and lodgement obligations of large proprietary companies under the First Corporate Law Simplification Act. They were concerned about the cost of undertaking the audits and the public disclosure of the information provided. Some also argued that the three criteria used to define a large proprietary company were essentially arbitrary and capture too many companies. While the Australian Securities Commission intends to release a class order which will provide relief for a significant proportion of the affected companies, industry representatives did not see that as sufficient.

The Task Force made a submission to the Corporations Law Simplification Task Force drawing its attention to the level of concern that still exists in the business community about the issue.

The Taxation Law Improvement Project aims to restructure and rewrite complicated taxation legislation into an understandable form using plain English.

The Tax law and Corporations law simplification processes should make complex legislation more understandable to business and thereby reduce the level of uncertainty about their obligations. This Corporations law simplification process has already resulted in a reduction in the reporting compliance burden for small business.

Intellectual property

There have been a number of recent reviews in the intellectual property area. Reviews of the patent attorneys professions, designs legislation and petty patents system all made recommendations that would reduce compliance costs if implemented. The recommendations made in review of the patent attorneys profession, in particular, have the potential to reduce compliance costs by opening the patent attorney profession to increased competition. The Commonwealth Government should respond to these reviews quickly and move to implement recommendations that would lower compliance costs as soon as possible.

Customs

The Australian Customs Service recently released a discussion paper - *A Cargo Management Strategy for the Australian Customs Service*. Many of the reforms proposed in the paper would reduce compliance costs. The reforms would make it easier for businesses to deal with customs, reduce record keeping requirements and dramatically reduce the paperwork for some businesses. The Commonwealth Government should seriously consider the reforms proposed in the report.

Trade Practices Act

The Task Force received 99 submissions dealing with fair trading issues and seeking amendment of the Trade Practices Act. This was the largest single issue raised in terms of the number of submissions received, however the matters raised were outside the Task Force's terms of reference. A submission was made to the Parliamentary Inquiry into Fair Trading noting the issues raised and solutions suggested by the small business people concerned.

CHAPTER 3: REDUCING THE TAXATION COMPLIANCE BURDEN

The taxation system is too complex and expensive in terms of the number of taxes, the complexity and associated uncertainty of the law, the frequency of changes, the difficulty of interpretation and the costs of compliance.

Taxation-related matters were the single most important group of issues raised with the Task Force by small business. More than 50 per cent of the public submissions specifically raised taxation, and these also featured prominently in the public consultations. Problems with fringe benefits tax (FBT) were a key concern, followed by the complexity and number of taxes, record keeping requirements, and issues in relation to specific taxes, particularly capital gains tax (CGT), sales tax and payroll tax.

Many of these problems are common to all businesses, large and small. However, large businesses are often better able to cope as they are more likely to have access to systems, technology and expert advice beyond the reach of small business. Similarly, the tax system appears to be geared to the more complex circumstances of larger businesses. Tax measures appropriate for larger businesses often prove unreasonably complex and onerous for small business.

Small business says time consumed in taxation compliance is a dead loss, adding no value to the business. There is the loss of potential earnings (if the time was used for normal business activities) and opportunites lost for business expansion and development.

The tax payment regime, which involves different payments for a number of taxes, poses a number of cashflow problems for small business. Many small business people do not have the time or planning and budgeting skills to stay on top of this complex payment regime. For example, many small businesses experience a crisis in their second year of business when they receive a provisional tax bill for their first year of business earnings and another for the current year.

What small business told us about taxation

Many small business people accept the need to pay a fair share of taxes. Most object to the burden imposed by taxation compliance rather than the overall amount of taxes paid.

The perception was that, even for those wanting to do the right thing, the current tax regime could be complex to the point of being incomprehensible and was full of traps and pitfalls. Some employers indicated an unwillingness to offer fringe benefits to staff, at least partly from a fear of getting it wrong and incurring penalties. Many also complained about the expense of hiring professional advice for taxation matters, without which they would feel vulnerable. One submission said: ‘the current tax regulations are such that anything short of specialist advice is a potential liability’.

Much of the complexity of the current taxation regime arises from the use of the taxation system by government to achieve a variety of social or economic objectives,

often using business as the vehicle for delivery. Many government initiatives aimed at the broad Australian community are administered by employers through their payroll systems. This form of delivery is attractive to government since it allows benefits and collections to be delivered immediately and progressively throughout the year and is simple to administer.

Many small business people regard this approach as unreasonably onerous and falling unfairly on some employers and not others. A particular grievance was the requirement that employers withhold and remit child support payments from non-custodial parents to the Australian Taxation Office (ATO). Another area of concern was the increasing complexity of employment declarations and the variety of tax measures implemented via these, such as the dependent spouse and sole parent rebates and the Higher Education Contribution Scheme.

Small businesses complained of acting as unpaid tax collectors and an arm of government. The Australian Chamber of Manufactures commented: 'in no other business activity which generates a return of $100 billion is an agency role performed without reimbursement of costs'. A number of submissions called for some form of cost recognition, whether by way of tax concessions or direct payment, or advocated shifting responsibility from the employer to the employee in some areas, such as superannuation.

The burden of managing complex, multiple taxation regimes is particularly onerous. While a business could possibly cope with each tax on its own, the administration of up to seven separate taxation or taxation reporting regimes - personal income, company tax, FBT, pay-as-you-earn (PAYE), sales tax, prescribed payments scheme, payroll tax - could be overwhelming.

The *Working Overtime* report indicates that firms paying only one tax spend an average of 73 hours a year on compliance; firms paying four or more taxes spend more than 250 hours. This does not include intangible costs such as the personal organisation and stress involved in juggling the various payment and reporting schedules and keeping on top of legislative and administrative changes.

Small business people felt that taxation requirements dictated a need for accounting records over and above those seen as useful for business management purposes, with the associated additional expenses of owner or staff time and professional assistance.

There are uncertainties associated with the status of contractors and employees. The status will determine if an employer is liable to deduct PAYE instalments, contribute to workers compensation and superannuation and pay payroll tax. The many definitions of employee and the confusion this creates for small business is discussed in chapter 4.

There is criticism about the volume and frequency of change in taxation. One submission commented 'we find it impossible to keep abreast of the mountains of paper that arrive and wonder if we'll miss an important change or announcement'.

Examples include changes to the formatting of group certificates, sales tax classification and exemption decisions, and changes to employment declarations, superannuation and taxation rulings.

Small business cannot always understand these changes or are uncertain about their application to their own businesses. Ironically, some of this stems from ATO attempts to provide clarity and guidance through the public rulings program and ATO information products. Some submissions described these as unnecessarily detailed and 'nit-picking'; others welcomed the attempt to provide more information but felt it could be better attuned to the needs of small business.

What small business wants

Many small business people expressed a willingness to forgo strict exactness in calculating tax liabilities in favour of simpler, formula-based approaches or paying more in some areas to balance revenue losses from rationalisation in others. These sentiments were reflected in statements such as 'can't we abolish FBT and put up the company tax rate to compensate the revenue?'

They said that the costs of record-keeping, making complex calculations, and obtaining professional advice could outweigh any tax savings or benefits likely to be realised from attempting to pursue the tax system to its limits. A common theme was that expressed by the Housing Industry Association:

> 'We have built a taxation system which is best able to be manipulated by those having the greatest means, capacity and power which leads administrators to introduce yet more arbitrary rules of interpretation and encourages taxpayers to try to level the playing field by ever increasingly imaginative processes. In all respects this is a costly waste of effort and resources'.

There were strong arguments for a program of major tax reform. It was generally felt that the current taxation system was hurting economic activity and growth, particularly in areas subject to international competition. Many small businesses advocated the introduction of a broad-based consumption tax or goods and services tax as offering the best prospect of meaningful tax reform and as a better alternative to the current sales tax regime. A typical comment was:

> 'I know that Mr Howard promised not to, but I believe (and so do many of my associates) that the only way out of this mess is to bring in the GST and get rid of the stupid and inflexible tax system we have.'

Many small business representatives expressed concerns about the cash or black economy. They believe this problem results in them paying additional tax and having to compete on unequal terms. Some expressed support for the current prescribed payments scheme and reportable payments scheme. Despite the additional compliance burden involved, it was felt that these arrangements had gone some way to overcoming the problem in those industries to which they apply. While this is an

area outside the Task Force's terms of reference, it seems that many small business people would support greater efforts to ensure that all businesses pay their fair share of tax.

The Task Force has sought, within the constraints of its terms of reference, to develop recommendations which address the main concerns of small business. The structure and revenue raising capacity of the taxation system would need to be examined to achieve more fundamental reforms.

Easier ways to calculate and pay tax

Fringe benefits tax

Fringe benefits tax was a greater source of concern than the number of small businesses actually paying FBT would suggest. The *Working Overtime* report of businesses with less than 20 employees indicates that 29 per cent of those surveyed pay FBT. ATO sources indicate that around 65 000 of more than one million small businesses with less than $10 million in turnover pay FBT[1] Many small businesses do not provide fringe benefits because the compliance costs and risks are seen as too high. They do not want the administrative burden, and fear being caught for making a mistake.

FBT is levied on a range of non-cash benefits provided by employers to their employees. It includes items such as cars, cheap loans, free or cheap goods, travel, and other kinds of personal benefits. The primary policy objective is to ensure that these kinds of non-cash benefits are subject to tax, ensuring equity of treatment for those who cannot package their wages or salaries in this way. Administrative efficiency is maintained by having the employer pay the tax on these benefits.

The high compliance costs associated with FBT arise from attempts to capture all benefits in the net (benefits are widely defined), the number and variety of FBT exemptions, the complexity of the rules for valuing benefits and the number of options available for making these calculations. There is also a requirement to keep detailed substantiation records, such as employee declarations, which is seen as onerous, particularly when there may be no tax payable. The complexity of current FBT provisions for car parking, meals, entertainment, and the arranger provisions (where a third party provides a benefit to the employee, but the employer has to pay the FBT) is particularly resented.

The Task Force has developed a package of reforms to the FBT regime which preserves equity in taxing non-cash benefits and maintains administrative efficiency. The reforms aim to:

- introduce a simplified valuation formula for cars;
- exempt meals and introduce a simplified formula for assessing deductability of meal expenses;
- exempt car parking and taxi travel;

[1] The difference between the Working Overtime and ATO figures reflects the different bases.

- align the FBT year with the income tax year at 30 June; and
- change the arranger provisions so that the onus of paying FBT lies with the supplier of the benefit.

The reforms address the issues of primary concern to small business, and will result in reductions in FBT compliance costs, particularly the elimination of administrative complexity and substantial record-keeping requirements in relation to cars and meals.

The Task Force recognises that the introduction of formula-driven approaches to calculating tax can result in some winners and losers. However, the savings in FBT compliance costs and other benefits arising from these recommendations should offset any increases in FBT liability on particular benefits in individual businesses in the long-term.

Simplify calculations for valuing a motor vehicle for FBT

Motor vehicles are the primary fringe benefit offered by small business. Employers can choose two different methods of valuing a motor vehicle for FBT:

- a statutory formula based on the cost price of the car, the number of days in which a car benefit arises, and the number of kilometres travelled; and
- the operating cost method, in which records such as log books must be kept of actual vehicle expenses and the proportion of business use.

In both cases, there are complex rules about how to calculate different components of the valuation. The present statutory formula is not necessarily a good indicator of private benefit in all cases. In addition, while only about 20 per cent of employers (representing five per cent of FBT revenue) use the operating cost method for calculating their FBT liability, it is likely that many more are maintaining records so they can choose the method which gives the most advantageous tax result. This practice adds substantially to the perceived compliance burden.

Under the Task Force proposal, the valuation of the FBT benefit would be based on a percentage of the capital cost of the vehicle. The amount of the benefit would vary according to the purchase price of the car. The proposed regime is that cars costing up to the current luxury vehicle threshold of $55 134 would be taxed at 13 per cent. Luxury cars would be taxed at 13 per cent on the first $55 134 and at 30 per cent for the amount in excess of this.

The rationale is that cars with a purchase cost of less than $55 134 are more likely to be used by small business than more expensive executive cars. This valuation of the FBT benefit would apply to the first four years of the life of the vehicle; after that the benefit would be calculated at two thirds of the purchase price, as at present.

Example	
Motor vehicle purchase price	$24 500
Value of benefit 13% of	$24 500
	= $ 3 185
Motor vehicle purchase price	$65 000
Value of benefit 13% of $55 134 plus 30% of $9866 ($65 000 minus $55 134)	= $ 7 167 + $ 2 960
	= $10 127

This method of valuation meets a number of small business concerns:

- Employers will know with certainty the amount of FBT for which they will be liable. Budgeting for FBT will be easier because the amount of FBT will not vary according to the number of kilometres travelled.
- Employers will not need to make odometer readings at the end of each FBT year.
- The operating cost method, with its associated high compliance cost and need to keep log books and other records, would be eliminated.
- There would be substantial savings in record-keeping and calculation of FBT liability.

Where there is limited personal use of the vehicle, it is likely that some employers who currently use the operating cost method will find that their FBT liability increases. The overall savings in record-keeping and administration, and the other benefits offered to business in this package could offset any such costs overall. Some small businesses may be able to prepare their own FBT return with savings in accounting fees.

Remove all meal entertainment from FBT

Small business regards current rules and compliance costs in this area as a nightmare. They require constant assessment of the circumstances under which meals are provided and detailed record-keeping. This can require small businesses to make distinctions between, for example, finger food, working lunches, and business entertainment, and the different circumstances under which these are offered, to calculate any FBT liability.

Meals are not generally regarded as a benefit which lends itself to significant salary packaging. However, not all meals may be of business benefit. It is therefore proposed that all meal expenses, including beverages, be pooled and that 70 per cent of the total be deductible as a business expense. This recognises that the majority of such meals are offered within a genuine business context for reasons of business benefit.

In setting this ratio, it is accepted that this kind of averaging may lead to some winners and losers before the benefits of simplification become available with time. There may be some additional cost to employers who primarily provide meals to employees travelling on business.

This proposal completely eliminates the need to make distinctions between different types of meals and the circumstances under which they are offered. This will result in substantial savings in compliance costs and addresses a major source of complaint by small business.

In order to avoid salary sacrifice/packaging of meals and to minimise any risk of tax evasion and revenue losses, the Task Force recommends the inclusion of a general anti-avoidance clause in the legislation prohibiting salary sacrifice/packaging for meals and entertainment.

Exempt all car parking from FBT

Car parking provided or reimbursed by the employer is not generally regarded as a benefit that lends itself to salary packaging. The administrative requirements for valuing provided car parking are a major source of complaint.

Exempt all taxi travel provided by an employer

Taxi travel does not lend itself to salary packaging, and the current exemption for travel between 7pm and 7am is administratively onerous.

Amend the arranger provisions

The Government should amend arranger provisions so that a third party supplier of a benefit is responsible for paying any FBT. A common example of this occurs when a supplier awards a prize such as a holiday to a successful sales person. At the moment, the employer is responsible for paying FBT for these benefits, even though the employer might have no control over the benefit, and may not know about it. This inequity is very much resented. Where the benefit supplied by the third party is a meal, the cost of the meal would form part of the supplier's 'meal pool' and would be subject to the deductibility/non-deductibility regime proposed in relation to meals on the part of the supplier. Where the provider wishes to reduce the FBT liability by way of a declaration by the recipient, it would be the provider's responsibility to obtain and keep one.

Align the FBT year with the income tax year

This measure will assist small business by allowing the use of the same set of accounting records for both purposes. Currently employers are required to aggregate two sets of records to prepare their FBT return for 31 March, and their income tax for 30 June. No changes are proposed to current FBT payment dates to minimise revenue slippage and maintain a spread of payment dates for business.

Recommendation 1

That the Commonwealth Government should introduce the following fringe benefits tax initiatives for the 1998-99 financial year:

- introduce a simplified valuation formula for motor vehicles based on the purchase price;
- exempt meals from FBT and introduce a simplified formula for assessing deductibility of meal expenses for income tax purposes;
- exempt car parking and taxi travel from FBT;
- align the FBT year with the income tax year at 30 June; and
- change the arranger provisions so that the onus of paying FBT lies with the supplier of the benefit.

Implementation strategy

The Tax Policy Division of Treasury should undertake further work to develop these proposals and draft the necessary legislative amendments with a view to introducing legislation in the Autumn 1997 Sittings of Parliament, passage in the 1997 Spring Sittings, and implementation from 1 July 1998.

Revenue implications

Small business complained strongly about the cost of FBT compliance, perceived as the most expensive, complex and onerous of any tax. These compliance costs are a dead weight, not just for individual small businesses but for the economy generally. The *Working Overtime* survey shows that a substantial reduction in compliance costs is likely to result in increased business activity and higher profitability. It is also likely that there would be economic benefits through making it easier for business to offer incentives, with flow on improvements in productivity. It is also possible that FBT simplification may lead to improvements in compliance levels, as those previously uncertain of their obligations or mistaken in them are brought into the system, or possible areas of current evasion are curtailed.

A particular source of complaint was the detailed record-keeping required for cars, meals and entertainment. Small business made it clear that simplification in these areas would be essential if any meaningful reduction in compliance costs was to be achieved.

The Task Force was unable to develop a strictly revenue neutral package of FBT initiatives but is confident that the recommendations will result in a meaningful reduction in compliance costs, and are likely to generate a range of revenue offsets. These gains are difficult to quantify but are nonetheless real.

Based on preliminary Treasury estimates and certain assumptions about response effects, both of which will require further analysis and quantification, the immediately attributable revenue implications of the FBT recommendations are as follows:

- statutory formula for cars - broadly revenue neutral at the proposed rates of 13 per cent up to the luxury car threshold and 30 per cent above that threshold;

- exempting all car parking - an ongoing revenue cost;

- exempting meals and allowing 70 per cent deductibility - an ongoing revenue cost, and it would require an effective anti-avoidance provision to be implemented to prevent salary packaging;

- exempting taxi travel - negligible revenue effects;

- amending the arranger provisions - negligible revenue effects; and

- aligning the FBT year with the income tax year - depending on transitional arrangements, a possible deferral of revenue in 1997-98 offset by revenue gains in later years.

If the direct revenue losses outlined above prove unacceptable, there are a number of options open to the Government, including addressing some of the anomalies in the present law whereby some areas of significant economic activity are exempt.

Optional pay as you go scheme

The current quarterly provisional tax (QPT) regime seeks to ensure that non-wage and salary earner taxpayers make regular quarterly payments to offset their annual income tax assessment. Quarterly payments are calculated on the basis of assessable income from the previous year (or in some cases, the one before that), plus an uplift factor, currently six per cent. Instalments can be varied, if income is likely to be significantly different from that of the previous year. There are substantial penalties associated with underestimating income for provisional tax purposes.

Many small business people claim their incomes fluctuate substantially over the course of the assessment year, and they have difficulties in estimating income with any degree of confidence for provisional tax purposes. Some also object on principle to the QPT payment dates, which seek to ensure that all instalments are paid in the relevant income year. They see this as contrary to normal commercial practice, which would allow 30 days for payment from the end of the quarter from which the income was earned.

The Government should offer an optional pay as you go (PAYG) scheme to meet these needs. Taxpayers who do not specifically elect to adopt PAYG would remain in the current QPT or annual provisional tax systems. Taxpayers who choose PAYG would be required to do so at the beginning of the financial year, and would have to remain in it for the full year, to minimise risks to revenue.

The optional PAYG scheme would still require minimum quarterly payments but calculated on current business receipts, rather than historical income. Payment would be due 30 days after the end of the quarter. The formula below shows how it would work.

PAYG formula

Gross business receipts X by average tax rate % = quarterly instalment - offsetting credits (voluntary payments/PPS credits) = Amount payable due in 30 days.

As with the current provisional tax systems, there may be a final wash-up payment on assessment.

The proposal would offer simplicity of calculations for PAYG taxpayers and address small business concerns about estimation of income and timing of payments. Small business people would welcome the flexibility offered. However, there would be some additional administrative costs to the ATO to offer and operate such a parallel system.

There are no identified risks to revenue, provided restrictions are placed on the capacity of taxpayers to move from one system to the other as suggested above. There would be some deferral of revenue in transitional arrangements, in the first year.

Recommendation 2

That the Commonwealth Government introduce an optional Pay As You Go system to allow small business and other provisional taxpayers the option of paying their tax in instalments from current business receipts from the 1998-99 financial year.

Implementation strategy

The Australian Taxation Office should finalise the details, in consultation with small business groups, and introduce the necessary administrative arrangements by the end of 1997 to allow small business to plan for the coming financial year.

Voluntary payments

A number of submissions asked for the capacity to make voluntary income tax payments when funds were available, indicating that this would help with financial discipline and make it easier to meet tax bills when due.

The current provisional tax regime does not support the capacity to make voluntary payments, although it does recognise and offset prescribed payment system (PPS) credits. Some taxpayers in PPS industries saw this offset as particularly useful as their provisional tax bill was correspondingly easier to manage.

The tax voucher system, introduced in 1993 to replace tax stamps, is a simple way of making voluntary income tax payments which is not widely known by small business. Tax vouchers may be purchased by anyone who is not an employee as a form of income tax prepayment. The vouchers are attached to the purchaser's income tax return, and are credited as full or part payment of any income tax liability. Any excess is applied to other tax liabilities or refunded.

Vouchers can currently be purchased only from the ATO, and their availability is not widely marketed. However, vouchers could be made available through existing ATO agency payment arrangements, such as Australia Post, already widely used by small business to pay business taxes such as PAYE. An electronic equivalent of the voucher system for voluntary payments might also be offered as a convenient system for small business. The ATO will need to modify its accounting systems to recognise and offset voluntary payments against provisional tax liabilities.

Recommendation 3

That use of the tax voucher system, or an electronic equivalent, be extended to enable taxpayers to make voluntary payments at any time which would be offset against provisional tax liabilities from the 1997-98 financial year.

Implementation strategy

The Australian Taxation Office should publicise the voluntary payments arrangements to small business and change its accounting procedures to allow introduction from 1 July 1997. The ATO should also explore the possibility of introducing an electronic voluntary payment mechanism.

Easier ways to handle the paperwork

Capital gains tax asset register

Australian Taxation Office guidelines indicate that asset records must be kept for at least five years after the disposal of the asset or until the death of the owner. For assets purchased before the introduction of CGT in 1985, records must now have been kept for at least 16 years with the period increasing each year. Records that must be kept for such long periods of time are at risk of loss or damage, and incur administrative costs in storage and tracking.

There is some confusion about which assets might be subject to CGT, and therefore which records need to be kept. A particular concern was where assets initially considered exempt from CGT, and for which records were not kept, might subsequently become subject to CGT. A common example of this was where a business was commenced in the family home.

An asset register, appropriately certified for correctness by a third party such as an accountant, could hold all of the asset details without the need to maintain source documents. Where an asset had been entered into the register, source documents would need only to be retained for five years, as is the case with other business records kept for taxation purposes. This would mean significantly reduced accounting fees on disposal of a CGT-liable asset and savings in storage and record administration. Similar kinds of summary documents, such as bank statements, are already accepted by the ATO as satisfactory business records.

Recommendation 4

That a capital gains tax asset register be introduced from the 1997-98 financial year to record asset details with an appropriate third party certification process to assure correctness.

Implementation strategy

The Australian Taxation Office should develop, in consultation with small business groups, the necessary administrative arrangements and certification process for introduction by 1 July 1997.

Annual compliance statement

At the close of each financial year, small businesses may be faced with preparing and lodging up to six separate returns or reconciliation statements for various taxes. Much of the information, such as identification details, is duplicated across these returns. As one submission said 'we advocate one number, one lot of information, the bringing into line of the times for compliance and a simpler form for it all to be collected by one body'.

A single annual compliance statement, replacing the multiplicity of returns with a single summary document, could reduce this burden. The annual compliance statement would include income tax and business taxes such as PAYE, prescribed payments scheme, FBT, reportable payments, superannuation guarantee charge and payroll tax. (See compliance statement diagram in Key Findings p3).

Inclusion of FBT in the compliance statement would be contingent upon the realignment of the FBT year with the income tax year recommended earlier. A unique business identification number, recommended in Chapter 8, would also support this initiative.

The cost to government will be minimal in transitional arrangements, and there may be savings in the reduction of forms and data capture. It should be possible to offer small business the capacity to lodge the statement electronically.

Recommendation 5

That a single compliance statement for income tax and all business taxes and a unique business identification number for all Commonwealth taxation purposes be introduced from the 1998-99 financial year.

Implementation strategy

The Australian Taxation Office should consult with accounting bodies and small business groups to develop appropriate procedures and a compliance statement by early 1998 to enable introduction from 1 July 1998. Negotiations should be held with the States and Territories about the inclusion of payroll tax in the compliance statement.

Issue of group certificates

Currently, employers must issue a group certificate to an employee who leaves within seven days of the end of employment. As well as calculating and generating the group certificate, there is an additional burden in keeping track of group certificates issued. This is particularly onerous on industries employing casual or temporary staff. In practice many small businesses issue group certificates at the end of the financial year when they undertake their annual PAYE reconciliation, regardless of when an employee leaves.

Small business would welcome the increased flexibility, and the reduction, for some, in administrative costs. The costs to government of this proposed change would be negligible. Some employees may still require prompt issue of group certificates on leaving their employment, and would be able to obtain one on request.

Many small businesses are unaware that group certificates can be printed on their own stationary to a set format. This could reduce costs in some cases and should be better promoted.

Recommendation 6

That the legislation pertaining to group certificates be amended to allow employers to issue group certificates by 14 July after the end of the relevant financial year or on request from the employee from the 1997-98 financial year.

Implementation strategy

The Tax Policy Division of the Treasury and the Australian Taxation Office should draft the necessary legislative amendments with a view to introduction in the 1997 Autumn Sittings of Parliament.

Reforming the tax system

Sales tax

Apart from some streamlining in 1993, the basic design of sales tax has not changed since its introduction as a temporary measure in the 1930s. Many submissions sought a fundamental rethink of the sales tax regime, and pointed to the economic distortions and competitive disadvantage imposed on some industry sectors, such as exporters, as evidence of the need for a more equitable indirect tax base.

Sales tax compliance costs are seen as particularly high. The Victorian Government submission said ' ..it has been estimated that compliance costs for most businesses which pay less than $50 000 in sales tax a year was almost 25 per cent of each dollar paid'. The *Working Overtime* report found that businesses paying sales tax averaged 56 hours a year in complying with requirements.

Others pointed out apparently bizarre examples of sales tax anomalies; such as:

- Wedding rings are exempt from sales tax; engagement rings are not. There are complex rules about what constitutes a wedding ring, such as limitations on the number and kinds of gemstones with which it can be set. Some rings used in ethnic communities as wedding rings do not meet the definition and do not receive this exemption.
- Paddle pop sticks included in a paddle pop are taxed at 12 per cent. Paddle pop sticks supplied as stirrers are classified as spoons and also taxed at 12 per cent. Paddle pop sticks sold as craft items are exempt.
- A sealant is marketed for both building and marine use. The product is identical, but the uses attract different sales tax rates.

The primary concerns of small business with sales tax included:

- complexity of the classification and exemption structure (there are five classification schedules and five classes of exemptions, each with its own set of rules);
- distortions in the market arising from the different tax treatment of goods;
- competitive disadvantages arising from classification/exemption anomalies and perceived or actual non-compliance by others;
- onerous record-keeping associated with administration, particularly with exempt purchasers of taxable goods (those who do not have to pay sales tax must either quote a sales tax number or make a declaration, both of which the seller must keep);
- a payment date of the 21st of the month, which means that some businesses are required to pay sales tax before they are actually paid for the goods on 30 day credit arrangements; and
- inconsistencies in ATO interpretations, particularly private rulings.

A major simplification review of sales tax is required. One possible model is that recently developed by the Institute of Chartered Accountants which proposes:

- two rates (or possibly three) - a general rate and a luxury rate - which can be set at suitable levels to ensure revenue neutrality;
- all goods to be included unless specifically exempted - food, clothing and footwear might be possible exemptions, although this is clearly a matter for government policy; and
- all business inputs (goods used by business for further processing, such as manufacture or repair, or for their own use) to be exempt.

Recommendation 7

That the Commonwealth Government undertake a major simplification review of sales tax, with the objective of reducing the number of classification schedules and variations in rates, extending exemptions for business inputs, and streamlining administration with a view to introducing changes in the 1998-99 financial year.

Implementation strategy

The Taxation Policy Division of Treasury and the Australian Taxation Office should establish a review team including industry representatives to review the wholesale sales tax system. The review should include effective stakeholder consultation. The review process should commence in early 1997 and report to the Government by December 1997 for consideration and decision in the 1998-99 Budget process.

Ongoing improvement to tax law and reduction of compliance costs

The Taxation Law Improvement Project is directed at restructuring, renumbering and rewriting the existing complicated legislation in a more understandable form using simple English. A package of Bills was recently introduced into Parliament as the first instalment of the rewriting program, with more to follow in 1997. The project has been criticised for not dealing with tax policy issues, but providing a more logical structure and plain language in the tax law is a worthwhile reform objective.

The Task Force considers that a separate review needs to be undertaken of areas of the Income Tax Assessment Act and Fringe Benefits Tax Act that result in excessive paperwork or compliance costs. This review will need to address anomalies and some areas of underlying policy. Examples of possible areas for attention include S51AL rules on occupational clothing; S47 (1A), which can result in small companies being subject to double taxation on the disposal of an asset and subsequent liquidation; the tax treatment of compensation payments; and the record keeping required for travel diaries. Many of these issues have previously been raised by industry and professional bodies.

The ATO has made efforts to assess and reduce compliance costs for business through surveys, studies and ongoing consultation with business representatives and their professional advisers. The ATO should continue and enhance these efforts, and in particular :

- seek to involve more small business people directly in consultative processes;
- undertake further studies to assess and quantify the compliance burden;
- attempt to model the interaction of taxation law and administration and, in particular, the interaction of the different revenue lines, at enterprise level; and
- review areas of known high compliance costs for possible administrative simplification.

Elsewhere in this report (Chapter 10) the Task Force has recommended the inclusion of taxation legislation in broader Commonwealth regulatory review processes such as the preparation of regulation impact statements. This will assist the Treasury and the ATO in identifying areas of significant compliance burden and ensure that any changes are practical and workable.

The ATO plans to introduce compliance impact statements that will appear as part of the explanatory memoranda to new legislation. It is recognised that there may be

sensitivities about proposed changes to tax law, such as Budget initiatives which are subject to strict confidentiality. In these cases, broad consultation with small business may not be possible prior to announcement, but consultation should occur as part of subsequent development of administrative arrangements.

Recommendation 8

That the Commonwealth Government establish as a priority a review of the Income Tax Assessment Act and Fringe Benefits Tax Act to address anomalies in the law which result in excessive paperwork or compliance costs to report by early 1998.

That the ATO continue and enhance its efforts to assess and reduce compliance costs for business through administrative simplification and the use of Regulation Impact Statements.

Implementation strategy

The Tax Policy Division of the Treasury and the ATO should establish a group to undertake a review of the Income Tax Assessment Act and Fringe Benefits Tax Act in consultation with small business groups, with the objective of introducing amendments for the 1998-99 financial year.

The Treasury and the ATO should report on progress in reducing compliance costs through their annual reports.

State and Territory payroll tax

A number of submissions raised concerns about the complexity of determining payroll tax liability across a number of jurisdictions. Payroll tax is levied on employers by State and Territory governments and based on an annual wages threshold that varies across jurisdictions; legal definitions, rates, and administrative arrangements also vary.

Once a business has reached the payroll tax threshold, it must determine:

- which payments count as wages for payroll tax purposes, such as salaries, allowances and bonuses;
- whether the people paid are contractors or employees;
- in which jurisdiction the work was performed; and
- in which jurisdiction payroll tax must be paid.

These questions can be extremely complex where a business operates in more than one State or Territory, and is a particular problem in areas around State borders such as Albury-Wodonga and the Gold Coast. Small business must understand payroll tax legislation and administrative arrangements in every jurisdiction they operate in and the complex interaction of these where they operate across jurisdictions. Some small business people complained of the compliance costs involved and the disincentive this posed when considering whether to expand their businesses interstate.

Submissions in relation to payroll tax asked for harmonisation across the States and Territories, particularly the adoption of a common tax base, definition of employee, and an alignment of administrative arrangements. Victoria, New South Wales, Queensland, the Australian Capital Territory and South Australia are already involved in a preliminary review of payroll tax to examine issues such as:

- contractor provisions and the definition of employer/employee relationships;
- the definition of wages;
- employer grouping provisions; and
- administrative arrangements, such as returns.

The Task Force strongly supports these cooperative approaches, and has recommended in this report the adoption of a common core definition of employee across all jurisdictions, Commonwealth as well as State (Chapter 4). The Task Force also recognises that the ability to vary payroll tax rates is an important factor in competition between the different States and Territories to attract business. However, the lack of harmonisation of the base on which payroll tax is levied and its administration is a disincentive to business expansion and imposes major compliance costs on those affected. Small business does not believe that the level or pace of reform in this area is sufficient.

Recommendation 9

That the States and Territories accelerate and intensify cooperative efforts to develop uniform definitions of the payroll tax base, including a common definition of employee, and harmonise legislation and administrative arrangements with the objective of achieving national consistency in the 1998-99 financial year.

That the Commonwealth support and encourage this process.

Implementation strategy

The Commonwealth raise the issue with the Council of Australian Governments, and the Treasury convene a meeting of state and territory treasury officials to seek to accelerate present processes. Work on a common definition of employee should be consistent with the broader work discussed in Chapter 4.

Information and education for small business

Taxation rights and enforcement

A number of submissions expressed fears and concerns about the apparent vulnerability of small business in the face of what was perceived to be a heavy-handed taxation regime. There was a sense of unequalness in the relationship, and fear of heavy penalties for mistakes which might inadvertently arise from the complexity of the taxation law.

Small businesses need more specific information on their rights when dealing with the ATO, particularly when they are penalised for late lodgment of returns or late

payment of taxes. The ATO should explain the reasons for the penalty and outline the taxpayer's rights in relation to remission, objections or appeals with the penalty advice.

It was widely accepted that taxation payments should be made promptly and that late payment should be penalised, but penalties for minor late lodgment of all business tax returns were seen as unnecessarily heavy-handed. Provided that payment has been made on time, taxpayers should be allowed up to an additional week to lodge these kinds of returns without penalty.

Recommendation 10

That provided payment has been made on time, up to an additional week be allowed for lodgment of business tax returns without penalty. Where penalty taxes are imposed, the Australian Taxation Office include information on the reasons for the penalty, its calculation, and any relevant taxpayer rights from 1 July 1997.

Implementation strategy

The Australian Taxation Office should immediately review its documentation relating to imposition of penalties to include clear calculations, explanations of reasons and appeal rights and mechanisms. The Australian Taxation Office should change its procedures on imposition of penalties from 1 July 1997.

Information products and public rulings

Provision of clear and simple information on sound business practices and taxation requirements can help reduce the compliance burden significantly. Good advice can encourage record-keeping systems which support both business needs and taxation requirements and may help small businesses dispense with expensive professional assistance in some areas. New business entrants find this kind of support particularly helpful.

ATO publications such as *Tax Guide for New Small Businesses* and *Guide to Keeping Your Business Records* have generally been well received. However, many small business people have not had access to these or other useful information products, such as industry bulletins. Small businesses also complain that ATO information products are often unnecessarily detailed. They are often confused as to the application of the information and what courses of action would be most appropriate to their businesses.

The ATO public rulings program seeks to provide clarity and greater certainty in the interpretation of the tax law, but is often confusing to small business. The status and applicability of draft public rulings is a particular source of confusion, often only picked up second-hand through the media. There are concerns that the ATO is using its rulings to place too much emphasis on pursuing timing differences in tax collections as opposed to permanent losses of revenue.

The ATO consults with professional advisers and industry associations but these groups do not always fully represent the views and needs of small business people.

Some ATO public rulings, which appeared to have undergone substantial consultation at industry association level, still did not address the real concerns of small business and proved incompatible with normal industry practices.

The ATO should consult more with small business so it can develop relevant user friendly information materials. Wider use could be made of professional advisers and small business advisory centres for dissemination of material and seeking feedback, particularly for draft rulings, as well as more direct forms of consultation.

Recommendation 11

That the Australian Taxation Office give greater priority to developing and disseminating relevant information products targeted specifically at small business.

That the Australian Taxation Office review its public rulings program with the objective of having fewer, simpler and more equitable rulings and to ensure the process is efficient and effective from 1 September 1997.

Implementation strategy

The Australian Taxation Office should consult widely and directly with small business to review, develop and refine user friendly information material for small business. All existing information should be reviewed by November 1997. The Australian Taxation Office should review its public rulings programe by September 1997 in consultation with accounting bodies and small business groups to ensure the process is efficient and effective.

CHAPTER 4: HELPING SMALL BUSINESS EMPLOYERS

Small business is most vulnerable to changes in economic and market circumstances. Their capacity to manage economic and market volatility depends to a significant extent on a high degree of flexibility in employment arrangements.

Employment related issues, particularly unfair dismissal and other elements of the current industrial relations system, superannuation payments, workers' compensation and occupational health and safety, are a major challenge for small business. Small business operators say it creates uncertainty, is a disincentive to employment and has opportunity costs. Professional advice is often needed to deal with these issues which impose significant additional compliance costs.

As one small businessman advised,

> 'I can tell you why most of them (small businesses) are not creating more jobs. It's too bloody hard, too bloody expensive and too bloody dangerous. While we are required to operate and adhere to the same laws and regulations as major corporations such as BHP and Coles, we do not have the benefits and luxuries of a department full of experts in industrial law, common law, taxation law, superannuation law, work safety law, rehabilitation programs, workers' compensation insurance, or experts in staff training procedures.'

Employment matters are further complicated by overlap between State and Commonwealth industrial awards and agreements, and related regulation that influences the conduct of the employment relationship. Although the majority of small businesses are respondent to State awards and agreements, they find it difficult to distinguish between the spheres of government responsible.

A critical factor in the difficulty experienced with employment related issues is that small business does not generally use or have access to the necessary regulations, awards, agreements or related publications. Instead, operators rely on summary documents provided from other sources that they believe are authorities on essential conditions and wage rates, OH&S, workers' compensation or superannuation requirements. Surveys and research indicate that awards are not widely used by small business employers.

According to one survey, only 27 per cent of small business operators read the award, 39 per cent use industry associations, 8 per cent ask their peers and 20 per cent use government agencies.[1]

Small business operators need help to effectively manage workplace requirements. The assistance must be accessible, in summary form and in plain English, and should be made available through their advisers, community-based organisations and industry associations.

---

[1] *Exploring Industrial Relations Further Analysis of AWIRS*, Industrial Relations Research Series Number 4, November 1994, p.143.

Workplace Relations and Other Legislation Amendment Bill

The Task Force submission to the Senate Economics References Committee considering the Workplace Relations Bill generally supported the proposed changes to the industrial relations system on the grounds that the Bill would provide greater flexibility for small business.

The submission stated that, from a small business perspective, an appropriate industrial relations framework based on sound regulatory principles is one which:

- is simple, straight forward and user friendly;
- is capable of being complied with at a minimum cost and without complexity;
- provides for resolution of industrial issues at the workplace;
- is flexible and has regard to the diversity of the small business sector; and
- ensures that subordinate regulation is not unnecessarily complex and legalistic requiring costly professional advice.

The Employment Advocate proposed under the Bill will be an important addition to the existing advisory service provided by the Commonwealth Department of Industrial Relations' awards management function, and should help overcome the complexity of employment related matters. The Employment Advocate must be accessible to small business, provide targeted information in plain English, and provide assistance and support on a range of employment related matters.

The Employment Advocate and the department's awards management function should coordinate advice to small business about the benefits of the Bill including through their advisers, community-based organisations and industry associations.

Australian Industrial Relations Commission (AIRC) - A more user friendly system

Small businesses advised that the AIRC is not user friendly or tailored to their needs. One submission suggested it was adversarial and very threatening to the uninitiated. Issues raised by small business included logs of claims and accessibility to the AIRC.

Logs of claims

Small business does not understand the logs of claims process or its implications, and operators can have legal responsibilities and obligations of which they have no knowledge. One submission described small business employer's response to the logs of claims process as:

> 'Employers, upon receipt of them, often throw them away because they do not understand or do not want to understand. Many employers are often caught in an award that they should not have been caught in and subsequently attract legal liabilities of which they have no knowledge ... and once caught there is virtually no way out.'

For an employer to be covered by a Commonwealth award, the Constitution requires an industrial dispute to exist between the employer and the union. As a result, the

log of claims is often written in terms that no employer would agree to. As the terms of the log of claims are not agreed, a dispute is notified and the AIRC settles the dispute by varying an award to reflect an arbitrated, conciliated or consent outcome.

When a letter of demand and log of claims is received from a union, the employer can ignore the letter, which then allows the union to notify a dispute to the AIRC and may result in the employer becoming bound to the award. Alternatively, the employer can challenge that the letter of demand does not apply and that, for example, the type of business could be outside the scope of the award.

While there is no immediate relief from the logs of claims process, alternatives will be available under the Workplace Relations Bill. The Bill will provide access for incorporated small businesses to Australian Workplace Agreements (AWA), which will enable employers and employees to agree comprehensive terms and conditions of employment, either on an employee by employee basis or with a group of employees. It will ensure that there is no a need for union involvement. Once signed by both the employer and employee, the AWA will be filed by the Employment Advocate and only referred to the AIRC where the Employment Advocate doubts that it meets the no disadvantage test.

The Bill should make it easier for small businesses to introduce working arrangements tailored to their specific needs and provide the necessary flexibility and certainty about workplace relations.

More help with logs of claims could be provided by an education program for small business about the industrial relations processes and regulation. Maximum benefit from this initiative would be achieved if the Commonwealth Department of Industrial Relations, Australian Industrial Registry and relevant employer associations are all involved.

Accessibility of the Australian Industrial Relations Commission

Small business operators say that AIRC hearings are held at unsuitable times and locations, its proceedings and documentation are too formal, and legal representation is essential in order to participate in the process.

In finalising the arrangements to give effect to the Workplace Relations Bill, the rules and regulations will need to be reviewed. In undertaking this review, the Minister for Industrial Relations and the President of the Australian Industrial Relations Commission should examine the complexity of the forms required to lodge matters with the AIRC and its procedures. For example, the concern that legal representation is required to ensure small businesses are not unfairly disadvantaged in AIRC proceedings should be addressed.

Recommendation 12

That in considering the changes necessary to give effect to the Workplace Relations Legislation, the President of the Industrial Relations Commission review the rules of the Commission and the Department of Industrial Relations review the regulations to the Workplace Relations Bill to ensure:

- a less legalistic and process oriented industrial relations system; and
- assistance is available to small business operators who are required to respond to logs of claims.

Implementation strategy

The President of the Australian Industrial Relations Commission and the Department of Industrial Relations should consult small business to determine how their specific circumstances and requirements in respect of the processes of the AIRC and logs of claims can be better accommodated.

Unfair dismissal laws

Small business is highly critical of the Commonwealth unfair dismissal laws which commenced in 1994: 'these regulations are considered to be the final nail in the coffin for a segment of the society that has now felt besieged for more than a decade.' [2]

Small business is cautiously optimistic about the Government's proposals to amend the unfair dismissal laws, and the sector will not change its attitude unless better outcomes result from the new arrangements.

Recommendation 13

That the revised arrangements for unfair dismissal be reviewed after 12 months of operation to ensure that it is delivering a more balanced and flexible approach for small business.

Implementation strategy

The Department of Industrial Relations, in consultation with industry groups and small business representatives, should report publicly on the impact of the revised unfair dismissal arrangements by 30 June 1998.

Who is an employee?

Commonwealth, State and Territory governments define an employee in a range of ways, and numerous pieces of regulation must be consulted by small business to determine the details and pay rates for different work arrangements. Most do not have the time or skills to sift through the legislation and instead engage advisers, adding extra cost.

[2] *Small Talk - Group Discussions with Small Business about Paper and Compliance Burden,* p29. Small Business Deregulation Task Force, Background Paper 2.

The definition of an employee is a major concern for small business in regulations including PAYE or group tax deductions, pay-roll tax, workers compensation, superannuation and fringe benefits tax.

There are two key issues that business must consider when employing people:

- is this person an employee or a contractor and for which regulatory purpose?; and
- how do I determine the relevant taxes and charges, and what is the base for calculation purposes?

This requires the employer to decide questions of law without the necessary expertise and increases the risk associated with operating the business. The task is even more onerous where there are employees working in more than one State or Territory.

Increasing numbers of larger businesses require small businesses and independent contractors to incorporate so that those contracting their services are able to avoid the costs that flow from deeming provisions. Where small businesses accede to this requirement, additional compliance obligations are inevitable.

In these situations the regulations are working against the viability of small businesses and dictating the structure of their business arrangements. To overcome these difficulties governments should agree a common core definition of an employee based on objective criteria. The current common law definition is not a good base as the existing tests developed by the courts are subjective and their interpretation varied. It is unrealistic to expect small business to apply the current common law tests.

One practical initiative would be for each sphere of government to coordinate the development of an information matrix of employment relationships. It would include standard definitions of employees for each regulation, identify core groups deemed to be employees and indicate what an employer's obligations are for employees and each of the groups deemed to be employees. Once developed the matrix should be made widely available to all employers.

Small business operators and subcontractors should be able to obtain a certificate to demonstrate that they have complied with the regulatory requirements for workers' compensation insurance and superannuation cover. The certificate would be evidence that the principal contractor has no further obligations in these areas.

Recommendation 14

That Commonwealth, State and Territory governments develop:

- a matrix of employer obligations under existing relevant Commonwealth, State and Territory regulation to be made available to small business operators by 1 July 1997; and

- a single objective definition of employee and definitions of those groups who will treated as employees for the purposes of all regulation.

That these definitions be included in relevant legislation during the 1997-98 financial year, and an updated matrix published of employer obligations made available to reflect the new definitions.

That a certificate of compliance be developed for subcontractors' superannuation and workers' compensation insurance policies and legislation amended to allow the certificate to be evidence that the principal has no further obligations.

Implementation strategy

An officials working party, chaired by the Department of the Prime Minister and Cabinet including relevant State, Territory and Commonwealth departments, be established to:

- develop a matrix of employer obligations under legislation which uses the definition of employee or deems groups to be employees;
- develop a single core objective definition of employee; and
- determine the legislation that would need to be amended to accommodate the new definition and a timetable for its implementation.

A safer workplace

Small businesses are concerned that they do not have the expertise to deal with technically complex occupational health and safety regulation (OH &S). They are not able to translate the regulations into effective workplace management strategies without the additional cost of hiring professional advisers. This has significant implications for small business as it can affect the safety of its employees, result in lost productivity and increase workers compensation premiums.

One small business adviser said that the complexity of the existing arrangements made small business owners play ostrich: 'bury their head in the sand and take the risk'.

Small business concerns about OH&S are consistent with many of the problems identified in the 1995 Industry Commission Report on Work, Health and Safety[3]. The report stated that the principal problems with existing arrangements are:

[3] *Work, Health and Safety: Industry Commission Report No 47, 11 September 1995.*

unclear legal rights and duties - although fundamentally sound, the rights and obligations in the principal OH&S statutes are not clearly defined;
too much legislation - there are 150 statutes regulating OH&S across Australia;
inflexible regulation - existing regulations do not adequately accommodate the different situations in individual workplaces;
inconsistency between jurisdictions - the jurisdictions place different obligations on employers, employees and suppliers;
inefficient mandated standards - the present approach to OH&S standards does not always produce efficient solutions; and
inadequate and unhelpful codes of practice - the advice given in codes of practice on how to comply with the law is inadequate and too general to be of practical help to most workplaces.

Surveys undertaken by the Australian Chamber of Commerce and Industry (ACCI) and the South Australian Government confirm that most small businesses have difficulty understanding OH&S requirements.

The South Australian Government and ACCI surveys found that small business:

- has a low understanding of the contemporary approach to OH&S. It perceives health and safety as driven by workplace culture and worker behaviour rather than effective management of hazards - there is also a perception that OH&S is not in their control;
- has little knowledge of the legislative responsibilities and practical ways of meeting them;
- prefers practical advice and written information which should be hazard or task specific, and which should demonstrate how to control the major hazards in the workplace; and
- prefers face to face contact either with OH&S agencies and specialists or through networking and strategic alliances.

The complexity, size and detail of OH&S regulations and codes of practice can in part be attributed to the institutional arrangements and processes for their development. Outcomes of the National Occupational Health and Safety Commission, Worksafe Australia and individual State OH&S authorities are not effectively coordinated and lines of responsibility and accountability are unclear.

In view of these problems there is a need for significant change. The Labour Ministers Council has addressed national OH&S issues in the past, and it is appropriate that it be charged with refocusing and accelerating progress with national OH&S reform. An appropriate agenda for the Labour Ministers Council would be to:

- determine, based on advice from the National Occupational Health and Safety Commission, the priorities for new OH&S standards;
- agree implementation of declared OH&S standards and codes of practice within a specific timeframe;
- address the implications of the Industry Commission Report on OH&S;

- ensure that accountability and transparency are key outcomes in any consideration of OH&S institutional arrangements in the context of addressing the Industry Commission Report;
- be responsible for achieving nationally consistent OH&S arrangements; and
- approve nationally consistent OH&S policy and programs.

Under this agenda the Labour Ministers Council could provide the political commitment necessary to achieve institutional accountability and client focused and transparent OH&S outcomes.

To help overcome small business concerns, the Labour Ministers Council should require that all OH&S regulation:

- define clearly the rights and duties of all parties who influence the risk to health and safety at the workplace;
- facilitate voluntary standards and codes of practice that accord with national OH&S policy and programs ;
- facilitate enterprise specific OH&S management systems;
- include deemed to comply arrangements for small business operators in future OH&S standards and codes of practice;
- require OH&S standards and codes of practice to meet regulatory impact statement requirements and comply with the COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies; and
- focus enforcement activity on a mix of advice and deterrence.

In addition OH&S standards and codes of practice should:

- not reference Australian Standards - they should be reflected in future National Occupational Health and Safety Commission Standards and Codes of Practice;
- provide, where appropriate, possible lead times for business to meet the standards or codes of practice;
- provide practical guidance, as appropriate, (developed by all jurisdictions and the National Occupational Health and Safety Commission) for small business on implementing the standards or codes of practice; and
- be the minimum effective standard as far as possible and be less prescriptive with increased flexibility and expressed in terms of outcomes.

Engaging the Labour Ministers Council in OH&S under the proposed agenda should ensure political commitment and ownership of agreed outcomes in all jurisdictions. The Council has the potential to reduce duplication, achieve client focused OH&S outcomes at the workplace and institutional accountability and transparent OH&S processes.

The initiatives for reform of the regulation, standards and codes of practice aim to resolve the concerns of small business and to help business generally. In particular, the proposals aim to ensure that small business has to deal with less complex regulation.

Deemed to comply provisions, voluntary standards and codes of practice, lead times to meet new standards and assistance with the development of enterprise specific OH&S management systems are particularly important to small business.

Recommendation 15

That the Labour Ministers Council be accountable for delivery of nationally consistent OH&S policy and programs, agree implementation of declared minimum standards and codes of practice within specified time frames and determine priorities for the development of new standards and codes of practice. OH&S codes of practice, where possible, should include deemed to comply provisions.

That the Labour Ministers Council address the Industry Commission Report with respect to the accountability and transparency of existing OH&S institutional arrangements, which should include consideration to stronger industry representation.

That OH&S standards comply with the COAG Principles and Guidelines for Ministerial Councils and Standards setting Agencies, be less prescriptive and expressed in terms of outcomes. All jurisdictions and Worksafe Australia should provide simple and practical guidance for small business on implementing OH&S standards and codes of practice.
The new OH&S arrangements be in place by 1 October 1997.

Implementation strategy

This recommendation be referred to COAG at its first meeting in 1997 for consideration and development of a program and timetable for the revised arrangements, and establishment of reporting arrangements to COAG for ongoing monitoring of OH&S reform.

Workers' compensation

The burden and compliance costs from the paperwork and complexity of workers' compensation was raised in a number of submissions, research and public consultations. A principal concern is the perception that the schemes are designed by and for big business. For example, small business has particular problems with existing premium and return to work arrangements.

There have been instances where workers' compensation premiums increase by as much as $36 000 a year. Small business believed that if an employee had an accident, the full cost of the claim would be met through increased premiums. Workers' compensation was described as being akin to a loan not insurance.

Small business does not have the flexibility of larger businesses to accommodate graduated return to work arrangements, or to meet the cost of wages and related expenses until such time as the claim is accepted and processed by their insurer.

Completing the paperwork necessary to process a claim and, for some, the need to act as an intermediary for the employee on many aspects of the claim, adds extra burden.

Other areas of difficulty identified by small business and industry associations are:

- cross jurisdictional differences;
- lack of experience-based premiums and large swings in premium levels;
- the different definitions of an employee across jurisdictions; and
- inconsistent claims processes and premiums - even within jurisdictions.

Impending initiatives resulting from the recent Heads of Workers Compensation Authorities Interim Report, *Promoting Excellence: National Consistency in Australia Workers' Compensation,* must accommodate the concerns of small business. While the detailed elements of the policy may be drawn from best practice elements of the reports, the framework must be right, especially in addressing the paperwork and compliance burden.

As with OH&S, the Commonwealth Government must ensure that there is an appropriate forum to achieve nationally consistent workers' arrangements. Nationally consistent arrangements will help overcome the current difficulties experienced when operating in more than one jurisdiction.

National consistency should also be achieved by the Council of Australian Governments giving formal responsibility to the Labour Ministers Council for national coordination of workers' compensation policy and programs. An appropriate reform agendafor the Council would be to finalise the review of workers' compensation and:

- agree national workers' compensation framework principles to be included in relevant legislation and mirrored in all jurisdictions;
- approve subsequent amendments to the principles that underpin the legislative framework;
- encourage nationally consistent and less complex policy, practice and programs; and
- obtain agreement on national compliance policy.

National consistency will not relieve all of the existing burden, and workers' compensation regulation should be amended to:

- include a common definition of employee, injury or illness and have common benefits and premium arrangements;
- provide in all jurisdictions for the mutual recognition of workers' compensation insurance cover obtained in other jurisdictions; and
- include premium setting guidelines - where experience is an indicator of risk, premiums may be experience based. Base premiums with bonuses and penalties within a proscribed range should be introduced for small business as an incentive to risk reduction and implementation of OH&S management systems.

Regulations should also facilitate small businesses forming groups to reduce the burden through existing rehabilitation and return to work arrangements. Such arrangements should also be an option to achieve greater leverage for negotiating premiums.

There are concerns about the arrangements for determining wage bases for premium calculations. The figures are based on periods other than the commencement of the relevant financial year and specific calculations are required which involve additional time and effort on the part of small business. The Labour Ministers Council should ensure that a nationally consistent definition of the wages base is established, and examine the timing of the period of workers compensation cover.

Small business is also concerned that individual jurisdictions endeavour to use workers' compensation as one element of competitive federalism and that this practice is to their detriment. Each jurisdiction should focus on achieving competitive premiums by improving occupational health and safety outcomes. This will benefit both small and other businesses and importantly employees.

Recommendation 16

That the Labour Ministers Council agree nationally consistent workers' compensation framework principles to be mirrored in all jurisdictions.

That workers' compensation provide for mutual recognition of workers' compensation insurance cover obtained in other jurisdictions for employees operating temporarily in other than the States or Territories in which their employer is based.

That premiums be better focused on the circumstances of individual sectors and employer sizes, with risk related premiums where appropriate. Where risk related premiums are inappropriate, base premiums with penalties and bonuses based on performance and implementation of OH&S management strategies should be available.

That arrangements be available for small business to form groupsto negotiate lower premiums and better strategies for rehabilitation, accident prevention and return to work arrangements.

That the proposed workers' compensation arrangements be in place by 1 July 1998.

Implementation strategy

This recommendation be referred to COAG at its first meeting in 1997 for consideration and development of a program and timetable for the revised arrangements, and establishment of reporting arrangements for ongoing monitoring of workers' compensation.

Superannuation

Superannuation is a key element in the Commonwealth Government's policy of encouraging people to make adequate provision during their working life for their retirement.

There are two elements to existing arrangements for the payment of employee superannuation contributions by employers - award superannuation and the superannuation guarantee.

Small business operators are confused by the complexity of the following aspects of the existing arrangements:

- employers paying the superannuation guarantee rate are often unaware that they must also ensure that the usually lower award payments, which are a component of the employer's superannuation guarantee, are paid in accordance with the award requirements;
- most award superannuation is calculated on a rate of pay specified in the award. As superannuation guarantee is calculated on ordinary time earnings it can be higher than the award rate. Therefore six per cent under the award could be less in dollar terms than six per cent under the superannuation guarantee. Some employers may use the award rate for superannuation guarantee contributions; and
- an employer may pay into a superannuation fund which is not appropriate under an award.

The Workplace Relations Bill will provide for superannuation to be an allowable matter inawards of the AIRC. However, individual employers and employees have the opportunity to take advantage of Australian Workplace Agreements (AWA) to remove the confusion about superannuation, by including their preferred arrangements in their agreements.

The Employment Advocate will need to ensure that small business fully understands the interaction between award superannuation, the superannuation guarantee and opportunities available under AWAs to clarify their obligations and responsibilities.

Other difficulties arise from the complex arrangements put in place by the superannuation guarantee legislation, particularly:

- determining an employee's earnings base;
- understanding the distinction between the superannuation guarantee and superannuation guarantee charge - which includes a late payment penalty for not meeting the requirements of the superannuation guarantee; and
- the administrative difficulties of superannuation payments for part-time and casual employees.

Superannuation initiatives already announced by the Commonwealth include retirement savings accounts and the option to take cash in lieu of superannuation guarantee contributions for employees earning between $450 and $900 a month.

While these have the potential to simplify some aspects of the current arrangements, they don't sufficiently address small business concerns about casual employees.

Recommendation 17

That from 1 July 1997the Superannuation Guarantee legislation be amended to allow casual employees, who work for an employer for less than three months in one financial year, to have the option of choosing between Superannuation Guarantee contributions or the equivalent in wages and salary .

That full-time secondary school students be excluded from the requirements of the Superannuation Guarantee legislation.

Implementation

The Treasury to develop appropriate additional amendments to the legislation for implementation from 1 July 1997.

Affirmative action

Affirmative action is considered to be an impediment to expansion as the decision to employ additional staff is influenced by the requirements to comply with the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986.*

Under the Act, firms employing more than 100 people must report annually to the Affirmative Action Agency. Those companies that have complied with the Act for a number of years should be recognised for their good performance and their reporting burden reduced.

Recommendation 18

That commencing 1 July 1997 employers that have met the requirements of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* for three consecutive years, be required to report to the Affirmative Action Agency only once every three years thereafter.

The agency's annual report form should clearly identify what information is mandatory, and what is voluntary, under the Act as part of an employer's annual report. It should also identify on its pro forma annual report form that information can be provided in alternative formats if the employer chooses.

Implementation strategy

The Affirmative Action Agency should make the necessary amendments to operate from 1 July 1997.

CHAPTER 5: STATISTICAL COLLECTIONS

Statistical collections are a source of considerable irritation for small business even though they represent only a small proportion of the overall paperwork burden. Small business is concerned about the approach of the Australian Bureau of Statistics (ABS), the duplication of information sought, the timing of surveys, and the lack of relevance of the results.

The broad community accepts the need for a range of reliable and timely official statistics on Australian economic and business conditions[1]. Good statistics are essential for informed policy decisions by governments and commercial decisions by individual businesses.

Widely contrasting views are held regarding the impact of statistical collections on small businesses. Some industry associations argued for an increase in particular collections on the basis that they imposed little or no burden on their members. Others advocated that government abandon its involvement in various fields (such as business expectations) in favour of private survey organisations.

Studies consistently show that statistical collections constitute a relatively minor proportion of the overall burden, in terms of the time spent on compliance. Small businesses selected in surveys in 1995-96 spent an average of nine hours completing statistical forms during the year. Overall, completion of survey forms represented around one per cent of the total time spent on paper and compliance work[2].

However, as table 5.1 indicates, the burden of statistical collections is spread unevenly across industries. Small businesses in agriculture, manufacturing and tourism-related industries (such as accommodation, cafes and restaurants, and cultural and recreational services) have a higher chance of being surveyed than those in other industries. For example, small businesses in manufacturing spent an average of 14 hours completing statistical returns during 1995-96[3].

Moreover, because of government requirements to produce statistics of equal quality across all States, small businesses in smaller States and Territories have a higher chance of being included in a survey than those in larger states.

Small business also considers it inequitable that some businesses are selected in a sample survey when the majority of other businesses excluded.

As table 5.1 shows, 28 per cent of small businesses are selected in surveys in any given year. For non-agricultural businesses, this proportion is 11 per cent. However, the chances of selection in a number of surveys increase significantly for businesses with more than 20 employees.

---

[1] *Small Talk*, Small Business Deregulation Task Force, Background Paper 2, August 1996
[2] *Working Overtime*, Small Business Deregulation Task Force, Background Paper 3, October 1996
[3] Ibid.

Table 5.1 Small Businesses with less than Twenty Employees Selected in ABS Surveys, by Industry, 1995-96

Industry	Number of small businesses in population	Percentage selected in any ABS survey	Number of selections
Agriculture, Forestry and Fishing	149,000	100	149,000
Mining	3,300	35	1,155
Manufacturing	40,400	42	16,968
Construction	96,400	10	9,640
Wholesale Trade	51,000	9	4,590
Retail trade	123,600	6	7,416
Accommodation, Cafes and Restaurants	32,400	25	8,100
Transport and Storage	32,800	6	1,968
Communication	2,100	25	525
Finance and Insurance	25,800	8	2,064
Property and Business Services	126,400	5	6,320
Health and Community Services	47,600	4	1,904
Cultural and Recreation Services	17,400	28	4,872
Personal and Other services	32,100	8	2,568
Total	780,300	28	217,090
Total, excluding agriculture	631,300	11	68,090

Source: ABS

Small businesses are critical of the number of surveys in which they are expected to participate, the frequency and duplication of requests for the same information, and the inconvenient or inappropriate timing of these requests. Typical comments from small business include:

> 'The number of surveys (we are) required or invited to complete for Federal, State and Local government departments; employer groups; union groups; consulting groups; etc. is endless... there is enormous duplication of survey information'; and
>
> 'Statistical collections are a nuisance.....I often report rubbish just to get them off my back.'

The ABS, other government agencies and private sector organisations conduct a wide variety of statistical collections. Very often there is duplication in the information requested and small business is often confused between collections which require compliance and those that are voluntary.

Statistical collections need to be better coordinated to reduce requests for the same information.

Small businesses also believe many government surveys are largely irrelevant which is in marked contrast to the perception of collections conducted by private sector

organisations. Private sector organisations are generally keen to promote and make available timely statistics. Small business views results from government-run surveys as benefiting only government and big business. In the words of one small business operator, 'government surveys are used against small business, whereas private sector surveys are used for them'.

The purposes of government surveys are not always clear. Results are sometimes published too long after the collection period[4] or not in a format relevant to small business. Questionnaire design is sometimes poor and collectors are perceived as unsympathetic and unhelpful. As one small business owner said: 'The perception of the burden of statistical surveys is influenced by the apparent irrelevance of the data being sought and the compulsory nature of some of the forms.'

ABS to lead by example

At the time the Prime Minister announced the establishment of the Task Force, he also said that the Australian Bureau of Statistics had guaranteed to reduce the cost to small business of completing statistical returns by 20 per cent and that it would also minimise the number of occasions small business were involved in more than one ABS collection.

An ABS analysis of the time small businesses spend completing various survey forms showed that over one-half of the total burden was attributable to three surveys - the annual Agricultural Census, the quarterly Survey of Tourist Accommodation and the annual Manufacturing Survey.

Some submissions argued that the Agricultural Census and the Survey of Tourist Accommodation did not impose a significant burden on businesses and should not be included in the 20 per cent reduction.

> 'Further cuts to the Agricultural Census will adversely impact on the credibility and value of the information collected. We strongly believe that our members and indeed most farmers do not see the Agricultural Census as an impost on their time. They understand its value and are concerned that its credibility is under threat.'
>
> '... the maintenance of a detailed and authoritative information base on the (tourism) industry is essential for planning and monitoring the future growth of tourism.'
>
> 'The industry would like to see the survey expanded to include origin of guests, and, in the longer term, purpose of visit.'

These comments demonstrate the difficult balances to be struck between the needs of providers and the users of information across the range of ABS collections. The ABS has decided to reduce the Agriculture Census by collecting a lesser amount of information from smaller businesses than larger businesses.

[4] An example of a worst case scenario was the 1992-93 Manufacturing survey where final results were not available until 1996.

The ABS also believes it can reduce some data items in the Survey of Tourist Accommodation without compromising its usefulness.

The ABS will continue to reduce the reporting burden statistical collections place on small businesses in subsequent years without unduly affecting statistical output. It also intends to introduce electronic reporting, where practicable, and make greater use of other agencies' data, such as the ATO. All collections and data items will be monitored continually for their essentiality.

One of the functions of the ABS is to coordinate the statistical activities of other Commonwealth agencies, to minimise duplication, ensure compatibility and maximise possible uses of available information. The ABS is also responsible for formulating and ensuring compliance with standards for the statistical activities of other Commonwealth agencies.

While the ABS is reducing the burden it places on small businesses, other organisations may be tempted to increase the statistical reporting burden. This is an area where the ABS can show leadership by encouraging other statistical collectors to adopt plans similar to its own aimed at reducing the burden on small business.

Recommendation 19

That the Australian Bureau of Statistics seek its proposed 20 per cent reduction in the reporting burden during 1996-97 as far as is possible through process efficiencies. Any reductions in data content should be subject to consultation with affected small businesses, where relevant.

That the Australian Bureau of Statistics further reduce the reporting burden where this can be done without jeopardising the integrity of collections, and publish annually measures of the burden it places on small business.

That all public and business organisations collecting statistics review and reduce their collections where possible; and private sector collectors develop a code of conduct to minimise the burden on small business.

Implementation strategy

The ABS should establish a process, in consultation with small business to reduce further the burden it places on small businesses without significantly affecting the usefulness of statistics. It should also publish in its annual report measures of the burden it places on small businesses and details of plans to reduce it.

The ABS should convene a forum involving other government and private statistical collectors during 1997. The objectives should be to encourage other collectors to match ABS reductions as soon as possible and to develop a code of conduct that keeps the statistical reporting burden within acceptable limits.

Improving small business representation on statistical advisory committees

Although small business is represented on a number of consultative committees that advise the Statistician on priorities and work programs, it is under-represented compared to government and large businesses. This means that issues associated with the statistical reporting burden placed on small businesses do not always receive sufficient attention.

At the National Small Business Summit, the Minister for Small Business announced that the Treasurer would invite another small business representative to join the Australian Statistics Advisory Council (ASAC). ASAC is the peak advisory council that advises the Government and the Statistician on matters relating to statistical services.

Recommendation 20

That small business representation be increased on all relevant statistical consultative committees of the Australian Bureau of Statistics by 1 July 1997 and that provider loads be progressively assessed.

Implementation strategy

The Treasurer, in consultation with small business groups, should appoint an additional small business representative to the Australian Statistics Advisory Council by December 1996.

The ABS should increase small business representation on all other relevant committees it convenes by July 1997 and ensure that reporting burden issues are addressed.

Extending the user-pays principle to non-core activities of the ABS

Many ABS statistics are available at a nominal charge. There are, however, some surveys or parts of surveys that are user-funded because of the narrow client base they serve and the fact that they would not be undertaken without user funding.

The boundary between what should be a user-funded survey and a non-user funded survey is not always clear. For example, a survey that involves a significant public good component and commercially useful information could still be undertaken without full user-funding.

A direct charge to users for those parts of surveys which are outside the core business of the ABS may exert more discipline on requests for additional data. This should also make it easier for the Statistician to manage the statistical reporting burden placed on small businesses. This is consistent with current ABS policy whereby user-pays survey activity has increased significantly over the past five years.

Recommendation 21

That the Australian Bureau of Statistics extend the application of the user-pays principle to cover non-core activities of the ABS commencing in 1997-98.

Implementation strategy

The ABS notes in all future annual reports the extent to which survey activity is subject to user-pays.

Improving the effectiveness of clearance processes for statistical collections

In 1983, the Government directed all Commonwealth agencies to consult with the ABS before proceeding with a statistical collection. This direction worked for a period, but over the years its impact has weakened.

A more effective clearance process for statistical collections would incorporate the following essential components:

- an executive direction for Commonwealth agencies conducting statistical collections of businesses to submit to a clearing house process conducted by the ABS*;*
- a review of proposed statistical collections of businesses, which would consider, among other things, the extent of duplication, data requirements, compliance costs, methodology (including form design), and the use of appropriate statistical standards and classifications. Justification for the collection would be provided by the agency proposing to conduct the collection;
- clearing house approval be a prerequisite for all statistical collections of business conducted by Commonwealth agencies. Non-approved collections would not be permitted. International and Australian experience has shown that clearance processes that are only advisory in nature tend to be ineffective;
- a registration number assigned to approved collections to be used on all material relevant to the collection; and
- a report on the process and all disallowed proposals to be published in the ABS annual report.

The clearance process should apply to collections involving 50 or more businesses, including collections conducted by others on behalf of Commonwealth agencies. It would not apply to statistics produced as a by-product of administrative processes. To ensure even handedness, the clearing house should involve other agencies and ABS collections should also be cleared through the process.

While the clearing process would impose additional costs on the ABS, it would reduce duplication and eliminate poor-quality requests for data. It would also be an effective means for monitoring the overall burden that statistical collections impose on businesses. A by-product would be a comprehensive directory of statistical collections.

The Commonwealth Government should invite State and Territory governments to subscribe to the process as this would increase its effectiveness. The National Small Business Summit supported the inclusion of State government collections in a clearance process.

Recommendation 22

That statistical collections affecting 50 or more businesses and run by, or on behalf of, all Commonwealth Government departments and agencies be subject to a central clearance process from 1 July 1997.

Implementation strategy

An executive direction should be issued to establish a formal clearance process for Commonwealth statistical collections, by June 1997.

The ABS and Office of Small Business should work with State and Territory governments to implement the commitments made at the National Small Business Summit to submit statistical collections run by their agencies to the clearance process.

A progress report on incorporating State and Territory statistical collections should be included on the agenda for the next National Small Business Summit.

Improving questionnaire design and collection arrangements

The ABS and other government agencies collecting statistics should adopt a more user friendly approach when seeking the support of firms to supply information. One small business owner suggested a non-dictatorial attitude would be welcomed. He went on to say:

> 'Too often the approach is that if the data is not supplied, legal action will be taken and this is not at all conducive to collecting data. A more business friendly approach is needed. After all, the agency is requesting the business to allocate time and resources to the request for virtually no return.'

The format and language used on mail-out questionnaires will affect the attitude businesses have to the survey. Small businesses made the following suggestions:

- give better explanations of the survey's purpose, including details of how data are to be used and how this use relates to small business;
- use less threatening language (especially in regard to authority and due date);
- include common logic and base fields which take account of record keeping practices of small businesses;

- be flexible in terms of timing and collection periods to bring them into line with commercial practice; and
- indicate on forms the estimated release dates for publication of the survey's results.

Given the amount of data the ABS has collected on the time it takes to complete its questionnaires, it would also be useful if this could be indicated on the front page of each questionnaire. Where businesses take more time than indicated they should be able to contact the ABS for assistance.

Small businesses would benefit from a better understanding of the surveys' purposes and reduced time to complete returns. The benefits of implementing these elements for government would include higher response rates and better quality of reported data, and implementation costs would not be substantial.

Recommendation 23

That the Australian Bureau of Statistics and other collecting agencies improve the explanations for, design and the timing of statistical collections from 1997-98 onwards.

Implementation strategy

The ABS should establish a working group to review questionnaires and timing so that the above changes can be introduced for collections conducted from 1997-98 onwards. These changes should be implemented in tandem with initiatives already underway in the ABS. This includes the upgrading of its forms design unit and the completion of a study into small business attitudes to personal interactions with ABS staff.

Promoting the benefits of statistical collections

Inadequate promotion of the broad benefits of statistical collections is a major factor contributing to small businesses' perception of the usefulness of official statistical surveys. The publicity campaign for the 1996 Population Census, for example, was a significant contributor to its success.

Small businesses also have asked for easier and quicker access to statistics, for example, through the Internet. While the ABS and other collectors have home pages already established, they should look at extending this service.

Recommendation 24

That the Australian Bureau of Statistics and other statistical collection agencies immediately increase the marketing of statistical products and the promotion of the wider benefits of statistical collections.

Implementation strategy

Individual collecting agencies should increase the marketing of their statistical products.

The ABS and other collecting agencies should encourage their clients to actively promote the benefits of statistics by publicising decisions and policy settings that are based on them.

The ABS and other government agencies should provide small businesses that participate in surveys with relevant and timely feedback on the data they contribute. This could be aggregated performance indicators (ratios, averages, quantiles) against which business performance can be gauged. Such a service should be free-of-charge to small businesses that participated in the survey, with a small service charge for non-participants.

Recommendation 25

That small businesses included in statistical surveys be provided free of charge with relevant and timely statistics based on the data they contribute from 1 July 1997.

Implementation strategy

All collectors should review existing information for small business and have new and improved products and appropriate distribution mechanisms in place from 1 July 1997.

CHAPTER 6: STREAMLINING GOVERNMENT PROCESSES AND REGULATIONS

Small business is challenged by the bewildering array of Commonwealth, State and Local government rules and regulations which affect many areas of business activity. With one national, eight State and Territory and over 750 Local governments, it is not surprising that in many cases, two or three spheres of government have regulations governing the same area of activity. This contributes to the business operators' nightmare of more forms, more duplication and more cost.

Governments recognise the need for greater coordination and for national consistency in regulations. Despite this, they have not always fully achieved their objectives or else have taken too long to develop and implement the desired outcomes[1].

The creation of national regulatory or coordination arrangements has the potential to:

- establish clear responsibility for regulating particular activities between and within jurisdictions;
- facilitate the development of uniform regulatory standards and their national application;
- provide a framework for their efficient enforcement - for example by encouraging authorities to share compliance information; and
- facilitate the introduction of the best practice regulations.

Care needs to be taken not to increase the regulatory burden through a highest common denominator approach that can have an adverse effect on the operations of small business. Rather, the emphasis must be on cost effective approaches.

The Commonwealth, States and Territories need to clearly delineate their areas of interest and responsibilities. The role and responsibility of Local governments as regulatory bodies vis a vis State and national regulatory agencies also needs to be clearly articulated. Local government regulations in many areas of activity such as food, the environment, building and planning can have adverse impacts upon small business.

The Task Force examined the regulation and compliance costs in a selection of specific areas, which were drawn to its attention by small business, and involved two or more levels of government. These sectors are building and development, environment regulation, food, chemicals, pharmacies and long-day child care. The analysis shows that there is substantial scope to achieve more efficient regulatory practices and outcomes through rationalisation of responsibilities, better coordination, better regulation and better use of technology. In some cases further work is required to clearly establish the best way forward.

Building and development industry

The housing industry is characterised by some 150 000 small firms operating in a highly competitive environment and governed by a myriad of regulatory controls imposed by State and Local governments which work against efficiency and inter-state expansion.

[1] ORR Recent Developments in Regulation and its Review, Information Paper, November 1993.

State governments set planning frameworks for medium and high density developments but almost every Local Government council has its own rules on such matters as the ratio of car parks to units, the number of units per standard lot size, building height and tree preservation. To cope with the variations in policy, developers buy in specialist expertise for each project with resultant cost increases of up to $2,000 a housing unit.

Streamlining regulations

The Industry Commission [2] estimated that potential savings of $350m a year would flow from more efficient building regulations, and a further $750m from improved building and planning approval processes. Savings of this magnitude warrant high priority being given to reform, especially for building regulations and approvals.

Local Government plays a central role in the building and development processes and there is scope for the Commonwealth to work with the Australian Local Government Association to accelerate reform processes.

Recommendation 26

That the Memorandum of Understanding currently being finalised between the Commonwealth and Local Government should be pursued as a vehicle to commit Local Government to change processes to reduce duplication of regulations and consequent costs.

Implementation strategy

The National Office of Local Government to consider the recommendations of the Task Force in consultation with other appropriate Commonwealth departments for incorporation in the Memorandum of Understanding with a view to finalisation and signature by the end of 1996.

The Commonwealth, State and Territory governments, together with Local Government and industry, have established the Australian Building Codes Board (ABCB) to develop and facilitate a national and uniform building regulation system. The ABCB is working towards a national simplified building control framework for builders including new performance based housing provisions which will contain nationally-oriented construction techniques. State and Territory variations will be kept to a minimum.

This Code, when introduced, will improve the consistency between councils in the administration of building regulations and make it considerably easier for builders to operate across Local Government boundaries. This will still enable Local Governments to accommodate specific needs peculiar to their local environment.

The National Office of Local Government in its submission to the Task Force estimated that delays and over regulation in development approvals processes add an estimated 2.3 per cent to development costs for a routine building development. The cost to

[2] Industry Commission, *The Growth and Revenue Implications of Hilmer and Related Reforms*, AGPS, Canberra, 1995.

the community, industry and all spheres of government ranges from several million dollars to $1 billion a year.

Improved administration, including the introduction of private certification, the greater use of technology to verify compliance and better coordination between planning bodies, will provide substantial benefits to small building companies and the economy.

Empowering approved professionals

Private certification of building applications and building inspections by approved professionals can be introduced to compete with the existing system of council officers checking technical matters. This would allow private certifiers to exercise the power of relevant authorities to make assessments, give consent and make any decision in relation to a proposed development on technical matters. A system of private certification already operates in Victoria, South Australia and the Northern Territory. A study undertaken in South Australia shows that a process which once took 30 days can now be completed within three days without any adverse impact on building quality[3]. The survey found that 80 percent of applicants were processed within 10 days.

There are a variety of models based on the National Model Building Act which could be implemented. They address legal liability, accreditation of private certifiers and professional indemnity.

Recommendation 27

That private certification of building approvals, including inspections during constructions and issuing of certificates of occupancy, be introduced in all States and Territories by 1 January 1998.

Implementation strategy

The Australian Building Codes Board and the National Office of Local Government to work with relevant State and Territory officials and industry associations to develop detailed implementation plans for consideration by Ministers. The implementation of this initiative should be monitored by the Commonwealth Minister for Small business and Consumer Affairs and the Commonwealth Minister for Local Government.

There is no systematic process for the involvement of Standards Australia in the development of building standards. Often interested parties will ask Standards Australia to prepare a code which goes well beyond the mandatory provision contained in the Building Code of Australia. Although voluntary, once developed and distributed, these standards can be forced on the industry by governments which introduce them in response to their own pressures.

The development policies of the relevant authorities, whether it be State or Local Government need to be clearly articulated so that there is no inappropriate use of

[3] South Australian Local Approvals Review Program, May 1996.

standards. This would allow developers to commit resources to conceptual and financial work knowing the rules from the start.

Recommendation 28

That no State or Territory should agree to any variations to the technical requirements for building requested by Local Government unless these have been agreed by the Australian Building Codes Board. That Standards Australia only become involved in building standards called up by the Australian Building Code at the request of the Australian Building Codes Board and this should be formalised in an agreement between the two bodies.

Implementation strategy

The Australian Building Codes Board to seek endorsement of this policy in the MOU currently being negotiated with Standards Australia.

AMCORD principles

A performance-based code for higher density developments, the Australian Model Code on Residential Development (AMCORD), has been developed in conjunction with all States and Territories and Local Government. AMCORD is now widely available to all States and Territories and local councils. This document will be supported by *Australia's Guide to Good Residential Design* which will provide useful information for small builders and developers on AMCORD principles and the implementation of a performance based approach.

All States and Territories, except the Northern Territory with whom discussions are continuing, have agreed to implement codes based on AMCORD principles over the next two years. The Commonwealth has provided funding to each jurisdiction to assist with the implementation. The Memorandum of Understanding between the Commonwealth Government and the Australian Local Government Association encourages local councils to adopt AMCORD principles and should be used to progress implementation at the local level.

Major industry associations, the Commonwealth Minister for Industry, Science and Tourism and industry practitioners are represented on the Housing and Urban Development Council (HUD) which advises on policy issues of relevance to the building and land development industries. HUD is well placed to oversee reforms in the planning processes.

Performance-based codes and small business

The Task Force supports the development of performance based codes as an alternative to regulations. Performance-based codes do not specify prescriptive standards but outline issues to be addressed to achieve the desired outcome. The increased use of performance based codes will increase flexibility, diversity and choice and allow small business to respond to market needs and preference and changes

in technologies. Some small businesses could however, be disadvantaged if suitable guidance is not provided about the desired result without precluding other options. To this end all performance-based codes should include acceptable or deemed-to-comply solutions as examples alongside the performance criteria in all codes.

Rationalising approval processes

The approval of a development application by a planning body is generally contingent upon the concurrent approval of other authorities such as heritage, environment, transport or another local council. Often the referral process slows down the approval process as councils wait for advice on referrals before finalising their own views on the proposed development. Some States have already taken steps to rationalise the process. The most successful reform has been the development of a single approval system at both the Local and State government level. Research studies confirm that there will be significant advantages resulting from the development of a single approvals agency[4].

The solution to the problems associated with the process of referral and concurrence must be given a high priority if reform in this area is going to be meaningful. There is potential for the development of a cooperative approach between all spheres of government and industry. The Commonwealth must be involved in this process to ensure that areas of Commonwealth jurisdiction, such as the environment, are integrated where appropriate.

Recommendation 29

That the three spheres of government develop a reform strategy for referral and concurrence procedures in the building and development industry by 1 July 1997. The strategy should include a system for resolving problems between government agencies and ensuring the delegation of decision making to the lowest level practicable taking into account the scale of development.

Implementation strategy

A high level intergovernmental working group should be established as soon as possible to prepare a strategy for consideration by Ministers with a view to implementation on 1 July 1997.

Faster product certification

The Building Code of Australia provides for a number of avenues by which materials and forms of construction or design may be verified as suitable for use. A criticism of current arrangements is the length of time and cost involved in having a new product certified or accredited. This works against smaller companies that manufacture or supply products or may wish to use new products to make their building business more efficient.

[4] Graham (1990), Mant and Walton (1990) and the Queensland Department of Housing Local Government and Planning (1990).

The two to three year time frame for certification is often too long to obtain the benefits of any market edge or leadership. Also, the jurisdiction-based system has created additional costs for applicants.

A national building products and systems certification system would remove duplication and consequent additional cost. Broader recognition of testing authorities and expertise would create competition between testing providers. Mutual recognition of overseas testing authorities also will improve the operation of the system.

The Australian Building Codes Board (ABCB) is working to implement an improved national building product and systems certification scheme which adopts these features.

Recommendation 30

That an improved national building products and systems certification scheme for all products which meet the performance requirements of the Building Code of Australia be implemented by 1 January 1997.

Implementation strategy

The Australian Building Codes Board should give priority to completing the scheme within the timetable suggested.

Consumer protection

Builder licensing requirements vary from State to State. In NSW and Queensland, the emphasis is on technical requirements; in Victoria, financial capacity and practical experience are prominent tests for registration; in Western Australia, five to seven years practical experience is required together with technical qualifications; while in South Australia, the emphasis is on practical experience.

Arrangements for consumer protection are no less variable. Some States have government-run monopoly schemes for warranty protection, some have private insurance schemes and only until recently in the Northern Territory has there been any scheme at all.

The licensing of builders is generally regarded as not having achieved its objective of protecting home buyers. It is an entry gate based on technical qualifications and experience, whereas builders are managers and contract out the construction work. Licensing does not guard against builder insolvency which remains the main source of claims on warranty protection and not faulty workmanship.

A sound, competitive risk-based warranty scheme that is uniform across Australia and mandatory for all builders, would provide maximum protection to home buyers. A uniform national scheme would allow for greater competition among providers through the creation of a national market with a larger premium pool, the development of national performance standards and greater consumer protection.

While these issues are currently being addressed across the country, the work needs to be progressed in delivering a national framework.

The establishment of a competitive insurance market will mean that high-risk and badly performed builders will be under threat of insurance refusal or considerably higher premiums which will add to their competitive disadvantage. Better builders will be able to advertise their high performance rating which will also be a feature of a competitive market. The end result will be a higher quality building industry.

Recommendation 31

That a national framework of consumer protection for the building and development sector be developed covering licensing/registration, statutory warranty/indemnity insurance, coverage, criteria and competency, dispute resolution and contracts by 1 January 1998.

Implementation strategy

The Department of Industry Science and Tourism should convene a meeting of senior officials from relevant Commonwealth and State/Territory, building, registration, licensing and warranty authorities. This group should be formally constituted as a senior official group of the Ministerial Council on Consumer Affairs and should also report regularly to the Building Regulations Ministers Conference.

Environmental Regulation

Environmental regulation is a growing area of regulation reflecting better knowledge of environmental impacts and the changing nature of society. Regulation in this area may result in increased compliance costs and marketplace uncertainty. The NSW Farmers' Federation notes that:

> '...Regulations relating to the environment are often of great significance to primary producers as they impact upon the way farming activities may be undertaken. The recent experience in NSW with the introduction of SEPP 46 has shown the potential for disruption and uncertainty when stringent environmental legislation is introduced without appropriate consultation.'

The responsibility for environmental regulation lies with Commonwealth, State, Territory and Local governments. In relation to particular activities, the approach taken by governments to regulation is influenced by intergovernmental bodies such as the Australian and New Zealand Environment and Conservation Council (ANZECC) and international agreements such as the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

Activities covered by environmental regulation include waste management, air, land and water pollution, protected area management such as national parks and World

Heritage areas, environmental impact assessment, land use controls and construction. Two areas of particular concern to small business are waste management and environmental assessment.

The interaction between regulators responsible for different aspects of what is often perceived by small business to be one area of government activity can be summed up in the frustration expressed by this small business man:

> 'Then came the Environment Protection Act. At the cost of a few more trees and much time I have been told I can carry on working provided I do not cough or sneeze without a correctly placed unbleached clean handkerchief. In the same mail that day I was told by the EPA I could carry on, I received a letter from the City Council telling me that unless I made application for consent to do what I am doing in the industrial area in which I rent my business premises I would have to cease operations. This will require more time paper work and the usual fee.'

Waste Management

Environmental compliance costs in the area of waste management have been identified as a problem for small business. The ANZECC Task Force for Industry Waste Reduction Agreements has been established to work with industry to develop voluntary industry waste reduction agreements. Enforcement is the responsibility of State and Territory governments. The ANZECC Task Force has links with Local Government but no specific small business representatives.

A national body, the National Environment Protection Council has a role to pass national environment protection measures that aim to give all jurisdictions harmonised environmental protection from air, water, noise or soil pollution. All jurisdictions including the Commonwealth will be adopting these measures.

A recent report by the Bureau of Industry Economics into the agri-food industry found that survey respondents cited negative impacts on future competitiveness were related to the increasing costs of complying with regulations such as emission controls[5]. Stricter emission standards and waste management regulations have increased costs. The introduction of cost-reflective pricing arrangements for waste disposal and land fill are two examples.

The study recognised that governments have responded to community concerns about environmental protection but suggests that this response should be more strategic in the future. It says that future policy making should consider approaches which:

- develop standard or control regimes for waste and emissions which are more sensitive to the associated pollutant loads;
- rely more directly on 'market based incentives' rather than prescribing what should or should not be done;
- rely more on pricing signals, where practical, in the management of waste disposal sites;

[5] Bureau of Industry Economics Agri-food Case Study Micro Reform - Impacts on Firms, AGPS, May 1996.

- recognise the value of non-uniform standards and regulations in circumstances where the costs and benefits of environmental protection measures differ between regions, states and nations; and
- require environmental regulatory proposals to be rigorously assessed within a framework which clearly identifies the relevant objectives and evaluates the relative merits of different measures and approaches. [6]

Environmental impact assessment

The Intergovernmental Agreement on the Environment (IGAE) signed by Heads of Government in February 1992, aims to streamline governmental decision making processes relating to the environment, improve public participation in decision making and provide for greater certainty in managing environmental issues across jurisdictions. Criticism by the industry of the IGAE is that its full potential is yet to be realised. For example, while there is agreement for mutual recognition of processes between the Commonwealth, State and Territory governments, the implementation framework is still to be negotiated.

The Industry Commission's report into *Tourism Accommodation and Training*[7] also notes that, 'While the IGAE has the potential to streamline government decision-making processes, it has yet to achieve this potential'.

A draft National Agreement on Environmental Impact Assessment (EIA) in Australia has been developed by the Australian and New Zealand Environment and Conservation Council. The draft Agreement has the potential to improve and avoid duplication of EIAs across Australia by implementing mutual accreditation processes across jurisdictions. Industry is urging greater action.

The Commonwealth EIA process has undergone a comprehensive review. Suggested proposals to improve Commonwealth EIAs include processes to improve efficiency, encourage earlier triggering of Commonwealth processes and to avoid unnecessary duplication by allowing the Commonwealth to accredit other processes. The proposed reforms aim to provide greater certainty for participants in EIA processes, minimise delays in gaining final approvals and help encourage minium standards for EIAs across Australia.

The finalisation of the National Agreement on EIA and reforms to the Commonwealth EIA procedures will benefit small businesses such as tourism operators, primary producers and the mining exploration industry by providing greater certainty of approval processes.

Effect on small business

As with other areas of government regulation, bodies charged with streamlining and coordinating government activities must have adequate small business representation. The development of regulatory impact statements cannot be done in isolation of marketplace activities. A small business perspective will assist in developing a cost benefit methodology and promoting partnership solutions to environmental problems.

[6] Ibid p 114.
[7] Report No 50 23 April, 1996, p35.

The current trend to harmonise standards through the establishment of a national standards setting processes has the potential to deliver tangible benefits to the community at least cost. However, for practical results to be achieved in environmental regulation the delays in fully implementing the IGAE have to be overcome.

Recommendation 32

That the mutual recognition and accreditation procedures and processes established by the Intergovernmental Agreement on the Environment be further developed and accelerated through on-going and new intergovernmental processes which will report to COAG at its meeting in mid-1997.

Implementation strategy

That amendments to environmental legislation and mechanisms to implement mutual recognition and accreditation processes be implemented in the context of timing determined by COAG as a result of their consideration to the outcomes of the Review of Commonwealth/State Roles and Responsibilities for the Environment.

FOOD REGULATION

Food regulation has emerged as a significant problem for small business. During public consultations and from submissions to the Task Force the following issues were raised:

- the industry is over regulated because in some areas all spheres of government are involved;
- the forms of regulation are prescriptive;
- Quality Management System/Hazard Analysis of Critical Control Points arrangements should be more commonly used;
- there is inconsistency in the monitoring and enforcement of food regulation; and
- the cost of compliance ultimately affects the competitiveness of food processors.

Government involvement

All spheres of government are involved in the regulation of the food industry. Under the Australia New Zealand Food Authority Act 1991 the Commonwealth, together with the States and Territories, develops national food standards; the States and Territories have responsibility for adopting the standards by reference into their food laws and for enforcing compliance with food standards; in the majority of States, the responsibility for enforcement has been devolved to Local Government agencies. The Commonwealth is also responsible for the inspection of food product at the national border. Both the Health and Agriculture portfolios are involved.

Arrangements at the State, Territory and Local Government level are less formal. The States and Territories currently have responsibility for food hygiene. The States and Territories have responsibility for packaging and other environmental matters.

The Office of Regulation Review (ORR) has identified more than 600 agencies involved in monitoring the compliance of food regulation. However, the extent of this work varies significantly and it is dependent upon the priority and resources provided to it.

Reducing the regulatory burden

At the first meeting of the Supermarket to Asia Council on 26 September 1996, the Prime Minister noted the need to streamline and reduce the cost of regulation on the food industry and asked the Task Force to advise on ways to reduce the regulatory burden.

Standards setting

On 5 July 1996 the National Food Authority became the Australia New Zealand Food Authority (ANZFA), when the treaty on the development of trans Tasman food standards came into force. The establishment of joint food standards setting system with New Zealand is a far reaching initiative and is a vehicle to develop a single food market between the two countries. Uniform food standards between Australia and New Zealand will reduce regulatory barriers to trade and free up the movement of product between the two countries. For the first time, one trans-Tasman authority will be recommending food laws to apply in two, sovereign jurisdictions.

Notwithstanding this, problems remain with surveillance and enforcement and with the training and education of food manufacturers.

Enforcement of food regulation

In addition to the issues raised in submissions to the Task Force from small business operators, the ORR previously identified a number of deficiencies with the enforcement of food regulation. They included:

- the present institutional arrangements often cause inefficiency, duplication and uneven enforcement with consequent impacts on the costs of compliance;
- many enforcement agencies appear to be under-resourced for the enforcement activities they undertake;
- priorities for enforcement varies from agency to agency;
- there are gaps in the range and effectiveness of the enforcement mechanism available; and
- the compliance strategies followed by enforcement agencies may need a better balance between responding to specific breaches and placing a greater emphasis on educative approaches which influence the culture of compliance.

The ORR tentatively supported a more national approach to enforcement of food regulation to overcome some of the inconsistencies and duplication in the current system. It noted ANZFA's initiative to establish an Australian Food Standards Information Network database designed to improve communication between the three spheres of government, improve enforcement action and reduce duplication across jurisdictions.

Cross jurisdictional issues

Food regulation is a highly complex activity. The costs of compliance could be reduced by continuing to move from prescriptive to outcome based standards.

ANZFA has moved in this direction and recent policy statements suggest that the Authority will be working closely with the food industry to develop codes of practice and similar co-regulatory measures. It is part of a deliberate step away from prescriptive regulation and it passes greater responsibility to the food industry for food safety matters.

The Australian Retailers' Association suggests that, 'where the implications for non-compliance are not dangerous to public health or the community, or irreversible, then prescriptive regulations should be removed.'

The BIE study on agri-food notes that survey respondents reported changes to food standards and regulations have resulted in cost increases. These costs are related to inspection services provided by the Australian Quarantine Inspection Service as well as costs related to investment in new plant and equipment in order to meet changes to regulations.

Attempts are now underway by the Commonwealth, State and Territory governments to introduce quality management systems (QMS) into food inspection and food safety with the development of national food hygiene regulations for the retail sector and new arrangement for meat processing establishments. There is agreement by Health Ministers that ANZFA, in consultation with the States and Territories, should develop a national food hygiene standard. This arrangement will replace the existing and inconsistent hygiene arrangements in each State and Territory which are sometimes augmented by Local Government by laws relating to food premises. QMS and risk assessment can be viewed as viable alternatives to prescriptive regulation which can provide relief from regulatory compliance costs to small business.

Governments should change their regulatory focus by first stripping away unnecessary regulation to avoid duplication and inconsistencies which can arise from the application of prescriptive legislation and risk assessment processes.

An efficient food regulation system should exhibit three features:

- uniform standards;
- uniform compliance and enforcement activity; and
- education and training initiatives.

Uniform standards have been largely achieved. There is some way to go to achieving the other two criteria.

National enforcement strategy

There is no nationally consistent enforcement strategy. However, ANZFA has been successful in gaining the agreement of the States and Territories to develop a national surveillance strategy. This initiative is under development and it will take some time to finalise. It requires close cooperation of the States and Territories and by Local Government and agreement on appropriate resourcing arrangements.

The existing surveillance and enforcement arrangements fall short of what is required in a potentially high risk area. States have, however attempted to improve food regulation in difference ways. For example, NSW has moved away from centralised enforcement strategies, while Queensland is moving towards a more centralised approach. The interpretation of regulations at the Local Government level needs to be addressed by the States to ensure greater consistency of approach.

The National Meat Association commented that:

> 'Another difficulty for small business operators is that often, at local government level, there are varying and even conflicting interpretation of regulations. For example, there is often inconsistency in requirements for construction fitout of meat retail premises. One NSW council may require that all internal walls should be tiled to a specific height, while another NSW council may require another material on the wall for the entire internal height. This does not create a level playing field for similar businesses within a State and can be a major cost burden depending in location.'

Review of legislation

A review of the ANZFA's legislation is scheduled under the Commonwealth's National Competition Review Program for 1998-99. Given the importance of the potential impact of food regulation and its enforcement to small business, this review should commence sooner with a view to significantly rationalising the number of regulatory agencies.

Recommendation 33

That a comprehensive review of the regulatory burden imposed on the food industry and of the surveillance and enforcement roles and responsibilities of the various spheres of Government be undertaken. The terms of reference to include regulation reform, enforcement and compliance, packaging and labelling, inspection of food premises and standards setting.

Implementation strategy

The Council of Australian Governments (COAG) to request the Australian New Zealand Food Standards Council (ANZFSC) to establish a working group of officials to review the current system of food regulation with a view to reduce significantly the number of regulatory agencies.

The working group of officials to consist of industry association representatives, small business owner operators, consumer association representatives, representatives of enforcement agencies, Local Government officials and representatives from the Commonwealth, State and Territory governments. ANZFSC to report to COAG by 30 June 1997 on priorities for regulation reform in the food industry.

Chemicals

Regulation of chemicals is based on two national schemes of registration and assessment. Agricultural and veterinary chemicals are administered by the National Registration Authority, and Worksafe Australia administers industrial chemicals. Aspects of the assessment process also involve the Commonwealth Department of Health and Family Services and the Environmental Protection Agency. The Commonwealth, State and Territories share responsiblility for enforcing requirements for the storage and use of chemicals.

Industrial chemicals

The *Industrial Chemicals (Notifications and Assessment) Act 1989* provides for a scheme to assess the risks to workplace health and safety, public health and the environment associated with the importation, manufacture or use of industrial chemicals.

The National Industrial Chemicals Notification and Assessment Scheme (NICNAS) is administered within Worksafe Australia. Under the scheme, manufacturers and importers of industrial chemicals are required to prepare notification statements, and to obtain either a permit or an assessment certificate, before introducing new chemicals to Australia. Existing chemicals are selected for notification on a priority basis, based on their occupational health and safety, public health or environmental risks.

An industrial chemical includes chemicals used in industry such as dyes, solvents plastics and photographic chemicals. NICNAS also registers and assesses chemicals used in the home such as paints, cleaning agents and cosmetics.

Agricultural and veterinary chemicals

The National Registration Authority for Agricultural and Veterinary Chemicals (NRA) is responsible for the evaluation and assessment of agricultural and veterinary (agvet) chemicals.

Registration is required for a large range of products that kill pests and control disease. These products include herbicides, fungicides and insecticides used for crop protection, in the garden, and for veterinary and medical treatments.

Following the application to register a product, the NRA undertakes a detailed independent assessment of all data on the chemical. This is to ensure that quality, safety and efficacy standards are met and that the product will have no unacceptable adverse impact on public health, occupational health and safety, trade and the environment.

NRA regulations provide that after registration, products are subject to ongoing scrutiny and compliance. This involves inspections of premises that store or supply agvet chemicals to check that products and labels are registered; that the container is approved and carries correct information; and that the product is stored correctly. Compliance involves testing products against approved standards.

Impact on small business

Small business is concerned about the assessment procedures for chemicals, the dissemination of information about the chemicals, costs of assessment and registration, labelling and lack of consistency and coordination between chemical assessment schemes.

The cost of assessment and registration of both schemes restricts the entry of small innovative manufacturers who wish to market chemicals less hazardous than those currently available.

Where such disincentives exist the effectiveness of the regulation should be questioned. One submission to the Task Force stated:

> 'Some household insecticides were highly effective, made by smaller innovative manufacturers, were not harmful to the environment (being pyrethrum based) or users (except asthmatics who cannot use pyrethroids) but were not registered under the NRA because the costs were more than the total value of the product produced. They are now being replaced by high priced more dangerous pesticides made by multi-nationals who can afford to register with the NRA.'

Regulation that aids the protection of the community through assessment of the risks to occupational health and safety, public health and the environment are legitimate and have a significant public benefit. However, where the regulations impede firms from participating in the industry or prevent the development of low risk products, the legislative arrangements should be re-focused to ensure that such benefits to the community can be achieved.

Apart from costs, other issues identified in submissions to the Task Force about the operation of NRA and the NICNAS scheme are:

- label approval processes and requirements;
- paperwork required to provide the information sought by the agencies; and
- duplication of the roles and responsibility of the agencies.

Changes proposed to NICNAS

The NICNAS scheme was reviewed in 1994-95 and the proposed move to full cost recovery was reviewed in June 1995 by an independent consultant.

As a result of these reviews, NICNAS will be changed to overcome many of the concerns raised by small business. Significant in this area are new proposals for

registration fees (currently under consideration by Government) which will have a particular focus on small business.

The intention of the proposals is to focus on encouraging the entry of non -hazardous chemicals by reducing assessment times and overcoming unnecessary assessment requirements for low risk chemicals. Other measures being pursued include electronic lodgement of notifications.

Consistency and coordination

On the issue of duplication and overlap between the two agencies, it appears that the dispersion of registration, assessment, and labelling of chemicals increases the cost of complying with the legislation.

The Industry Commission in its 1995 report on Work, Health and Safety argued that a single chemical assessment body would:

- provide greater integration of policy advice, taking into account the risks of a chemical to OH&S, public health and the environment;
- provide an integrated forum for addressing the needs of the users of chemical assessments, including State and Territory governments, workers, industry and community groups;
- increase the cost effectiveness of chemical assessments, since coordination would occur in-house instead of externally;
- eliminate the scope for duplication of assessment, to the extent that there are difficulties in classifying a particular substance to a single assessment scheme; and
- ensure that community funding provided for different types of chemical assessments is commensurate with the risks from a particular chemical.

The Task Force has not formed a definite view on the merits of the Industry Commission position but, based on that assessment and the concerns raised by small business, believes a more detailed examination of chemical assessment arrangements is warranted.

Recommendation 34

That the Commonwealth Government send a reference to the Productivity Commission to inquire into and report by 31 December 1997 on the most efficient and effective to institutional and regulatory arrangements for industrial, agricultural and veterinary chemicals.

Implementation

The Treasury to develop the terms of reference and the Commonwealth Government to refer the issue to the Productivity Commission for inquiry and report by 31 December 1997. The terms of reference should include the following issues:

- the level of duplication in the existing arrangements for the assessment, registration and labelling of chemicals;
- the extent to which cost recovery requirements restrict the entry of, or exclude existing, innovative small manufacturers from market participation;
- fee structures, having regard to the public benefit of the regulation;
- the compliance burden on small business and the extent to which it is a barrier to enter to the industry; and
- an appropriate methodology for assessing the impact of full or partial cost recovery by regulatory bodies and determining criteria against which proposals for full cost recovery can be assessed.

Pharmacy industry

Pharmacies are regulated and licensed at the State level, but the dispensing of pharmaceutical benefit prescriptions, is subject to Commonwealth regulation. Under the terms of the 1995 five year agreement between the Pharmacy Guild and the Commonwealth Government, the parties have undertaken to streamline administration of the Pharmaceutical Benefits Scheme. Changes should be aimed at a reduction in paperwork and faster processing of payments, which will also assist cash flow management.

At present, pharmacists lodge their payment claims for dispensing prescriptions that are covered under the Pharmaceutical Benefits Scheme with the Health Insurance Commission primarily on a monthly basis. They must lodge the original copies of all such prescriptions and repeat supply documents as well as provide a computer disk that contains a summary report on the prescriptions. The Health Insurance Commission then processes this data and determines the amount payable to the pharmacist.

The system of claim lodgement and processing for payment can be transformed with the greater use of computer technology. The optimum solution would be to introduce an on-line interactive, real time system that would provide the following advantages:

- the pharmacist would be better placed to ascertain the eligibility of the patient for subsidised prescriptions and so the need for eight concessional PBS access cards would be removed ;
- there would be a complete record of all prescriptions issued to each individual, across pharmacies, and the pharmacist would know whether the patient had reached the safety-net threshold; and
- the charge to the patient and the payment by the Commonwealth would be calculated and the latter amount would be direct credited to a specified bank account nominated by the pharmacist shortly after supplying the medication.

The fully interactive solution is highly attractive and is technologically feasible. The potential benefits would be delivered across programs, across Commonwealth-State administrative responsibilities and include other institutions such as hospitals. The system could also potentially involve non-claim prescriptions and certain over-the-counter medications.

The House of Representatives Standing Committee on Family and Community Affairs is currently inquiring into health information management and telemedicine and its findings will impact on policy views on a fully interactive eligibility and payment system for pharmacists.

To capitalise on business management advances already integral to pharmacy dispensary management systems, movement towards an improved prescriptions processing system is feasible. Such a system would use modem based technology with more reliance upon the electronic prescription record and less dependant upon paper. The system would include, for the pharmacist, access to patient entitlement to PBS using a personalised patient card.

Provision was made in the 1996 Budget for the use of the Medicare Card as an indicator for general level access to the PBS. This will become effective at 1 January 1997.

The Commonwealth needs to explore the costs to government and the benefits to pharmacies of a more efficient processing and payment system. One estimate puts the cost of developing and implementing the scheme at about $15m or $3 000 for each pharmacist. The benefits to a pharmacy include faster turnaround of data and payment, considerable reduction in paper handling, instant updating of changes to concessional eligibility rules and immediate verification of a patient's eligibility (the pharmacist meets the cost of errors in assessing eligibility at present).

If pharmacists value these benefits, then an option is to seek a fee payment of $1 000 per year for three years to offset the implementation cost. Administrative savings will also accrue from the Health Insurance Commission when the scheme is operational.

Recommendation 35

That the Commonwealth Government introduce on-line electronic prescription information, claim lodgement and payment processing for the Pharmaceutical Benefits Scheme during 1997-98.

Implementation strategy

The Health Insurance Commission, in consultation with the pharmacy industry, to develop a proposal for consideration by Government in the 1997-98 Budget context.

Long-day centre-based child care[8]

The child care industry has been one of the fastest growing service industries in Australia in recent decades.[9] Small businesses in the child care sector agree that regulations to ensure acceptable minimum standards are appropriate. However, the long-day child care industry is highly regulated with all spheres of Government playing a role. Among other things, Local governments determine where child care centres can be located and set out hygiene standards for the building. There is legislation in each State and Territory setting minimum standards such as the staff-to-child ratio, qualifications of staff, space requirements per child, and health and safety requirements.

The National Standards for Centre Based Long Day Care have been developed to encourage national consistency in standards across all States and Territories. These standards cover: facilities (for example, space, nappy change areas and sleeping areas), health and safety; curriculum and programming; child and staff ratios; and administrative functions. The National Standards are designed to ensure acceptable levels of facilities and care are maintained but as yet they have not been implemented in any jurisdiction.

The Commonwealth Government is involved in monitoring quality of care outcomes of child care through the Quality Improvement and Accreditation Scheme. The Scheme is administered by the National Child Care Accreditation Council (NCAC) and is a quality assurance scheme that strives for the highest level of care. If centres wish to accept children whose parents receive Commonwealth Government assistance with fees[10] they must participate in the accreditation scheme.

As child care assistance payments form a significant part of fee receipts, meeting the accreditation guidelines is crucial. The scheme therefore represents a form of regulation with which nearly all centres must comply.

To be accredited a centre must comply with 52 principles of a specified standard. Often the principles specify a set of sub-principles. Some of the principles are easily measurable, however, many require subjective judgements. For example, staff must be responsive to children's feelings and needs; staff must create a pleasant atmosphere; toileting and nappy changing procedures must be a positive experience; and meal times must be pleasant occasions. If a centre meets the principles, the degree to which they meet them determines whether their accreditation is reviewed annually, bi-annually, or every three years.

Submissions received from the private sector of the child care industry criticised the Quality Improvement and Accreditation Scheme and the way the national standards were developed and are being implemented. The frustration felt by small business child care operators can be summed up from this comment by a member of the Child Care Centre Association of Qld Inc.

---

[8] Unless otherwise stated 'long-day child care' refers to all formal centre-based child care and not family day care or informal arrangements that are not regulated.

[9] EPAC, Child Care Task Force Interim Report, Future Child Care Provisions in *Australia, 1996*, Canberra.

[10] Registration with the NCAC is sufficient to be eligible for assistance in the developmental phases of the scheme.

> 'Contrary to the popular public perceptions of finger-painting, play dough and the "hokey-pokey", child care is not about children, quality care or even a healthy return on your investment. Instead, it is an endless morass of red tape and paperwork. To be allowed to open our doors and stay open, there are volumes of Federal, State and Local Government legislation that apply. From the beginning of the planning and construction of a child care centre, we begin to be administered by local council by-laws and building inspectors and health inspectors.'

There are currently three major review processes underway on child care, however these have not allayed industry criticism of the regulatory framework. The previous government initiated a review of the child care accreditation scheme which has reported to the Department of Health and Family Services. A Council of Australian Governments' review of roles and responsibilities for child care between Commonwealth, States and Territories is expected to report next year as is a study on long-term child care needs by the Economic Planning Advisory Commission.

Effect on small business

While studies vary on the cost of the Quality Improvement and Accreditation Scheme to centres, the Australian Child Care Confederation claims they amount to around $10 a week a child and represent a significant issue for the continued viability of proprietors and for the cost of care. A Cooper & Lybrand study claims this cost is around $2 per week.

Whatever the amount, child care centres are being subjected to additional cost because of an accreditation system which is in effect quasi-regulation that has not been subject to any detailed public cost and benefit analysis. Centres that do not participate in the scheme miss out on a significant share of the child care market.

Removing the layers of government

The role of regulating child care quality (that is, ensuring child care meets appropriate minimum standards) should lie with State and Territory governments, backed by national standards. The Commonwealth should not have a regulatory or quasi-regulatory role in this area and should not be in a position to deny access to a significant sector of the market through a system based on maximum standards where acceptable minimum ones exist at the State level.

Best practice standards can play an important role in promoting excellence and consumer choice. In many industries, firms' voluntarily adhere to such standards to better market their product or services. Accreditation under the QIAS could serve such a purpose. To meet this objective the link between accreditation and eligibility for children receiving fee relief would need to be broken. State regulation would remain to provide safeguards to ensure minimum community standards are upheld and could be the basis for fee relief.

This approach has a number of advantages. It would reduce compliance costs imposed on child-care operators. These lower cost should mean lower prices for child care. People who want the additional assurance of QIAS accreditation would be free to make that choice. Finally, it would also offer potential savings in Commonwealth administration.

Recommendation 36

That the Commonwealth withdraw from the regulation or quasi-regulation of child care leaving it a State/Territory responsibility and that the link between participation in the Quality Improvement and Accreditation Scheme and Childcare Assistance payments be removed. The Quality Improvement Accreditation Scheme, if maintained, should be purely voluntary as a guide to parents.

Implementation strategy

The current Council of Australian Governments working group be charged with developing mechanisms to implement minimum consistent standards for child care in line with the National Standards for Centre Based Long Day Care to be agreed with the States and Territories as soon as possible. The Commonwealth should sever the link between participation in the accreditation scheme and a centres' eligibility to take children receiving assistance in the context of the 1997-98 Budget.