

Commonwealth of Australia 2013

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**Publications enquiries:**

Media and Publications

Productivity Commission

Locked Bag 2 Collins Street East

Melbourne VIC 8003

Tel: (03) 9653 2244

Fax: (03) 9653 2303  
Email: maps@pc.gov.au

**General enquiries:**

Tel: (03) 9653 2100 or (02) 6240 3200

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The Productivity Commission

The Productivity Commission is the Australian Government’s independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long term interest of the Australian community.

The Commission’s independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

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# Foreword

Regulation is an inescapable part of doing business and the way it is implemented is often as important to business and to compliance outcomes as the content of the regulation itself. Small businesses face greater challenges in understanding and fulfilling their compliance obligations than do larger businesses. By exercising discretion and choosing judiciously how regulation should be implemented, a regulator can reduce costs for small businesses while maintaining or even improving compliance outcomes — a win‑win for business and the community.

In this study, the Commission has been asked to benchmark regulator approaches to engagement with small business in order to improve the delivery of regulatory objectives for communities and reduce unnecessary compliance costs. The study was commissioned with agreement from the Council of Australian Government’s Business Regulation and Competition Working Group. While much of the analysis in this report focuses on Commonwealth, state and territory regulators, the regulatory engagement approach of local governments and the experiences of businesses — collected during other recent Commission benchmarking studies — are also drawn on where relevant.

The study was undertaken by a team in the Commission’s Canberra office, led by Rosalyn Bell. The study benefited from discussions and submissions from a variety of stakeholders in the government and business sectors. In particular, the Commission is very grateful to those regulators which responded to its detailed survey on business engagement practices and to all those small business people who gave up several hours of their time to participate in regional roundtable meetings.

Dr Warren Mundy

Presiding Commissioner

September 2013

# Terms of reference

**BENCHMARKING STUDY ON REGULATOR ENGAGEMENT WITH SMALL BUSINESS**

I, David Bradbury, Assistant Treasurer, pursuant to Parts 2 and 4 of the *Productivity Commission Act 1998* hereby request that the Productivity Commission undertake a research study to benchmark the extent to which the different approaches to regulator engagement with small business have the potential to affect the costs (including time and effort) incurred by these businesses. This request follows agreement by COAG's Business Regulation and Competition Working Group that the Productivity Commission undertake a study of this type.

Small business stakeholders consistently raise with Governments their view that compliance approaches and the regulatory posture adopted by regulators with respect to small business, and the degree to which regulators recognise and accommodate the particular circumstances of small business, can have a significant impact on regulatory burden.

Approaches to the regulation of small business can be wide ranging, with some regulators adopting a facilitative role, assisting small businesses to meet their compliance responsibilities, recognising that regulatory compliance activities impose a disproportionate cost on smaller firms. Other regulators adopt a more traditional compliance based regulatory posture.

In undertaking this study, the Productivity Commission is asked to:

* identify the nature of the regulatory posture of Commonwealth and state and territory regulators with respect to small business, including the extent to which facilitative and educative approaches are appropriately combined with compliance based approaches, and the extent to which approaches vary according to the nature and objectives of the regulations;
  + In doing so, the Commission should draw where appropriate on examples of the various approaches that are used in shaping regulatory culture (including by incorporating regulatory objectives into legislative instruments).
* identify the levels of assistance and education that jurisdictions provide to small business and consider whether this could be better targeted;
* identify the extent to which regulators apply a risk based approach to enforcement and compliance, including the mandating of information requirements, in regulating small business;
* clarify the extent to which regulators consider the size and nature of a business when undertaking compliance and enforcement and compliance based information-gathering activities;
* identify whether particular approaches to the exercise of regulatory roles have the capacity to reduce unnecessary compliance costs incurred by small business, while sustaining good regulatory outcomes, and could therefore be described as best practice; and
* have regard to leading practices in overseas jurisdictions.

In order to undertake this study, the Commission will also need to consider and determine a definition of what constitutes a small business, noting that different regulators and jurisdictions use different definitions. As a starting point, the Commission may wish to consider whether there would be benefit in broader adoption of the Australian Bureau of Statistics (ABS) definition of a small business to provide for ease of comparison with ABS data.

A report is to be completed within nine months of the receipt of this Terms of Reference. The Commission is to provide both a draft and final report, and the reports will be published.

DAVID BRADBURY  
ASSISTANT TREASURER

[received 7 December 2012]

**LETTER OF EXTENSION**

Mr Peter Harris  
Chair  
Productivity Commission  
GPO Box 1428  
CANBERRA ACT 2601

Dear Mr Harris

Thank you for your letter of 26 March 2013 requesting an extension to the reporting date for the Productivity Commission’s study into *Regulator Engagement with Small Business*, from 7 September 2013 to 18 October 2013.

I approve an extension of the final reporting date to 18 October 2013 and note your advice that this extension will enable the Commission to meet its obligations under the caretaker conventions.

I have copied this letter to the Prime Minister, the Deputy Prime Minister and Treasurer, the Minister for Finance and Deregulation and the Minister for Small Business.

Yours sincerely

DAVID BRADBURY  
ASSISTANT TREASURER

[received 16 April 2013]

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