



Australian Government

**Australian  
Small Business  
Commissioner**

8 July 2015

Dr Warren Mundy  
Presiding Commissioner  
Business Set-up, Transfer and Closure  
Productivity Commission  
GPO Box 1428  
CANBERRA ACT 2601

Dear Dr Mundy

**Re: Draft Report – Business Set-up, Transfer and Closure**

I am writing to provide some observations on the Productivity Commission's *Draft Report on Business Set-up, Transfer and Closure*. My observations are in addition to my earlier submission on the *Issues Paper* (February 2015) and are based on my experience and the feedback my Office has received from small business stakeholders. I also draw your attention to our submission to the White Paper on the Reform of Australia's Tax System where we deal with various tax issues in some depth.<sup>1</sup>

Firstly, I wish to congratulate the Productivity Commission for its work completed to date. From a small business and family enterprise perspective, I am encouraged by the objectives of the Review to reduce the impediments faced by those setting up, transferring or closing a business in Australia. In particular, we strongly support:

- Regulators having the ability to exempt businesses, for a fixed period, from particular regulatory requirements that deter entry but where exemption does not threaten consumer, public health and safety, or environmental outcomes (Draft Recommendation 8.1).
- Governments continually reviewing regulation to ensure relevance, effectiveness and efficiency (Draft Recommendation 8.1).
- Governments ensuring flexible and adaptive regulation and regulators in the face of change, together with appropriate funding for the task (Draft Recommendation 8.1).
- Governments providing information and assistance on commercial matters (and including through mentoring, skills and training) where there is a market failure in private provision (Draft Recommendation 11.1). The *Draft Report* also notes that:

"Governments should provide accessible information about all their regulations, processes and programs... Government information portals can help signpost individuals and businesses as to where to find this information."<sup>2</sup>

<sup>1</sup> Our submission is available at <http://bettertax.gov.au/files/2015/06/Australian-Small-Business-Commissioner.pdf>

<sup>2</sup> *Draft Report*, p. 269.

I would add that where private provision is available, governments still have a core role in directing businesses to the availability of such services. This approach would similarly apply to Draft Recommendation 12.3 where there may be a role for government in providing general guidelines/directions on business exit (dealt with below in greater detail).

- Aligning the personal and corporate insolvency rules. Chapter 13 of the *Draft Report* provides that, although the dual insolvency framework should be retained, the Government “...should aim to align the requirements under personal and corporate insolvency where possible and practicable”.<sup>3</sup> This would mean that recommended reforms in either part of the framework would, where possible, be appropriately reflected in the other part.
- Reform of the corporate insolvency regime to improve options when companies are undergoing difficulties, such as to facilitate restructuring through voluntary administration, provision of a ‘safe harbour’ to allow company directors to explore restructuring options without liability for insolvent trading, and simplified liquidation for businesses with little or no recoverable assets (Draft Recommendations 15.1ff).
- Continued removal of barriers to small business engagement by reforming government procurement practices (such as removal of complex and prescriptive tender documentation). The *Draft Report* links its consideration of this area to the Harper Review on competition policy that recommended that all governments should review their procurement practices (endorsed in paragraph 10.3 of the *Draft Report*).

There are also other areas of the *Draft Report* that I support but address in greater detail below, relating to regulation and regulators, access to finance and family enterprise succession.

## **Regulation and regulators**

I agree with Draft Recommendation 3.1 that governments should promptly implement the recommendations from the Productivity Commission’s previous report on *Regulator Engagement with Small Business (2013)*, particularly:

- Regulators should ensure that they are adopting an educative and facilitative approach, processes and requirements are as simple and streamlined as possible, and the cumulative regulatory burden is reduced (Recommendation 7).
- Governments and regulators should tailor their approaches for small business to reduce small business compliance costs and enable small business to easily manage their own compliance (Recommendations 8 and 9).
- Small business should have readily accessible complaint and review processes, including that governments should ensure that there are independent, low cost alternative dispute resolution services to resolve disputes and misunderstandings between small businesses and regulators (Recommendation 16).

For example, the Commonwealth has already undertaken significant reforms in streamlining the process to set up a business. However, there are areas where much more can be done, such as simplifying processes that require small businesses to enter the same information multiple times and on multiple government websites/portals.

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<sup>3</sup> *Draft Report*, p.314.



## Access to Finance

Despite a number of submissions raising access to finance as a barrier to setting up a business,<sup>4</sup> the *Draft Report* concludes that generally access to finance is not a widespread and major barrier to most businesses in Australia (Draft Finding 5.1). However, it is the experience of my Office that access to finance is still an issue for some small businesses, especially start-ups. My Office is regularly informed by small businesses that businesses need to borrow against personal assets (such as the family home) and from family members and friends. Indeed, the *Draft Report* recognises that new businesses rely more heavily on personal credit cards, personal secured bank loans and other personal finance due to reliance on the presence of collateral by lending institutions.<sup>5</sup>

When applying for traditional debt finance, start-ups often struggle to demonstrate serviceability of a loan whilst they also lack business asset collateral. While such businesses may have a good business proposal, they can find it hard to substantiate this via a persuasive business plan. Lending institutions will also usually require financial history and/or cash flow projections in order to determine whether the start-up will be able to repay their debt. Due to the risk-averse nature of financial institutions, viable and profitable businesses can fail to obtain business finance from traditional commercial sources.

Non-traditional forms of lending such as peer-to-peer lending or crowd-sourced funding are still in their infancy in Australia and can be difficult for small businesses to access as they are generally more commonly aimed at tech start-ups or 'innovative' businesses.

These factors mean that small businesses are drawn to personal borrowing – for example, the *Draft Report* notes that, although it is not due to regulatory impediments, credit cards can be a “significant source of debt finance” (Draft Finding 7.2). Although this does not mean that a potential gap in the market inevitably requires government involvement to create alternative sources of finance, we draw your attention to the significant interest charges that can apply and the potential role for government in investigating systemic approaches to address the level of interest charges impacting small business. In this regard, we welcome the opening up of credit card systems to operators other than authorised deposit taking institutions (ADIs) since 1 January 2015 (referred to in Box 9.2 of the *Draft Report*). Approaches such as this may increase market competition and help resolve some of the issues that small businesses have with this form of borrowing.

## Family enterprise succession

I believe that there is a place for governments to provide general information and guidance for business and this includes stressing the importance of planning for business succession and exit. Government involvement would not be to replace the private assistance that is available through accountants, lawyers and other business advisors, but point to these (and other) sources of information and assistance and the critical role that such advice plays for small business. I see facilitating access to and provision of appropriate information as a core responsibility of governments.

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<sup>4</sup> *Draft Report*, pp.108-9.

<sup>5</sup> *Draft Report*, p.150.

For family enterprises, succession planning is critical to ensure long-term viability. A family enterprise needs to be able to integrate how its business operates today within the family's value system with how it will do so for future generations. Succession planning and the encouragement and development of the next generation are an important long-term investment for family enterprises.

To ensure the longevity and success of family enterprises, succession plans need to be put in place early. However, Draft Recommendation 12.3 provides that governments should provide information on matters like family enterprise succession only when there is a market failure in private provision. It is my view that this Draft Recommendation does not go far enough. I agree that, where there is private provision of assistance on issues like family enterprise succession, governments should not enter into the marketplace in competition with private advisors who cater for the precise needs of particular businesses. However, governments can and should still play a role in both helping businesses recognise the critical business need for good advice and alert businesses to private sector providers who can provide advice tailored to their individual circumstances.

If you would like to discuss this letter in further detail please do not hesitate to contact either myself, Dr Craig Latham or Nicci Clarke

Yours sincerely

**Mark Brennan**

Australian Small Business Commissioner

[www.asbc.gov.au](http://www.asbc.gov.au)