



Small Business
Development Corporation



Your ref: [REDACTED]
Our ref: [REDACTED]

Mr David Smith
Director General
Department of Mines, Industry Regulation and Safety
Mineral House
100 Plain Street
EAST PERTH WA 6004



Dear Mr Smith

STREAMLINE WA – SMALL BUSINESS LENS

I refer to the meeting of public sector agencies held on 6 March 2019 to discuss the Streamline WA initiative.

I appreciated the opportunity to meet with you and Mr Mike Rowe as co-Chairs of the Streamline WA Steering Committee, along with a number of other Directors General and senior officials from across the State public sector.

It is particularly pleasing that the importance of small business has been recognised as a key area of focus of Streamline WA, and that advice and guidance from the Small Business Development Corporation (SBDC) is actively being sought.

I noted that the meeting supported dropping the proposed “small business work stream” in favour of a small business focus or “lens” being applied across all areas of interest. From the SBDC’s considerable insights into regulatory reform, it is also reassuring that Streamline WA is especially focused on the practices and culture of regulators (including risk-based decision making), reducing duplication and overlap, and digitisation of information and administrative processes and systems.

In relation to the regulation of small business activities, the SBDC considers that an important starting point is to establish better practice guiding principles for regulatory reform. To this end, the SBDC has developed eight key principles for better practice regulatory behaviour, modelled on leading practices identified by the Productivity Commission in its 2013 report, *Regulator Engagement with Small Business*, and the United Kingdom’s Regulators’ Code (2014). Please refer to Attachments 1 to 3 for further details of these better practice principles.

In our 2015 report *Identifying regulatory burden on small business – café case study*, the SBDC also developed an industry ranking tool to determine regulatory mapping case studies as part of Treasury's 90-Day Regulatory Mapping and Reform initiative. This matrix could be adopted by Streamline WA as a way of determining priority reforms areas – refer to Attachment 4.

By working collaboratively and strategically across government, I see Streamline WA being a powerful opportunity to transform business regulation and administrative practice for the betterment of the State's small business sector.

If you would like more information on the attachments or further reform insights, please contact me on 6552 3301 or Martin Hasselbacher, Director Policy and Advocacy on 6552 3302.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Eaton', with a stylized flourish at the end.

David Eaton
SMALL BUSINESS COMMISSIONER

1 April 2019

Attachments (4)

cc: Mr Mike Rowe
Director General
Department of Water and Environmental Regulation

SBDC's 8 key principles for better practice regulatory behaviour**1. Regulate as a last resort**

If regulation is the only option that can address the problem, consult with small businesses and limit the costs and processes they have to go through.

2. Take a risk-based, flexible approach to regulation

Ensure that decisions about the nature and level of compliance obligations and enforcement measures reflect the relative risks posed by the business activity.

3. Communication is key

Publish clear, easy to understand information across a variety of channels and make it easy for small businesses to contact you.

4. Minimise information collection

Only collect the information that is truly necessary, adopt data sharing practices where possible, and make it easy for small businesses to submit required information

5. Be helpful

Adopt an approach focused on helping small businesses understand their obligations and meet their compliance requirements. Create an environment where small businesses are comfortable in seeking advice without fear of enforcement action, and are confident in the advice they receive.

6. Coordinate and cooperate

Work with other regulators to reduce the cumulative burden of regulation and minimise conflicting advice. Consider mutual recognition, joint or delegated inspections.

7. Be open and transparent

Publish timeframes, fee schedules, your compliance approach and customer service charter. Provide clear feedback on the rationale for decisions, and provide an avenue for the resolution of disputes.

8. Culture is critical

Officers should aim to facilitate, educate and assist small businesses to meet their obligations rather than being compliance or penalty-focused. Agencies should meet their published timeframes and standards and strive for continuous improvement.

Productivity Commission, Final Report - Regulator Engagement with Small Business**1. Culture is critical**

- 1.1. Governments should recognise the fundamental importance of regulator culture in influencing engagement practices. Working closely with regulators, they need to ensure that appropriate transparency, accountability and capacity building mechanisms are in place to foster the adoption of a culture — reflected in the actual engagement practices of all staff — that:
- promotes a facilitative and educative posture towards business which seeks to achieve regulatory objectives without unnecessarily constraining business activity and growth; and
 - embraces continuous improvement, including critical evaluation of existing practices and opportunities to learn from the experience of other regulators.

2. Get the regulation right, provide sufficient resourcing and guidance

- 2.1. When designing regulation, all governments should apply agreed regulatory impact analysis principles, including evaluation of: intended approaches to regulation implementation, monitoring and enforcement; and the likely impacts on business.
- 2.2. Governments should ensure that regulators have sufficient resourcing to enable them to administer and enforce regulation effectively and efficiently. This includes ensuring regulators have the capacity to make appropriate use of educative and facilitative engagement practices. Clear guidance needs to be provided by government on enforcement priorities, especially where more severe resource constraints cannot be addressed in the short term.
- 2.3. Governments should explicitly acknowledge that some risks cannot be eliminated and that regulators should operate independently, and without undue interference from government, in implementing risk management approaches. These acknowledgements should be incorporated in a public statement of governments' expectations of their regulators.

3. Proportionate compliance obligations and enforcement responses

- 3.1. Regulators should adopt a risk based approach, ensuring that decisions about the nature and level of compliance obligations and enforcement responses consistently reflect an assessment of the relative risks posed by business activities. While the appropriate degree of sophistication will vary depending on the types of risks and businesses regulated, risk based approaches should generally be formalised and be made known to businesses.
- 3.2. Governments should ensure that regulators have access to a sufficient range of enforcement tools to enable them to respond to compliance breaches flexibly and in a graduated, fair and proportionate way.
- 3.3. To increase voluntary compliance and reduce compliance costs for small business, regulators should ensure - subject to the overarching goal of maximising community net benefits - that:
- they are adopting an educative and facilitative approach to achieving compliance
 - licensing, registration, and other processes and requirements are as simple and streamlined as possible — for example licences are rationalised and less frequent or comprehensive inspections are required for low risk businesses
 - they cooperate and coordinate to reduce the cumulative burden of regulation, for example through mutual recognition of approvals and permits or joint or delegated inspections

- existing industry and other third party certification and inspection processes are recognised when determining compliance requirements for business.

Governments should ensure that there are no unnecessary legislative or other constraints on the capacity of regulators to adopt such strategies where appropriate.

4. A tailored approach for small business

4.1. Governments and regulators should provide different treatment for small business when net benefits to the community would be enhanced. In determining whether such treatment is appropriate, consideration should be given to:

- the likely change in compliance outcomes and any risk to regulatory objectives
- the potential to reduce unnecessary compliance costs for small business, including any transitional costs that might affect the appropriate pace of implementation of regulatory requirements
- the administrative cost, complexity and potential for resulting distortions to business behaviour from altering the content or delivery of regulation for small businesses.

Before providing for different treatment in the design of regulation, governments should undertake formal regulatory impact analysis, including consultation with small businesses and the community.

4.2. Regulators should, as far as possible, enable small businesses to more effectively and easily manage their own compliance. Given small businesses generally have less capacity to distil regulatory requirements and higher compliance cost structures, regulators should, where possible:

- remove any unnecessary complexity in regulatory requirements and associated guidance material
- set outcome based regulatory requirements, but also offer detailed guidance about acceptable solutions including, where feasible, offering a compliance pathway which, if fully implemented, would deem businesses compliant with requirements.

4.3. Governments should not impose upon regulators a single definition of small business as this could lead to inflexibility and higher costs for some businesses and for the community more generally. Policy makers and regulators are best placed to define small business in ways that are practical and appropriate for their regulatory area.

5. Effective communication practices

5.1. Regulators should ensure information and advice on regulatory requirements is brief, readily available, reliable and provided in user friendly language and formats. To cater for the diversity of small businesses, a multi-channel engagement strategy should be employed.

- Where the benefits are likely to outweigh the costs, information and advice should be tailored to reflect the compliance capacities of small businesses, including the needs of business owners from non-English speaking backgrounds.
- Regulators should provide email and call-back services wherever possible to assist those small businesses that have difficulties accessing regulator helplines and call centres.
- Governments should recognise and support progress made by regulators in making their websites and online engagement practices more user friendly.

5.2. Regulators should ensure data and information requested of business are:

- no more than is needed to regulate effectively
- tailored around data businesses already collect
- not already collected by another part of government.

Regulators should make it as easy as possible for small business to complete and lodge forms, including through the use of electronic lodgement.

5.3. Regulators should ensure that effective consultation processes are in place that allow small businesses to provide feedback, at low cost, on: the source and magnitude of compliance burdens; how well the regulation is achieving objectives; and any unintentional adverse impacts, including interactions between different regulations and cumulative effects.

To facilitate this, governments should ensure that already agreed principles for effective consultation, including those for small business recently endorsed by COAG's Business Regulation and Competition Working Group, are adhered to by regulators.

6. Processes that are timely, transparent and accountable

6.1. Regulators should undertake their regulatory activities in a timely manner, so as to minimise the cost of delay for businesses. In addition to the use of statutory time limits, wherever possible, regulators should:

- commit publicly (for example in service charters or annual reports) to target timeframes for key processes
- report on their performance in meeting targets
- routinely communicate expected timeframes to businesses in relation to individual applications
- adopt other measures to improve timeliness, such as tracking of referrals to other agencies and the use of pre-lodgement meetings.

6.2. Regulators should ensure there is transparency and accountability in decision making and in the use of discretion, in order to minimise uncertainty and the risk of corruption or the inappropriate treatment of one business relative to another. Generally, this should include:

- formal documentation and publishing of compliance and enforcement strategies and key decision making processes
- documenting enforcement decisions with reasons
- publication, subject to meeting any confidentiality and privacy requirements, of decisions with broader implications or with particular educational or deterrent value
- provision of a client service charter detailing what business can expect in their interaction with the regulator
- ensuring all decisions are potentially subject to review and businesses have access to appropriate dispute resolution mechanisms.

6.3. Regulators should ensure that processes for lodging complaints and seeking review of decisions are readily accessible by small businesses. Appropriate mechanisms would have a degree of independence from the compliance monitoring operations of the regulator, provision for businesses to obtain reasons for decisions taken, and processes that allow regulators to learn from complaints.

Further, governments should ensure that there are independent, low cost mediation services in place to resolve disputes and misunderstandings between small businesses and regulators.

- As a minimum, regulators should be required by legislation or ministerial direction to cooperate with the mediation agency and provide whatever information the agency
- Mediation services should be provided by Small Business Commissioners where currently in place. Such processes should complement (not replace) existing statutory and administrative rights to have decisions formally reviewed and the functions performed by offices of the ombudsman.

7. Continuous improvement in engagement

7.1. Governments and regulators should ensure mechanisms are in place to strengthen the incentives for continuous improvement and the wider adoption of leading practice engagement approaches. This includes:

- ongoing internal, and periodic independent, evaluation of the effectiveness and costs of regulator engagement strategies
- facilitating the efficient sharing of information, experiences and lessons learnt, for example, through the use of forums of regulators or 'communities of practice'
- requiring regulators, including regulatory functions embedded within departments, to monitor and regularly report on their performance — including measures of effectiveness in achieving outcomes and reducing the compliance burden imposed on business (and small business in particular)
- a commitment to common, whole of government, performance measures that can be used to facilitate, where appropriate, comparisons of regulator performance, both within and across jurisdictions
- development of better practice regulator-business engagement principles that can be used as a guide for regulators, including to inform the development of performance indicators.

An appropriate body in each jurisdiction should monitor and periodically report on regulators' progress in implementing engagement practices that are consistent with the agreed principles. Such reporting would also provide an opportunity to highlight innovative practices that could be adopted more widely.

7.2. To address gaps in staff skills and capacities regulators should:

- implement policies that focus on the recruitment and retention of staff with the appropriate industry knowledge and mix of enforcement, investigative and communication skills
- ensure the provision of appropriate training and written guidance for staff, including on the rationale for risk based enforcement and the appropriate use of discretion, and monitor regulator practices for consistency with such guidance
- facilitate opportunities for staff to enhance their understanding of business practices and the nature and magnitude of the compliance costs their engagement approaches impose on small businesses
- implement cooperative arrangements with other regulators that facilitate the sharing of knowledge and resources.

UK Regulators' Code¹**1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow**

- 1.1. Regulators should avoid imposing unnecessary regulatory burdens through their regulatory activities and should assess whether similar social, environmental and economic outcomes could be achieved by less burdensome means. Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.
- 1.2. When designing and reviewing policies, operational procedures and practices, regulators should consider how they might support or enable economic growth for compliant businesses and other regulated entities, for example, by considering how they can best:
 - understand and minimise negative economic impacts of their regulatory activities;
 - minimise the costs of compliance for those they regulate;
 - improve confidence in compliance for those they regulate, by providing greater certainty; and
 - encourage and promote compliance.
- 1.3. Regulators should ensure that their officers have the necessary knowledge and skills to support those they regulate, including having an understanding of those they regulate that enables them to choose proportionate and effective approaches.
- 1.4. Regulators should ensure that their officers understand the statutory principles of good regulation and of this Code, and how the regulator delivers its activities in accordance with them.

2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views

- 2.1. Regulators should have mechanisms in place to engage those they regulate, citizens and others to offer views and contribute to the development of their policies and service standards. Before changing policies, practices or service standards, regulators should consider the impact on business and engage with business representatives.
- 2.2. In responding to non-compliance that they identify, regulators should clearly explain what the non-compliant item or activity is, the advice being given, actions required or decisions taken, and the reasons for these. Regulators should provide an opportunity for dialogue in relation to the advice, requirements or decisions, with a view to ensuring that they are acting in a way that is proportionate and consistent.

This paragraph does not apply where the regulator can demonstrate that immediate enforcement action is required to prevent or respond to a serious breach or where providing such an opportunity would be likely to defeat the purpose of the proposed enforcement action.
- 2.3. Regulators should provide an impartial and clearly explained route to appeal against a regulatory decision or a failure to act in accordance with this Code. Individual officers of the regulator who took the decision or action against which the appeal is being made should not be involved in considering the appeal. This route to appeal should be

¹ This Code came into statutory effect on 6 April 2014 under the *Legislative and Regulatory Reform Act 2006* (UK) and can be accessed via: <https://www.gov.uk/government/publications/regulators-code>.

UK Regulators' Code¹

publicised to those who are regulated.

- 2.4. Regulators should provide a timely explanation in writing of any right to representation or right to appeal. This explanation should be in plain language and include practical information on the process involved.
- 2.5. Regulators should make available to those they regulate, clearly explained complaints procedures, allowing them to easily make a complaint about the conduct of the regulator.
- 2.6. Regulators should have a range of mechanisms to enable and regularly invite, receive and take on board customer feedback, including, for example, through customer satisfaction surveys of those they regulate.

3. Regulators should base their regulatory activities on risk

- 3.1. Regulators should take an evidence based approach to determining the priority risks in their area of responsibility, and should allocate resources where they would be most effective in addressing those priority risks.
- 3.2. Regulators should consider risk at every stage of their decision-making processes, including choosing the most appropriate type of intervention or way of working with those regulated; targeting checks on compliance; and when taking enforcement action.
- 3.3. Regulators designing a risk assessment framework, for their own use or for use by others, should have mechanisms in place to consult on the design with those affected, and to review it regularly.
- 3.4. Regulators, in making their assessment of risk, should recognise the compliance record of those they regulate, including using earned recognition approaches and should consider all available and relevant data on compliance, including evidence of relevant external verification.
- 3.5. Regulators should review the effectiveness of their chosen regulatory activities in delivering the desired outcomes and make any necessary adjustments accordingly.

4. Regulators should share information about compliance and risk

- 4.1. Regulators should collectively follow the principle of "collect once, use many times" when requesting information from those they regulate.
- 4.2. When the law allows, regulators should agree secure mechanisms to share information with each other about businesses and other bodies they regulate, to help target resources and activities and minimise duplication.

5. Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply

- 5.1. Regulators should provide advice and guidance that is focused on assisting those they regulate to understand and meet their responsibilities. When providing advice and guidance, legal requirements should be distinguished from suggested good practice and the impact of the advice or guidance should be considered so that it does not impose unnecessary burdens in itself.¹
- 5.2. Regulators should publish guidance, and information in a clear, accessible, concise format, using media appropriate to the target audience and written in plain language for the audience.
- 5.3. Regulators should have mechanisms in place to consult those they regulate in relation to the guidance they produce to ensure that it meets their needs.

UK Regulators' Code¹

- 5.4. Regulators should seek to create an environment in which those they regulate have confidence in the advice they receive and feel able to seek advice without fear of triggering enforcement action.
- 5.5. In responding to requests for advice, a regulator's primary concerns should be to provide the advice necessary to support compliance, and to ensure that the advice can be relied on.
- 5.6. Regulators should have mechanisms to work collaboratively to assist those regulated by more than one regulator. Regulators should consider advice provided by other regulators and, where there is disagreement about the advice provided, this should be discussed with the other regulator to reach agreement.

6. Regulators should ensure that their approach to their regulatory activities is transparent

- 6.1. Regulators should publish a set of clear service standards, setting out what those they regulate should expect from them.
- 6.2. Regulators' published service standards should include clear information on:
 - how they communicate with those they regulate and how they can be contacted;
 - their approach to providing information, guidance and advice;
 - their approach to checks on compliance, including details of the risk assessment framework used to target those checks as well as protocols for their conduct, clearly setting out what those they regulate should expect;
 - their enforcement policy, explaining how they respond to non-compliance;
 - their fees and charges, if any. This information should clearly explain the basis on which these are calculated, and should include an explanation of whether compliance will affect fees and charges; and
 - how to comment or complain about the service provided and routes to appeal.
- 6.3. Information published to meet the provisions of this Code should be easily accessible, including being available at a single point on the regulator's website that is clearly signposted, and it should be kept up to date.
- 6.4. Regulators should have mechanisms in place to ensure that their officers act in accordance with their published service standards, including their enforcement policy.
- 6.5. Regulators should publish, on a regular basis, details of their performance against their service standards, including feedback received from those they regulate, such as customer satisfaction surveys, and data relating to complaints about them and appeals against their decisions.

Decision matrix for selecting small business industries

